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RATTAN SINGH

v.

STATE OF HIMACHAL PRADESH

DECEMBER 11, 1996

B

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

*Criminal Law :*

*Evidence Act, 1872 : Section 32(1).*

C

*Admissibility of statement made by a person who was dead—Conditions to be satisfied—Accused intruded into courtyard of house of deceased during dead of night—Deceased cried out that accused stood with gun—Immediately thereafter deceased was fired at—Held: Statement need not be made under expectation of death—There need not necessarily be direct nexus between "circumstances" and death—Even distant circumstances could become admissible if it had nexus with the transaction which resulted in death—Even apart from S.32(1) such statement of deceased admissible under S.6 due to its proximity of time and space to the act of murder—Distinction between English and Indian laws pointed out.*

E

*Section 6—Res gestae—Accused intruded into courtyard of house of deceased during dead of night—Accused recognised by deceased—Deceased cried out that accused stood with gun—Immediately thereafter deceased was fired at—Held: such a statement of deceased admissible under S.6 due to its proximity of time and space to the act of murder.*

F

*Criminal Procedure Code, 1973 : Section 154.*

*FIR—Omissions in—Fact regarding wresting of gun from accused omitted in FIR—However, gun found lying near dead body—Held: FIR need not contain all details of occurrence—Whether facts omitted never happened at all had to be considered along with other evidence—Omission regarding wresting of gun inconsequential especially when there was overwhelming evidence that gun was lying near deadbody.*

G

*Section 313—Examination of accused—Held: not a mere formality—Answers given by accused had practical utility for criminal courts in appreciating entire evidence.*

H

*Words and Phrases :*

"Circumstances of the transaction which resulted in his death"—Meaning of—In the context of S.32(1) of Evidence Act, 1872.

The appellant was convicted under Section 302 of the Indian Penal Code, 1860 and sentenced to undergo imprisonment for life. Hence this appeal.

According to the prosecution, on the night of the incident all the inmates of the deceased's house were sleeping in the courtyard of the house. At about 11.00 p.m. the deceased's mother-in-law woke up sensing that somebody had intruded into their privacy and asked others whether anyone was there. Suddenly, the deceased cried out that the appellant-accused, who was known to her, was standing there with a gun. This was followed by the sound of a gunshot and pellets had delved into her body. The sister-in-law of the deceased wrested the gun from the accused but the accused made good his escape. A First Information Report was lodged and during investigation the gun was found near the deadbody.

In the appeal before this Court on behalf of the appellant-accused it was contended that there was omission in the FIR regarding wresting of the gun from the accused and this omission was enough to conclude that the said part of the story was later improvement.

Dismissing the appeal, this Court

**HELD:** 1.1. If the statement of the deceased that the appellant was standing nearby with a gun had been made when the deceased was under expectation of death it becomes dying declaration in evidence after her death. Nonetheless, even if she was nowhere near expectation of death, still the statement would become admissible under Section 32(1) of the Evidence Act, 1872, though not as dying declaration as such, provided it satisfies one of two conditions set forth in the sub-section. This is probably the one distinction between English Law and the Law in India on dying declaration. In English Law, unless the declarant is under expectation of death his statement cannot acquire the passport of admissibility. [945-B-D]

*Sharad Birdhichand Sarda v. State of Maharashtra*, AIR (1984) SC 1622 and *Tehal Singh & Ors. v. State of Punjab*, AIR (1979) SC 1347, relied on.

**A** 1.2. Section 32(1) of the Evidence Act renders a statement relevant which was made by a person who is dead in cases in which cause of his death comes into question, but admissibility depends upon one of the two conditions; Either such statement should relate to the cause of his death or it should relate to any of the circumstances of transaction which resulted in his death. [945-E]

**B**

1.3. When the deceased made the statement that the appellant was standing with a gun she might or might not have been under the expectation of death. But that does not matter. The fact spoken by the deceased has subsequently turned out to be a circumstance which intimately related to the transaction which resulted in her death. The collocation of the words in Section 32(1) "circumstances of the transaction which resulted in his death" is apparently of wider amplitude than saying "circumstances which caused his death." There need not necessarily be a direct nexus between "circumstances" and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. It is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death. [945-H; 946-A-C]

