

PANCHDEO SINGH

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v.

STATE OF BIHAR

DECEMBER 7, 2001

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

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Evidence Act, 1872 : Section 32.

Dying declaration—Reliability of—Accused—Conviction based on dying declaration—Statement in declaration as to presence of accused at the scene of crime—Declaration recorded by Magistrate in the presence of Doctor—Satisfaction of Magistrate that injured was in a fit state of mind at the time of making declaration—No medical certification that injured was in a fit state of mind—Held, not safe to rely upon such a declaration.

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Penal Code, 1860 : Sections 302, 148 and 149.

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Murder—Accused—Conviction based on dying declaration—Validity of.

The appellant was convicted under Section 302 read with Section 149 of Indian Penal Code, 1860. He was also convicted under Section 324 of the I.P.C. read with Sections 148 and 149. The conviction and sentence of life imprisonment imposed on the appellant by the Trial Court was affirmed by the High Court. Both the Trial Court as well as the High Court relied on a statement of the deceased in the dying declaration with regard to presence of the appellant accused at the site of the occurrence. The declaration was recorded by a Magistrate in the presence of a Doctor. Though the Magistrate opined that injured was in a fit state of mind of making a declaration yet no certification to that effect or signature of the Doctor was taken on the declaration. In his evidence, the Magistrate also deposed that he did not recollect as to whether the deceased put up his signature on the declaration. The question in this appeal is as to whether such a declaration by itself would tantamount to substantial evidence against the appellant warranting the conviction and sentence as affirmed by the High Court.

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Allowing the appeal, the Court

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A HELD : 1. A dying declaration itself can be treated as a substantive
 piece of evidence and can be the basis of an order of conviction and
 sentence without there being any corroboration, provided, however, the
 same brings forth a sense of confidence and trustworthiness in the mind of
 the Court. The declaration must be such so as to evoke confidence in the
 B factual context. [510-B; D]

2. In the instant case Court is unable to record its confidence on the
 declaration so as to lend support and concurrence to the judgment under
 appeal. It is only the Judicial Magistrate, who has stated from the witness
 box that the declarant was in a fit condition to make the statement and he
 C was otherwise satisfied in regard thereto. The Doctor was available but
 unfortunately there is neither any certification as regards the state of the
 condition of the declarant nor even a signature of the Doctor in the decla-
 ration. Why did not the Doctor certify the fitness of the person making the
 statement or even append his signature, there is no answer to the same.
 D The magistrate also did not recollect as to whether the deceased did put his
 signature or not but since there is no mention of "L.T.I." before the name
 of deceased obviously left thumb impression is not there on the dying
 declaration. This is the declaration which happened to be the only material
 piece of evidence on the basis of which the Trial Court came to a conclusion
 that the appellant herein ought to be found guilty under Section 302 IPC
 E warranting sentence of life imprisonment. It is not a very safe piece of
 evidence to rely upon for conviction under Section 302 IPC.

[509-H; 510-A; B-E]

F *Ramnath Madhoprasad and Ors. v. State of Madhya Pradesh*, AIR (1953) SC 420, referred to.

Tarachand Damu Sutar v. The State of Maharashtra, AIR (1962) SC 130; *Munnu Raja and Anr. v. The State of Madhya Pradesh*, AIR (1976) SC 2199; *Arvind Singh v. State of Bihar*, JT (2001) 5 SC 127 and *Paperambaka Rosamma and Ors. v. State of A.P.*, [1999] 7 SCC 695, relied on.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 497 of 2000.

From the Judgment and Order dated 14.9.99 of the Patna High Court in Crl. A. No. 64 of 1989(R).

H Jaspal Singh H.M. Singh and Anil Hooda for the Appellant.

