Smt. Paniben vs State Of Gujarat on 13 March, 1992

Equivalent citations: 1992 AIR 1817, 1992 SCR (2) 197, AIR 1992 SUPREME COURT 1817, 1992 (2) SCC 474, 1992 AIR SCW 2050, 1992 CRIAPPR(SC) 149, 1992 SCC(CRI) 403, (1992) 2 SCR 197 (SC), 1992 CRILR(SC MAH GUJ) 334, (1992) 4 JT 397 (SC), 1992 (2) SCR 197, (1992) 2 ANDHWR 60, (1993) SC CR R 65, 1993 CHANDLR(CIV&CRI) 108, (1992) 2 CRILC 379, (1993) 2 GUJ LR 985, (1992) MAD LJ(CRI) 644, (1992) 2 MAHLR 653, (1992) 2 SCJ 509, (1992) 1 CURCRIR 1100, (1992) 1 CRICJ 421, (1992) ALLCRIR 530, (1992) 29 ALLCRIC 527, (1992) 1 ALLCRILR 610, (1992) 3 ALLCRILR 610, (1992) 1 CRIMES 1180

Author: S. Mohan

Bench: S. Mohan, G.N. Ray

PETITIONER:
SMT. PANIBEN

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT13/03/1992

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
RAY, G.N. (J)

CITATION:
1992 AIR 1817 1992 SCR (2) 197
1992 SCC (2) 474 JT 1992 (4) 397
1992 SCALE (1)655

ACT:
Indian Penal Code 1860:
Section 302-Bride burning-Conviction and sentence-Duty of Court.
Section 32-Dying declaration-When can form sole basis of conviction-Plurality of dying declaration-Have to be accepted when trustworthy and reliable.
Penology
Sentencing-Bride burning-Language of deterence to speak.

HEADNOTE:

The appellant in the appeal was convicted under Section 302 of the Indian Penal Code, and sentenced to life imprisonment by the High Court reversing the acquittal of the Trial Court.

The Prosecution alleged that deceased was married to the son of the accused in the year 1972, and that there were frequent quarrels between the appellant-mother-in-law and the deceased-daughter-in-law. On one occasion, on account of a quarrel the daughter-in -law went away to her parents' house and on the assurance of her father-in-law that nothing would go wrong, the deceased was sent to the house of the accused. The accused, the deceased and her husband were all living in the same house. Even after the return, there used to be quarrels between the accused and the deceased. The accused developed a profound dislike for the deceased.

On the night of 7th May,1977,at about midnight, the deceased was sleeping all alone in the `osri' of the House. The accused went there,poured kerosene on her person,and as the deceased got up, the accused lit the fire and left the `osri'. The deceased shouted for help and hearing her shouts, her husband and other collected there and the fire was extinguished. She was removed to the hospital in the cart. In the cart, she told some witnesses that her mother-in-law had burnt her. later on. she was

198

taken to the Government hospital in a taxi in a burnt condition. The police constable on duty informed the Taluka police station and the Head Constable made an entry in the police station diary, and another Head Constable went to the hospital and recorded the statement of the deceased in the early hours. In that statement, she stated that her mother-in-law had burnt her. The Head Constable wrote a `yadi' for a dying declaration to the Executive Magistrate who reached the hospital at about 7.00 A.M. on 18.5.1977, and recorded the dying declaration Ex.29. In this declaration also, the deceased stated that she was burnt by the accused. The Police sub-Inspector who took up the investigations, went to the scene of occurrence, made the panchnama of the scene of occurrence and recorded the statement of witnesses. He also recorded a statement of the deceased on 19.5.1977. In that also, the deceased stated that she was burnt by her mother-in-law. The sub-Inspector arrested the accused on 18.5.1977. The deceased succumbed to the injuries on 20.5.1977. On completing the necessary investigations, the accused was charge-sheeted and committed before the Session Judge.

The Sessions Judge came to the conclusion that the deceased might have committed suicide, that it was also probable that someone else might have burnt her alive,

because she had a grievance against her mother-in-law she implicated her in dying declaration. The dying declarations, hence could not be accepted having regard to this inherent infirmity. On these findings it was held that the prosecution had failed to prove that the deceased was burnt alive by the accused, and the accused was acquitted.

