MANIBEN W/O. DANABHAI TULSHIBAI MAHERIA

v.

STATE OF GUJARAT

MAY 11, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Evidence Act, 1872—s. 32—Dying Declaration—Reliability—Deceased burnt by pouring kerosene over her by mother-in-law and brother-in-law—Conviction on basis of dying declarations—Correctness of—Held: There is no discrepancy in the dying declarations—There is specific statement regarding involvement of the accused though actual overt act played by mother-in-law is not stated—Also dying declaration cannot be discarded only because death took place 25 days after the incident—Thus, conviction justified.

According to the prosecution, there was dispute between the families. On the fateful day mother-in-law and brother-in-law of the deceased burnt her by pouring kerosene over her body. The deceased tried to extinguish the fire. In the meanwhile, she suffered extensive burn injuries. Her relatives and some neighbours came to her help. And took her to the hospital and informed her husband. She stated the cause of receiving burn injuries to the doctor. The Magistrate recorded her dying declaration. FIR was lodged. Trial Court convicted both the accused. High Court upheld the order. SLP by the brother-in-law was dismissed. Hence the present appeal by the appellant.

Dismissing the appeal, the Court

HELD: 1.1. There is no discrepancy in regard to the involvement of the appellant *vis-a-vis* her son. The only discrepancy which has been pointed out by appellant was that in some of her statements, she had not stated the actual overt act played by appellant herein. In these statements, she merely had answered the questions put to her by different persons. When questions are put differently, answers would also appear to be different. On a first glance, it may appear that the detailed description of the offence is missing, but the statement of the deceased must be construed reasonably. The presence of the appellant at the house at the relevant time is not disputed and also the

A involvement of appellant's son. Only because her husband had rushed to the hospital upon hearing the news, the same would not mean that the deceased was tutored by him. A son would not falsely implicate his mother, despite their bitter relationships. The very fact that the appellant and her son had developed ill relations with the deceased and her husband, is an indicator to show why
B the incident had taken place. [Para 11] [413-F-H; 414-A-B]

1.2. The defence case that the deceased had committed suicide was disbelieved because she was pregnant and she had a daughter aged about 2 and 1/2 years. Her statement that she had come to answer the call of the nature on the wash room at the ground floor which was common one and thereafter
C had been going upstairs cannot be disbelieved in view the nature of the injuries. Even the appellant conceded that she must have fallen on the ground and the kerosene was poured on the front portion of her body. Furthermore, had the appellant not participated in the commission of the offence, she should have been the first person to raise a hue and cry and call her other daughter-in-
D laws and neighbours. Immediately after the occurrence, she was not found at her house. Both the accused were arrested at a much later stage.

[Paras 12 and 13] [414-B-E]

1.3. Much capital is sought to be made from the fact that the doctor who took down her statement at the hospital has not been examined. However, the
E doctor who treated her, has been examined and he also supported the prosecution case in regard to the incident in question. He might not have taken down her statement but it is natural that he would ask the deceased about the cause of her sustaining burn injuries. The submission that the 'degree of burn' was not disclosed by doctor who took down her statement at the hospital
F is immaterial. In view of the admitted fact that kerosene was used for causing injuries and having regard to the nature of the injuries, the injuries would be of third degree. [Para 14] [414-E-F]

1.4. A dying declaration need not cease to be one only because death took place 25 days after the incident. All attempts would be made to save a
G precious life of a 25 year old young woman. The doctors must have tried their best. Dying declaration which is recorded in expectation of death, need not be discarded only because death took place after a few days. What is necessary for the said purpose *inter alia* is that the statement had been made by a person who cannot be found or who is dead and thus incapable of giving evidence.
H The statements of the deceased must be of relevant facts.

[Para 18] [415-C-D]

Najjam Faraghi **v.** *State of W.B.*, **A.I.R. (1998) SC 682;** *B Shashikala* **v.** *State of Andhra Pradesh,* **AIR (2004) SC 1610;** *Uka Ram* **v.** *State of Rajasthan,* **AIR (2001) SC 1814;** *Smt. Paniben* **v.** *State of Gujarat,* **AIR (1992) SC 1817;** *Mohan Lal and Ors.* **v.** *State of Haryana,* **(2007) 3 SCALE 283 and** *Ravikumar Alias Kutti Ravi* **v.** *State of T.N.,* **[2006] 9 SCC 240, relied on.** A

'The Order of Things' by Mr. Barbara Ann Kipfer; Principles and Practice of Medical Jurisprudence by Taylor **p.250, referred to.** B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 618 of 2006.

