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Subbarayappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-05-2003

Reported in : ILR2004KAR1235

Judge : S.R. Bannurmath and ;Mohan Shanthanagoudar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 374

Appeal No. : Cr. A.No. 1613/2001

Appellant : Subbarayappa

Respondent : State of Karnataka

Advocate for Def. : H.V. Ramesh, HCGP

Advocate for Pet/Ap. : B. Anand, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Mohan Shanthana Goudar, J.

1. The appellant is convicted accused for the offence punishable under Section 302 IPC in S.C. No. 218/95 on the file of the I Addl. Sessions Judge, Kolar.

The facts leading to this case are that deceased Rangamma and the accused were living as wife and husband in a hut situated in the land of Akkulamma at Madapalli. Since one month prior to the incident the accused used to quarrel with the deceased by telling that he does not want to cohabit with her any more. At about 8.30p.m. on 3.3.1993, the accused picked quarrel with the deceased and told her that she should leave the house. The deceased questioned the accused as to why she should leave the house and that she will reside with him only. At that point of time, the husband took out a tin containing kerosene and poured the kerosene on the body of the deceased and set her on fire. Thereafter, the accused went out of the house by closing the door and bolting it from outside. As the deceased started to cry in a loud voice for help, PWs.2 and 5 came to the house and opened the door. She was brought outside the house by these two persons and the fire was extinguished. Thereafter, the deceased was shifted to Government Hospital, Bagepalli. The Doctor, P.W.7, gave her first aid treatment and reported about the incident to the concerned police at about 2a.m. on 4.3.93 as per Ex.P.6 which was received by the Head Constable of Bagepalli Police Station who was the then Station House Officer, during the mid-night. He rushed to the said Hospital and as the deceased was in a fit state to give the statement, the said Head Constable, P.W.16 recorded the statement of the injured as per Ex.P.7. On the basis of the said statement, PW.16-Head Constable registered a case in Cr.No. 23/93 for the offence under Section 307 IPC. Thereafter, the injured was shifted to Victoria Hospital, Bangalore wherein she was declared dead. After receipt of the intimation of death, Section 302 IPC is added in the case. The Sub-Inspector of Police, namely Sri Lokeshwara with the help PW.16 investigated into the crime to certain extent and thereafter handed over the investigation to the Sub-Inspector of Police, PW.14 Sri M.A. Hussain. After completing the investigation, the Inspector lodged Chargesheet against the accused for the offence under Section 302 of IPC. As the accused did not plead guilty for the charges levelled against him, the trial was proceeded against the accused for the offence under Section 302 of IPC. During the course of trial, the prosecution examined 18 witnesses and got marked 20 exhibits. After hearing, the Court below convicted the accused for the offence punishable under Section 302 of IPC and sentenced him to undergo R.I. for life and to pay a fine of Rs. 1,000/ - with a default clause.

2. This appeal is filed by the accused as an indigent person through jail authorities. Therefore, this Court had requested Sri B. Anand, learned Advocate to assist the Court as amicus curiae.

Heard Sri B. Anand, and Sri H.V. Ramesh, learned HCGP for theState.

The learned amicus curiae submitted that the evidence on record is not properly appreciated by the Court below, which has resulted in the miscarriage of justice. Though all the material witnesses have turned hostile, the trial Court has not given due importance for the same. He further submitted that except the evidence of PWs.7 and 16 and the alleged dying declaration as per Ex.P.7, absolutely, there is no material on record against the accused. As there is contradictory material in the dying declaration and the evidence of PWs.7 and 16, the Court below should not have relied upon the dying declaration and the evidence of the above two witnesses. On the other hand, Sri Ramesh, learned HCGP argued in support of the judgment and order of conviction of the Court below.

3. It is not disputed that the death of deceased Rangamma is homicidal. However, the evidence of the Doctor, PW.6, who conducted the post-mortem examination, discloses that the death was due to shock as the result of burns sustained by the deceased. The Doctor's evidence coupled with the statement of the deceased made prior to her death as per Ex.P.7 and the evidence of Police Constable, PW.17, who recorded Ex.P.7, show that the death is homicidal. The Court below has rightly come to the conclusion that the death is homicidal.