The State appealed to the High Court, and a Division Bench considered the circumstances under which the dying declarations were recorded. It found that the dying declaration Ex.24 clearly showed as to how the occurrence had taken place. The second dying declaration Ex.29 was recorded in a question and answer form that there was no scope for tutoring the deceased for giving any statement which would involve the accused, and that at that time, the deceased was all right and she was in a position to give the dying declaration. The third dying declaration was made to the deceased's father who was a truthful witness and clearly establishes that there was no scope of parents tutoring the deceased in any way. The findings of the Trial Court it was held could not be accepted with reference to the various aspects like enmity between the mother-in-law and the deceased, the failure of the deceased to narrate the incident to her

199

husband, and was not prepared to believe that the deceased attempted to commit suicide and only for revenge involved the accused falsely. In the result, the order of acquittal was set aside, the accused was held guilty of the offence of murder and was convicted under Section 302 I.P.C and sentenced to imprisonment for life. It was, however, recommended that the Government consider the case favourably on the aspect of remission of sentence under Section 432 of the Code of Criminal Procedure.

In the appeal to this Court, it was contended on behalf of the appellant that the High Court was not justified in convicting the accused purely on the dying declarations which bristle with many contradictions and improve from stage to stage, and that having regard to the fact that the relationship between the mother-in-law and the daughter-in-law,was far from cordial the deceased had every motive to implicate the mother-in-law. It was also contended that the appellant was 58 years of age and that having spent more than a decade in jail,the appeal calls for interference on the ground of sentence.

Dismissing the appeal, and upholding the conviction and sentence, this Court

HELD 1. The situation in which a man is on death bed is so solemn and serene when he is dying the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination and dispensed with. Besides, should the dying declaration be excluded it will result in mis-carriage 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. [205E]

2. 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 a nature as to inspire full confidence of the Court in the correctness. [205F]

3. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind

200

after a clear opportunity to observe and identify the assailants. [205G]

4.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. [205H]

5. If the plurality of dying declarations could be held to be truthworthy and reliable, they have to be accepted. [207E]

In the instant case there four dying declarations. The fist dying declaration is Ex. 24 recorded by a Head Constable who wrote down the statement as deposed by the deceased. At that time, the deceased was conscious. The second dying declaration is Ex. 29 and was recorded by the Taluka Magistrate in question and answer form. There was no possibility of the deceased being tutored, prompted as to utter falsehood, so as to implicate the accused, It is also clear when she made the statement, she was in a fit mental condition. The third oral dying declaration was made by the deceased to her father who has impressed the High Court as a truthful witness. The fourth dying declaration Ex.34 recorded by the police sub-inspector has been rightly rejected by the High Court. The High Court was fully justified in accepting the dying declarations because they answer every test which is required to be accepted for such acceptance.

[207E, H;208 D, E,G]

In the instant case, the theory of suicide has been rightly rejected by the Court. A tender lass after only five years of married life with and affectionate husband and a young daughter to foster could not have resorted to that rash act merely because there were quarrels between her and her mother-in-law. In every house it is proverbial that such quarrels do take place. It is impossible to contend that the deceased was so much frustrated in life so as to commit

suicide. [208H-209D]

6. It would be a traversity of justice if sympathy is shown when such a cruel act is committed. it is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. It is hard to fathom as to why even the "mother" in her did not make her feel. It is tragic ,deep rancour should envelop her reason and drown her finer feelings. The

201

language of deterrance must speak in that it may be a conscious reminder to the society. Undue sympathy would be harmful to the cause of justice. It may even undermine the confidence in the efficacy of law. [209C-D]

7. Merely because the accused has spent more than a decade in jail is no justification to show any leniency. [209E]

Mannu Raja v. State of M.P., [1976] 2 SCRR 764; State of M.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164; Ram Chandra Reddy v. Public Prosecutor, AIR 1976 S.C. 1994; Rasheed Beg v. State of Madhya Pradesh, [1974] 4 S.C.C. 264; Kake Singh v. Sate of M.P., AIR 1982 SC 1021; Ram Manorath v. State of H.P.,1981 SCC (Crl.) 531; State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617; Surajdeo Oza v. State of Bihar,AIR 1979 SC 1505; Nanahau Ram and another v. State,AIR 1988 SC 912; State of H.P. v. Madan Mohan, AIR 1989 S.C. 1519; Mohan lal v. State of Maharashtra, AIR 1982,S.C. 839, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal appeal No. 487 of 1980.