Ashok Mathur for the Respondent. A

The Judgment of the Court was delivered by

BANERJEE, J. Admissibility of a dying declaration has had judicial scrutiny for over five decades. Whereas the earlier view in *Ramnath's case* (*Ramnath Madhoprasad and Ors. v. State of Madhya Pradesh*, AIR (1953) S.C. 420) to the effect that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration, a larger Bench judgment of this Court in *Tarachand* (*Tarachand Damu Sutar v. The State of Maharashtra*, AIR (1962) SC 130) categorically observed that conviction based on dying declaration, against the correctness of which no cogent reasons have been given or suggested, is sustainable in law. B
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This Court, a decade later in *Munnu Raja and Anr. v. The State of Madhya Pradesh*, AIR (1976) SC 2199 stated the law to the effect that though the dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. This Court went up to observe that the court must not look out for corroboration unless it comes to the conclusion that a dying declaration suffered from any infirmity. D
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One of the latest pronouncement of this Court pertaining to the subject find place in the decision of *Arvind Singh v. State of Bihar*, J.T. (2001) 5 SC 127) wherein, this court observed that apart from the care and caution factors as noticed earlier the dying declaration ought otherwise to be treated as trustworthy. The issue thus becomes as to whether the dying declaration has been able to bring about a confidence thereon or not is it trustworthy or it is a mere attempt to cover up the laches of investigation: it must allure to the satisfaction of the court that reliance ought to be placed thereon rather than a distrust: The confidence of the court is the summum-bonum and in the event of there being any affirmation thereto in the judicial mind, question of any disbelieve or distrust would not arise. In the event however of there being some infirmity, howsoever, negligible it be, the Court unless otherwise satisfied about the credibility thereof, ought to look for some corroboration, if however it is otherwise, question of requirement of a corroboration would not arise: dying declaration alluring confidence of the court would be a sufficient piece of evidence to sustain conviction. There is no format as such of dying declaration F
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A neither the declaration need be of any longish nature and neatly structured. As
 a matter of fact, perfect wording and neatly structured dying declaration may
 bring about an adverse impression and create a suspicion in the mind of the
 court since dying declarations need not be drawn with mathematical precision
 - the declarant should be able to recollect the situation resulting in the available
 state of affairs.

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 C Having dealt with the basic issue involved in the matter and adverting
 to the factual score, be it noted that against the judgment and order of conviction
 and sentence dated 23rd December, 1988 passed by the additional Sessions
 Judge, Dhanbad, two separate appeals being CrI.A.No.64/1989 (*Panchdeo
 Singh v. State of Bihar*) and the other, CrI.A.No.65/1989 (*Dun Bahadur Singh
 v. State of Bihar*), the High Court by a common judgment affirmed the order
 of conviction and sentence passed against the appellant by the court below. The
 learned Additional Sessions Judge, Dhanbad convicted the appellant herein
 under Section 302 read with Section 149 of the Indian Penal Code for committing
 murder of one Sriram Singh and Section 148 of the Indian Penal Code
 and sentenced rigorous imprisonment for life. The accused was further convicted
 under Section 324 read with Section 149 of the Indian Penal Code and
 Section 148 of the Indian Penal Code and was sentenced to rigorous imprisonment
 for 3 years on each count though, however, sentence were directed to run
 concurrent. The High Court dealt with both the appeals by common
 judgment as noticed above, affirmed the judgment of the learned Sessions
 Judge and it is against this order of affirmation that the present appellant
 Panchdeo Singh moved this Court for special leave to appeal under Article 136
 of the Constitution and this Court granted such leave by its order dated 12th
 May, 2000.

F At this juncture it will be convenient to advert to the prosecution case
 briefly : on 20.12.1980, around 8 a.m., the informant Ramsumer Singh (PW-
 8), in the company of Sriram Singh (the deceased) was going to Modidih
 Colliery Office on some election work and when on way they arrived on the
 road, at a distance of about 50 yards from the Modidih Director's Technical
 G Bungalow, the informant spotted the appellants, co-accused Sakaldeo Singh,
 Vinod Kumar Singh (since deceased) and Nagendra Singh (who died during
 the trial) standing with their Car No.BHW 98 stationed on the west of the road,
 and Sakaldeo Singh hurled a bomb on Sriram Singh (the deceased), which hit
 in his abdomen, and thereafter Nagender Singh and Dun Bahadur Singh threw
 H bombs, causing injuries to the deceased and the informant too sustained wounds.

