A STATE OF RAJASTHAN

v.

PARTHU

SEPTEMBER 13, 2007

B **[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]**

Penal Code, 1860:

C *s.302—Deceased died of burn injuries—Dying declaration that husband poured kerosene oil and lit the fire—Conviction by trial court—Set aside by High Court—On appeal, held: judgment of conviction can be recorded on basis of dying declaration alone subject to satisfaction of court that same was true and voluntary—For ascertaining same, court to look at the circumstances—Husband was alone with deceased when incident took place—*
D *After incident he was not found—It was for him to show as to how death of deceased took place—In the absence of sufficient and cogent explanations in that behalf, trial court correctly considered same as circumstances against him—Evidence Act, 1872—s.32.*

Evidence Act, 1872:

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s.32—Dying declaration—Made in presence of doctor PW-10 and IO—Doctor attested thumb impression as also statement of deceased before IO—Conviction by trial court by placing reliance on dying declaration—Acquittal by High Court on the ground that no statement made by doctor that deceased was in fit state of mind to make statement—Correctness of—Held: Not
F *correct—By attesting statement of deceased, doctor meant that statement was made before IO in his presence and same was correctly recorded by him—Penal Code, 1860—s.302.*

Prosecution case was that the wife of appellant had received serious burn injuries. On receipt of the information, Head Constable PW-6 reached the
G **spot and took her to the hospital. PW-6 recorded her statement which was treated as dying declaration wherein she disclosed that she was burnt by her husband. PW-9, SHO also recorded the statement of the deceased on 8.6.1995.**

Deceased died on 19.6.1995. Trial Judge relying on the dying

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declarations, held the respondent guilty of commission of offence u/s. 302 IPC. On appeal, High Court recorded judgment of acquittal holding that no reliance could be placed on the dying declarations as no statement had been made by P.W.10-Dr. 'A' that the deceased was in a fit state of mind to make a statement before the Investigating Officer P.W.6. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. Similar statements in regard to nature of offence have been made in the two dying declarations; although the dying declaration recorded by the Investigating Officer PW-9 on 8.6.1995 is a bit more detailed one. It has been recorded by both the Courts below that Dr. 'A' PW-10 was present when the dying declaration was recorded. It is true that in the said dying declaration, no certificate to the effect that the deceased was in a fit state of mind to have such statement, was subscribed but after recording of the dying declaration was over, the Doctor attested her thumb impression as also her statement before the Investigating Officer. [Para 9] [935-G, H; 936-A]

1.2. The High Court commented thereupon opining that there could not be any attestation of such statement. Technically the High Court may be right but what was meant by P.W.10-Dr. 'A' by issuing such a certificate in the dying declaration was that the statement of the deceased was made by her before the Investigating Officer in his presence and the same has correctly been recorded by the latter, P.W.10-Dr.'A' is a Medical Jurist. He himself also had inquired about the incident in question from the deceased. She had revealed that a quarrel had taken place between the husband and wife whereafter he had poured kerosene on her and lit the fire.

[Para 10] [936-B, C]

2. A judgment of conviction can be recorded on the basis of the dying declaration alone subject of course to the satisfaction of the Court that the same was true and voluntary. For the purpose of ascertaining truth or voluntariness of the dying declaration, the Court may look to the other circumstances. Apart from the fact that the homicidal nature of death was not disputed by the respondent and furthermore as he in his statement under Section 313 had raised a positive defence that she died of an accident, the High Court adopted a wrong approach. It is not disputed that the deceased and the appellant were living separately from their family. It has also not been disputed that at the time when the incident occurred, the respondent was in his house together with the deceased. It is furthermore not in dispute that

after the incident took place, the respondent was not to be found. He was arrested only on 20-6-1995. If the deceased and the respondent were together in their house at the time when the incident took place which was at about 10 O'clock in the night, it was for the respondent to show as to how the death of the deceased took place. In the absence of sufficient or cogent explanations in that behalf the Court would be entitled to consider the same as the circumstances against the accused. [Paras 13 and 14] [937-C, D, E, F, G]

Raj Kumar Prasad Tamakar **v.** *State of Bihar,* **(2007) 1 SCALE 19;** *State of Rajasthan* **v.** *Kashi Ram,* **(2006) (XI) SCALE 440 and** *State of Punjab* **v.** *Karnail Singh,* **[2003] 11 SCC 271, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 325 of 2002.

From the Judgment and Order dated 30.4.2001 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 37 of 1997.

Aruneshwar Gupta, Naveen Kumar Singh and Shashwat Gupta for the Appellant.

Ranbir Singh Yadav, V.K. Pandita and H.M. Singh for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. The Officer In-charge of Harmirgarh Police Station received a telephonic message that one Smt. Lali wife of Parthu, respondent herein has received burn injuries and was lying in a serious condition. An entry to that effect was made in the Rojnamcha register whereafter Head Constable P.W.-6 Narayan Singh along with some other police personnel proceeded to the spot. They took her to Mahatama Gandhi Hospital at Bhilwara for treatment. The said Narayan Singh recorded her statement which was treated as dying declaration wherein she disclosed that she was burnt by her husband. On the basis of the said statement a First Information Report for an offence under Section 307 I.P.C. was recorded by P.W.9- Shankar Singh, SHO Police Station Hamirgarh. He took up the investigation in relation to the said incident. P.W.9- Shankar Singh also recorded the statement of the deceased on 8.6.1995.

