Panneerselvam vs State Of Tamil Nadu on 15 May, 2008

Equivalent citations: 2008 AIR SCW 4787, 2008 (3) AIR JHAR R 641, AIR 2009 SC (SUPP) 508, (2008) 3 MAD LJ(CRI) 399, 2008 CRILR(SC MAH GUJ) 453, (2008) 2 JCC 1427 (SC), 2008 CRILR(SC&MP) 453, 2008 (17) SCC 190, (2008) 3 ALLCRILR 321, (2008) 1 CRILR(RAJ) 453, (2008) 2 MADLW(CRI) 1257, 2008 (2) CALCRILR 359, 2008 (3) ALLCRIR 2578, (2009) 64 ALLCRIC 729, 2008 (3) GUJLH 442, 2008 (2) JCC 1427, (2008) 3 RECCRIR 54, 2008 (40) OCR 923, 2008 (8) SCALE 151, (2009) 1 CGLJ 211, 2008 CHANDLR(CIV&CRI) 555, 2008 (3) ANDHLT(CRI) 335 SC

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Bench: Arijit Pasayat, P. Sathasivam, Mukundakam Sharma

JUDGMENT

Arijit Pasayat, J.

1. These two appeals have their matrix in a common judgment of a Division Bench of the Madras High Court disposing of three criminal appeals preferred under Section 374 of the Code of Criminal Procedure, 1973 (in short `Cr.PC'), against the judgment of the Principal Sessions Judge, Thanjavur in Sessions case No. 65 of 1994 dated 13.5.1997. Five persons had faced trial for alleged commission of murder of one Arunbharathi @ Jynarab (hereinafter referred to as the `deceased'). They were convicted for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short `IPC'). So far as A1, A2 and A5 are concerned, each was sentenced to undergo imprisonment for life. A1, A2 and A5 were convicted for offence punishable under Section 348 IPC and sentenced to one year RI each. A1 was charged for commission of offence punishable under Section 201 IPC and sentenced to undergo one year RI and A2 and A5 were convicted for offence punishable under Section 201 read with Section 34 IPC and each was sentenced to undergo RI for life.

2. A1 was Head Constable, while A2 was a Constable A3 was a Writer, and A4 was a Pere Constable. All of them were attached to Ammapet Police Station, and they were on duty on 14.12.1992 and 15.12.1992. A5 was a native of Udaiyur Kovil

3. After the case was committed to the Court of Sessions charges were framed since the accused persons pleaded innocence they were put to trial. In order to substantiate the charges 14 witnesses were examined. On consideration of the material on record the Trial Court recorded the conviction and imposed sentences as aforesaid.

4. Stand of the appellant before the High Court was that the deceased had put himself on fire and in fact, all the accused persons immediately quenched the fire and had taken him to the Government Primary Health Hospital, Ammapet, where PW3 doctor was available. The deceased made a voluntary statement to PW3 wherein he categorically stated that he had poured petrol on himself and set himself on fire. Thereafter the deceased with the burn injuries was taken to the Medical College Hospital where also he made a similar statement to PW4 the doctor. Subsequently, another doctor PW6 examined him where also he made a similar statement. Therefore, it was submitted that the Trial Court was not justified in convicting them relying on the purported dying declaration alleged to have been given by the deceased to the Revenue Divisional Officer (PW14) on 16.12.1992 i.e. four days prior to his death. The same was nothing but a tutored one. The High Court held that the so called statements made before the doctors cannot be accepted in view of the dying declaration recorded by PW14 the RDO. The High Court did not attach any importance to the statements purportedly given before PWs, 3, 4 and 6 and also relied on the dying declaration purportedly made by the deceased before the PW14. The High Court found that the allegations against A2, A3 were not proved beyond reasonable doubt and they were entitled to acquittal. Accordingly, the appeals filed by these accused persons were allowed and those filed by the appellants in these two appeals were dismissed.

5. In support of the appeal learned Counsel for the appellants submitted that the High Court proceeded on presumptions that because the statements of the deceased to PWs, 3, 4 and 6 were made in the presence of a Constable, therefore, they were not voluntary. On the contrary at the time when the statements were made, the relatives of the deceased were present is evident from the evidence of PW1 who took the deceased to the hospital. He had categorically admitted that he was accompanied by several persons when the deceased was taken to and was at the hospital. PW1 and others were there with him. PW1 has categorically admitted that this was the situation in the Ammapet hospital and Thanjavur Medical College Hospital. He has categorically stated that several persons were present at the hospital. It was, therefore, submitted that the voluntary statement made right from the beginning should not have been lightly brushed aside. It is also pointed out that the High Court came to an erroneous conclusion by misreading dying declaration purported to be made before RDO that it was either A1 or A5 (the present appellants) who had poured petrol and set him on fire.

6. In response, learned Counsel for the respondent-State submitted that the High Court had rightly relied upon the dying declaration made before the RDO. According to him the fact that police officials were present when the statements were made by the deceased before the doctors made the position clear that the deceased was not speaking the truth.

7. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben v. State of Gujarat :

> (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja and Anr. v. The State of Madhya Pradesh]
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> (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh v. Ram Sagar Yadav and Ors. and Ramavati Devi v. State of Bihar]
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> (iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. v. The Public Prosecutor]
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> (iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg v. State of Madhya Pradesh]
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> (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See Kaka Singh v. State of M.P.]
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> (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. v. State of U.P.]
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> (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu]
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> (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors. v. State of Bihar].

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. v. Madan Mohan and Ors.].

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v. State of Maharashtra]

9. We find that the High Court has erroneously discarded the statements made by PWs. 3, 4 and 6 to the effect that the deceased voluntarily told each one of them that he had set himself on fire. As rightly contended by learned Counsel for the appellant, even though one police official was present when the statement was made to PWs. 3, 4 and 6, yet large number of relatives of the deceased, more particularly, PW1 who had taken him to the hospital were present also. Additionally, the High Court has misconstrued the dying declaration. The deceased had categorically stated therein that he did not know who set him on fire. The High Court observed, as if, the deceased had said that either A1 or A5 did so. The conclusions have been arrived at by misreading the evidence. Therefore, the impugned judgment of the High Court cannot be maintained and is set aside. The appellant in each case is acquitted of the charges. The appellants be released from custody forthwith unless required in any other case. The appeals are allowed.