On alarm, the witnesses arrived and the culprits fled away in the parked car towards Loyalabad. The informant, Bhagwan Singh and other witnesses carried Sriram Singh to Loyalabad Central Hospital, where the fard-beyan of Ramsumer Singh (PW-8) was recorded by the police officer, attached to Jogta Police Station, on 20.12.1980 at 10.30 a.m. The motive behind the occurrence is alleged to be the previous enmity. On its basis, the formal First Information Report (Exhibit 2) was drawn up and the investigation commenced. During investigation, the injured (Sriram Singh) succumbed to the wounds on the next day of the occurrence, around 10.30 a.m., at Sadar Hospital, Dhanbad, and after completion of the investigation, charge-sheet was laid in court against the appellants and other accused in the case.

In their statements, recorded under section 313 of the Criminal Procedure Code, the appellants denied their involvement in the occurrence and stated false implication.

At the trial, the prosecution examined as many as 14 witnesses. Out of it three are formal witnesses. Even one of the formal witnesses were declared hostile along with other eight. But admittedly the conviction under Section 302 IPC and sentence to undergo rigorous imprisonment for life both by the Additional Sessions Judge, Dhanbad and that of the High Court has been on the basis of the dying declaration of the deceased, which admittedly does not involve the appellant herein with the crime. There is, however, a positive statement against the appellant herein in regard to his presence at the site of occurrence and it is on the basis of this statement in a dying declaration that the High Court sustained the conviction and sentence as passed by the learned Additional Sessions Judge. The dying declaration thus needs to be considered with some detail. For convenience sake, the dying declaration is set out herein below:

"Dying declaration of Shri Ram Singh son of Chandwar Singh of Village: Akbarpur, Police Station (Illegible), Distt. Azamgarh, at present Modidih, PS: Jogta, Distt. Dhanbad, being recorded at Sadar Hospital, Dhanbad on 20.12..1980 at 11.20 AM. According to the injured the occurrence took place at 8.00 AM today.

Question : When, how, and where did you sustain injury?

Answer: Sakaldeo Singh son of Mukhram Singh threw bomb on me from the front side on my belly on Modidih Road which

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leads to Tetanwari Station Road.

Question : Do you want to say anything more?

Answer: Nagender Singh son of Mukhram Singh also threw and hit bomb from behind. Dun Bahadur Singh and Vinod Singh son of Mukh Ram Singh also ran with the bomb. Pachdeo Singh was also with them. When the bomb hit me, I ran away but fell down on the ground due to hit of another bomb on the back side. I was wearing vest, shirt and woolen jacket. I was going from Modidih to the Union Office, Modidih."

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The filed copy of the above noted declaration does not contain any signature but a perusal of the original depicts that the deceased signed the declaration but the signature appears at the bottom of the page with some space in between the last writing and the signature. In this context, the evidence of the Magistrate, being PW-12, seems to be of some relevance :

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".. On that day I received an order of the Chief Judicial Magistrate, Dhanbad to record the dying declaration of injured Shri Ram Singh son of Shri Chander Singh R/o Aklipur, PS: Meh Nagar, Distt. Azangarh, at present Modidih, Police Station : Jogta, Distt. Dhanbad. After receipt of this order I went to Sadar Hospital, Dhanbad on the same day and recorded dying declaration of the said injured at 11.20. I recorded it, in the presence of Dr.Raman Shanker Prasad. I recorded his statement as stated by the injured and the same was read over to him. He marked his signature after being found the statement correct. That statement is scribed and signed by me. Dying declaration is marked as Ex.5."

