

irappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-09-1998

Reported in : 1998(2)ALT(Cri)152; 1998CriLJ1806; ILR1998KAR1387; 1998(3)KarLJ251

Judge : M.F. Saldanha and;B.N. Mallikarjuna, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3 and 32; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 162(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 645 of 1996

Appellant : irappa

Respondent : State of Karnataka

Advocate for Def. : Sri S.S. Koti, Additional State Public Prosecutor

Advocate for Pet/Ap. : Sri B.R. Patil and ;Sri K.B. Patil, Advs.

Judgement :

M.F. Saldanha, J.

1. This appeal is one more of the distressing cases wherein a young wife has lost her life due to burn injuries. The accused before us is the husband and the prosecution, as invariably happens, contended that the relationship between the

spouses was not good that there were frequent quarrels between them and that on the date of the incident i.e. 7-10-1995 around dinner time, one more such verbal altercation had taken place. Pursuant to this, it is alleged, that the accused-husband doused the clothes of the deceased-wife with kerosene oil and set fire to the clothes by means of a match stick. The wife Gangavva undoubtedly screamed out in pain which resulted in the congregation of several persons there. The flames were ultimately put off and Gangavva who was badly burnt was taken to the Primary Health Centre. She was treated there but the Doctor found her condition to be serious. The police were informed and Gangavva was thereafter taken to the hospital at Haveri. In the meanwhile, the police had recorded her statement which has subsequently been converted to the status of a dying declaration. Gangawa's condition deteriorated and even though she technically survived for 41 days, she ultimately died on 17-11-1995 at 6.00 p.m. The husband had been arrested in the meanwhile and came to be charged for having committed an offence punishable under Section 302, Indian Penal Code. The learned Trial Judge after evaluating the evidence held the accused guilty and convicted him of the offence of murder and sentenced him to undergo a life sentence. The present appeal is directed against the conviction and sentence.

2. Mr. Patil, learned Counsel who, represents the appellant has submitted that the Trial Court has jumped to the conclusion of guilt without having carefully evaluated the finer points of the case. As far as the oral evidence is concerned, he submits that even if the witnesses have indicated some background of quarrels which are said to have been taken place between the spouses, there is nothing to indicate that the nature of the hostility was so serious or so grave as to justify a situation thereby the accused would go to the extent of killing his wife. As far as this argument is concerned, the learned Additional State Public Prosecutor has submitted that as long as this evidence is on record, it would indicate a background of ill-feeling and that it would also provide a possible motive or ground for the accused having set fire to the deceased wife. His submission is that as long as the relationship was not good, the prosecution is entitled to rely on this circumstance. We need to record here that having regard to the normal situation prevalent in married life more importantly at the strata to which the accused belongs, that quarrels and scuffles between the spouses is not something unusual

particularly in poverty conditions and that unless it is shown that there is a very long standing or a very deep seated hostility, that this ground alone may not be good enough to justify the commission of such an offence. We do not lose sight of the fact that numerous instances had come up before the Courts where even without such a background, on the spur of the moment tempers have run high and incidents of the present type have taken place. In the present case, however, the evidence with regard to the background relationship between the parties is rather casual and is not conclusive.

3. Mr. Patil thereafter seriously attacked the evidence of the solitary eye-witness who happens to be none other than the son of the accused and the deceased viz, P.W. 4. Undoubtedly, this evidence is not of much consequence because the boy who was admittedly present on the scene and who was aged only 8 years old has virtually supported the defence theory that the clothes of the deceased caught fire and that his father tried to help her. Mr. Patil submitted that even the rest of the evidence of P.W. 4 is no way helpful to the prosecution. We are generally in agreement with the submission, even though the learned Additional State Public Prosecutor did try to argue that this witness has deposed to the fact that violent quarrels took place between the two spouses.

4. The most important witness in the case is P.W. 5-Savithravva who is the landlady. Apart from deposing about the quarrels between the husband and wife, she has stated that she arrived on the scene almost immediately after the incident took place and she supports the version that it was the accused who was responsible. As far as this witness is concerned, Mr. Patil submits that a close scrutiny of this evidence would indicate that she was not there at the time when the fire started and that this is the crucial aspect of the case. He has also relied on the fact that this witness does not state that the deceased who was conscious and in a position to speak said anything to her that would implicate the accused in the offence. In our considered view, therefore, this evidence is also not of much consequence though the learned Trial Judge has sought to rely on it for purposes of corroboration.