4. It is not disputed that the accused and the deceased were living as husband and wife in a hut at Madapalli village. PW.3, the mother of the deceased, deposed that the deceased Rangamma had earlier married one Gangulappa who died within three months of the marriage and thereafter, the said deceased Rangamma started living with her for some time. The accused came to the village for stone cutting work and at that time there was acquaintance of the accused with the deceased and that she went along with the accused to Karollapalli Village and thereafter to Madapalli Village. They were living as husband and wife. The evidence of PW.3 is supported by the evidence of PW.4 who also deposed that the accused and the deceased were living in Madapalli Village. The evidence of

PWs.9 and 11, further corroborate the fact that the accused and the deceased were jointly living in a hut in Madapalli Village. It is also not in dispute that no one was living in the said hut in which the accused and the deceased were living except them. Thus there is ample material on record that both of them were living as husband and wife under the same roof. There is also no dispute that on the date of the incident, the accused was residing in the same house.

5. As rightly submitted by the learned Advocate (Amicus Curiae), Sri B. Anand, except the Doctor and the police officer, more particularly, PW.16, the other witnesses have turned hostile. The prosecution mainly relies upon the statement of the deceased vide Ex.P.7, the evidence of PW.7-Doctor who treated the injured immediately after the incident and PW.16, the Head Constable who recorded the statement of the injured at 8 p.m. in the Hospital in the presence of the Doctor. Learned Amicus Curiae argued that there is no Certificate issued by the Doctor to show that the injured was in a fit condition to give the statement. We have perused the statement, Ex.P.7 in detail. The said statement is about the quarrel of the accused against the deceased since one month prior to the incident. It also mentions that about 8.30 p.m. on 3-3-93, after quarrelling, the accused poured kerosene on the deceased, set her on fire and went out of the house after closing the doors. Thereafter, PWs.2 and 5 namely Earappa and Narasimhappa came to the house hearing the cries, opened the door, took the deceased out of the house and extinguished the fire.

6. The statement of the victim according to us, is given by her in natural way. The said statement is recorded by the Head Constable-PW.16 before the Doctor; PW.7, at 4.00 a.m. on 4-3-93. The left thumb impression of the injured was obtained on the said statement of the injured. It is true that there is no Certificate of the Doctor as to the fitness of the declarant. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or signs or otherwise will suffice provided the indication is positive and definite. In most of the cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a Doctor or a Police Officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate is absolutely necessary, although to assure authenticity it is usual to

call a magistrate, if available for recording the statement of a man about to die. 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 for such recording. Consequently, what evidential value or weight has to be attached to such 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 person who records such statement that the declarant was fit to make the statement even without examination by the 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 otherwise. Reference in this connection is available in the judgment of the Apex Court in the case of LAXMAN v. STATE OF MAHARASHTRA 2000 AIR SCW 3479 wherein it is held that certification by the Doctor is only a rule of caution. Thus, even without the certificate of the Doctor, the declaration can be relied upon, provided, the Court ultimately holds the same to be voluntary and truthful. Thus, what is necessary is, as to whether or not the statement by the injured is voluntary and truthful. In this connection, the prosecution heavily relies upon the evidence of PW.7, the Doctor, before whom the said statement Ex.P.7 is recorded by PW.16, the Head Constable. The said Doctor was in the night duty in the Hospital at Bagepalli on 3-3-93. His evidence discloses that the native people and one Anjinamma brought a woman by name Rangamma with the history of burn injuries. He gave first aid treatment and sent intimation to the concerned police at about 2 a.m. on 4-3-93 as per Ex.P.6. It is also deposed by him that the injured had sustained 90% burnt injuries. He has specifically stated that the said Rangamma was conscious and talking. The police came to the Hospital at 4 a.m. and recorded the statement of Rangamma. The Doctor identifies the said statement in the Court as Ex.P.7. The Doctor has also deposed that Rangamma stated that her husband poured kerosene and closed the door from outside and further he deposes that the police obtained her left thumb impression on Ex.P.7 in his presence. He denied the suggestion that Ex.P.7 does not contain the thumb impression of Rangamma and that she did not give any

such statement. We do not find anything to disbelieve the evidence of PW.7 who is an independent witnesses that too, a responsible public servant.

