CASE NO.:
Appeal (crl.) 985 of 1997

PETITIONER:
B. Shashikala

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 22/01/2004

BENCH:
Doraiswamy Raju & S.B. Sinha.

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

This appeal by the appellant herein arises out of a judgment of conviction and sentence passed by a Division Bench of the Andhra Pradesh High Court in Criminal Appeal No. 606/96 whereby and whereunder the judgment passed by Additional Session Judge, Ranga Reddy District dated 21.6.1996 in S.C. No. 47/93 convicting the appellant herein for commission of an offence under Section 302 of the Indian Penal Code and sentencing her to undergo life imprisonment was modified to one under Section 304 Part \026 II of the Indian Penal Code and sentencing her to undergo rigorous imprisonment for 4 years.

The basic facts of the matter shortly stated are as under :

The deceased was married to Radha Krishna, PW 2, brother of the appellant herein on or about 15.5.1990. The appellant and her mother Heeramani (since deceased) and one B. Harikrishna had been abusing and harassing the deceased for compelling her to bring T.V. and other articles. Radha Krishna, the husband of the deceased having regard thereof decided to reside separately in the same house alongwith his wife. On 23.1.1991 at about 1.00 p.m., the appellant and her mother entered into the room of the deceased. She was then reading a book. The appellant poured kerosene on her and her mother closed the deceased's mouth whereafter fire was set on her by the accused No. 1. Thereafter she rushed outside with flames on her person shouting for help. Two neighbours, Ch. Susheela and Smt. N. Yadamma attracted by her shouts came and poured water. Her dress was changed and she was taken to the Railway Hospital by them followed by one Sri G. Venugopal, another neighbour.

While she was in the Railway Hospital, the Head Constable of Malkajgiri police station recorded her statement at about 7.30 p.m. on 23.1.1991 on the basis whereof a case under Sections 498-A and 307 IPC was registered. She later on died. The brother of the appellant, (the husband of the deceased) supported the prosecution case fully at the investigation stage. A charge under Section 302 of the Indian Penal Code was framed against the appellant and the accused No. 3, as in the meanwhile the accused No. 1 died.

Before the learned Session Judge, 21 prosecution witnesses were examined including the brother of the appellant as also the neighbours.

The learned Session Judge having regard to the materials on records held the appellant guilty of charges under Section 302 of the Indian Penal Code. The Accused No. 3, however, was acquitted. On appeal, the High Court although substantially affirmed the findings of the learned Session Judge but altered the conviction and sentence from one under Section 302 to Section 304 Part-II of the Indian Penal Code stating:

"...Till her death what type of medicines were given to save her from the burn injuries are not produced before the Court. It is also not explained by the prosecution that during the deceased's stay in the hospital, she was treated by the able doctor. In the absence of such explanation, it is also possible to believe that the deceased might have died due to untime and improper medicines given by the doctors in the hospital. In view of the circumstances explained, the submission made by Sri Ramanadham that it was not the intention of A-2 to kill the deceased is correct. Therefore, the appeal deserves to be allowed in part and accordingly it is allowed in part. However, the conviction under Section 302 IPC and the sentence of life imprisonment are set aside and it is now ordered that A-2 is convicted for the offence under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for 4 years, in view of her young age and other special circumstances pointed out by Sri Ramanadham regarding sentence. This shall not be the precedent for other cases."

This appeal has been filed questioning the aforementioned judgment of conviction and sentence.

Mr. T. Anil Kumar, learned counsel appearing on behalf of the appellant would submit that the learned Session Judge and the High Court committed an error in passing the judgment of conviction and sentence against the appellant inasmuch as the prosecution has failed to prove the motive for commission of the crime. The learned counsel would contend that the so-called dying declaration being not admissible in evidence could not have been relied upon inasmuch as the Magistrate who recorded the same did not know Hindi nor the person who translated the same was acquainted with the said language.

The learned counsel would urge that from the deposition of the mother of the deceased it cannot be said that any case of demand of dowry has been made out.