**E**

1.4. Even apart from Section 32(1) of the Evidence Act, the aforesaid statement of the deceased can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act. [946-F-H; 947-A-B]

**G** 1.5 In either case, whether it is admissible under Section 32(1) or under Section 6 of the Evidence Act, it is substantive evidence which can be acted upon with or without corroboration in finding guilt of the accused. [947-B]

**H** 2. Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such statements cannot be expected to

be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often the Police Officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitory exercise. It is the voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all. In the instant case there is overwhelming evidence that the gun was lying near the deadbody. Hence, omission in the First Information Statement regarding wresting of the gun from the accused is of no consequence. [944-C-F]

*Podda Narayana & Ors. v. State of Andhra Pradesh*, AIR (1975) SC 1252; *Sone Lal & Ors. v. State of U.P.*, AIR (1978) SC 1142 and *Gurnam Kaur v. Bakshish Singh & Ors.*, AIR (1981) SC 631, relied on.

3. Examination of the accused under Section 313 of the Criminal Procedure Code, 1973 is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating the entire evidence adduced in the court during trial. [947-H; 948-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 509 Of 1991.

From the Judgment and Order dated 10.10.90 of the Himachal Pradesh High Court in CrI.A. No. 88 of 1983.

Suman Kapoor and Pankaj Kalra for the Appellant.

Avatar Singh Rawat, T. Sridharan and T.A. Khan for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. A young housewife (Kanta Devi) enceinte by four

A months, was shot at with a double barrel gun by an assailant who gate crashed into her courtyard during the odd hours of the night when she was sleeping. The shoal of pellets spewed out of the mouth of the gun had pierced into her lungs and heart and she died instantaneously. Appellant - an ex-armyman - was challaned by the police for the said murder. Sessions Court acquitted him but a Division Bench of the High Court of Himachal Pradesh, on appeal by the State, convicted him under Section 302, I.P.C. and sentenced him to imprisonment for life. He has filed this appeal under section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970 and also under section 379 of the Code of Criminal Procedure.

C The following is the story which prosecution has unfurled in the Trial Court :

D Kanta Devi (aged 21) was married to Puran Chand and she was living with her in-laws in her husband's house at Bhali village. Her husband was working in the Public Works Department and most-often he was living away from his family. Her sister-in-law Sheela Devi (PW10) though married was also residing in the same house. Appellant, after superannuation from military service has settled down in his home village. He obtained a licence for possession of Ex. P1 - gun. Appellant, in course of time developed some infatuation for Kanta Devi and he started doting on her with libidinous designs, but she was not willing to reciprocate his oglings. This negative response had burgeoned the seed of rancour in his mind towards Kanta Devi and thenceforth he started harassing her. When she found him incorrigible she complained to the police about his lewd conduct. This led to initiation of security proceedings against him during which his gun was seized by the authorities, but he secured it back by making an application through advocate Prahalad Chand Sharma (PW2). Nonetheless his bitterness towards her, instead of abating, was only brimming up. He made some unsuccessful attempts to retaliate though in one such attempts he could shoot down one of the pet dogs of her household.

G On the night of 6.7.1982, all the inmates of Kanta Devi's house were sleeping on the courtyard of the house. Her husband was, as usual absent from the house. At about 11.00 p.m. Kanta Devi's mother-in-law woke up sensing that somebody would have intruded into their privacy and asked H others whether anyone was there. Suddenly, deceased Kanta Devi cried out

that appellant was standing there with a gun. This was followed by the sound of a gun shot and pellets have delved into her body. Kanta Devi's brother-in-law Prakram Chand (PW3) and his sister Sheela Devi (PW10) pounced upon the deceased and in a bout Sheela Devi succeeded in wresting the gun from him but the assailant made his escape good leaving his torch-light and chappals at the place of incident. Kanta Devi slumped down to the cot and slouched her head.