From The Judgment and Order dated 17/18-4-80 of the Gujarat High Court in Crl. A. No. 885 of 1978.

Vimal Dave for the Petitioner.

R.N. Sachthey and Anip Sachthey for the Respondent. The Judgment of the Court was delivered by MOHAN, J. Everytime a case relating to dowry death comes up, it causes ripples in the pool of the conscience of this Court. Nothing could be more barbarous, nothing could be more heinous than this sort of crime. The root cause for killing young bride or daughter-in -law is avarice and greed. All tender feelings which alone make the humanity noble disappear from the heart. Kindness which is the hallmark of human culture is buried. Sympathy to the fairer sex, the minimum sympathy is not even shown. The seedling which is uprooted from its original soil and is to be planted in another soil to grow and bear fruits is crushed. With this prefatory note, we pass on to the matrix of facts.

The criminal appeal is directed against the conviction of the appellant under Section 302 of Indian Penal code and sentencing her to life imprisonment reversing the acquittal by the Tribal Court. The case of the Prosecution shortly is as under:

> Bai Kanta was married to Valji Savji sometime in the year 1972. Accused is the mother-in-law of Bai Kanta. There were frequent quarrels between the mother-in-law and the daughter-in-law. Once Bai Kanta on account of quarrel went away to her parent's house. Accused went to the house of Bai Kanta to bring her back. The father-in-law of Bai Kanta gave an assurance that nothing would go wrong. On this assurance, Bai Kanta was sent to the house of Accused. The accused, Bai Kanta and her husband were all living in the same house. Even after the return, there used to be quarrels between the accused and Bai Kanta. The accused developed profound dislike for Bai Kanta. On the night of 7th May, 1977 at about 12 mid night, Bai Kanta was sleeping all alone in the 'osri' of the house. The accused went there, poured kerosene on her person. Bai Kanta got up as she felt the kerosene was being poured and meanwhile the accused lit fire and left the 'osri'. Bai Kanta shouted for help. Hearing the shouts, the husband and other collected there and the fire was extinguished. She was removed to the hospital in the cart. In the cart, she had told witnesses Ratnabhai, Savji Dahya, Shantaben, Valji Ben and others that her mother-in-law had burnt her. Up to the Gadhka village, she was taken in the cart. Later on, she was brought to Rajkot Government hospital in a taxi in burnt condition. The police constable on duty at the hospital informed Taluka police station about Bai Kanta having been brought to the hospital in burnt condition. So, Head Constable Kanji Ukabhai who was in-charge of the police station made an entry in the police station diary. He directed Head Constable Abhal Mamaiya to go the hospital and enquire into this matter. Accordingly Head Constable Abhal Mamaiya went to the hospital and recorded the statement of Bai Kanta in the early hours. It was stated by her that the mother-in- law burnt her. Abhal Mamaiya wrote a yadi for dying declaration to the Executive Magistrate which was received by him at 6 a.m. Abhal Mamaiya, thereafter filed a complaint on the strength of the statement of the deceased and the investigation started. The Executive Magistrate reached the hospital at about 7.10 a.m. on 18.5.1977. He recorded the dying declaration Ex. 29. In that declaration also, Bai Kanta stated she was burnt by the accused. Police Sub- Inspector Tavde of Rajkot Taluka police station took up the investigation; went to the seen of occurrence; made the panchnama of the scene of occurrence; recorded the statement of witnesses. He arrested the accused in the evening. He also recorded the statement of Bai Kanta on 19.5.1977. In that also, Bai Kanta stated, she was burnt by her mother-in-law, the accused. The Sub-Inspector Tavde arrested the accused at about 6.45 p.m. on 18.5.1977. Bai Kanta succumbed to the injuries on 20.5.1977 at 0045 hours.

Thereafter, post-mortem was carried out.

On completing the necessary investigation, the accused was chargesheeted and after committal, she was tried by the learned Sessions Judge of Rajkot in Sessions Case No. 34 of 1977.

On consideration of the evidence, the learned Sessions Judge came to the conclusion that the deceased might have committed suicide. Besides, it was also probable that someone else might have burnt her alive. Because she had a grievance against her mother-in-law, in the dying declaration she implicated her. Hence, the dying declaration could not be accepted having regard to the inherent infirmity. Accordingly, it was held that the prosecution has failed to prove that the deceased was burnt alive by the accused. Thus it ended in acquittal.

