

SURINDER KUMAR
v.
STATE OF PUNJAB
(Criminal Appeal No. 579 of 2009)

NOVEMBER 21, 2012

[SWATANTER KUMAR AND MADAN B. LOKUR, JJ.]

Evidence Act, 1872 - s.32 - Dying declaration - Appreciation and admissibility of - Discussed.

Penal Code, 1860 - ss.304B and 498A - Death of married woman due to burn injuries - Victim gave declaration/ statement squarely blaming her husband - Statement/ declaration was recorded by a police official in the presence of two doctors - Conviction of victim's husband i.e. the appellant by Courts below - Justification of - Held: The dying declaration of the victim was voluntary and truthful - It was not made under any pressure - The dying declaration contained facts which would not have been known to strangers like the police official or the two doctors - The details given by the victim in the dying declaration were indicative of her consciousness and her fitness to make a statement - The dying declaration was truthful inasmuch as the victim did not introduce any exaggerations and narrated only the basic and important facts, namely, about the persistent demand for dowry by the appellant - She also truthfully stated that she had been telling her mother-in-law and brothers-in-law that appellant was demanding dowry and that they had asked him not to make such demands - The victim did not implicate anybody other than the appellant and truthfully stated that since she was fed up with the persistent demand of dowry made by him, she poured kerosene oil on herself and set herself on fire - Consequently, conviction of appellant upheld - Evidence Act, 1872 - s.32.

A The appellant's wife was admitted in the hospital with 90% burn injuries. 'M', Assistant Sub Inspector of Police, went to the Hospital and recorded the statement of appellant's wife in vernacular in which she squarely blamed the appellant. Subsequently, the appellant's wife
B succumbed to her injuries.

The Trial Judge held that the evidence indicated that the appellant had been demanding dowry from his wife and since she had not brought sufficient dowry, he mistreated her; that there was no reason to disbelieve the
C dying declaration given by the appellant's wife that she was driven by the appellant to commit suicide; that the dying declaration was voluntary and that it was recorded by 'M' in the presence of two doctors, and accordingly convicted the appellant under Section 304-B and 498-A
D IPC and sentenced him to ten years rigorous imprisonment under Section 304-B IPC and 3 years rigorous imprisonment under Section 498-A IPC. The High Court affirmed the conviction and sentence.

E The case of the appellant is that his wife had accidentally caught fire and therefore it was not a case of suicide. The appellant contended before this Court that the dying declaration given by his wife should not be accepted. The reasons given for this were that she had
F 90% muscle deep burns and as per the post-mortem report the superficial skin had peeled off and that with such a high degree of burns, it cannot be said that the appellant's wife was in a condition to make a statement and secondly she could not have signed the statement or even affixed her thumb impression. It was submitted
G that the dying declaration was a very detailed one and it is not expected that a person in that condition could make such a detailed dying declaration.

The question which therefore arose for consideration
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in the present appeal was whether the dying declaration given by the appellant's wife to the effect that the appellant had driven her to commit suicide should be accepted or not.

Dismissing the appeal, the Court

HELD: 1. There are a large number of decisions where persons with 90% burns have given a dying declaration and that has been accepted. [Para 16] [1028-C]

Amit Kumar v. State of Punjab (2010) 12 SCC 285: 2010 (9) SCR 1088; *Paniben v. State of Gujarat* (1992) 2 SCC 474: 1992 (2) SCR 197; *Govindappa v. State of Karnataka* (2010) 6 SCC 533: 2010 (6) SCR 962; *Sukanti Moharana v. State of Orissa* (2009) 9 SCC 163: 2009 (11) SCR 996; *Kamalavva v. State of Karnataka* (2009) 13 SCC 614: 2009 (11) SCR 498 and *Satish Ambanna Bansode v. State of Maharashtra* (2009) 11 SCC 217: 2009 (3) SCR 1166 - relied on.