It is not in dispute that PW 8 B. Surendra Reddy, the I

Additional Sub-Judge working in Kakinada at the relevant time was posted as Munsif Magistrate, Hyderabad, West and South. The said witness in his deposition categorically stated that on receiving a requisition containing a request to record the dying declaration of the deceased, he went to the hospital and recorded the same. It is also not in dispute that the doctor treating the deceased declared that she was 'conscious, coherent and in a fit condition to give evidence'. As she did not know Telugu or English, the doctor translated the question put by him into Hindi and translated the answers given by declarant into English. The statement so recorded was read over and explained to her by the doctor and she admitted the same to be true and correct. An endorsement to that effect was also made by the doctor. PW 8 in his deposition clearly stated that he can understand Hindi as having worked as Munsif Magistrate, Hyderabad West and South as also III Metropolitan Magistrate and II Additional Rent Controller for three years, 'he had occasions to examine various witnesses who used to speak in Hindi and advocates used to translate the deposition in English and according to the said witness he used to follow the witnesses as to whether advocates were translating the same correctly or not'. The witness categorically stated that 'he was satisfied that the doctor had translated and what all the deceased had been telling about was correct' and recorded the same.

It may be true, as has been pointed out by the learned counsel, that the doctor Dr. K. Prahlad PW 4 examining himself as a witness could not convey the meaning of 'sasur' and 'sas' but he clarified that he knew Hindi to some extent only. But he clarified that as the deceased was although speaking in Hindi but here and there she also used English words and as such he could understand the terms of the same.

What was necessary in a situation of this nature is working knowledge in Hindi. PW 4 and PW 8 may not be able to speak or write chaste Hindi but evidently they understood the statement of the deceased in Hindi.

In the dying declaration, PW 4 made the following endorsement:

"It is certified that the patient is conscious, coherent and in a fit state of mind throughout the statement and I solemnly affirm and state that I translated the questions put by the Hon'ble Magistrate in English, into Hindi and translated the address given by the patient in Hindi into English and I made the true translation of the same."

Another statement was also made by PW 8 stating :

"It is certified that the declarant is conscious, coherent and in a fit state of mind throughout the proceedings, that the Doctor translated my questions into Hindi and the answers given by the declarant in Hindi into English as the declarant do not know Telugu and unable to give answers in English and that the

Doctor read over and explained her statement in Hindi and she admitted the same to be true and correct and signed the same and that I recorded the statement in the presence of Dr. K. Prahalad on this 23rd day of January, 1991."

The evidence of PW 8 is absolutely clear and unambiguous as regard the manner in which he recorded the statement of the deceased with the help of PW 4. It is also evident that he has also knowledge of Hindi although he may not be able to read and write or speak in the said language. His evidence also shows that he has taken all precautions and care while recording the statement. Furthermore, he had the opportunity of recording the statement of the deceased upon noticing her gesture. The Court in a situation of this nature is also entitled to take into consideration the circumstances which were prevailing at the time of recording the statement of the deceased.

The learned Session Judge keeping in view the evidence of PW 8 who was a judicial officer was satisfied that the dying declaration of the deceased had been recorded fairly and correctly. Keeping in view the materials on record, we do not find any infirmity therein.

It is also relevant to note that the statement of the deceased was recorded prior to the coming of PW 10 and PW 11 to Hyderabad from Pune. In that view of the matter, any possibility of her making any tutored statement is ruled out as there was no person other than her husband at the hospital.

Under sub-Section (1) of Section 32 of the Evidence Act, any statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, would constitute relevant facts. If as a result thereof, the Court is satisfied that the statement made by a person who is now dead is relevant, the same becomes admissible in terms of Sub-Section (1) of Section 32 of the Evidence Act.

It is not necessary that the dying declaration would be admissible in evidence only when a statement is made in expectation of a death. The law does not say so.

Section 32 of the Evidence Act is an exception to hearsay rule.

In P.V. Radhakrishna vs. State of Karnataka [(2003) 6 SCC 443], this Court laid down ten principles governing dying declaration and held :

"13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested

evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (See Gangotri Singh v. State of U.P. (1993 Supp.(1) SCC 327), Goverdhan Raoji Ghyare v. State of Maharashtra (1993 Supp.(4) SCC 316), Meesala Ramakrishan vs. State of A.P. (1994) 4 SCC 182) and State of Rajasthan v. Kishore (1996) 8 SCC 217).

14. There is no material to show that the dying declaration was the result or product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility."

Together with the dying declaration, if we consider the letters written by the deceased to her mother and sister which have been marked as Exs. P10 to P13, it will be evident that she had constantly been complaining about the ill-treatment meted out to her by the accused No. 1 and 2. She in Ex. P10 go to the extent of saying that unless something is done and her mother comes immediately, that letter should be treated as a last one. In all the letters she has expressed her helpless condition.

