Uka Ram vs State Of Rajasthan on 10 April, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1814, 2001 AIR SCW 1478, 2001 (2) UJ (SC) 849, 2001 (5) SRJ 178, (2001) 4 JT 472 (SC), 2001 (4) JT 472, 2001 (3) SCALE 251, 2001 (2) LRI 532, 2001 ALL MR(CRI) 1215, 2001 (5) SCC 254, 2001 CALCRILR 258, 2001 SCC(CRI) 847, 2001 BLJR 1 95, (2001) 1 BLJ 159, (2001) 1 CAL HN 83, (2001) 2 EASTCRIC 124, (2001) 2 CHANDCRIC 107, 2001 CHANDLR(CIV&CRI) 359, (2002) SC CR R 58, (2001) 1 DMC 727, (2001) 2 ALLCRILR 263, (2001) 1 CALLT 173, (2001) 3 MAHLR 450, (2001) 21 OCR 52, (2001) 2 RAJ LW 216, (2001) 2 RECCRIR 416, (2001) 2 CURCRIR 132, (2001) 3 SUPREME 238, (2001) 2 ALLCRIR 1277, (2001) 3 SCALE 251, (2001) 42 ALLCRIC 972, (2001) 2 ALLCRILR 308, (2001) 2 CRIMES 188, 2001 (2) ANDHLT(CRI) 29 SC, (2001) 2 ANDHLT(CRI) 29

Bench: K.T. Thomas, R.P. Sethi, S.N. Phukan

CASE NO.:
Appeal (crl.) 749 of 2000

PETITIONER:
UKA RAM

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 10/04/2001

BENCH:
K.T. Thomas, R.P. Sethi & S.N. Phukan

JUDGMENT:

SETHI,J.

L...I...T.....T.....T.....T.....T.....T.....T..J Solely relying upon the dying declaration of Parveena, the deceased, the trial court held the appellant guilty for the murder of his wife and daughter Kumari Dharmistha aged 16 months. Upon conviction for the offences under Sections 302, 326 and 498A of the Indian Penal Code, the appellant was sentenced to imprisonment for life for the main

offence. Appeal against the aforesaid conviction and sentence was dismissed by the High Court vide judgment impugned herein.

The facts of the case are that on the intervening night of 6/7th May, 1994, Nonji (PW1) submitted a complaint before the incharge of the police station Bheenmal to the effect that when he was at the Chakki of Tararam at about 11.30-12.00 in the midnight he heard voice raising the noise saying Mare Mare from the side of the house of the appellant. On hearing the noise, the informant came out from the Chakki and saw Smt.Parveena, wife of appellant in blazes rushing out from her house. She tore her clothes and was sitting in naked position. After sometime the appellant also came out of his house. On being asked Parveena told that the appellant had burnt her by sprinkling kerosene oil. After registering the case under Sections 324 and 498A IPC, the police commenced the investigation. Parveena who was admitted in the hospital died on 8.6.1994 and the daughter of the appellant died on 2.7.1994 whereafter the offence was changed to Section 302 IPC.

To prove its case, the prosecution examined 21 witnesses at the trial, most of whom turned hostile and did not support the case of the prosecution. Before her death the deceased had made dying declarations Exhibit P-20 which was recorded by the police at about 3.30 a.m. and Exhibit P-27 which was recorded by Judicial Magistrate at 3.55 a.m. on 7.5.1994. The oral dying declarations, allegedly made by the deceased, were sought to be proved by the testimony of PWs 1, 2, 3, 4 and 5. PWs 1, 2 and 4 have not supported the prosecution.

In his statement recorded under Section 313 of the Code of Criminal Procedure, the appellant stated that on 6.5.1994 between 11.30 and 12.00 p.m. he was sleeping outside his house whereas his wife and daughter were sleeping inside the house. After hearing weeping of his daughter he went inside the house and saw his daughter in the state of burning along with his wife. He made an attempt to save their lives. He thought that his wife had burnt his daughter, hence he started abusing her upon which she went outside at Chabutra while burning. He brought his mother on the scene of occurrence who was living separately. He went to the hospital along with the burnt wife and the daughter. According to him his wife was insane and he has been getting her treated for insanity.

From the record it appears that the FIR was received in the police station on 7.5.1994 at about 1.30 a.m. The statement Exhibit P-20, obviously under Section 161 of the Code of Criminal Procedure, is stated to have been made by the deceased at about 3.30 a.m. and dying declaration Exhibit P-27 was recorded by the Magistrate at about 3.55 a.m. For convicting and sentencing the appellant, both the trial as well as the High Court have relied upon dying declaration, Exhibit P-27.

Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-sections (1) to (8) of Section 32 of the Act. When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question is admissible in evidence being relevant whether the person was or was not, at the time when they were made, under expectation of

death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Such statements in law are compendiously called dying declarations. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a mans mind the same feeling as that of a conscientious and virtuous man under oath - Nemo moriturus praesumuntur mentiri. Such statements are admitted, upon consideration that their declarations made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declarations are admitted in evidence, is based upon the legal maxim Nemo moriturus praesumitur mentire i.e., a man will not meet his maker with a lie in his mouth. It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross- examination, it is essential for the court to insist that dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.

In Tapinder Singh v. State of Punjab [1970 (2) SCR 113] this Court held:

> The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under Section 32(1) of the Indian Evidence Act in a case in which the cause of that persons death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, imposing on it an obligation to closely scrutinise all the relevant attendant circumstances.
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> This Court in Dandu Lakshmi Reddy v. State of A.P. [1999 (7) scc 69] observed that on the fact-situation of a case a judicial mind would tend to wobble between two equally plausible hypothesis - was it suicide, or was it homicide? If the dying declaration projected by the prosecution gets credence the alternative hypothesis of suicide can be eliminated justifiably. For that purpose a scrutiny of the dying declaration with meticulous circumspection is called for. It must be sieved through the judicial cullendar and if it passes through the gauzes it can be made the basis of a conviction, otherwise not. It was further held that in view of the impossibility of conducting the test on the version in the dying declaration with the touchstone of cross-examination, the court has to adopt other tests in order to satisfy its judicial

conscious that the dying declaration contained nothing but the truth.

Ms.Minakshi Vij who appeared as amicus curaie in this case vehemently argued that the trial court as well as the High Court was not justified in relying upon the dying declaration (Exhibit P-27) to base the conviction, as, according to her, the said declaration was not made by a mentally sound and normal person. It is submitted that the deceased was suffering from a mental illness which might have prompted her to end her life. Alternatively, it is argued knowing that Parveena was a mental patient, the prosecution should have taken steps to ascertain that while making the statement she was not suffering from any such illness. In rebuttal Sh.Sushil Kumar Jain submitted that as despite taking such a plea the appellant has not chosen to lead any defence evidence, the genuineness of the dying declaration cannot be doubted. He has further submitted that because before recording the statement (Exh.P-27) the doctor had declared the deceased to be fit to make the statement vide Exhibit P-26, no doubt can be created about the mental faculties of the deceased at the time of making the statement.

There is no dispute that the prosecution is under a legal obligation to prove its case beyond all reasonable doubts and the accused is only to probabilise his defence. From the evidence on record we find that the plea regarding the mental condition and illness of the deceased was not an after-thought in the instant case. It is evident that during the whole trial, the appellant has been trying to cross-examine the witnesses to probabilise that the deceased was suffering from mental illness which could be a reason for her to commit suicide or alternatively the statement Exhibit P-27 cannot be held to be voluntarily made or not made under any extraneous influences. Nonji (PW1), the first informant in reply to a court question had stated that Parveena was mad but added that he had heard about her madness. In cross-examination Lal Singh (PW3) had stated I do not know that Parveena was mad or not. Villagers were saying that Uka Ram had brought her for medical treatment. Pabu (PW4) in her cross-examination had stated Parveena was mentally made and my son had brought her for medical treatment. Masra (PW10), the father of the deceased was also cross-examined on this subject wherein he had stated that It is wrong to say that previous son-in-laws of Sathu and Abu Road say that Pravina is insane and it is also wrong that due to above reasons they left Parvina. I am ill for 5 years. It is wrong to say that my son Prabhu got treatment of insanity at Palanpur. It is wrong to say that treatment of insanity of my two daughters is going on. Prabhu (PW11), who is the real brother of the deceased has stated that It is true that the mental treatment of my sister Pravina was going on. She was suffering from lunatic attack. On this subject statement of accused under Section 313 has already been noticed. In her dying declaration the deceased had not referred to any reason which allegedly prompted the appellant to commit the crime.

After going through the whole of the evidence, perusing the record and hearing the submissions of the learned counsel for the parties, we are of the opinion that the prosecution had not proved,

beyond doubt, that the dying declaration was true, voluntary and not influenced by any extraneous consideration. Despite knowing the fact that the deceased was a mental patient, the investigating agency did not take any precaution to ensure that the incident was suicidal or homicidal. The probability of the deceased committing suicide has not been eliminated. There also exist a doubt about the mental condition of the deceased at the time she made dying declaration (Exhibit P- 27). Exhibit P-26, the medical certificate only states to her physical condition to make a statement but does not refer to her mental condition even at that time. The trial as well as the High Court appear to have ignored this aspect of the matter while convicting and sentencing the appellant. We are satisfied that it is a fit case in which the appellant is entitled to the benefit of doubt.

As the dying declaration, the sole evidence upon which the conviction is based, is not reliable beyond all reasonable doubts, the conviction and sentence of the appellant is not justified. Accordingly, the appeal is allowed by setting aside the impugned judgment. The appellant is acquitted of all the charges and is directed to be set at liberty forthwith unless required in some other case.