2. There is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question-answer form. There may be occasions when it is possible to do so and others when it may not be possible to do so either because of the prevailing situation or because of the pain and agony that the victim might be suffering at that point of time. [Para 21] [1029-C-E]

3. It is also not obligatory that either an Executive Magistrate or a Judicial Magistrate should be present for recording a dying declaration. It is enough that there is evidence available to show that the dying declaration is voluntary and truthful. There could be occasions when persons from the family of the accused are present and in such a situation, the victim may be under some

A pressure while making a dying declaration. In such a case, the Court has to carefully weigh the evidence and may need to take into consideration the surrounding facts to arrive at the correct factual position. [Para 22] [1029-E-G]

B 4.1. In the instant case, clearly, the dying declaration made by the appellant's wife was not under any pressure. The only persons who were present when she made her dying declaration were 'M' and two doctors. There is no doubt that both the Courts have rightly come to the conclusion that the dying declaration made by the appellant's wife was voluntary. [Para 23] [1029-G-H; 1030-A]

C 4.2. The dying declaration contains some facts which would not have been known to strangers like 'M' or the two doctors. For example, they could not have known the parental village of the appellant's wife or when she was married or the caste of the appellant and so on. Therefore, it is incorrect to obliquely suggest that since the dying declaration was detailed, it should not be accepted. On the contrary, the details given by the appellant's wife at the time of her death are indicative of her consciousness and her fitness to make a statement. [Para 24] [1030-B-C]

F 4.3. The dying declaration was truthful inasmuch as the appellant's wife did not introduce any exaggerations and narrated only the basic and important facts, namely, about the persistent demand for dowry by the appellant. She also truthfully stated that she had been telling her mother-in-law and brothers-in-law that the appellant was demanding dowry and that they had asked him not to make such demands. The appellant's wife did not implicate anybody other than the appellant and truthfully stated that since she was fed up with the persistent demand of dowry made by him, she poured kerosene oil

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on herself and set herself on fire. [Para 25] [1030-D-E] A

4.4. Given the facts of the case and the law laid down in Paniben case, this Court has no difficulty in upholding the concurrent views of the Trial Court as well as the High Court in accepting the dying declaration of the appellant's wife as voluntary and truthful. The appellant's wife was driven to suicide by the appellant and consequently the conviction and sentence awarded to the appellant under Section 304-B and Section 498-A IPC is upheld. [Paras 2, 28] [1024-C; 1031-C-D] B

Laxmi v. Om Prakash (2001) 6 SCC 118; 2001 (3) SCR 777 - distinguished. C

Case Law Reference:

2010 (9) SCR 1088	relied on	Para 16	D
1992 (2) SCR 197	relied on	Para 16	
2010 (6) SCR 962	relied on	Para 17	
2009 (11) SCR 996	relied on	Para 18	E
2009 (11) SCR 498	relied on	Para 19	
2009 (3) SCR 1166	relied on	Para 20	
2001 (3) SCR 777	distinguished	Para 27	F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 579 of 2009.

From the Judgment & Order dated 13.8.2008 of the High Court of Punjab & Haryana at Chandigarh in CrI. Appeal No. 337-SB of 1995. G

Rajiv Kumar, Prabhoo Dayal Tiwari, Dinesh Verma (for Dr. Kailash Chand) for the Appellant.

V. Madhukar, AAG, Srijita Mathur, Anvita Gowshish (for Kuldip Singh) for the Respondent. H

A The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question for consideration is whether the dying declaration given by Kiran Bala to the effect that her husband (the appellant) had driven her to commit suicide should be accepted or not. The case of the appellant is that Kiran Bala accidentally caught fire and therefore it is not a case of suicide.

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C 2. We agree with the concurrent view of the Trial Court and the High Court that Kiran Bala was driven to suicide by the appellant and as such his conviction and sentence under Section 304-B and Section 498-A of the Indian Penal Code (for short the IPC) should be upheld.