From the Final Judgment and Order dated 20.04.2005 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 359 of 2004. C

H.A. Raichura and Saroj Raichura for the Appellant.

Hemantika Wahi and Pinky Behera for the Respondent. D

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Appellant is the mother in law of the deceased. They were living in the same premises. Whereas the deceased and her husband Dinesh Danabhai were occupying the first floor, appellants were occupying E the ground floor. There was, however, a common wash room at the ground floor. The passage to the first floor of the house was also through the ground floor.

2. There was a dispute between the families in regard to the charges for consumption of electrical energy. The dispute between the parties led even F to the appellant lodging a complaint against her son Dinesh resulting in his arrest. At the relevant point of time, the deceased was pregnant. At about 10.15 a.m. on 31.7.2002, when Dinesh was in his office and their daughter Dolly was asleep, the deceased came to the ground floor for answering the call of the nature. G

3. As she was about to climb the staircase for going to the first floor, Girishbhai (Accused No. 1) is said to have caught her hair from behind and forcibly threw her on the floor, poured some kerosene over her body, and appellant is said to have lighted the match stick. Both the accused thereafter went outside the house. The deceased tried to extinguish the fire by pouring H

A water on her person from a bucket. In the meanwhile, she received extensive burn injuries. She cried out for help whereupon the wives of her elder brothers-in-law, namely Pushpaben and Gitaben, came together with some neighborers. They took her to a hospital and her husband was informed. She disclosed the cause of her receiving burn injuries to the doctor. She was referred to the Civil B Hospital at Ahmedabad in view of seriousness of her condition. She was immediately taken to Ahmedabad and was admitted in the V.S. Hospital in the burns ward.

4. Her statement was recorded by PSI Mr. N.J. Gohil and again she stated about the incident at some detail. Her dying declaration was also C recorded by an Executive Magistrate, Metro Area Court at about 8.30 in the afternoon. She answered all the questions, the relevant part whereof is as under:-

> "10. Facts of the incident -We are staying on upper portion. Out mother-in-law and brother-in-law deny to stay on upper part. Latrine D is at the outside. My brother-in-law closed the window which is for going upper and down house and my brother-in-law named Girish by pouring Kerosene and my mother-in-law by lighting match-stick have burnt me."

E 5. She also made similar statements at the time of her admission in the Burns Ward of the V.S. Hospital, Ahmedabad to the doctors.

6. Both the accused were convicted by the learned Trial Judge and the appeal preferred by them has been dismissed by reason of the impugned judgment.

F

7. The Special Leave Petition was filed by both of them. The Special Leave Petition of Girishbhai was however, dismissed.

8. Mr. H.A. Raichura, learned counsel appearing on behalf of the appellant in support of this appeal raised the following contentions.

G

(i) There being discrepancies in the statements of the deceased in her so-called dying declarations, conviction could not have been based solely thereupon, as in some of the dying declarations she did not mention the specific role played by the appellant herein.

H (ii) Her dying declaration could not have been relied upon as the death took place only after 25 days of the First Information

Report.

(iii) As would appear from the record that before the dying declarations were made, her husband was present and thus, she must have been tutored.

9. Ms. Hemantika Wahi, learned counsel appearing on behalf of the State, on the other hand, would submit that in all her dying declarations, she has made a specific statement in regard to the involvement of the appellant together with her son Girish Bhai, and these dying declarations are consistent in nature and there is, thus, no infirmity in the impugned judgments.

10. The deceased suffered 85% burn injuries which as per the statement of Dr. Vipul are :-

> "...there were 4% burns in the head and neck of Kokilaben. There was 9% burns on the right shoulder upto finger. There was 5% burns from left shoulder to left hand fingers. There was 6% burn on the front side of the chest. There was 9% burn at the back side of the chest. There was 15% burns on the right leg. There was 18% burn on the left leg. There was 1% burn on the private part. In this way there there was total burn of 85%. The burns had reached upto depth from upper side....."

