

Mahesh Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-06-2000

Reported in : 2001(4)KarLJ116

Judge : B. Padmaraj and ;S.R. Bannurmath, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#); [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Evidence Act, 1872](#) - Sections 6 and 32

Appeal No. : Criminal Appeal No. 986 of 1996

Appellant : Mahesh

Respondent : State of Karnataka

Advocate for Def. : Sri B.C. Muddappa, Additional State Public Prosecutor

Advocate for Pet/Ap. : Sri Sanjaya Patil, Amicus Curiae

Judgement :

S.R. Bannurmath, J.

1. Being aggrieved by the judgment of conviction dated 18-4-1996 passed by the Sessions Judge, Bangalore City in S.C. No. 314 of 1994, the accused has preferred this appeal.

2. The brief facts of the case are as follows:

The deceased Channamma is the wife of accused Mahesh. They had led married life almost for a decade and in fact stated to have three children including P.W. 6-Mamata. According to the prosecution the accused was addicted to liquor and in the drunken condition used to pick up quarrel with the deceased. On the fateful day viz., 28-1-1994 at about 3 O'clock in the afternoon, it is alleged that the deceased came in drunken condition to the house, picked up quarrel with his wife Channamma in the house and suddenly poured kerosene on her from a plastic can in the house and set her on fire, She was taken to the hospital and later at about 9.30 p.m. in the night she breathed her last. According to the prosecution when Channamma was taken to the hospital, P.W. 14-Smt. Kalpana was the duty doctor who on examining her noted the history of burns in the accident register marked in this case as Ex. P. 1 and the entry at Ex. P. 11(a). In the history, Channamma had stated that it was her husband who set her on fire. Thereafter intimation to the Police was sent as it was a medico-legal case. P.W. 12-Shivaji Rao, H.C. was on duty on that day in the jurisdictional Police Station viz., RMC yard Police Station. At about 5.50 p.m. when the message was received, the SHO sent him to find out more information. Accordingly, P.W. 12 went to the Victoria Hospital and in the presence of P.W. 1-Dr. Trishula after verifying with her as to the condition of fitness of the injured Channamma recorded her statement as to the incident as per Ex. P. 1. Treating the statement of the injured at Ex. P. 1 as the complaint, he registered the case in Crime No. 21 of 1994 for the offence under Section 307 of the Indian Penal Code against the accused and investigation was taken. Later when Channamma succumbed due to injuries while undergoing treatment, the offence was altered to one under Section 302 of the Indian Penal Code. During the investigation, the Investigating Officer held the spot mahazar, recorded statements of witnesses including the neighbour of the accused and the deceased. After completion of the investigation and securing the necessary reports, filed charge-sheet. On the basis of the material collected, the accused was charged for the offence under Section 302 of the Indian Penal Code. As the accused has denied charges and claimed to be tried, he was tried in S.C. No. 314 of 1994. The prosecution has examined in all 17 witnesses and got marked 16 documents so also M.Os. 1 to 5. In his 313 Criminal Procedure Code statement, the accused denied the prosecution case and stated that his wife (Channamma)

received burn injuries due to stove burst and when he went to her rescue, he also received some burns and it was he who brought Channamma to the hospital. Appreciating the entire evidence, the Trial Court relying upon the dying declarations made by the deceased before the doctor and P.W. 12-HC found the accused guilty of the offences charged. Accordingly convicted him and sentenced him to undergo imprisonment for life. Hence, the present appeal. As this was a jail appeal and accused was not in a position to appoint a Counsel, this Court had sought assistance of learned Counsel Sri Sanjaya Patil as Amicus Curias to argue the case on behalf of the accused/appellant.