The facts:

D 3. The appellant Surinder Kumar and Kiran Bala were married some time in 1990-91. They have a female child.

E 4. On 28th April 1994 Kiran Bala was admitted to the Civil Hospital, Tanda, with burn injuries all over her body. Since her condition appeared to be serious, Dr. Kewal Singh the Medical Officer informed the Assistant Sub Inspector of Police, Mohinder Singh, through a memo, of her admission in the hospital with 90% burns.

F 5. Mohinder Singh went to the Tehsil Office to contact the Tehsildar who was also the Executive Magistrate. Finding that he was not available and since a Judicial Magistrate was not located in Tanda, Mohinder Singh went to the Civil Hospital apparently to obtain first hand information of the events.

G 6. In the Civil Hospital, Mohinder Singh contacted Dr. Kewal Singh at about 9.30 a.m. and he certified that Kiran Bala was fit to make a statement. Thereafter, Mohinder Singh recorded the statement of Kiran Bala in vernacular in the presence of Dr. Kewal Singh and Dr. Satpal Singh, Medical Officer. The statement was read over to her and after she

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admitted the contents to be true, her signature and right thumb impression was taken on the statement. An endorsement was made on the statement by Dr. Kewal Singh and Dr. Satpal Singh to the effect that Kiran Bala had given her statement in their presence.

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7. Unfortunately, Kiran Bala passed away on the same day.

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8. In the meanwhile, based on the statement given by Kiran Bala, Mohinder Singh began investigating into the occurrence. On 5th May, 1994 he arrested the appellant who had been absconding till then and on completion of investigations, he filed a challan in which the appellant was accused of having driven Kiran Bala to commit suicide. The appellant was charged for offences under Section 304-B and Section 498-A of the IPC. He pleaded not guilty and claimed trial.

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9. Before filing the challan, Mohinder Singh asked Dr. Kewal Singh in writing on 8th July 1994 whether Kiran Bala was conscious throughout the time her statement was recorded. Dr. Kewal Singh certified that Kiran Bala was medically fit (fully conscious) from the beginning of her statement till the very end.

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10. At this stage, it is appropriate to quote the English translation of the dying declaration made by Kiran Bala on 28th April 1994. This reads as under:-

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"I am resident of village Bainchan. My parental village is Chatiwind in Amritsar. I was married about 3 ½ years ago with Surinder Kumar son of Rattan Chand, caste Balmiki, resident of Bainchan, Distt. Hoshiarpur, according to customary rites. I have one daughter, who is aged about 2 ½ years. My husband Surinder Kumar is working as a labourer. Today i.e. 28.4.1994 at about 7.30 A.M. my husband Surinder Kumar quarreled with me and was saying that I had brought less dowry at the time of marriage and that I should bring a scooter and Rs.5000/- in cash

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A from my parents. I had been telling my mother-in-law and
brothers-in-law that my husband had been demanding
more dowry and they had been asking him not to make
such demands. I had not informed my parents about the
demands of dowry so that they may not form a bad opinion
B about my husband. Today, at about 7.30 A.M. fed up with
the demands of dowry made by my husband, I poured
kerosene oil and set myself on fire. When I put myself on
fire, my mother-in-law Ramo, sister-in-law Paramjit Kaur,
my daughter Ritu, my husband Súrinder Kumar were
C present in the house. However, my mother-in-law and
sister-in-law were not aware about the setting on fire. When
I caught fire, I raised alarm extinguished the fire. My
husband Surinder Kumar, sister-in-law Paramjit Kaur, a
neighbour, namely Kamla my nephew Kala took me to Civil
D Hospital for treatment. My parents should get back the
articles of dowry given to me and my daughter Ritu should
remain with my husband. My parents should not marry my
younger sister Neeta with my husband Surinder Kumar. I
had confided in my younger sister Neeta about demands
of dowry made by husband. Except my husband, my
E mother-in-law, sister-in-law, brother-in-law or other
members of my in laws had not made any demands of
dowry and only my husband Surinder Kumar used to make
the demands of dowry and I have set myself on fire after
pouring kerosene oil being fed up from the demands of
F dowry made by my husband".