7. The evidence of PW.16 discloses that he was the Station House Officer in the intervening night of 3-3-93 and 4-3-93. He received an intimation letter at 2.15 a.m. on 4-3-93 from the medical officer, PW.7, that a patient by name Rangamma with 90% burn injuries was admitted in the Hospital. After going to the Hospital, he recorded the statement of Rangamma as per Ex.P.7 in the presence of PW.7. The doctor specifically deposed that Rangamma was conscious and was talking. The Head Constable identifies the said statement as Ex.P 7. In his deposition, said Head Constable repeats the statement of Rangamma that was given by her before him. During the course of cross-examination, it is deposed by PW.16 that the condition of the patient was critical when he went there but she was able to speak. When he asked the Doctor about the condition of the patient, the Doctor orally told him that the condition of the patient was okay. We find the evidence of PW.7 and PW. 16 probable, dependable and disinterested. There is no reason as to why the independent witnesses, that too, the responsible public servants should depose against the accused. The evidence of PW.7 and 16 amply go to show that the deceased was in a fit state of mind for making the statement and the statement of Rangamma was recorded in the presence of the Doctor as per Ex.P.7. In view of the evidence of the Doctor as well as that of the Head Constable, PW.16, we conclude that the deceased was in a fit state of mind to give the statement. Thus, the absence of Certificate by the Doctor about the fitness of mind at the time of her statement will not make the statement unreliable. There is nothing on record to show that the deceased was influenced or threatened to make the statement in a particular way, particularly when, none of her relatives were present in the Hospital. We find her statement voluntary and truthful.

8. It is relevant to note here that the statement of Rangamma was recorded by PW 16 in the presence of PW.7, as if the statement of the injured and was treated as Complaint. It is well settled that when the Complaint of the victim is to be recorded, it is not necessary to get the certificate of the doctor about her fitness to give the statement. It assumes the character of dying declaration after the death of the declarant.

As has been held by this Court and the Apex Court in number of decisions, the dying declaration may form the sole basis for conviction without the need for independent corroboration if it is shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. A reference in this connection may be made to a judgment in the case of JAIKARAN v. STATE OF DELHI 1999 SCC(Cri) 1385 in which it is observed as under:

'10. A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premise that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premises which is considered strong enough to set off the need that the make of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, In the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court, on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence - neither extra strong nor weak - and can be acted upon without corroboration if it is found to be otherwise true and reliable (PADMABEN SHAMALBHAI PATEL v. STATE OF GUJARAT (1991 SCC (Crl) 275 (PARA 8))'

A reference also can be made to the recent judgment of Apex Court in P.V. RADHAKRISHNA v. STATE OF KARNATAKA AIR 2003 SC 2859 which reads thus.

'The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, or prompting or a product of imagination. The Court must be further satisfied that the deceased was in fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.'

Looking into the facts and circumstances of the case, we find that the declaration or statement of Rangamma is true, free from blemish and voluntary. Consequently, the Court can base its conviction without any further corroboration relying on the said statement. In this case, the accused is none else than the husband of deceased. The identity of the accused cannot be doubted. In the absence of any evidence regarding the influence we find that the statement as per Ex.P.7 thoroughly reliable and free from blemish. It is also found that the maker of the statement was in a fit state of mind and made the statement on the basis of personal knowledge without being influenced by others.

Sri Anand, learned Amicus Curiae further submitted as the injured had sustained 90% burn injuries, she could not have made such a statement. It has been held by the Apex Court in the judgment reported in AIR 2003 SC 2859 supra thus

'There is no hard and fast rule of universal application on question whether the percentage of burns suffered is determinative factor to affect the credibility of the dying declaration and the improbability of its recording. Much would depend upon the nature of the burn, part of the body affected by burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration.'

The records on hand do not disclose that the injuries hampered the capacity of the injured to talk and narrate the incident. As we have already found that she was in a mentally fit condition to make statement, the absence of certification as to the state of the mind of the declarant is not fatal when the police official recorded the statement in the presence of the Doctor and that the Doctor has deposed that the injured was in fit condition to make the statement. Added to this, there is no material on record that the dying declaration is either product of imagination, tutoring or prompting. We find that the dying declaration is trustworthy and has credibility.

We find no explanation by the accused in his statement recorded under Section 313 Cr.P.C. As there is no dispute that the accused was living with the deceased during the relevant point of time as husband, the silence of the accused as well as non-explanation regarding the cause of death of the deceased and as to how she received injuries would supply additional link to the chain circumstances against the accused.

The Trial Court is justified in relying upon the dying declaration for coming to the conclusion. On re-appreciation of the entire evidence on record, we find no reasons to differ with the conclusion of the trial Court. Consequently, the appeal fails and the same is dismissed.

We place on record our appreciation for the valuable services rendered by Sri B. Anand, amicus curiae. Office is directed to pay a sum of Rs. 2,000/- as honourarium to the learned Amicus curiae.

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