The State took up the matter in Criminal Appeal No. 885 of 1978 to the High Court of Gujarat. The Division Bench considered the circumstances under which the dying declaration were recorded. It found that the dying declaration Ex.24 clearly shows as to how the occurrence had taken place.

The second dying declaration Ex.29 which was recorded in question and answer form. There was no scope of tutoring the deceased for giving any statement which would involve the accused. At that time the deceased was allright and she was in a position to give the dying declaration.

The third dying declaration made by the deceased's father Jadav who was a truthful witness, clearly establishes there was no scope of parents tutoring the deceased in any way.

It was further held that the findings of the Trial Court could not be accepted with reference to the various aspects like enmity between the mother-in-law and the deceased, the appreciation of the statement of deceased, the failure of the deceased to narrate the incidence to her husband.

The High Court considered the legal position whether the accused could be convicted on the basis of dying declaration in the light of relevant case law. It ultimately held that the deceased was young girl aged about 18 years who had a married life of only 5 years to her share with all hopes of living a happy married life in future with her husband who was affectionate towards her. She had also a young daughter aged about 2 1/2 years. Except the relationship with her mother-in-law, she was quite happy. There was no possibility of her coming to a conclusion that she must end her life. There was no indication that the deceased was so harassed as to have lost her self-control so as to commit suicide. Thus, the High Court was not prepared to believe that the deceased attempted to commit suicide and only for the revenge, she involved the accused falsely. In the result, the order of acquittal was set-aside. The accused was held guilty of the offence of murder. She was convicted under section 302 of Indian Penal Code and sentenced to imprisonment for life. However, it was recommended to the Government to consider her case favourably on the aspect of remission of her sentence under Section 432 of the Code of Criminal Procedure.

Special leave petition was directed to be treated as petition of appeal by an order dated 6.8.1980 passed by this Court. Under these circumstances, the criminal appeal comes before us.

The learned counsel for the appellant vehemently urged that the High Court was not justified in convicting the accused basing purely the dying declaration which bristles with so many contradictions and improvements from stage to stage. Having regard to the fact that relationship between the mother-in-law and the daughter-in-law far from cordial, the deceased had every motive to implicate the mother-in- law. Normally speaking deceased would not have failed to narrate this

incidence to her husband who was affectionate to her. Besides, there were also several other infirmities pointed out by the learned Sessions Judge who had acquitted the accused. That acquittal should not have been interfered with.

In any event, the accused at the time of the judgment of the High Court itself was 58 years of age. She having spent more than a decade in jail, the appeal calls for interference on sentence.

The learned counsel appearing for the respondent State submits: the High Court has considered fully each and every aspect after administering to it the caution that an order of acquittal cannot be interfered with lightly.

It analysed the three dying declarations. There again, it had forefront the law that it could not be safe to hold an accused guilty solely on the basis of dying declaration. After doing so, it found that the implication of the mother- in-law who was real offender was not on account of enimity. It considered the other aspect as to why the husband was not informed and the so called infirmities pointed out by the Sessions Court. In the light of the decision of this Court, it was found that the dying declaration ought to be accepted and rightly convicted the accused.

Having regard to the drastic nature of the crime, even on sentence, no sympathy can be shown.

This is a case where the basis of conviction of the accused is the three dying declarations. The principle on which dying declarations are admitted in evidence is indicated in legal maxim.

> "nemo moriturus proesumitur mentiri-a man will not meet his Maker with a lie in his mouth".

The situation in which a man is on death bed is so solemn and serene when he is dying the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in mis-carriage 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.

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 a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, 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 assailants. 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 coroborated. 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:

> (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. Mannu Raja v. State of M.P., [1976] 2 SCR 764.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. State of M. P. v. Ram Sagar Yadav, AIR 1985 Sc 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164.

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. Ram Chandra Reddy v. Public Prosecutor, AIR 1976 S.C. 1994.

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. Rasheed Beg v. Sate of Madhya Pradesh, [1974] 4 S.C.C. 264.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M. P.., AIR 1982 S.C. 1021)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. 1981 SCC (Crl.)

531).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v.

Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram and another v. State, AIR Sc

912)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State U.P. v. Madan Mohan, AIr 1989 S.C. 1519) In the light of the above principles, we will consider the three dying declarations in the instant case and we will ascertain the truth with reference to all dying declaration made by the deceased Bai Kanta. This

Court in Mohan Lal v. State of Maharashtra, AIR 1982, S.C. 839 referred to held:

> "Where there are more than the 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 truth worthy and reliable, they have to be accepted.

