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Court : Karnataka Kalaburagi

Decided On : Jul-04-2016

Judge : Anand Byrareddy & L. Narayana Swamy

Appeal No. : Criminal Appeal No. 3770 of 2010

Appellant : Nagappa

Respondent : The State of Karnataka, rep. by Aditonal SPP, Gulbarga

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of the Cr.P.C. praying to set aside the judgment and order of conviction dated 03.11.2010 passed by the Fast Track Court-I/II at Bijapur in Sessions Case No.140/2008 convicting the appellant/accused for the offence punishable under Section 302 of Indian Penal Code; and etc.)

Anand Byrareddy, J.

1. Heard the learned Counsel for the appellant and the learned Additional Advocate General.

2. The facts of the case are as follows:

The appellant was the accused before the Court below in the following circumstances. The appellant was said to be in relationship with the complainant

deceased Gandrabai. It transpires that the accused had seen Lalsab Mull visiting Gandrabai on 24th April 2008 at about 9.00 p.m. in Nimbal village and the accused was angry and suspected the complainant of having a relationship with Lalsab Mull. It further transpires that he had immediately visited the complainant and had picked-up a quarrel and accused her of having an affair with Lalsab Mull and immediately set her ablaze by pouring kerosene on her and she had sustained serious injuries. She was admitted to hospital only on the next day at about 2.30 p.m. The complainant Gandrabai Siddram Badiger was a resident of Nimbal village. She had deserted her husband as he was suspecting her fidelity; she had two daughters and one son by the said marriage, and they were all residing with her husband. Her husband is said to have died and the two daughters also said to be dead. Subsequently, she had developed a relationship with one Dhareppa Biradar from Nimbal and Dhareppa Biradar, in turn, having died, the complainant started relationship with the accused Nagappa Waddar.

3. It is in this background that the accused seeing Lalsab Mull who had visited her, according to the complainant to ask her to come for coolie work, however, the accused had mistaken the incident as to there being an illicit relationship between the complainant and Lalsab Mull, and therefore, had set her ablaze on the night of 24th April 2008 at about 9.00 p.m.

4. As a result, the complainant had sustained injuries to her face, back and legs. It transpires that one Babu Biradar and Nabi Inamdar had shifted her to hospital, and thereafter, on receiving information of the incident, the Police Officer-PW.16 had recorded her statement as to the manner in which the incident had taken place which was duly certified by a medical practitioner who was providing her treatment, and thereafter, the Gandrabai who had suffered 80% burn injuries, is said to have succumbed to the injuries. It is on the basis of the said complaint, which was treated as a dying declaration, that the accused had been arrested and after further proceedings and on committal of the case to the Court of Sessions, charges had been framed against him to which he has pleaded not guilty and claimed to be tried, the prosecution had then examined 33 witnesses and had marked several exhibits and material objects on the basis of which, the Court below had framed the following point for consideration.

1. Whether the prosecution proves beyond all reasonable doubt that the deceased Gandhrabai having illicit relationship with the accused, the accused having come to know that CW.18 Lalsab Mulla had gone to the house of deceased taking a suspicious that deceased is having illicit relation with the CW.18, on 24.4.2008 at about 21.00 hours in the house of deceased Gandhrabai, situated at Nimbal the accused committed a murder intentionally causing the death of Gandhrabai by pouring kerosene on her and setting ablaze and thereby he has committed an offence punishable under Section 302 IPC?

5. The court below had answered the point in the affirmative and convicted the appellant to life imprisonment with fine of Rs.5,000/-. It is that which is under challenge in the present appeal.

6. The learned counsel for the appellant would point that all the witnesses have turned hostile and have not supported the case of the prosecution except the official witnesses-PW.14 the Medical Officer who had provided treatment; PW.16 the Investigating Officer; and PW.19 the Medical Officer who conducted the post-mortem of the body, who have supported the case of the prosecution, and therefore, the law, as laid down by the Supreme court insofar as the dying declaration is concerned, is that it should evoke the confidence of the Court and the dying declaration, though there is no hard and fast rule as to the manner or form in which it is to be recorded, should indicate that the deceased had made the statement while in a fit state of mind and this ought to be certified by a medical practitioner. This is a rule of caution which is normally to be followed and when there arises a doubt as to whether the statement has been recorded without such certification and when the sole material evidence on which the case of the prosecution is to be established the court should proceed with extreme caution.

7. In the present case on hand, there is no indication that there was an endorsement by the Medical Practitioner as to the deceased being in a fit state of mind to make a statement that could be treated as a dying declaration and the mere signature put on the dying declaration by the medical practitioner would not suffice to satisfy the test as to whether the deceased was in a fit state of mind especially when she has had suffered 80% burn injuries. It is pointed out that there

is no accuracy as to the percentage of the burn injuries suffered by the deceased, In that, whereas PW.19-the Medical Officer who had conducted the post-mortem has indicated and she had suffered 95% burn injuries, there is an inconsistent certification by the medical officer who had been examined as PW.14, who has stated that she had suffered 80% injuries. Therefore, the inconsistency could not also be reconciled in proceeding on the footing that the statement made by the deceased was in a fit state of mind and hence it would result in a grave miscarriage of justice, if the case of the prosecution is to be held to have been established beyond all reasonable doubt when there is no independent witness supporting the case of prosecution. It is in this vein that the learned counsel would urge the grounds set out in the appeal.