3. Sri Sanjaya Patil, learned Amicus Curiae after taking us in detail through the evidence of the prosecution contended that the multiple dying declarations before the Court are defective in nature and as such could not have been relied upon as the sole basis by the Trial Court to convict the appellant. Elaborating his argument, he contended that the dying declaration recorded by P.W. 12-Shivaji Rao, HC vide Ex. P. 1 does not bear the necessary certification by the doctor to show the mental and physical fitness condition of Channamma to make such a statement. It is contended that except stating that this statement was recorded in his presence, there is absolutely no material to show that Channamma was in a fit condition to give such statement. As such in the absence of any certification, reliance placed by the Trial Court on such a document and conviction of the accused solely on the basis of this dying declaration is erroneous. Commenting upon the oral dying declaration made by Channamma before her daughter P.W. 6, it is contended that P.W. 6 was a minor aged about 11 years then and the deceased could not have made any dying declaration implicating the accused before such a minor. In addition, the learned Counsel pointed out Ex. D. 1 marked in her statement before the Police to contend that P.W. 6 did not visit the hospital on 28-1-1994 and it is only on the next day that too after the death of the mother, P.W. 6 had gone to the hospital. As such the learned Counsel contended that Channamma could not have made any statement before P.W. 6. Added to this, the learned Counsel contended that at the earliest point of time it was the accused who was present in the house and in fact he tried to rescue his wife, subside the fire and rescue his wife and in the process he too received some burn injuries on his hands and it was the accused himself who took her to the hospital. Highlighting these acts of the

accused, it is contended that the conduct of the accused was not that of a murderer, but of a compassionate husband who in fact went to the rescue of his wife and in the process suffered some injuries also. As such he contended that the cumulative effect of the entire prosecution case would not by any stretch of imagination be held against the accused so as to find him guilty of murder of his wife by setting fire. On the other hand Sri B.C. Muddappa, learned Additional State Public Prosecutor appearing on behalf of the State argued in support of the findings of the Trial Court.

4. We have perused the records in detail. The entire case of the prosecution is based on three circumstances as projected by the prosecution viz., motive, dying declaration made by the deceased before doctor, P.W. 12-HC and the daughter P.W. 6 and thirdly the circumstantial evidence viz., the very admission of the accused being present in the house at the time and place of incident coupled with the very statement of the accused made before the duty doctor when he was examined by-her.

5. At the outset so far as the alleged dying declaration before the daughter P.W. 6 is concerned, as the defence has successfully brought out the contradiction in her statement through Ex. D. 1 to show that P.W. 6 did not visit the hospital and met her mother on 28-1-1994 and it was only on the next day (by the time Channamma was dead) shows prima facie that Channamma could not have made any statement before P.W. 6. P.W. 6 being a minor and capable of being tutored under influence, no much reliance can be attached to her evidence especially when she has suffered material omission amounting to contradiction vide Ex. D. 1. However apart from the oral dying declaration before P.W. 6, the prosecution has also placed reliance on the two other dying declarations viz., one made before the doctor and another before the Police Constable. So far as the argument of the learned Counsel that the dying declaration recorded before P.W. 2 does not bear any certification of the doctor as to her fitness, condition of mind and body is concerned it has to be observed at the outset that P.W. 12 had not gone to the hospital to record the dying declaration. He had been assigned to find out as to the cause of her burn injury and he contacted the duty doctor and after verification from the doctor regarding the fitness condition of Channamma recorded her

statement as per Ex. P. 1 and treated it as a complaint. On the death of Channamma this statement assumes the character of dying declaration. As such mere absence of certification on this statement or complaint of Channamma will not take away its evidentiary value especially when Dr. Trishula P.W. 1 in whose presence the same was recorded has in clear terms stated that the injured was in a fit condition to make such statement. In this regard, the Hon'ble Supreme Court in the case of Koli Chunilal Savji v State of Gujarat, in the similar circumstances has observed that requirement of doctor's endorsement on the dying declaration is only rule of prudence and the ultimate test is whether the dying declaration is truthful and voluntary.

