Supreme Court of India
Vithal Somnath Kore vs State Of Maharashtra on 20 January, 1978
Equivalent citations: AIR 1978 SC 519, 1978 CriLJ 644, (1978) 1 SCC 622
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Bench: D Desai, S M Ali
JUDGMENT S. Murtaza Fazal Ali, J.

1. These two appeals are directed against the judgment of the Maharashtra High Court, convicting the appellants under Sections 302/34 of the Indian Penal Code, after reversing the order passed by the Sessions Judge acquitting the two appellants The appellants have filed these appeals under Section 379 of the Criminal Procedure Code and the provisions of the Supreme Court Enlargement of Appellate Jurisdiction Act.

2. It is rather an unfortunate case of patricide resulting from a dispute relating to property. A detailed narrative of the prosecution case is to be found in the High Court judgment and it is not necessary for us to repeat the same here. Suffice it to say that there appears to be no love lost between deceased Babu Bapu vaid and his son, accused No. 1 Ananta, hereafter to be referred as A-1. The other accused Vithal Somnath Kore was a friend of A-1 and will be referred to as A-2. It appears that A-1 was living separately from his father and uncles and he filed a suit for partition of the property against his father. A partition decree was passed and when the occurrence took place an appeal against the decree was pending in the appellate court. On 3rd February 1971 while the deceased was coming towards his village Pathardi and was about three furlongs from his house he was surrounded by the two accused A-1 & A-2. A-2 poured kerosene oil on deceased's clothes and A-1 is said to have lighted deceased's clothes through a lighted Mashal made of an iron bar. On receiving the burn injuries the deceased shouted, which brought P.Ws. 2 and 6 to the spot. These witnesses ran to the spot on hearing the cries of the deceased and deceased was also running towards his house. Fortunately, the witnesses arrived at the scene in time and at once extinguished the fire, but the accused ran away on seeing them Some time later Pandarang P.W. 5, a brother of the deceased arrived at the scene of the occurrence and arranged for a cot and took his brother to the dispensary at Kern, where Om. Doshi gave him first-aid The deceased is said to have made an oral dying declaration to P.Ws 2 and 6 wherein he implicated the two accused and repeated the same dying declaration before his brother, P.W. 5 also. Dr. Doshi asked the constable to writ down a dying declaration made by the deceased of which the questions were put by the Dr. and answered by the deceased. The first written dying declaration, therefore, appears to have been made by the deceased to Dr. Dosh at about 11.00 p.m.. Thereafter, Pandarang lodged an F.I.R. at the Police Station which brought the Investigating Officer to the spot and after the usual investigation the accused were challaned but ultimately acquitted by the Sessions Judge as indicated above. The accused pleaded innocence and the defence of A-1 was that his father was a man of loose character and had outraged the modesty of a woman a few years ago and bad even cast an evil eye on his daughter-in-law, (wife of A-1) and suggested that he may have been assaulted by some of his enemies. The Sessions Judge found that the evidence against the accused was not satisfactory and the case was not proved and he accordingly acquitted the accused. The State filed an appeal to the High Court against the order of acquittal, in which the High Court reversed the judgment of the Sessions Judge and convicted the appellants under Section 302/34 and sentenced them to

imprisonment for life. Hence this appeal before us.

3. We have heard learned Counsel for the parties and have also gone through the judgments of the High Court and that of the Sessions Judge. It is no doubt true that the High Court hearing an appeal against an order of acquittal can interfere for substantial reasons and not merely because another view on the evidence is reasonably possible, but it seems to us that the High Court was fully alive to the principles laid down by this Court for interference with an order of acquittal. The High Court has given convincing reasons for setting aside the judgment of the learned Sessions Judge. The main evidence against the accused consisted of the following facts:

(1) The evidence of the two eye witnesses P.Ws. 2 and 6.

(2) Evidence fin cubed by the oral dying declaration alleged to have been made by the deceased before P.Ws 2 and 6 the moment they arrived at the scene as also to P.W. 5 Pandurang.

(3) The dying declaration made by the deceased to Dr. Doshi at the dispensary, (4) Another dying declaration which was recorded by the Head Constable at the Hospital and last dying declaration which was recorded by Honorary Magistrate, P.W. 13 at the General Hospital at about 2.10 p.m..

The High Court as also the Sessions Judge disbelieved the evidence relating to the recovery of the tin containing Kerosne Oil which may be left out of consideration. The Sessions Judge appears to hive discarded the evidence of P.Ws. 2 and 6 on most trivial grounds and unconvincing reasons, bordering on pure speculation as rightly pointed out by the High Court. To begin with P.Ws. 2 & 6 were independent witnesses and bear no enemity against the deceased nor were they in any way interested in or intimate with the deceased. The Sessions Judge brought that these witnesses in view of the distance could not have seen the occurrence, although he holds that there can be no doubt that the witnesses arrived at the scene of occurrence after the accused had fled away. As regards P.W. 6 it is admitted that he had received some burn injuries on his finger which indicates that he must have reached the spot in time to see the entire occurrences and took active part in extinguishing the fire. Furthermore, the Sessions Judge appears to have over looked the fact that according to these witnesses when they heard the cries of the deceased they ran to the place of occurrences and the deceased was also running towards them and naturally the distance would have been shortened so that the witnesses could have contacted the deceased in no time.