2. Lali died on 19.6.1995 whereafter Section 302 I.P.C. was added in the First Information Report.

3. Before learned trial Judge eleven prosecution witnesses were examined. Some of the prosecution witnesses who were relatives of the deceased turned hostile. A

4. Respondent, however, in his cross-examination under Section 313 stated that the death of Lali was an accidental one, as when she had been pouring kerosene in the stove and lit the match stick, suddenly the fire broke out. B

5. Learned trial Judge relying on or on the basis of the aforementioned two dying declarations, which were marked as Exhibit P-6 and Exhibit P-14 respectively, held the respondent guilty of commission of the said offence. The High Court, however, on an appeal having been preferred thereagainst by the respondent was of the opinion that as no statement had been made by P.W.10-Dr. Avdesh Mathur that the deceased was in a fit state of mind to make a statement before the Investigating Officer P.W.6.- Narayan Singh and furthermore in view of the fact that he had not treated the deceased, was sufficient to arrive at a conclusion that no reliance could be placed on the said dying declarations. C D

6. The High Court was furthermore of the opinion that keeping in view the fact that the incident took place on 27.5.1995 and the death took place on 19.6.1995, the dying declarations of the deceased should have been recorded by a Magistrate. E

7. On the finding, the High Court recorded a judgment of acquittal. The State of Rajasthan, is thus, before us.

8. We may at the outset notice that the High Court itself has proceeded on the basis that the 'homicidal nature of the death of the deceased is not in dispute'. The fact that she had died of burn injuries is also not in dispute. The short question which arises for our consideration is as to whether the aforementioned two dying declarations could be relied upon or not. F

9. We have gone through the said two dying declarations Exhibit P-6 and Exhibit P-14. Similar statements in regard to nature of offence appear to have been made in the said two dying declarations; although the dying declaration recorded by the Investigating Officer- Shankar Singh PW-9 on 8.6.1995 is a bit more detailed one. It has been recorded by both the Courts below that Dr. Avdesh Mathur PW-10 was present when the dying declaration(Exhibit P-14) was recorded. It is true that in the said dying G H

A declaration, no certificate to the effect that the deceased was in a fit state of mind to have such statement, was subscribed but after recording of the dying declaration was over, the Doctor attested her thumb impression as also her statement before the Investigating Officer.

10. The High Court commented thereupon opining that there could not B have any attestation of such statement. Technically the High Court may be right but what was meant by P.W.10-Dr.Avdesh Kumar by issuing such a certificate in the dying declaration was that the statement of the deceased was made by her before the Investigating Officer in his presence and the same has correctly been record by the latter, P.W.10-Dr. Avdesh Kumar is a Medical C Jurist. He himself also had inquired about the incident in question from the deceased. She had revealed that a quarrel had taken place between the husband and wife whereafter he had poured kerosene on her and lit the fire.

11. We may notice that P.W.10-Dr. Avdesh Kumar had in his cross-examination categorically stated:

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> " No note had been put on the report exhibit P6 to the effect that deceased is in fit condition to give statement, but she was in a fit condition to give statement. It is incorrect to say that the deceased was not in a position to give statement and when she was in the condition, she was not in her consciousness."

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12. We may notice that in *Laxman* v. *State of Mahrasthra* - [2002] 6 SCC 710, this Court opined as under:

> " 5. The Court also in the aforesaid case relief upon the decision of this Court in *Harjit Kaur* v. *State of Punjab* wherein the Magistrate F in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the G conclusion that the observations of this court in *Paparambaka Rosamma* v. *State of A.P.*, (At SCC p.701 para 8) to the effect that
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> " in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration it would be very much risky to accept the subjective satisfaction of a Magistrate H who opined that the injured was in a fit state of mind at the time of

making a declaration" A

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating B the questions he had put to the patient and from the answers elicited was satisfied that he patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* must be held to be not correctly decided and we affirm the law laid down by this Court in C *Koli Chunilal Savji* v. *State of Gujarat."*

13. It is now a well settled principles of law that a judgment of conviction can be recorded on the basis of the dying declaration alone subject of course to the satisfaction of the Court that the same was true and voluntary. For the purpose of ascertaining truth or voluntariness of the dying declaration, the D Court may look to the other circumstances. Apart from the fact, as noticed hereinbefore, that the homicidal nature of death was not disputed by the respondent herein and furthermore as he in his statement under Section 313 had raised a positive defence that she died of an accident, we are of the opinion the High Court adopted a wrong approach. It is not disputed that the deceased and the appellant were living separately from their family. It has also E not been disputed that at the time when the incident occurred, the respondent was in his house together with the deceased. It is furthermore not in dispute that after the incident took place, the respondent was not to be found. He was arrested only on 20-6-1995. If the deceased and the respondent were together in their house at the time when the incident took place which was F at about 10 O'clock in the night, it was for the respondent to show as to how the death of the deceased took place.

14. In the absence of sufficient or cogent explanations in that behalf the Court would be entitled to consider the same as the circumstances against the accused. (See *Raj Kumar Prasad Tamakar* v. *State of Bihar,* (2007) 1 G SCALE 19).

15. This Court in a large number of decisions in a case of this nature had also applied the principles of Section 106 of the Indian Evidence Act. (See *State of Rajasthan* v. *Kashi Ram* (2006) XI SCALE 440 and *State of Punjab* H

A v. *Karnail Singh,* [2003] 11 SCC 271.

16. For the reasons stated above, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. The judgment of the learned trial Judge is affirmed. The respondent who is on bail shall surrender to serve out the remaining sentence. His bail bonds are cancelled.

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D.G. Appeal allowed.