A MOHANLAL AND ORS.

v.

STATE OF HARYANA

FEBRUARY 21, 2007

B [DR. ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Penal Code, 1860; Ss. 34 and 302:

C *Dowry death—In-laws allegedly harassing daughter in law - Causing death by setting her on fire—Dying declaration—Trial Court found in-laws guilty of committing crime under s.302 r/w s. 34 IPC, convicted and sentenced them to life imprisonment—Affirmed by High Court—On appeal, Held: Situation in which a person is on death bed, being exceedingly solemn, secure and grave, are the reasons in law to accept veracity of his/her* D *statement—Since accused deprived of his right of cross-examination, dying declaration should be of such a nature as to inspire full confidence of the Court—Statement of deceased should not be result of either tutoring or prompting or product of imagination—Once the Court is satisfied of the declaration being true and voluntary, it could base its conviction without corroboration—In the instant case, before the dying declaration was recorded,* E *relatives of the deceased were present with her—Only a vague reference of dowry demand was there in the dying declaration —Thus, the dying declaration itself was result of tutoring and not free and voluntary—Hence, Courts below not justified in placing reliance on it to convict the accused—Under the circumstances, impugned judgment cannot be sustained and set* F *aside—Accused acquitted of all charges.*

According to the prosecution, accused appellant nos. 1 and 3 had been harassing and torturing her daughter-in-law for demand of dowry and allegedly they set her on fire. Her dying declaration was recorded by the Judicial Magistrate (PW-3). The victim succumbed to the burn injuries. The G **trial Court put emphasis on the dying declaration and found accused-appellants guilty of committing the offences punishable under s. 302 r/w s.34 IPC and sentenced them to life imprisonment. High Court confirmed the conviction and sentence against the accused persons. Hence the present appeal.**

Accused-appellants contended that the very fact that the doctor did not

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find any boil in the armpit of the deceased falsified the prosecution case, as according to the prosecution, the refusal by the deceased to show the boil was the cause for pouring kerosene on the deceased; and that though PWs 7 and 8 claimed to have stated before the police about the dowry demand during investigation, the same was found to be untrue. A

Allowing the appeal, the Court B

HELD: 1. 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. [Para 9] [1034-E-F] C

2.1. 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. [Para 10] D E

[1034-G-H; 1035-A] F

Smt. Paniben v. *State of Gujarat,* AIR (1992) SC 1817; *Munnu Raja & Anr.* v. *The State of Madhya Pradesh,* [1976] 2 SCR 764; *State of Uttar Pradesh* v. *Ram Sagar Yadav and Ors.,* AIR (1985) SC 416; *Ramavati Devi* v. *State of Bihar,* AIR (1983) SC 164; *K. Ramachandra Reddy and Anr.* v. *The Public Prosecutor,* AIR (1976) SC 1994; *Rasheed Beg* v. *State of Madhya Pradesh,* [1974] 4 SCC 264; *Kaka Singh* v. *State of M.P.,* AIR (1982) SC 1021; *Ram Manorath and Ors.* v. *State of U.P.,* [1981] 2 SCC 654; *State of Maharashtra* v. *Krishnamurthi Laxmipati Naidu,* AIR (1981) SC 617; *Surajdeo Oza and Ors.* v. *State of Bihar,* AIR (1979) SC 1505; *Nanahau Ram and Anr.* v. *State of Madhya Pradesh* AIR (1988) SC 912; *State of U.P.* v. *Madan Mohan and Ors.,* AIR (1989) SC 1519 and *Mohanlal Gangaram Gehani* v. *State of* G H

A *Maharashtra,* AIR (1982) SC 839, relied on.

2.2. In the instant case, the evidence of the Judicial Magistrate and Medical Officer clearly show that before the dying declaration was recorded the relatives of the deceased including PWs 7 and 8 were present with her and were subsequently asked to leave the room where the dying declaration
B **was recorded. Though much was made of the dowry demand by the courts below there is only a vague reference to it in the dying declaration. The statement of PWs 7 and 8 that they had told the Investigating Officer about the dowry demand is not correct. They had not said so before the Investigating Officer. It is also significant that prior to the death, neither the deceased nor her**
C **parents had complained to the police or told anyone else about any alleged dowry demand. In the circumstances, the dying declaration itself was clearly the result of tutoring and was not a free and voluntary one. The courts below were therefore not justified in placing reliance on the same. Additionally, there was only a vague reference of dowry demand to the police which in any event has not been established and also was not told during investigation. Once the**
D **dying declaration is excluded, there is nothing to implicate the accused with the death. Looked at from any angle, the impugned judgment of the High Court cannot be maintained, hence set aside. The appellants are acquitted of the charges. [Paras 11 and 12] [1036-D-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 236 of
E 2007.

From the Judgment and final Order dated 4.8.2006 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 231-DB/2003.

Naresh Kaushik, B.S. Methaila, Amita Kalkal, Anish Dhingra and Lalita
F Kaushik for the Appellants.