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In cross-examination, the witness stated :

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3. Before recording dying declaration I asked to the injured about his name etc. He was in a fit condition to make the statement or not, I did not put up any other question to know about it. He voluntarily stated his name and full address, therefore, I got satisfied myself that he was in fit condition to make the statement. The statement was read over to the injured and he marked his signature after being found it

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correct which is not on my record. Below the statement “Ram Singh” has been mentioned, therefore, I state that the injured marked his signature. I do not recollect as to whether he put his signature or not. There is no mention of L.T.I. before “Ram Singh”. L.T.I. of Ram Singh is not on the Dying Declaration.

4. The injured was not previously known to me. The injured was introduced by the doctor. This fact has not been noted down by me on the dying declaration.”

The issue thus arises for consideration as to whether a declaration, as above, by itself would tantamount to substantial evidence against the appellant herein warranting the conviction and sentence as affirmed by the High Court.

Before so doing, a look at the decision of this Court in *Rosamma (Paparambaka Rosamma and Ors. v. State of A.P., [1999] 7 SCC 695* would be of some relevance wherein this Court observed that where conviction is solely based on the dying declaration there is an obligation on the part of the Court to consider with extreme care and caution both the dying declaration as also the evidence of the witnesses supporting it. In *Rosamma* (supra) the doctor was also examined and the doctor appended a certificate at the end of the declaration that the patient is “conscious while recording the statement”. It is on this, this Court observed that the question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to make a declaration in the absence of a certificate by the doctor certifying the state of the mind that existed before recording the dying declaration and this Court opined that in the absence of a medical certification that the injured was in a fit state of mind at the time of making that declaration, it would be very risky to accept the subjective satisfaction of the Magistrate, who opined that the injured was in a fit state of mind at the time of making a declaration. In *Rosamma* (supra) noting of the state of mind of the declarant before making the statement by the doctor has been stated to be an essential requirement for the prosecution to prove—incidentally—mere certification by even a doctor at the end of the declaration that the patient is conscious while recording the statement was stated to be not sufficient -this is so by reason of the factum of the dying declaration being only the circumstance for conviction and sentence of the accused. Presently, however, there is not even a doctor’s certification as regards the state of the condition of the declarant. It is only the Judicial Magistrate, who has stated from the witness box that

A the declarant was in a fit condition to make the statement and he was otherwise satisfied in regard thereto. The doctor was available since the Magistrate named him as Dr.Raman Shanker Prasad but unfortunately there is neither any certification nor even a signature of the doctor in the declaration.

B As noticed above, declaration itself can be treated as a substantive piece of evidence and can be the basis of an Order of conviction and sentence without there being any corroboration, provided, however, the same brings forth a sense of confidence and trustworthiness in the mind of the Court—why did not the doctor certify the fitness of the person making the statement or even append his signature, there is no answer to the same. The Magistrate also did not
C recollect as to whether the deceased did put his signature or not but since there is no mention of “L.T.I.” before “Ram Singh” obviously left thumb impression is not there on the dying declaration. This is the declaration which happened to be the only material piece of evidence on the basis of which the trial Court came to a conclusion that the appellant herein ought to be found guilty under
D Section 302 IPC warranting sentence of life imprisonment. The decision of this Court in *Rosamma* (supra) directly runs counter to the Judgment under appeal. In our view it is not otherwise a very safe piece of evidence to rely upon for conviction under Section 302 IPC. The declaration must be such so as to evoke confidence in the factual context. However, we are unable to record our confidence on such a declaration so as to lend support and concurrence to the
E Judgment under appeal. As noticed above, *Rosamma* (supra) decides counter and we do record our respectful agreement, apart from being a larger Bench Judgment which should act as a binding precedent, with the observations and findings and on the wake of the aforesaid we are of the view that the High Court fell into a manifest error. The Judgment under appeal thus cannot be sustained.
F The appeal is thus allowed. The appellant be released forthwith, if not wanted in any other case.

T.N.A.

Appeal allowed.