Decision of the Trial Court:

G 11. On the merits of the case, the Trial Judge held that the
evidence indicated that the appellant had been demanding
dowry from Kiran Bala and since she had not brought sufficient
dowry, he mistreated her. The Trial Judge was of the view that
there was no reason to disbelieve the dying declaration given
by Kiran Bala that she was driven by the appellant to commit
H suicide. It was held that the dying declaration was voluntary and

was recorded by Mohinder Singh in the presence of two doctors. Under the circumstances, the appellant was found guilty of the offences alleged against him and sentenced to ten years rigorous imprisonment and fine for an offence under Section 304-B of the IPC and 3 years rigorous imprisonment and fine for an offence under Section 498-A of the IPC.

Decision of the High Court:

12. Before the High Court the submission made by the appellant was that the dying declaration could not be relied upon for several reasons. It was argued that since Kiran Bala had suffered burn injuries to the extent of 90%, she was not in a fit condition to make a statement. Moreover, the dying declaration was not recorded in a question-answer form. There was also no reason to disbelieve the defence witnesses who testified that Kiran Bala accidentally caught fire.

13. The High Court was of the view that there was sufficient evidence to show that Kiran Bala was driven to commit suicide, which she did at about 7.30 a.m. on 28th April, 1994. Kiran Bala was conscious when she gave her dying declaration and although her condition may have been critical at that point of time, there was sufficient intrinsic evidence to show that she was fit to make the statement. Moreover, it is not as if her statement was vindictive inasmuch as she squarely blamed only the appellant and nobody else.

14. On this evidence, the High Court upheld the view of the Trial Judge and affirmed the conviction and sentence.

Discussion and conclusion:

15. The only submission before us was that the dying declaration given by Kiran Bala should not be accepted. The reasons given for this were that she had 90% muscle deep burns and as per the post-mortem report the superficial skin had peeled off. It was argued that with such a high degree of

A burns, it cannot be said that Kiran Bala was in a condition to
 make a statement and secondly she could not have signed the
 statement or even affixed her thumb impression. It was
 submitted that the dying declaration is a very detailed one and
 it is not expected that a person in that condition could make
 B such a detailed dying declaration.

16. We are not at all impressed by any of these
 submissions. There are a large number of decisions that have
 been cited before us by learned counsel for the State where
 persons with 90% burns have given a dying declaration and
 C that has been accepted. For example, in *Amit Kumar v. State
 of Punjab*, (2010) 12 SCC 285 the victim had 90% burns and
 yet her statement was accepted. This Court noted, inter alia,
 that the victim did not unfairly implicate anybody who had not
 participated in the crime. This Court relied on ten principles
 D governing a dying declaration as mentioned in *Paniben v.
 State of Gujarat*, (1992) 2 SCC 474 to conclude that there was
 no reason to disbelieve the dying declaration given by the victim
 in that case.

E 17. Similarly, in *Govindappa v. State of Karnataka*, (2010)
 6 SCC 533 the victim had 100% burn injuries and yet she was
 found to be in a fit state of mind to give her statement and affix
 her left thumb impression on the statement. The dying
 declaration was accepted by this Court on the evidence of the
 F doctor that the victim was in a position to talk.

18. In *Sukanti Moharana v. State of Orissa*, (2009) 9 SCC
 163, the victim had 90 to 95 per cent burn injuries covering 90
 to 95 per cent body surface and yet her dying declaration was
 G accepted after considering the principles laid down in *Paniben*.

