Supreme Court of India
Bhagwan Tukaram Dange vs State Of Maharashtra on 13 March, 1947
Author: .....J.
Bench: K.S. Radhakrishnan, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1823 OF 2008

Bhagwan Tukaram Dange …. Appellant

Versus

State of Maharashtra …. Respondent

J U D G M E N T

K.S. Radhakrishnan, J.

1. Appellant herein, accused No.1 (A-1) along with his father, accused No.2 (A-2) was charge-sheeted for the offences of murder of his wife under Sections 302, 498A read with Section 34 of the Indian Penal Code. A-1 and A-2 were found guilty and sentenced to suffer imprisonment for life, with a default sentence. Aggrieved by the order of conviction and sentence, they filed Criminal Appeal No.11 of 2000 before the High Court of Bombay and the same was dismissed vide judgment dated 09.02.2004. A-2 later died and A-1, aggrieved by the judgment of the High Court has filed this appeal.

2. The prosecution story is as under:

A-1 son and A-2 father returned to their house on 18.10.1998 at about 7.00 PM, fully drunk. On reaching home, they demanded Rs.200/- to Rs.300/- from the wife of A-1. On refusal, she was severely beaten up and asked to bring it from her parental house. A-2 then sprinkled kerosene from a plastic can over the body of the deceased and A-1 then lit a match-stick and set fire on the saree of the deceased. Deceased shouted for help and rolled down on the ground and ultimately succeeded in extinguishing the fire, but by the time she had suffered more than 80 per cent burns over the body. On getting information, parents of the deceased came to the spot and took her to the nearby Public Health Centre, Mayani. After first aid, the deceased was referred to the Civil Hospital, Satara and on 19.10.1998, at about 3.10 AM she was admitted there. Dr. Barge, PW1 treated her and informed Head Constable Shelar (PW5) regarding the admission of the deceased, in an injured condition. PW1 found that she was fully conscious and was in a condition to give statement. PW5, in the presence of PW1, recorded the dying declaration (Ext.P26). Later, Special Judicial Magistrate (PW4)

reached the Civil Hospital, Satara. Dr. Suresh Pawar (PW3) informed PW4 that the deceased was fully conscious and was in a condition to give statement. PW4 recorded the second dying declaration (Ext.P23) of the deceased, which was sealed in an envelope (Ext.P24) and was deposited in the Court of the CJM, Satara. Father of the deceased, Rajaram Mahadu Tupe (PW6), also met the deceased, who had also narrated the same incident to him, which was considered as the third dying declaration.

3. PW7, the investigating officer, came to the spot of the incident and prepared the spot panchnama. PW7 seized the plastic can, match stick and partly burnt cloths from the spot where the deceased extinguished the fire by rolling on the ground. The deceased succumbed to the burn injuries on 21.10.1998 and accused were charge-sheeted.

4. Mr. Ranjan Mukherjee, learned amicus curiae, submitted that the evidence recorded is insufficient to warrant a conviction in the absence of any direct evidence. Learned counsel also pointed out that there are a lot of inconsistencies in the dying declarations recorded and a conviction solely on those inconsistent versions cannot be sustained. Learned counsel also submitted that unless there is corroborative evidence, no reliance could be placed on the inconsistent versions given by the deceased in the dying declarations. Learned counsel also submitted that, in any view, the present case would not fall under Section 302, and, at best, it may fall either under Section 304 Part I or Section 304 Part II. Reference was made to exception 4 to Section 300 IPC and stated that since the accused was under the influence of liquor, it has to be perceived that there was no intention to kill the deceased. Reference was made to the Judgments of this Court in Sukhbir Singh v. State of Haryana (2002) 3 SCC 327 and Sandesh alias Sainath Kailash Abhang v. State of Maharashtra (2013) 2 SCC

479.