Prakram Chand (PW3) accompanied by two neighbours. PW-4 Piar Singh and PW-5 Sahib Singh (who rushed to the scene on hearing the hue and cry from the place of occurrence) proceeded to the police station, but on the way they came across the police party to whom Prakram Chand gave First Information Statement (Ex. PD). Sub-Inspector of Police (PW-23) visited the scene on the morning and held the inquest, seized the gun and other articles. Appellant was later arrested and after completion of the investigation charge-sheeted him for the murder of Kanta Devi.

Appellant has denied his involvement in the incident which led to the death of Kanta Devi. However, he owned the gun produced in this case (Ex. P1) but he said that police had seized that gun from his house. He denied the allegation that he was ogling on Kanta Devi and later developed acerbity towards her.

Sessions Court made a scathing criticism on the investigating officer for his failure to trace out finger impression on the torchlight. Learned Sessions Judge took a serious view of the omission in the First Information Statement that Sheela Devi (PW10) snatched the gun from the appellant. On that score learned Sessions Judge disbelieved the entire testimony of Sheela Devi (PW10) as well as Prakram Chand (PW3). He sidestepped all the incriminating circumstances against appellant and gave him a clean chit and permitted him to be armed with the gun again.

The Division Bench of the High Court has totally differed from the Sessions Court and relied on the testimony of Sheela Devi (PW10) as well as her brother Prakram Chand (PW3). The High Court did not take the omission in the First Information Statement (regarding wresting the gun) seriously as it did not cause any dent on the otherwise sturdy prosecution nutshell. The High Court treated the reasoning of the Sessions Judge for sidelining the evidence of two important witnesses as exceedingly unreasonable.

A Learned counsel for the appellant did not dispute the fact that Kanta Devi was shot dead on the night of 6.7.1982 at her house. So the only question is whether it was the appellant who did it.

B Learned counsel for the appellant made an endeavour to persuade us to concur with the Sessions Judge's view that the omission (in the First Information Statement) regarding wresting of the gun from appellant is enough to conclude that the said part of the story is a later improvement. Omission of the said detail is there in the First Information Statement, no doubt. But criminal courts should not be fastidious with mere omissions in C First Information Statement, since such statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes first information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important D details in a narration. Quite often the Police Officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement. So any omission therein has to be considered along with the other evidence to E determine whether the fact so omitted never happened at all. (Vide *Podda Narayana & Ors. v. State of Andhra Pradesh* AIR 1975 SC 1252; *Sone Lal & Ors. v. The State of Uttar Pradesh*, AIR (1978) SC 1142 and *Gurnam Kaur v. Bakshish Singh & Others*, AIR (1981) SC 631.

F In this case, there is overwhelming evidence that the gun was lying near the deadbody, even apart from the evidence of P.W. 3 and P.W. 5. The two neighbours who reached the spot on hearing the cry were Piar Singh (PW4) and Sahib Singh (PW5). Both of them said that when they reached the place they saw Kanta Devi lying dead and a gun, a torchlight and a pair of slippers were lying on the same site. Nothing has been elicited G from these witnesses during cross-examination to doubt the truth of their testimony. That apart, PW6, PW7 and PW8 who were present when the Sub- Inspector (PW23) prepared the inquest have unequivocally said that the gun was lying on the courtyard where the dead body of Kanta Devi remained. We have, therefore, no difficulty in believing that the gun would H have been wrested from assailant at the spot itself.

One of the most important items of evidence in this case is what the deceased had uttered immediately before she was fired at. When her mother-in-law sensed that somebody had intruded in the courtyard during the odd hours, the deceased (near whom the intruder was standing then) spoke out that appellant was standing nearby with a gun. In a split second the sound of firearm shot was heard and in a trice the life of Kanta devi was snuffed off.

If the said statement had been made when the deceased was under expectation of death it becomes dying declaration in evidence after her death. Nonetheless, even if she was nowhere near expectation of death, still the statement would become admissible under Section 32(1) of the Evidence Act, though not as dying declaration as such, provided it satisfies one of the two conditions set forth in the sub-section. This is probably the one distinction between English law and the law in India on dying declaration. In English law, unless the declarant is under expectation of death his statement cannot acquire the passport of admissibility, (*Sharad Birdhichand Sar v. State of Maharashtra*, AIR (1984) SC 1622 and *Tehal Singh and Ors. v. State of Punjab*, AIR (1979) SC 1347).