5. The conviction has really to be based on the statement of the deceased which was recorded by the Investigating Officer at the time when she was at the Primary Health Centre, but this statement has been treated as a valid dying declaration and therefore assumes vital significance. It is true that in this statement the deceased has implicated the husband as being the person who set her on fire. The statement has been signed by the deceased and the learned Trial Judge has placed heavy reliance on the statement for purposes of convicting the accused. Mr. Patil has attacked the evidentiary value by pointing out that the statement has not been recorded either by a Magistrate or by a Doctor as should normally be done, and that the Investigating Officer has not indicated any reasons why he did not get the statement recorded by one of two such persons. Mr. Patil also relies on another very serious infirmity, namely, the fact that the document does not bear the certificate from the Doctor who was treating the patient, certifying that the patient was not only conscious and able to speak but more importantly that the patient was in a fit condition to make a statement. Mr. Patil places heavy reliance on the well settled position in law which postulates that a dying declaration though an extremely strong piece of evidence, must pass the test of rigorous scrutiny by the Court and he submits that the basic error committed by the learned Trial Judge was that he straight away accepted the document without the requisite scrutiny. His essential submission is that this document cannot be relied upon as a valid dying declaration and if this position is upheld, then the conviction would have to be set aside. He has fortified this argument by pointing out to us that the Doctor, who is P.W. 2, has in terms stated that no such statement was recorded by the police and it is his contention therefore that there is a serious doubt with regard to the point of time of its origin. No statement was recorded as to the veracity of the signature of the deceased on that statement.

6. As against this position, the learned Additional State Public Prosecutor has vehemently defended the conviction. To start with, he has taken us through the case law with regard to the dying declaration because his principal argument is that in cases of this type where necessarily, the supportive evidence will either be non-existent or flimsy, particularly in wife burning cases, that it has now been accepted by the Courts that a conviction can follow on the basis of an uncorroborated dying declaration.

7. We shall briefly deal with the case law in question. As long back as in the decision in *Khushal Rao v State of Bombay*, the Supreme Court laid down certain guidelines obliging the Trial Courts to embark upon a careful scrutiny of dying declarations and held that once the document is accepted by the Court that it does not require corroboration and can be acted upon for purposes of basing a conviction. In the decision in *Tarachand Damu Sutar v State of Maharashtra*, the Supreme Court had occasion to review the earlier decision and the law as was laid down in the decision in *Ram Nath Madhoprasad v State of Madhya Pradesh*, namely that dying declaration required corroboration because the author of it having died, it was unsafe to base a conviction on it particularly in cases of murder. Without looking for supportive evidence, the Supreme Court following the later decision referred to by us *supra*, held that a dying declaration if found to be genuine and reliable, can form the sole basis of a conviction. The learned Additional State Public Prosecutor invited our attention to the decision of the Supreme Court in *Ramawati Devi v State of Bihar*, in support of his submission that a dying declaration recorded by an Investigating Officer can be acted upon in certain situations. We need to point out here that the Supreme Court in the decision in *Dalip Singh and Others v State of Punjab*, while examining the evidentiary value of a dying declaration very clearly observed that it must be recorded preferably by a Doctor or a Magistrate and the Supreme Court was at that time relying on the earlier decision in *Munnu Raja and Another v State of Madhya Pradesh*. We do not dispute that there could be few cases in which a dying declaration recorded either by the Investigating Officer or the Duty Constable at the hospital in an emergency could be relied upon by the Court, but this situation could be accepted only when there is a valid explanation as to why this procedure had to be followed. There may be cases in which the condition of the injured was serious or a situation where the injured was likely to lose consciousness or where there was no time to secure the services either of a Magistrate or a Doctor, but this evidence must be adduced in order to satisfy the Court that there was justification for not getting the statement recorded by an independent party. The obvious reason why the Courts preferred the dying declaration to be recorded by a person other than from the investigating team because there is always the possibility of the Investigating Officer wanting to take

a short cut by straightaway implicating the husband or such person whom he suspects and it is therefore a rule of caution which prescribes that the Courts would invariably insist upon this exercise being performed by the third party particularly a Magistrate or a Doctor who inspires a higher degree of confidence. Lastly, the learned Additional State Public Prosecutor invited our attention to the decision in Munnu Raja, supra, wherein the Supreme Court accepted the position that a FIR can be treated as a dying declaration and vice versa.

