Munnu Raja & Anr vs The Stae Of Madhya Pradesh on 20 November, 1975

Equivalent citations: 1976 AIR 2199, 1976 SCR (2) 764, AIR 1976 SUPREME COURT 2199, (1976) 3 SCC 104, 1976 3 SCC(CRI) 376, (1976) 2 SCR 764, 1976 CRI APP R (SC) 77, 1977 2 SCJ 94, 1976 LABLJ 599, 1976 JABLJ 599, 1977 MADLJ(CRI) 393, 1976 UJ (SC) 154

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, A.C. Gupta

PETITIONER:
MUNNU RAJA & ANR.

Vs.

RESPONDENT:
THE STAE OF MADHYA PRADESH

DATE OF JUDGMENT20/11/1975

BENCH:
CHANDRACHUD, Y.V.
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CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1976 AIR 2199 1976 SCR (2) 764
1976 SCC (3) 104
CITATOR INFO :
F 1979 SC1173 (8)
F 1980 SC 559 (11)
RF 1986 SC 250 (27)
R 1988 SC2013 (23)
RF 1992 SC1817 (17)

ACT:

I.P.C. Section 302 r/w Section 34-Dying declaration-Whether F.I.R. can be treated as dying declaration-Appreciation of dying declaration -Wehther dying declaration must cover the whole incident.

Section 32(1) of Evidence Act-Dying declaration made before investigating officer in presence of a doctor but in the absence of a Magistrate-Evidentary value of the testimony of hostile eye witnesses-Powers of High Court in appeal against acquittal.

HEADNOTE:

The appellants were tried by the Sessions Judge on the charge of committing murder of Bahadur Singh. The prosecution relied on the evidence of two eye witnesses and three dying declarations made by the deceased. The two eye witnesses supported the prosecution case only partly and were, therefor, permitted to be cross-examined by the Public Prosecutor. The Sessions Judge thought it unsafe to rely on the testimony of the two eye witnesses and was also not impressed by and of the dying declarations. Consequently he acquitted the appellants.

The High Court in appeal did not discard the evidence of the eye witnesses but utilised it by way of corroboration to the dying declarations. The High Court set aside the order of acquittal and convicted the appellants under section 30 read with section 34 I.P.C. and sentenced each of them to imprisonment for life.

In an appeal under section 2(1) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.
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HELD: 1. The Sessions Court rightly discarded the evidence of the hostile eye witnesses. They resiled from their Police, Statements and it is evident that they have no regard for truth. Their evidence cannot be used to corroborate the dying declarations. [766-C]

2. In regard to the dying declarations the Sessions Court wholly overlooked the earliest dying declaration which was made by the deceased soon after the incident. The second dying declaration was the first information report lodged by the deceased at the Police Station. The Sessions Judge was clearly in error in holding that the first information report cannot be treated as a dying declamation. After making the statements before the police the deceased succumbed to his injuries and, therefore, the statement can be treated as a dying declaration, and is admissible under section 32(1) of the Evidence Act, The maker of tho statement is dead and the statement relates to the cause of his death. [766DF]

3. It is, well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross examination, there is neither a rule of law nor a rule of prudence that a dying declaration cannot be acted upon unless it is corroborated. [766G]

4. Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. What is necessary is that the whole of the statement made by the deceased must be laid before the court without tampering with its terms or its tenor. [767-C]

5. The deceased did not bear any enmity or hostility

towards the appellants nor did any other persons who were in the company of the deceased after the assault were shown to have any animus for implicating the appellants false. [767E] 765

6. The second dying declaration was not made to the Investigating officer. It was made by way of First Information Report and it was only after the information was recorded that the investigation commenced. The High Court was right in relying on the first and second dying declarations. Considering the facts and circumstances of the case these two dying declarations can be accepted without corroboration. [767F, 768C]

7. The High Court ought not to have relied on the third dying declaration which is said to have been made by the deceased in the hospital. The Investigating officer ought to have requisitioned the services of a Magistrate for recording that dying declaration, Investigating officers are naturally integrated in the success of the investigation and the practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. [768CD]

8. The High Court in reversing the order of acquittal passed by the Sessions rt did not violate any of the principles governing appeals against acquittal. [768E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 227 of 1972 From the Judgment and order dated the 8th September, 1972 of the Madhya Pradesh High Court in Criminal Appeal No. 927/69.

Mohan Behari Lal for the Appellant.

Ram Panjwani, Dy. Advocate General for the State of M.P., N. S. Parihar and I. N. Shroff for the Respondent.

ORDER CHANDRACHUD, J.-The appellants, Munnu Raja and Chhuttan, were tried by the learned Sessions Judge, Chatarpur on the charge that at about 10 a.m. On April 30, 1969 they committed the murder of one Bahadur Singh. In support of its case, the prosecution relied upon the evidence of Santosh Singh (P.W. 1) and Mst. Gumni (P.W. 4) who claimed to be eye witnesses and on three dying declarations alleged to have been made by the deceased. The two eye witnesses were permitted to be cross-examined by the Public Prosecutor as they supported the case of the prosecution only partly. Santosh Singh stated that he saw Chhuttan assaulting Bahadur Singh with a spear but that he did not see Munnu Raja at all. On the other hand, Mst. Gumni stated that it was Munnu Raja and not Chhuttan who assaulted the deceased. Since the two principal witnesses turned hostile, the learned Sessions Judge thought it unsafe to rely on their testimony and, in our opinion, rightly. The learned Judge was also not impressed by any of the dying declarations with the result

that he came to the conclusion that the prosecution had failed to establish its case beyond a reasonable doubt. In that view of the matter, the appellants were acquitted by the learned Judge.