Section 32(1) of the Evidence Act renders a statement relevant which was made by a person who is dead in cases in which cause of his death comes into question, but its admissibility depends upon one of the two conditions : Either such statement should relate to the cause of this death or it should relate to any of the circumstances of transaction which resulted in his death.

Three aspects have to be considered pertaining to the above item of evidence. First is whether the said statement of the deceased would fall within Section 32(1) of the Evidence Act so as to become admissible in evidence. Second is whether what the witnesses have testified in Court regarding the utterance of the deceased can be believed to be true. If the above two aspects are found in the affirmative, the third aspect to be considered is whether the deceased would have correctly identified the assailant?

When Kanta Devi (deceased) made the statement that appellant was standing with a gun she might or might not have been under the expectation of death. But that does not matter. The fact spoken by the deceased has subsequently turned out to be a circumstance which intimately related to

- A the transaction which resulted in her death. The collocation of the words in Section 32(1) "circumstances of the transaction which resulted in his death" is apparently of wider amplitude than saying "circumstances which cause his death". There need not necessarily be a direct nexus between "circumstances" and death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with
- B any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction
- C which resulted in the death. In *Sharad Birdhi Chand Sarda's* case (cited supra) this Court has stated the above principle in the following words :

- "The test of proximity cannot be too literally construed and practically reduced to a cut and dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death."

- F Even apart from section 32(1) of the Evidence Act, the aforesaid statement of Kanta Devi can be admitted under section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration 'A' to section 6 makes it clear. It reads thus :-

- G "A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating or so *shortly before* or after it as to form part of the transaction is a relevant fact."

(emphasis supplied)

- H Here the act of the assailant intruding into the courtyard during dead of

the night, victim's identification of the assailant, her pronouncement that appellatant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.

In either case, whether it is admissible under Section 32(1) or under Section 6 of the Evidence Act, it is substantive evidence which can be acted upon with or without corroboration in finding guilt of the accused.

But then the court must be assured of the remaining two aspects i.e. reliability of the evidence and accuracy of the contents of the pronouncement. We have no difficulty in believing that Kanta Devi would have said so. Both PW3 and PW10 have spoken about this in their evidence. Further PW3 has mentioned about it even at the earliest opportunity when he gave First Information Statement. As to the question whether Kanta Devi would have correctly identified appellatant, it was contended that it was then dark and there was shadow of a mango tree and hence she could not have identified him correctly. The evidence shows that it was a moonlit night and it happened on the open courtyard. The gunning down was followed by a bout between the assailant on the one side and PW3 and PW10 on the other during which these witnesses also had occasion to identify the assailant at very close range. Further again, Ex. P1 gun which PW10 Sheela Devi succeeded in wresting from the appellatant is admittedly the gun of the appellatant.

From the above circumstances we can unhesitatingly come to the conclusion that Kanta Devi had correctly identified the appellatant when she said that it was the appellatant who was standing with a gun.

Learned counsel for the appellatant tried to make out much from the fact that no finger impression of Sheela Devi was found on the gun. We do not find any consequence on account of it in this case. In fact, appellatant did not seriously dispute when the trial judge put the question to him regarding that circumstance during his examination under Section 313 of the Code of Criminal Procedure (question no. 25 related to the evidence that gun was produced by Sheela Devi and was taken into possession by the police. The answer given by the appellatant to that question was "I do not know"). Examination of the accused under Section 313 of the Code is not a mere formality. Answers given by the accused to the questions put

- A to him during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating the entire evidence adduced in the court during trial. Ex. P1 - gun - admittedly belongs to the assailant. Therefore, when PW10 said in court that she succeeded in snatching it from the assailant and she surrendered it to the police, we see no reason to disbelieve her, particularly in view of the evasive answer given by the appellant to the question concerned.
- B

- C We have no doubt that the Division Bench of the High Court has salvaged criminal justice in this case by interfering with the unmerited acquittal emerged from a perverse approach made by the Sessions Court. We, therefore, confirm the conviction and sentence passed on the appellant and dismiss the appeal.

V.S.S.

Appeal dismissed.