5. Mr. Shankar Chillarge, learned counsel appearing for the respondent- State, submitted that the trial court as well as the High Court has correctly appreciated the oral and documentary evidence adduced in this case, especially, the dying declarations. Learned counsel pointed out that both the dying declarations have been properly recorded and the doctor had certified that the deceased was in a sound state of mind to give her version and the statements of the deceased were correctly recorded in the dying declarations. Learned counsel submitted that the dying declaration made before the Executive Magistrate is consistent with the earlier statement made before the police in the presence of the doctor, who had deposed that the deceased was in a condition to give her version of the incident.

6. We may indicate that in this case the conviction was recorded on the basis of the dying declarations, Ext.P26 and Ext.P23 corroborated by circumstantial evidence. The first dying declaration was recorded by PW5, the Head Constable on 19.10.1998 when the deceased was admitted to the Civil Hospital, Satara. PW1, who treated the deceased, informed PW5 that the deceased was fully conscious and was in a condition to give her statement. Ext.P26 was recorded by PW5, in the presence of PW1. Later, the Special Magistrate (PW4) also reached the Civil Hospital. PW3, who examined the deceased, also informed PW4 that the deceased was fully conscious, well

oriented and in a fit condition to give the statement. PW4, therefore, recorded the second dying declaration in the presence of PW3. We have gone through Ext.P26 and Ext.P23 and noticed no inconsistency in the statements made by the deceased to PW5 as well as to PW4. Statements therein were further corroborated by the evidence of PW6, father of the deceased. PW4, who conducted the post-mortem examination, stated that burn injuries found on the body of the deceased were ante-mortem injuries, which were sufficient to cause death.

7. Dying declaration is undoubtedly admissible under Section 32 of the Indian Evidence Act, but due care has to be given by the persons who record the statement. Dying declaration is an exception to the hearsay rule when it is made by the declarant at the time when it is believed that the declarant's death was near or certain. Dying declaration is based on the maxim, "Nemo moriturus praesumitur mentire" i.e. a man will not meet his maker with a lie in his mouth. Dying declaration is a statement made by a dying person as to the injuries culminated in his death or the circumstances under which the injuries were inflicted. Hearsay evidence is not accepted by the law of evidence because the person giving the evidence is not narrating his own experience or story, but rather he is presenting whatever he could gather from the statement of another person. That other person may not be available for cross-examination and, therefore, hearsay evidence is not accepted. Dying declaration is an exception to hearsay because, in many cases, it may be sole evidence and hence it becomes necessary to accept the same to meet the ends of justice.

8. The Court has to carefully scrutinize the evidence while evaluating a dying declaration since it is not a statement made on oath and is not tested on the touchstone of cross-examination. In Harbans Singh & another v. State of Punjab AIR 1962 SC 439 this Court held that it is neither a rule of law nor of prudence that dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. Reference may also be made to the decision of this Court in State of Uttar Pradesh v. Ram Sagar Yadav and others (1985) 1 SCC 552. This Court in State of Uttar Pradesh v. Suresh alias Chhavan and others (1981) 3 SCC 635 held that minor incoherence in the statement with regard to the facts and circumstances would not be sufficient ground for not relying upon statement, which was otherwise found to be genuine. Hence, as a rule of prudence, there is no requirement as to corroboration of dying declaration before it is acted upon.

9. Ext.P23, the first dying declaration in this case, as already stated, was recorded by PW5, the Head Constable, in the presence of PW1, the doctor who treated the deceased at the hospital. PW1 doctor had categorically deposed that the deceased was fully conscious and was in a condition to give the statement. Ext.P26, the second dying declaration was recorded by the Special Judicial Magistrate, PW4. The deceased at that time was examined by PW3, who had also deposed that the deceased was fully conscious, well oriented and was in a condition to give the statement. We have gone through Ext.P26 and Ext.P23 and find no reason to discard the statements recorded in both the dying declarations, which, in our view, are consistent and minor variations here and there would not be sufficient to discard the entire statement considering the fact that the victim was suffering from more than 80% burn injuries.