19. In *Kamalavva v. State of Karnataka*, (2009) 13 SCC
 614, reference was again made to *Paniben*. It was noted that
 the doctor who was present at the time of recording the dying
 declaration had attached a certificate to the effect that it was
 H recorded in his presence. This Court rejected the technical

objection regarding the non-availability of a certificate and endorsement from the doctor regarding the mental fitness of the deceased. It was held that the view taken by this Court in numerous decisions is that this is a mere rule of prudence and not the ultimate test as to whether or not the dying declaration was truthful or voluntary.

20. In *Satish Ambanna Bansode v. State of Maharashtra*, (2009) 11 SCC 217, the victim had 95% superficial to deep burns and after referring to Paniben, her dying declaration was accepted by this Court.

21. Insofar as the case before us is concerned, we may only note that there is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question-answer form. There may be occasions when it is possible to do so and others when it may not be possible to do so either because of the prevailing situation or because of the pain and agony that the victim might be suffering at that point of time.

22. It is also not obligatory that either an Executive Magistrate or a Judicial Magistrate should be present for recording a dying declaration. It is enough that there is evidence available to show that the dying declaration is voluntary and truthful. There could be occasions when persons from the family of the accused are present and in such a situation, the victim may be under some pressure while making a dying declaration. In such a case, the Court has to carefully weigh the evidence and may need to take into consideration the surrounding facts to arrive at the correct factual position.

23. Clearly, the dying declaration made by Kiran Bala was not under any pressure. The only persons who were present when she made her dying declaration were Mohinder Singh and the two doctors. We have no doubt that both the Courts have

A rightly come to the conclusion that the dying declaration made by Kiran Bala was voluntary.

B 24. The dying declaration contains some facts which would not have been known to strangers like Mohinder Singh or the two doctors. For example, they could not have known the parental village of Kiran Bala or when she was married or the caste of her husband and so on. Therefore, it is incorrect to obliquely suggest that since the dying declaration was detailed, it should not be accepted. On the contrary, the details given by Kiran Bala at the time of her death are indicative of her C consciousness and her fitness to make a statement.

D 25. We are also of the opinion that the dying declaration was truthful inasmuch as Kiran Bala did not introduce any exaggerations and narrated only the basic and important facts, namely, about the persistent demand for dowry by her husband. She also truthfully stated that she had been telling her mother-in-law and brothers-in-law that the appellant was demanding dowry and that they had asked him not to make such demands. Kiran Bala did not implicate anybody other than the appellant E and truthfully stated that since she was fed up with the persistent demand of dowry made by him, she poured kerosene oil on herself and set herself on fire.

F 26. It is not necessary for us to repeat the principles laid down in Paniben since they have been repeated in several judgments, some of which have been referred to above. All that we need say is that the decisions referred to and relied on in Paniben need to be updated. Applying the principles laid down Paniben, the dying declaration given by Kiran Bala ought to be G accepted as voluntary and truthful.

H 27. Learned counsel for the appellant relied on *Laxmi v. Om Prakash*, (2001) 6 SCC 118 particularly paragraph 21 of the Report. In that case, the third dying declaration (out of five) was under consideration. This Court upheld the doubt expressed by the Trial Court (and endorsed by the High Court)

that even though the victim had 85% burns, her neck, mouth and lips were burnt. The records available with the Burns Ward of the concerned hospital also showed that her hands were burnt and the skin had peeled off. In such a situation, a grave doubt was expressed whether the victim could have made a detailed statement and put her signature thereon. Clearly, that case was decided on its peculiar facts and no general principle of law was laid down in the paragraph under reference.

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Result:

28. Given the facts of the case and the law laid down in Paniben, we have no difficulty in upholding the concurrent views of the Trial Court as well as the High Court in accepting the dying declaration of Kiran Bala as voluntary and truthful. Consequently, we uphold the conviction and sentence awarded to the appellant.

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29. There is no merit in the appeal and it is accordingly dismissed.

B.B.B.

Appeal dismissed.