11. The burn injuries were caused by kerosene as is also evident from the Report of the Forensic Science Laboratory (Ext. 73). It may be true that the deceased gave her statement about the cause of her suffering injuries at about 12.45 in the morning before Dr. Ashish, but she gave her statement also before the Magistrate. Admittedly, there is no discrepancy in regard to the involvement of the appellant *vis-a-vis* her son Girishbhai. The only discrepancy which has been pointed out by Mr. Raichura was that in some of her statements, she had not stated the actual overt act played by appellant herein. In these statements, she merely had answered the questions put to her by different persons. When questions are put differently, answers would also appear to be different. On a first glance, it may appear that the detailed description of the offence is missing, but in our opinion the statement of the deceased must be construed reasonably. It is in dispute that she had involved both the accused in all her statements. Only because her husband had rushed to the hospital upon hearing the news, the same would not mean that the deceased was tutored by him. A son would not falsely implicate his mother, despite their bitter relationships. Furthermore first disclosure in regard to the

A cause of the incident having been attributed upon her brother-in-law and the appellant, it is unlikely that the same was tutored by her husband. She was an educated lady, she had studied upto the second year of graduation. The very fact that the appellant and her son had developed ill relations with the deceased and her husband is an indicator to show that why the incident had
B taken place. The presence of the appellant at the house at the relevant time is not disputed. Also, the involvement of Girishbhai has not been disputed.

12. The defence case was that the deceased had committed suicide. The defence case to that effect was disbelieved for good reasons as because she was pregnant and she had a daughter aged about 2 and ½ years. The
C daughter was sleeping on the first floor. Indisputably the wash room was on the ground floor. It was a common one. Her statement, therefore, that she had come to answer the call of the nature and thereafter had been going upstairs cannot be disbelieved keeping in view the nature of the injuries. Even Mr. Raichura conceded that she must have fallen on the ground and the kerosene
D was poured on the front portion of her body.

13. Immediately, after the incident, she raised a hue and cry. Other relatives immediately came there. She was taken to the hospital and her husband was informed. Had the appellant not participated in the commission of the offence, she should have been the first person to raise a hue and cry
E and call her other daughter-in-laws and neighbours. Immediately after the occurrence, she was not found at her house. Both the accused were arrested at a much later stage.

14. Much capital is sought to be made from the fact that Dr. Deepti who took down her statement at the hospital, Ahmedabad has not been examined.
F However, Dr. Nitin who treated her, has been examined and he also supported the prosecution case in regard to the incident in question. Dr. Nitin might not have taken down her statement but it is natural that he would ask the deceased about the cause of her sustaining burn injuries.

G 15. The submission of Mr. Raichura that the 'degree of burn' was not disclosed by Dr. Ashish is, in our opinion, immaterial.

16. In 'The Order of Things' by Mr. Barbara Ann Kipfer, classification in regard to the burn injuries has been made as under:-

H "first degree (affects epidermis; as from sunburn, steam)

second degree (affects dermis; from scalding water, holding hot metal) A

third degree (full layer of skin destroyed; fire burn)"

17. In Taylor's Principles and Practice of Medical Jurisprudence at page 250, it is stated that the classification of burns would depend upon the depth of involvement of the tissues which are measured by the body surface B affected. In view of the admitted fact that kerosene was used for causing injuries and having regard to the nature of the injuries, the injuries would be of third degree as classified by Wilson.

18. A dying declaration need not be cease to be one only because death took place 25 days after the incident. All attempts would be made to save a C precious life of a 25 year old young woman. The Doctors must have tried their best. Dying declaration which is recorded in expectation of death, need not be discarded only because death took place after a few days. What is necessary for the said purpose inter alia is that the statement had been made by a person who cannot be found or who is dead and thus incapable of giving evidence. D The statements of the deceased must be of relevant facts vide *Najjam Faraghi* v *State of W.B.*, A.I.R (1998) SC 682, *B. Shashikala* v *State of Andhra Pradesh,* AIR (2004) SC 1610, *Uka Ram* v *State of Rajasthan,* AIR (2001) SC 1814, *Smt. Paniben* v *State of Gujarat* AIR (1992) SC 1817 and *Mohan Lal and Ors.* v *State of Haryana,* (2007) 3 SCALE 282.

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19. Strong reliance has been placed by Mr. Raichura on *Ravikumar Alias Kutti Ravi* v *State of T.N.* [2006] 9 SCC 240, wherein this Court opined;

> "5. Section 32 of the Evidence Act, 1872 is an exception to the general rule against hearsay. Sub-section (1) of Section 32 makes the statement of the deceased admissible which is generally described as "dying F declaration". The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that of a conscientious and virtuous man under oath. The dying declaration G is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must H

A be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be on guard to see that the statement of the deceased was not the result of either tutoring or prompting or a product of imagination. The court has also to see and ensure that the deceased was in a fit state of mind and had the B opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on the dying C declaration 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 the rule of prudence....."

This case satisfies the legal requirements as noticed therein.

D

20. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.

N.J. Appeal dismissed.