

A

STATE OF RAJASTHAN

v.

BHUP RAM

JANUARY 13, 1997

B

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Criminal Law :

Criminal Procedure Code, 1973 : Section 164.

C

Dying declaration—Recording of—Mode of—Deceased answered questions in Bagri language while Magistrate recorded it in Hindi—Answers recorded in narrative form and not in questions and answers form—Held : Dying declaration was not vitiated merely because it was recorded in a different language—Conviction could be based upon it—High Court erred in

D

not relying on the dying declaration and setting aside conviction recorded by trial court—Evidence Act, 1872, S.32.

Evidence Act, 1872 : Section 27.

E

Weapon of offence—Recovery of—On basis of statement made by accused during investigation in another case—Conditions for applicability of—Held : such information admissible in evidence—It was immaterial whether information was supplied in connection with same crime or a different crime.

F

Pistol—Recovery of—At the instance of accused—Ballistic expert opined that bullet recovered from body of deceased could have been fired from said pistol—High Court overlooked this circumstance—Held : this circumstance should have been kept in mind while considering legal implication of evidence relating to recovery of pistol.

G

The respondent-accused was convicted of an offence under Section 302 of the Indian Penal Code, 1860. But, on appeal, the High Court acquitted the respondent. Hence this appeal.

H

According to the prosecution, the deceased was first married to the respondent's brother who died after a brief marital life. Thereafter, the deceased was given in marriage to the respondent, but the new alliance was

marred by frequent skirmishes and bickerings between the spouses. The deceased was residing in the house of her parents. The estrangement between the couple reached a point of no return and the respondent wished to get rid of the deceased. So the respondent went to the house of the deceased on the night of occurrence and shot at the deceased with a pistol. The deceased was taken to the hospital and her dying declaration was recorded by the Judicial Magistrate.

The respondent was arrested in connection with another criminal case and on the strength of the information elicited from him the police recovered a pistol. The pistol as well as the bullet recovered from the body of the deceased were sent to the ballistic expert who opined that the bullet could have been fired from the said pistol.

High Court declined to act on the dying declaration since the deceased answered the questions put to her by the magistrate in *Bagri* language whereas the magistrate recorded it in Hindi in a narrative form instead of in questions and answers form. The High Court also held that the evidence relating to the recovery of pistol was outside the scope of Section 27 of the Evidence Act, 1872 inasmuch as the recovery was effected during investigation of another case. The High Court also overlooked the opinion of the Ballistic expert. Hence this appeal by the State Government.

Allowing the appeal, this Court

HELD 1.1. Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. It is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial Officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it. [195-E]

1.2. A dying declaration would not go bad merely because the magistrate did not record it in the form of questions and answers. It is axiomatic that what matters is the substance and not the form. Questions put to the dying man would have been formal and hence the answers given are material. Criminal courts may evince interest in knowing the contents

A of what the dying person said and the questions put to him are not very important normally. That part of the statement which relates to the circumstances of the transaction which resulted in his death gets the sanction of admissibility. Here it is improper to throw such statement overboard on a pediantic premise that it was not in the form of questions and answers. [195-G-H]

B

Ganpat Mahadeo Mani v. State of Maharashtra, [1993] Supp. 2 SCC 242, relied on.

C

2.1. The conditions prescribed in Section 27 of the Evidence Act, 1872 for unwrapping the cover of ban against admissibility of statement of the accused to the police have been satisfied. They are: (1) A fact should have been discovered in consequence of information received from the accused; (2) He should have been accused of an offence; (3) He should have been in the custody of a police officer when he supplied the information; (4) The fact so discovered should have been deposed to by the witness. If those conditions are satisfied, that part of the information given by the accused which led to such discovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence. It is immaterial whether the information was supplied in connection with the same crime or a different crime. [196-E-F]

D

E

2.2. In the instant case, the fact discovered by the police is not the pistol, the weapon of offence, but that the accused had buried the said pistol and he knew where it was buried. Of course, discovery of said fact became complete only when the pistol was recovered by the police. [196-G]

F

Puluduri Kottaya v. Emperor, AIR (1947) PC 67, approved.

G

Jaffar Husain Dastagir v. State of Maharashtra, AIR (1970) SC 1934; *K. Chinmaswamy Reddy v. State of A.P. & Anr.*, AIR (1962) SC 1788; *Earabhadrapa Alias Krishnappa v. State of Kamataka*, [1983] 2 SCC 330; *Ranbir Yadav v. State of Bihar*, [1995] 4 SCC 392 and *Shamshul Kanwar v. State of U.P.*, [1995] 4 SCC 430, relied on.