The first dying declaration is Ex 24. It was recorded by Head Constable Abhal Mamaiya. At that time, the deceased was conscious. He wrote down her statement as deposed by her. That clearly shows that when the deceased was sleeping in the Osri at night, her mother-in-law, her father-in-law and others were sleeping in the pali, at about 12 mid-night, the accused poured kerosene and ignited her. Because the deceased shouted, people from round about gathered and fire was extinguished. Therefore, her father-in-law, maternal aunt-in-law and sister-in-law and 2 to 3 other persons took her in a cart. It is admitted by Head Constable Abhal Mamaiya in cross-examination that while recording the statement, he did not call the Medical Officer.

The second dying declaration is Ex. 29. This is recorded by Taluka Magistrate Bhachandra Prabhashanker Trivedi. He reached the hospital at 6.35 a.m. He reached the hospital at 6.35 a.m. He ascertained from the Doctor whether Bai Kanta was conscious. The Doctor examined her and found her to be conscious. Thereafter, only the Medical Officer was allowed to remain the room and the other persons were sent out. He recorded the dying declaration in question and answer form. The Executive Magistrate wrote down the answers given by the deceased. This was completed by 7.10 a.m. This declaration makes it clear that the deceased was sleeping alone in the 'osri', someone came near her, poured kerosene whereupon she woke up. At that time, she found out the person who poured kerosene on her, was her mother-in-law, the accused. According to this statement, the accused poured kerosene because there was dispute in the house for 8 to 10 days prior to the date of the occurrence, during which time frequent quarrels took, place and the mother-in-law rebuked her since Bai Kanta did not do work.

It is important to note to the specific question as to whether she was sleeping alone or someone else was also with her, she replied that her husband had gone to the wadi and she was sleeping alone.

It is equally important to note that the parents of the deceased reached the hospital only round about 7.30 a.m. Hence there is no possibility of she being tutored, prompted as to utter falsehood, so as to implicate the accused. It is also clear that at that time when she made the statement, she was in a fit mental condition to make the statement.

The third oral dying declaration was made by the deceased to her father Jadav. The deceased told him that her mother-in-law had burnt her. Jadav impressed the High Court as a truthful witness because he did not want to fall in line with the narration of the police in which minor details were attributed to him. We also on going through the evidence of Jadav are fully impressed with the same.

As rightly held by the High Court the fourth dying declaration Ex. 34 stated to have been recorded by the police Sub-Inspector Tavde has to be discarded. Thus, we are clearly of the opinion the High Court was fully justified in accepting the dying declaration because they answer every test which is required to be applied for such acceptance.

We concur with the High Court in reversing the findings of the Learned Sessions Judge as to why the deceased could not try to run and catch the miscreant and allow her cloth to burn. Equally, we agree with the High Court with regard to the other infirmities including not informing the husband. The theory of suicide has been rightly rejected by the High Court. As was pointed out a tender less after only five years of married life with an affectionate husband and a young daughter to foster could not have resorted to that rash act merely because there were quarrels between her and her mother-in-law. In every house it is proverbial that such quarrels do take place. It is impossible to contend that the deceased was so much frustrated in life so as to commit suicide.

In the result, we have no hesitation in upholding the conviction.

Turning to the sentence; sympathy is what is pleaded at our hands. We are clearly of the opinion that it would be a traversity of justice if sympathy is shown when such cruel act is committed. It is rather strange that the mother-in- law who herself is a woman should resort to killing another woman. It is hard to fathom as to why even the "mother" in her did not make her feel. It is tragic deep rancour should envelope her reason and drawn her finer feelings. The language deterrance must speak in that it may be conscious reminder to the society. Undue sympathy would be harmful t the cause of justice. It may even undermine the confidence in the efficacy of law.

Merely because the accused has spent more than a decade in jail, we see no justification to show any leniency. Of course, we are aware the High Court itself had recommended for remission under Sec. 432 of the Code of Criminal Procedure, in view of the accused being 58 years of age at that time. Whether of the counsel in favour or opposition have informed us as to what had happened whether remission was granted or not. However, we leave it at that.

In the result, we dismiss the appeal.

N.V.K. Appeal dismissed.