8. While the learned Additional Advocate General would submit that it is true that the witnesses examined have not supported the case of the prosecution and the entire case of prosecution rests on the dying declaration of the deceased. The dying declaration ought to be given its due prominence and in cases such as this and the instance that the dying declaration could be valid and could be relied upon only if a medical practitioner had duly certified that the deceased was in a fit state of mind had made the statement and only on such certification the dying declaration should be recorded is not the correct position of law. He would place reliance on a recent judgment of the Supreme Court in the case of GULJARI LAL v. STATE OF HARYANA [(2014)4 SCC 583] which has reviewed the case law including the constitutional Bench judgment of LAXMAN v. STATE OF MAHARASHTRA [(2002)6 SCC 710] and it is urged that there is no hard and fast rule as to the form and manner in which a dying declaration has to be recorded. It would be sufficient if the Court is satisfied about the circumstances in which the dying declaration is recorded, and in the present case on hand it is not the case of the appellant that PW.16-the Investigating Officer, and PW.14-the medical practitioner, who had provided the treatment to the deceased, and PW.19 the Medical Officer who had conducted the post-mortem examination of the deceased, had any personal grudge or animosity against the appellant in having tendered evidence in support of the dying declaration. Therefore, the same if addressed dispassionately, does not cast any suspicion or does not create any doubt as to the same having been recorded on the statement of the deceased. Hence, it is

contended that there is no infirmity in the judgment of the court below and the deceased speaking from her death bed would have to be readily accepted in a case of this nature and hence would submit that the conviction and the sentence imposed by the Court below be affirmed.

9. Given the above rival contentions, the Supreme Court in the case of LAXMAN v. STATE OF MAHARASHTRA has opined that there is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form prescribed for such recording. Consequently, what evidentiary value or weight has to be attached to such a statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by a doctor, the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established even otherwise. Given this dictum of the Constitution Bench of Supreme Court which has been consistently followed in later judgments including GULJARI LAL v. STATE OF HARYANA.

10. In the present case on hand, the dying declaration which is marked as Exhibit P13 is extracted hereunder for ready reference. The same reads as follows:

(Kannadam)

11. The dying declaration is roughly translated into English thus:

I, Gandhrabai w/o Sidrama Badigera, Hindu, aged 38 years, occupation: Coolie resident of Nimbal B.K. village, complain:

That I am a resident of Nimbal B.K. village. My husband, doubting my fidelity, had deserted me 15-16 years. I had two daughters and one son. My two daughters are dead and the son is with my husband. I had an illicit relationship with one

Dhareppa Biradar who was the resident of Nimbal BK village and was living with him. The said Dhareppa Biradar died about an year ago. I am now living with one Nagappa Balappa Vaddar. He had suspected my fidelity. Last Wednesday, one Lalsab Mehaboob Mulla came to my home to call me for coolie work. The said Lalsab Mehboob Mulla s visit to my house is said to have been noticed by Nagappa Vaddar. He had picked up a quarrel with me this morning and afternoon and had insulted and scolded me saying you prostitute! you have a relationship with Lalsab, otherwise why had he come to our house? I will kill you with this axe. Again he had picked up a quarrel yesterday night at 9.00 and started telling you prostitute, I will not spare you and with an intention to kill me he poured kerosene on me and set me ablaze. When I started screaming, Siddappa Badadal a Teacher, Ravutappa Salegaon and Kashima Nagathana, hearing my cries came and put out the fire. I suffered injuries on my face, neck, back and arms and leg. Today I was brought to hospital by Babugoudappa Biradar and Nabi Imamsab Mulla, who are residents of our village.

Hence, the complaint that suspecting my fidelity on the visit of Lalsab visiting my house and with an intention of murdering me, Nagappa Bashappa Vaddar had poured kerosene on me and set me on fire.

12. The said dying declaration bears the left thumb impression of Gandrabai, the signatures of the Investigating Officer, the medical officer as well as the Medical Officer of Primary Health Centre, Horti.

13. The other discrepancy, which according to the learned counsel for the appellant is an inconsistency, which cannot be reconciled, is also not material. In that, the medical practitioner who had provided the treatment has assessed the burn injuries as 80% to the whole body, whereas PW.19 has expressed that it could be 95%. This variance in the percentage of burn injuries is of little consequence when the deceased ultimately died.

14. The only point that requires to be addressed by us is whether the Court below was justified in relying upon the dying declaration when it was not preceded by certification that the deceased was in a fit state of mind while making the dying declaration. Given the guidelines laid down by the constitution Bench in Laxman s

case (supra), we are satisfied as to the genuineness of the dying declaration, given the circumstances of the case. Therefore, there is no infirmity or illegality committed by the Trial Court in having accepting the dying declaration. There is no substance in this appeal. The same is dismissed. The conviction and sentence imposed by the Trial Court is affirmed.

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