10. Learned counsel appearing for the accused-appellant submitted that since the accused was under the influence of liquor, he had no intention to kill the deceased wife and, therefore, at best,

the offence would fall either under Section 304 Part I or Section 304 Part II of the Indian Penal Code. We find it difficult to accept this contention. Assuming that the accused was fully drunk, he was fully conscious of the fact that if kerosene is poured and a match-stick lit and put on the body, a person might die due to burns. A fully drunk person is also sometimes aware of the consequences of his action. It cannot, therefore, be said that since the accused was fully drunk and under the influence of liquor, he had no intention to cause death of the deceased-wife. Learned counsel for the Appellant made reference to Sandesh alias Sainath Kailash Abhang (supra), wherein even though it was stated that committing the offence under the influence of liquor is a mitigating circumstance, but was later clarified in an order passed in Review Petition (Crl.) No.D8875 of 2013, filed in that case, stating as follows :

> "... However our observations may not be construed to generally mean that drunkenness of an accused is a mitigating factor in the award of punishment."

11. Intoxication, as such, is not a defence to a criminal charge. At times, it can be considered to be a mitigating circumstance if the accused is not a habitual drinker, otherwise, it has to be considered as an aggravating circumstance. The question, as to whether the drunkenness is a defence while determining sentence, came up for consideration before this Court in Bablu alias Mubarik Hussain v. State of Rajasthan (2006) 13 SCC 116, wherein this Court held that the defence of drunkenness can be availed of only when intoxication produces such a condition as the accused loses the requisite intention for the offence and onus of proof about reason of intoxication, due to which the accused had become incapable of having particular knowledge in forming the particular intention, is on the accused. Examining Section 85 IPC, this Court held that the evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into account with the other facts proved in order to determine whether or not he had the intention. Court held that merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts. This Court, in that case, rejected the plea of drunkenness after noticing that the crime committed was a brutal and diabolic act.

12. We find it difficult to accept the contention of the counsel that since the accused-Appellant was under the influence of liquor, the offence will fall under Section 304 Part I or Section 304 Part II. A-1 was presumed to know the consequences of his action, of having lit the match stick and set fire on the saree of deceased, after A-2 sprinkled kerosene on her body. In our view, the accused was correctly charge-sheeted under Section 302 IPC and we find no reason to interfere with the conviction and sentence awarded by the trial court and affirmed by the High Court.

13. Learned counsel appearing for the appellant-accused further submitted that the appellant has already served the sentence for more than 16 years without remission, he should be set free. Learned counsel appearing for the State brought to our knowledge the guidelines for pre-mature release under the "14 Year Rule" of Prisoners serving life sentence after 18th December, 1978. The Government Resolution No.RLP1006/CR621/PRS-3 dated 11.04.2008 issued by the Government of Maharashtra has made applicable the guidelines to convicts undergoing life imprisonment and those having good behavior while undergoing the sentence.

14. Annexure 1 to the said Government Resolution refers to various categories of offences and the period of imprisonment to be undergone including set-off. In the instant case, relevant category No.2 which deals with "the offences regarding the crimes against women and minors" reads as under:

Annexure I |Categ| |Categorization of crime |Period of | |ory | | |imprisonment to be | |No. | | |undergone including| | | |remission subject | | | |to a minimum of 14 | | | |years of actual | | | | |imprisonment | | | |including set off | | | |period | |2 | |Offences relating to crimes | | | |against women and minors | | | |a |Where the convict has no previous |20 | | | |criminal history and committed the| | | |murder in an individual capacity | | | |in a moment of anger and without | | | | |premeditation. | | | |b |Where the crime as above committed|22 | | | |with premeditation | |

15. Resolution, referred to above read with Annexure I, would indicate that the appellant has to serve a period of minimum 20 years with remission. Since the appellant has already suffered 16 years of sentence without remission, the State Government is directed to consider as to whether he has satisfied the requirement of Resolution dated 11.04.2008 read with Annexure I and, if that be so, he may be set free if the period undergone by him without remission would satisfy the above-mentioned requirement.

16. The appeal is disposed of with the above direction.

.....J.

(K.S. Radhakrishnan) .....J.

(Vikramajit Sen) New Delhi, March 13, 2014