Being aggrieved by the order of acquittal, the State Government filed an appeal in the High Court of Madhya Pradesh, which was allowed by a Division Bench of that Court by its judgment dated September 8, 1972. The High Court did not discard the evidence of the eye witnesses but utilised it by way of corroboration to the dying declarations alleged to have been made by the deceased. Setting aside the order of acquittal, the High Court has convicted the appellants under s: 302 read with s. 34 of the Penal Code and has sentenced each of them to imprisonment for life. The appellants have filed this appeal under s. 2(1) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

We have heard Mr. Mohan Behari Lal on behalf of the appellants at some length and we have considered each of his submissions care fully. It is however unnecessary to discuss every one of the points made by him because, basically, the scope of this appeal-not for getting that the appellants had a right to file this appeal in this Court-lies within a narrow compass. As we have indicated earlier, no exception can be taken to the view taken by the learned Sessions Judge that it is not safe to place reliance on the testimony of Santosh Singh and Mst. Gumni. They resiled from their police statements and it is evident that they have no regard for truth. Their evidence cannot be used to corroborate-the dying declarations either.

We are thus left with the three dying declarations made by Bahadur Singh and since the prosecution has placed great reliance on them, we thought it necessary to hear the learned counsel fully on the facts and circumstances leading to the dying declarations.

In regard to these dying declarations, the judgment of the Sessions Court suffers from a patent infirmity in that it wholly overlooks the earliest of these dying declarations, which was made by the deceased soon after the incident in the house of one Barjor Singh. The second statement which has been treated by the High Court as a dying declaration is Ex. P-14, being the first information report which was lodged by the deceased at the police station. The learned Sessions Judge probably assumed that since the statement was recorded as a first information report, it could not be treated as a dying declaration. In this assumption, he was clearly in error. After making the statement before the police, Bahadur Singh succumbed to his injuries and therefore the statement can be treated as a dying declaration and is admissible under section 32(1) of the Evidence Act. The maker of the statement is dead and the statement relates to the cause of his death.

The High Court has held that these statements are essentially true and do not suffer from any infirmity. It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated: [see Khushal Rao v. State of Bombay]. The High Court, it is true, has held that the evidence of the two eye witnesses corroborated the dying declarations but it did not come to the conclusion that the dying declarations suffered from any infirmity by reason of which it was necessary to look out for corroboration.

It was contended by the learned counsel for the appellants that the oral statement which Bahadur Singh made cannot, in the eye of law, constitute a dying declaration because he did not give a full account of the incident or of the transaction which resulted in his death There is no substance in this contention because in order that the Court may be in a position to assess the evidentiary value of a dying declaration, what is necessary is that the whole of the statement made by the deceased must be laid before the Court, without tampering with its terms or its tenor. Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. Indeed, quite often, all that the victim may be able to say is that he was beaten by a certain person or persons. That may either be due to the suddenness of the attack or the conditions of visibility or because the victim is not in a physical condition to recapitulate the entire incident or to narrate it at length. In fact, many a time, dying declarations which are copiously worded or neatly structured excite suspicion for the reason that they bear traces of tutoring.

It was urged by the learned counsel that after the attack, the deceased was all along accompanied by a large number of persons and one cannot therefore exclude the possibility that he was tutored into involving the appellants falsely. We see no basis for this submission because not even a suggestion was made to any of the witnesses that the deceased was tutored into making the statement. The deceased, on his own, did not bear any enmity or hostility to the appellants and had therefore no reason to implicate them falsely. Indeed, none of the persons who were in the company of the deceased after he was assaulted, is shown to have any particular animus for implicating the appellants falsely.

In regard to the second dying declaration, Ex. P-14, the main objection of the learned counsel is that it was made to the investigating officer himself and ought therefore be treated as suspect. In support of this submission, reliance was placed on a Judgment of this Court in Balak Ram v. State of U.P. The error of this argument consists in the assumption that the dying declaration was made to an investigating officer. The statement, Ex. P.14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information was recorded, and indeed because of its that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the statement. The judgment on which the counsel relies has therefore no application.

We are in full agreement with the High Court that both of these dying declarations are true. We are further of the opinion that considering the facts and circumstances of the case, these two statements can be accepted without corroboration. Bahadur Singh was assaulted in broad day light and he knew the appellants. He did not bear any grudge towards them and had therefore no reason to implicate them falsely. Those who were in the constant company of Bahadur Singh after the assault, had also no reason to implicate the appellants falsely. They bore no ill-will or malice towards the appellants. We see no infirmity attaching to the two dying declarations which would make it necessary to look out for corroboration.

We might, however, mention before we close that the High Court ought not to have placed any reliance on the third dying declaration. Ex. P-2, which is said to have been made by the deceased in

the hospital. The investigating officer who recorded that statement had undoubtedly taken the precaution of keeping a doctor present and it appears that some of the friends and relations of the deceased were also present at the time when the statement was recorded. But, if the investigating officer thought that Bahadur Singh was in a precarious condition, he ought to have requisitioned the services of a Magistrate for recording the dying declaration. Investigating officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We have therefore excluded from our consideration the dying declaration, Ex. P-2, recorded in the hospital.

The High Court was, therefore, justified in reversing the order of acquittal passed by the Sessions Court and in convicting the appellants of the offence of which they were charged. In so doing, the High Court did not violate any of the principles governing appeals against acquittal, to which our attention was drawn by the appellants' counsel from time to time In the result, we confirm the judgment of the High Court and dismiss the appeal.

P.H.P. Appeal dismissed.