8. It was in this background, he submitted that the complaint in the present case has rightly been treated as a dying declaration. His further submission was that the Doctor-P.W. 2 who has described the condition of the patient has stated in his evidence that she was conscious and in a position to speak. He therefore submits that even if the Doctor has not certified on the dying declaration itself for whatever reason, the Court must accept the evidence of the Doctor for purposes of holding that the very important and vital ingredients have been satisfied. We are unable to accept this argument because the consequences would be extremely unsafe. It is an essential requirement and one on which there could be no matter of compromise that the condition of the patient at the time when the dying declaration was made has to be assessed by the Doctor concerned and certified on the document at that very point of time. The Courts can never accept a situation whereby this very vital requirement is bypassed and the prosecution attempts to get over the infirmity by examining the Doctor at a much later point of time in order to try and cover up the lacuna. It is a well accepted position in law that where the condition of a patient is so serious, that is the Doctor must certify the consciousness levels. There can be no dispute about the fact that the patient in such cases is undergoing a lot of physical pain that the mental condition of the patient is also not very certain having regard to the nature of the injuries and the consequences thereof, but what is most important is that the Courts have always taken note of the fact that as soon as a seriously injured person is brought to the hospital, the formal treatment is commenced, the most important of which is the administration of tranquilizers and painkillers for purposes of controlling the trauma and reducing the pain. It is a medically accepted fact that these drugs have attendant side effects, the most important of which is drowsiness and it is for this reason that the Courts insist that the Doctor has got to certify that the patient was

not only conscious but also is in a position to speak and was in a mentally fit condition to make a statement. The law with regard to dying declaration invariably lays down that the dying declaration must be in the form of question and answers and preferably recorded in the words of the patient. The principal reason for this is because a Court will be able to independently assess from the nature of the answers as to precisely what was the condition of the patient. The contemporaneous certificate from the Doctor is more important because the Doctor would be in a position to indicate as to whether the mind of the patient was clear and whether having regard to the over all condition, the patient understood the questions and was in a position to give correct answers. This being the basic position in law, we find it impossible to accept the submission canvassed by the learned Additional State Public Prosecutor that even if the Doctor had not certified on the document that it was good enough for the Doctor to have done so at the time of the trial. We do not dispute the good faith of the Doctor, but we do consider that it is impossible even for a medical practitioner to merely look at the case papers and to precisely opine as to what exactly was the condition of the patient at a particular point of time. We have carefully scrutinised the medical certificates and the evidence in this case and we find that the deceased had suffered very extensive burn injuries and that the Doctor himself has certified her condition as being far from good when he stated that her condition was dangerous. In totality, therefore, the most crucial piece of evidence, namely, the dying declaration that has been relied upon by the Trial Court cannot be used by the prosecution for purposes of basing the conviction in this case.

9. We have not lost sight of the fact that the Doctor has admitted in cross-examination that there were several persons around the patient at that time and it has come on record that a crowd collected immediately after the incident. It is not very certain as to who these people were and therefore, since it is clear that the deceased was in a position to speak, we cannot rule out the possibility of influences having worked on her mind as a result of statements or conversations that must have taken place.

10. The appellant's learned Advocate is right when he points out that if the vital evidence in this case, namely, the dying declaration is to be rejected that there is

hardly any other evidence or circumstance which could justify a conviction. The learned Additional State Public Prosecutor has undoubtedly laboured very hard to put forward the alternate submission that even if the dying declaration in question is to have lesser evidentiary value, that the Court must piece together the remaining evidence and the conviction could be sustained. Unfortunately, all the other heads of evidence are extremely vague and weak and it would be a travesty of justice to sustain the conviction on the basis of this material.

11. In the light of the aforesaid situation, the appeal succeeds. The conviction and sentence recorded by the Trial Court are set aside. The accused is directed to be set at liberty forthwith, if not required in any other offence. The appeal is accordingly allowed.

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