4. We fully agree with the High Court that there was no good reason to distrust the evidence of P.Ws. 2 and 6. We have persed their evidence and we think they have deposed in a straightforward manner and their evidence contains a ring of truth. Thus the evidence of these witnesses is sufficient to convict the appellants for the offence of murder. But the evidence of eye witnesses was further corroborated by the oral dying declarations said to have been made by the deceased to P.Ws. 2 and 6 and also to his brother P.W. 5 which finds place in F.I.R. also.

5. Another very important document is the dying declaration Ex. 29 recorded by Dr. Doshi which does not appear to have been considered by the learned Sessions Judge at all. Dr. Doshi had appeared as a witness and had testified on oath that the deceased was fully conscious and had made

the statement before him. This dying declaration does not suffer from any infirmity at all and that is why the learned Sessions Judge has not dealt with it but has excluded it from consideration. This was undoubtedly, a serious error of law which was committed by the learned Sessions Judge. Then we have dying declaration, Ext. 43, which in our opinion may be excluded from consideration because there is an endorsement of the Doctor that the patient was not answering the questions. Although it is not clear as to when this endorsement was made but having regard to the circumstances of this case we feel it safe to exclude this dying declaration from consideration. Even apart from this there appears to be sufficient evidence against the appellants to sustain the charge of murder. The last dying declaration is Ex 40 which was recorded by an Honorary Magistrate, P.W. 13 at General Hospital at about 2.10 p.m.. The learned Sessions Judge stems to have discarded this dying declaration on three grounds. In the first place the Sessions Judge thought that it was not coherent. Secondly, he was of the view that the deceased tried to improve upon the case of the prosecution by falsely implicating his daughter-in-law Mukta, who was emotioned in his dying declaration. Thirdly, the learned Judge assumed that the deceased was unconscious because he died about two hours later. On a persual of the dying declaration along with evidence of P.W. 13, who being on honorary Magistrate, was a very independent and respectable witness, we find that the reasons given by the Sessions Judge cannot be sustained In the first place reading dying declaration as a whole, we do not find that this is incoherent. There are a few lapses and a few questions have been missed but by and large the deceased appears to give a complete narrative of the manner in which he was burnt. He has named the two accused in his dying declaration and also mentioned the enemity resulting from the partition suit. One important statement in this dying declaration which has been missed by the Sessions Judge was that the deceased himself states that he was feeling much better and was fully conscious It is true that the deceased had mentioned the name of his daughter-in law Mukta but he does not either assign any role to her nor dots he try to involve his daughter-in-law in his assault. It may be possible that Mukta may have come to the spot on hearing alarm and that is why the deceased mentioned her name here. It was suggested that the deceased was suffering from intermittant fits of unconsciousness. There is however, sufficient evidence to show that the deceased was fully conscious when he made the dying declaration before the Honorary Magistrate It is well settled that a dying declaration if believed by the Court, is sufficient to sustain a conviction. In the case of Lallubhai Devchand Shah and Ors. v. The State of Gujarat AIR 1972 SC 1976, it was held that if the truthfullness of a dying declaration is accepted, it can always form the basis of conviction of the accused. In the instant case we find that even though there was some enemity between the father and the son, yet if A-1 was not the real assailant it is most unlikely that his father would in his dying moment try to falsely implicate his own son. This circumstance, therefore, appears to be a sufficient guarantee of the truth of the dying declaration made by the deceased.

6. Having, therefore, considered the evidence of the eye witnesses and the evidence furnished by the dying declarations, we are satisfied that the High Court was right in reaching the conclusion that the prosecution hid proved its case against the appellants beyond reasonable doubt. This was not a case where another view was reasonably possible. The order of the Session Judge was based on pure speculation and was mainifestly wrong and was rightly set aside by the High Court.

7. We would like to mention here that in the first instance A-2 had filed the appeal before the Supreme Court but later we directed learned Counsel appearing amicus curiae to move A-1 also to file an appeal to this Court if he so desires. And, thereafter, A-1 also filed an appeal which has been registered as a separate appeal. Mr. Ganpule, counsel for the appellants states that Superintendent of Jail had written to him that he was entitled to Rs. 250/- for drafting the petition of appeal from Jail. This is indeed a most extraordinary conduct on the part of Superintendent of Jail. We do not understand under what law he can make such a demand. We, however, do not wish to say anything more on this aspect as the learned Counsel appearing for the State has assured us that he will take up this matter with the Government. The result is that the judgment of the High Court is upheld and the appeal is dismissed.