6. So far as the dying declarations are concerned, their admissibility rests on the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. It is governed by the maxim 'Nemo moriturus praesumitur mentire' which means the general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the person is at the point of death and when every hope of this world is gone and when every motive to falsehood is silenced and the mind induced by the most powerful considerations to speak the truth; a situation too solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by positive oath administered in a Court of justice. Taking into consideration of certain prevalent conditions, the Apex Court right from the case of Khushal Rao v State of Bombay, till the date have however laid down certain guiding principles while appreciating the evidence regarding dying declaration:

1. It is neither a rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration.
2. If the Court is satisfied that the dying declaration is true and voluntary it can base a conviction on it, without corroboration.
3. The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination and the deceased had opportunity to observe and identify the assailants and was in a fit

state to make such declaration.

4. Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

5. Lastly, it is for the Court in order to satisfy whether the declared was in a fit mental condition to make the dying declaration look up to the medical evidence. But where the eye-witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical evidence cannot prevail.

7. Keeping in mind these principles, we have considered the evidence on record in the present case. It has to be noted that immediately after the injured Channamma was taken to the hospital on 28-1-1994 at about 4 p.m., Dr. Kalpana/P.W. 14 examined her and recorded the history in MLC register marked as Ex. P. 11. The relevant entry is at Ex. P. 11(a) which states as follows:

'Stated to have sustained burns when her husband drunk and poured kerosene over her and set ablaze on 28-1-1994 at about 4 p.m. in the house'.

8. This was the earliest statement of the deceased made before a duty doctor. The doctor who has examined in the Court has reiterated these aspects in the Court also. Except hypothetical suggestion that person with 100% burns cannot make a statement or is not in a position to give a statement, no other materials contra-indicative has been elicited from the doctor to even suggest that Channamma was totally incapable of making any statement. Apart from the P.W. 14, we have yet another evidence of doctor Trishula who was examined as P.W. 1. He was also working in the Burns Ward of Victoria Hospital and he too has stated in his evidence that deceased was in a fit condition to give statement. To this witness also, except the futile attempt of the defence that he has falsely stated about the condition of the deceased, no material again is elicited to show that the condition of Channamma was so precarious or unfit so as to disable her from making any statement. On our careful scrutiny of these two earliest versions of the doctors in fact one of which finds place in the medico-legal register Ex. P. 11, leaves us no doubt as to the condition of Channamma was fit and proper to give such statement. The noting made by P.W. 14 in Ex. P. 11 in fact has to be treated as an

entry in contemporaneous document viz., medico-legal register maintained by the doctor during the course of his job. The Hon'ble Supreme Court in similar circumstances in the case of Shripatrao v State of Maharashtra, where also there was no certification made on the dying declaration by the doctor but the same was found in contemporaneous documents like case sheet, it has held that doctor had no reason to falsely depose against the accused or to prepare false case papers.

9. No doubt the accused in his 313 Criminal Procedure Code statement has stated that Channamma received injuries due to stove burst, but in our view this is an afterthought. This can be demonstrated by looking into another contemporaneous document viz., entry in accident register at Ex. P. 12. While the accused was being examined and treated for some burns received by him, he has stated thus:

'Said to have sustained injuries while he was saving his life who set ablaze on 28-1-1994 at about 4 p.m.'

10. In this history furnished by the accused, absolutely there is no mention of the stove burst. If really Channamma had received injuries due to accidental stove burst, this would have found place definitely in Ex. P. 12. On the other hand the words 'who set ablaze' indicate it was an attempt of suicide on the part of Channamma. Moreover even as the spot mahazar indicates, there were no signs of any stove burst available to the investigating team. Considering these aspects, in our view, the reliance placed by the Court below on the two dying declarations by the deceased especially the one at the earliest point of time before the duty doctor by way of history assumes the character of dying declaration which we too find truthful and reliable. On careful consideration and scrutiny, we see no reason to depart from the well-considered findings of the Trial Court and as such see no merit in the appeal. Accordingly, the appeal being devoid of merits is dismissed.