The submission of the learned counsel to the effect that in none of the letter, it was revealed that she was asked to bring any dowry by her in-laws, although may be correct but it was not expected that everything would be written in those letters. The letters written by the deceased clearly indicate that she had again and again been asking all of them to come and see her pitiable condition. In one of the letters, Ex. P13 it has been stated that even the accused persons had been questioning the character of her mother which she could not tolerate. Even in that letter she had beseeched that the same be treated as a telegram. PW 10 Chandravathi in her evidence also stated that after her marriage the deceased was allowed to come to her house only twice. PW 2 the husband of the deceased although in his statement initially supported the case of the prosecution but in his examination before the Court, resiled from his earlier statement and was declared hostile. The cause of the death of deceased, however, was not disputed by him. He further deposed that a different mess was created at least three months prior to the death of his wife in the same house. The reason for the same is obvious. Had the relationship between the deceased and the accused persons been cordial, they would not have run a separate mess. It is further evident from the record that the marriage took place against the wishes of the other members of the family and the same had not been attended by the accused persons. It defies any logic as to why the deceased

would go to the extent of falsely implicating the accused persons. We may notice that before the learned Session Judge a submission was made to the effect that the dying declaration was recorded at the instance of PW 2 with a view to get himself exculpated. Such a suggestion surprisingly had not been given to the investigating officer.

So far as the contention of the appellant to the effect that in Ex. P4 an endorsement has been made to the effect that she suffered the injury as a result of an accident, is concerned the likelihood of such a statement having been recorded at the instance of appellant herself cannot be ruled out. The incident took place when the accused Nos. 1 and 2 were in the House. Their presence in the house had clearly been mentioned in the dying declaration. PW3 and PW 12 who were neighbours of the deceased had also made the said statement. It is not in dispute that the appellant herein together with the neighbour accompanied the deceased to the hospital. Had it been a case of suicide and not homicide, she would not have rushed out of the door with flames on her person. There is nothing on records to show that the appellant or her mother, although they were residing in the same house and were present at the relevant time, made any attempt to save her. It is borne out from the records that only the lady neighbours poured water on her, put out the fire and changed her saree. It is also relevant to notice the opinion of PW 9, the Medical Officer as recorded on 26.1.1991. He found on external examination a dermoepidermal burns with charring seen all over the body except small portion of ambelicus and portion of back and some portion of below half of the left leg and also some portion around over the left upper arm. The burns were ante-mortem in nature and were about 85% in total.

PW 5 Nallagunta Simhadri in his evidence also categorically stated "The room was smelling kerosene" which is indicative of the fact that the fire took place because of kerosene.

The Investigating Officer, PW 13 in his evidence stated that he found a pump stove and a plastic kerosene tin with 1/4th litre of kerosene. He did not seize the kerosene jar. He did not notice any marks of burning on the floor of the room or cot inside the house. Food had also been prepared. In these circumstances, a case of stove burst must be ruled out. To the aforementioned extent, the evidence of PW 13 has also been corroborated by PW 5.

We, therefore, do not find any infirmity in the findings of the learned Session Judge as also the High Court. The High Court in its judgment observed :

"...On a careful consideration of the entire evidence, we find that the trial court was justified in convicting the accused as the case of the prosecution is supported by both dying declaration and corroborated by the other evidence. Since the correctness of the dying declaration, Ex. P-8 is not discredited, the other evidence discloses that the conviction is based on the dying declaration. In this case not only motive has been proved, but the role played by the accused has been

established by a reasonable doubt. The findings given by the trial court are just and proper. The deceased was subjected to burn injuries. She was taken to the Government hospital and kept there..."

The High Court, however, despite arriving at the aforementioned finding converted the conviction of the appellant from one under Section 302 IPC to Section 304 Part-II IPC on the grounds stated hereinbefore. Such an approach, in our opinion, is wholly unwarranted being contrary to Explanation 2 appended to Section 299 of the Indian Penal Code. But, since the State has not filed any appeal in this regard, we desist from interfering with the same. In the instant case, there is nothing on record to show that the deceased had not been given any medical care and attention. The findings of the High Court that the deceased might have died due to untime and improper medicines given by the doctor is based on surmises and conjectures and not on any materials on record.

For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment and the appellant already escaped with higher punishment in view of the alteration of the nature of offence, unjustifiably. The appeal is accordingly dismissed.