H

3. The report of the Ballistic expert is evidence under Section 293 of the Criminal Procedure Code, 1973 proves that the bullet and pistol (involved in this case) were microscopically examined and the expert expressed the opinion that the bullet could have been fired from the said

pistol. This circumstance, though overlooked by the High Court, should be kept in mind while considering the legal implication of the evidence relating to the recovery of the pistol. [197-F] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 377 of 1996. B

From the Judgment and Order dated 29-8-95 of the Rajasthan High Court in D.B. CrI. A. No. 258 of 1989.

Ms. Alka Agrawal for Aruneshwar Gupta for the Appellant.

Doonger Singh, V.J. Francis and P.I. Jose for the Respondent. C

‘The Judgment of the Court was delivered by

THOMAS J. Respondent’s wife (Mst. Chawli) was shot dead on 20.7.1985 while she was sleeping in her house. Respondent Bhup Singh was alleged to be the killer. Police, after investigation, upheld the allegation and challanned him. Though the Sessions Court convicted him of murder, the High Court of Rajasthan acquitted him. This appeal has been filed by special leave by the State of Rajasthan in challenge of the aforesaid acquittal. D

Prosecution case is a very short story : Chawli was first married to respondent’s brother who died after a brief marital life. Thereafter, Chawli was given in marriage to the respondent, but the new alliance was marred by frequent skirmishes and bickerings between the spouses. Chawli was residing in the house of her parents. The estrangement between the couple reached a point of no return and the respondent wished to get rid of her. So he went to her house on the night of occurrence and shot at her with a pistol. When he tried to use the firearm again, Chawli’s father who heard the sound of the first shot rushed towards him and caught him but the killer escaped with the pistol. E

Chawli told everybody present in the house that she was shot at by her husband Bhup Singh. She was taken to the hospital and the doctor who attended on her thought it necessary to inform a judicial magistrate that her dying declaration could be recorded. Pursuant to it PW5 - Bhagwan Singh who was judicial magistrate of first class, Alwar, went to the hospital and recorded her dying declaration. At 2.30 P.M. she breathed her last. F

H

A Police registered the case on the basis of a statement recorded from Bhajan Lal, a neighbour. On 22.7.1985, respondent was arrested in connection with another criminal case and on the strength of the information elicited from him the police recovered Article 4 - pistol.

B The bullet recovered from the body of Chawli as well as Article 4 - pistol were sent to the ballistic expert. In his report, the said expert affirmed the possibility of the bullet having been fired from the said pistol.

C During trial Chawli's father (Ram Ratan - PW1) her sister (Rameshwari - PW2) and Bhajan Lal - PW3 who gave the first information statement have been declared hostile as they all supported the respondent. His version was that somebody else had shot her dead and respondent was falsely implicated. Chawli's mother Smt. Mangli was examined by the respondent as defence witness No. 2 to support his plea. However, the trial court, after rejecting the evidence of PW1, PW2 and PW3 and also DW2, placed full reliance on the dying declaration proved by PW5 - judicial magistrate and also on the evidence pertaining to the recovery of Article 4 - pistol and convicted the respondent and sentenced him to imprisonment for life.

E The Division Bench of the High Court of Rajasthan, which heard the appeal filed by the respondent, declined to act on the dying declaration. The High Court held that the evidence relating to recovery of pistol was outside the scope of Section 27 of the Evidence Act inasmuch as the recovery was effected during investigation of another case. As nothing else remained for the prosecution to embark upon, the Division Bench acquitted the respondent.

F If the dying declaration recorded by PW5 judicial magistrate is reliable, there is no legal hurdle in basing a conviction on it even without any supporting material.

G The statement in Ex. P-8 dying declaration is unmistakably clear that her husband Bhup Singh shot her with a pistol. But learned Judges of the High Court highlighted two features in Ex. P-8 dying declaration as infirmities, vitiating its evidentiary value. First is, deceased answered the questions put to her by the magistrate in *Bagri* language whereas PW5 recorded it in Hindi in a narrative form. According to the Division Bench the H magistrate should have recorded the dying declaration in the form of

questions and answers. Second is, PW5 magistrate had not ascertained from the doctor whether deceased was in a position to give a conscious dying declaration.

Dr. Naresh Kumar (PW7) who attended the deceased first when she was brought to the hospital with bullet injury has given evidence that he sent a requisition to the magistrate as he felt that a dying declaration from Chawli could be recorded. PW5 - judicial magistrate has deposed that he recorded in Hindi what the deceased told him. The doctor and the judicial magistrate have said in one accord that deceased was conscious when the statement was made. In the above situation there was no justification for the High Court to assume that the deceased would not have been conscious when she gave the statement to the judicial magistrate. Similarly, it was a wrong assumption that deceased would not have spoken in Hindi because PW5 has stated in his evidence positively that deceased gave her answers in Hindi. Even otherwise, it is too much to think that judicial magistrate would have recorded differently from what the deceased had said to him.

Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. We bear in mind that it is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it.

Nor would dying declaration go bad merely because the magistrate did not record it in the form of questions and answers. It is axiomatic that what matters is the substance and not the form. Questions put to the dying man would have been formal and hence the answers given are material. Criminal courts may evince interest in knowing the contents of what the dying person said and the questions put to him are not very important normally. That part of the statement which relates to the circumstances of the transaction which resulted in his death gets the sanction of admissibility. Here it is improper to throw such statement overboard on a pedantic premise that it was not recorded in the form of questions and answers. (Vide *Ganpat Mahadeo Mani v. State of Mahatashtra*, [1993] Suppl. 2 SCC 242.)

A We find Ext. P-8 dying declaration as a clear and unambiguous statement. The infirmities pointed out by the High Court are too tenuous to knock off such a very valuable and sturdy item of substantive evidence.

B The High Court sidestepped the evidence regarding recovery of pistol and the statement of the accused which led to it on the mere ground that the pistol was recovered in connection with another case. That other case was registered on 9.7.1985 as Crime 116 of 1985 against the respondent and he was arrested on 22.7.1985 in connection therewith. PW12 - SHO of Raising Nagar Police Station has deposed in this case that when respondent was questioned he told him that the pistol was wrapped in a bag and was buried near his house. When respondent was taken to that place he disinterred Article 4 - pistol and handed it over to the police.

D It is clear from the above evidence that PW12 discovered the fact that respondent had buried Article 4 - pistol. His statement to the police that he had buried the pistol in the ground near his house, therefore, gets extricated from the ban contained in Section 25 & 26 of the Evidence Act as it became admissible under Section 27. The conditions prescribed in Section 27 for unwrapping the cover of ban against admissibility of statement of the accused to the police have been satisfied. They are : (1) A fact should have been discovered in consequence of information received from the accused; (2) He should have been accused of an offence; (3) He should have been in the custody of a police officer when he supplied the information; (4) The fact so discovered should have been deposed to by the witness. If those conditions are satisfied, that part of the information given by the accused which led to such discovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence. It is immaterial whether the information was supplied in connection with the same crime or a different crime. Here the fact discovered by the police is not Article 4 - pistol, but that the accused had buried the said pistol and he knew where it was buried. Of course, discovery of said fact became complete only when the pistol was recovered by the police.

G In this context, we think it appropriate to quote the celebrated words of Sir John Beaumont in *Pulukuri Kottaya v. Emperor*, AIR (1947) PC 67 :

H "In their Lordships' view it is fallacious to treat the 'fact discovered'

within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact.... Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; *knives were discovered many years ago*. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant."

(emphasis supplied)

The ratio therein has become locus classicus and even the lapse of half a century after its pronouncement has not eroded its forensic worth. We may point out that this court has approvingly referred to the said ratio in a number of decision, (e.g. *Jaffer Husain Dasiagir v. The State of Maharashtra*, AIR (1970) SC 1934; *K. Chinnaswamy Reddy v. State of Andhra Pradesh & Anr.*, AIR (1962) SC 1788; *Earabhadrapa alias Krishnappa v. State of Karnataka*, [1983] 2 SCC 330; *Ranbir Yadav v. State of Bihar*, [1995] 4 SCC 392 and *Shamshul Kanwar v. State of U.P.*, [1995] 4 SCC 430.)

Ext. P-14 is the report dated 8.4.86, submitted by Dr. P.S. Manocha, (Assistant Director of State Forensic Science Laboratory, Rajasthan). The said report which is evidence under Section 293 of the Code of Criminal Procedure proves that the bullet and pistol (involved in this case) were microscopically examined and the expert expressed the opinion that the bullet could have been fired from the said pistol. This is yet another circumstance which though overlooked by the High Court, we bear in mind while considering the legal implication of the evidence relating to the recovery of Article 4 - pistol.

For the aforesaid reasons we are of the firm view that the High Court was clearly wrong in marginalising the evidence of PW 12 that respondent told him about concealment of Article 4 - pistol which is clearly admissible under section 27 of the Evidence Act.

As the High Court committed serious error is discarding the

A aforesaid two very valuable items of evidence, we are constrained to interfere with the order of acquittal. We, therefore, upset the impugned judgment and restore the conviction and sentence passed on the respondent by the trial court. We direct the Sessions Judge, Sri Ganganagar, to take immediate steps to put the respondent in jail for undergoing the sentence.

B

VSS