Rajeev Gaur Naseem and T.V. George for the Respondent.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellants for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment
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for life as was awarded by the trial Judge i.e. learned Additional Sessions Judge, Narnaul. A

3. According to the prosecution version as unfolded during the trial, Renu (hereinafter referred to as the 'deceased') was set on fire by the appellants who were torturing and harassing her for dowry demand. A boil had developed under her armpit. After making arrangements for her comforts, her husband went out of station. Her mother in law- appellant No.3 told her that she was telling a lie about the boil under her armpit and she really had no problem. Her father in law (appellant No.1) wanted her to show the place where the boil was, but the deceased did not show it to him. Her brother-in-law- appellant No. 2 also used to harass her. On the contrary, her husband did not cause any harassment to her. On the date of occurrence i.e. 15.9.2001, the appellants confined her in a room, poured kerosene on her and set her on fire. Her father-in- law remarked that on her failure to show him the place where the boil was, she has to die by burning. They were also harassing her for dowry. Her dying declaration was recorded by Judicial Magistrate, First Class (PW-3) and was exhibited as Ex. PD/4. The learned trial Court put emphasis on the dying declaration and recorded the conviction as afore-noted. B C D

4. The stand of the appellants before the trial Court and the High Court was to the effect that the statement in the so called dying declaration that she had a boil in her armpit was belied by the doctor's evidence who found no boil on her body. Furthermore, the evidence of PW-3, whose testimony is the foundation for the conviction by the trial Court, as upheld by the High Court, indicates that there was scope for tutoring the victim. That aspect has been lost sight of by the courts below. The stand of the State before the trial Court as well as the High Court was that sanctity has to be attached to the dying declaration and therefore the appellants were guilty of the charged offences. E F

5. The High Court by the impugned judgment held that the entire case hinges on the dying declaration given by the deceased to the JMFC (PW-3). It was held that the dying declaration clearly implicated the appellants and, therefore, the same was rightly acted upon by the trial Court. Further, the evidence of PWs 7 and 8 i.e. father and mother of the deceased clearly showed that there was demand for dowry. The High Court accordingly upheld the conviction and sentence. G

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A 6. In support of the appeal, learned counsel for the appellants submitted that the very fact that the doctor did not find any boil in the armpit of the deceased falsified the prosecution case, as according to the prosecution, the refusal by the deceased to show the boil was the cause for pouring kerosene on the deceased. Additionally it was pointed out that though PWs 7 and 8 claimed to have stated before the police about the dowry demand during B investigation, the same was found to be untrue in view of the acceptance that no such statements were made during investigation to the Investigating Officer.

7. Learned counsel for the respondent on the other hand supported the C judgment of the courts below submitting that the dying declaration has been rightly relied upon by the courts below.

8. A bare reading of the so called dying declaration Ex.PD/4 shows that according to the deceased, the appellants were enraged because she did not show the place of the boil to her father in law (appellant No.1). As rightly D submitted, the doctor (PW1) who conducted the post mortem clearly stated that there was no boil or pustule in the armpit of the deceased. There is no dispute to this factual position by learned counsel for the respondent-State.

9. 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 E 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. F

10. 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 G 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 H

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* AIR (1992) SC 1817:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr.* v. *The State of Madhya Pradesh* [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. [See *State of Uttar Pradesh* v. *Ram Sagar Yadav and Ors.* AIR (1985) SC 416; and *Ramavati Devi* v. *State of Bihar* AIR (1983) SC 164.]

(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* AIR (1976) SC 1994.]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg* v. *State of Madhya Pradesh* [1974] 4 SCC 264.]

(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.* AIR (1982) SC 1021.]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath and Ors.* v. *State of U.P.* [1981] 2 SCC 654.]

(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* AIR (1981) SC 617.]

(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* AIR (1979) SC 1505.]

A (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* AIR (1988) SC 912.]
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(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.* AIR (1989) SC 1519.]

C (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* AIR (1982) SC 839.]

D 11. In the instant case, it is to be noted that the evidence of PW-3 and doctor clearly show that before the dying declaration was recorded the relatives of the deceased including PWs 7 and 8 were present with her and were subsequently asked to leave the room where the dying declaration was recorded. Though much was made of the dowry demand by the courts below there is only a vague reference to it in the dying declaration. The statement E of PWs 7 and 8 that they had told the Investigating Officer about the dowry demand is not correct. They had not said so before the Investigating Officer. It is also significant that prior to the death, neither the deceased nor her parents had complained to the police or told anyone else about any alleged dowry demand. In the circumstances, the dying declaration itself was clearly F the result of tutoring and was not a free and voluntary one. The courts below were therefore not justified in placing reliance on the same. Additionally, there was only a vague reference of dowry demand to the police which in any event has not been established and also was not told during investigation. Once the dying declaration is excluded, there is nothing to implicate the accused-appellants with the death.

G 12. Looked at from any angle, the impugned judgment of the High Court cannot be maintained and is set aside. The appellants are acquitted of the charges. They will be set at liberty forthwith unless required in custody in respect of any other case. The appeal is allowed.

H S.K.S. Appeal allowed.