Supreme Court of India
P.V. Radhakrishna vs State Of Karnataka on 25 July, 2003
Author: A Pasayat
Bench: Doraiswamy Raju, Arijit Pasayat.

CASE NO.:
Appeal (crl.) 1018 of 2002

PETITIONER:
P.V. Radhakrishna

RESPONDENT:
Vs.

State of Karnataka

DATE OF JUDGMENT: 25/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

Accused-appellant allegedly committed uxoricide was found guilty of offence punishable under Section 302 Indian Penal Code, 1860 (for short 'IPC'); and sentenced to undergo imprisonment for life and a fine of Rs.1,000/- with default stipulation of one month imprisonment by 22nd Additional City Civil and Sessions Judge, Bangalore. The appeal before the High Court of Karnataka having yielded no success, this appeal has been filed.

Accusations which led to trial of the accused-appellant in essence are as follows:

On 7.2.1993 Smt. Dharni (hereinafter referred to as 'the deceased') was in the house with the accused-appellant when they quarrelled over certain domestic differences, and the accused poured kerosene and set her on fire. On hearing her screams and seeing smoke coming out of the room, their landlord V.N. Guptha (PW1) rushed to the spot. He did not find the accused there; but was told by the deceased that the accused had poured kerosene and set her on fire and run away. On receiving of information about the incident Srinivasa Murthy, ASI, (PW6) arrived at the spot along with Sivanna (PW4) Police constable. The deceased was taken to the Victoria Hospital for treatment. At the hospital PW6 recorded statement of the deceased in the presence of Dr. M. Narayana Reddy (PW7). This was treated as FIR. After registering the case, investigation was started. In the hospital the deceased breathed her last while undergoing treatment on 8.2.1993 at about 10.25 p.m. Dr. Thirunavukkarasu (PW3) conducted the post-mortem and found that the deceased had sustained about 80 to 85% ante-mortem burns. On completion of investigation, charge sheet was placed. Learned Trial Judge on consideration of the evidence on record found the accused guilty, as afore-

mentioned, and convicted and sentenced him. Reliance was placed on the dying declaration which was recorded by PW6 in the presence of PW7 and was marked as Exhibit P-7. In appeal before the High Court, the accused- appellant contended that the so-called dying declaration was not credible and acceptable. But the High Court did not find any substance in the plea, and dismissed the appeal by the impugned judgment.

Learned counsel appearing for the accused-appellant submitted that the so-called dying declaration (Exhibit P-7) cannot by any stretch of imagination be considered to be a dying declaration in the sense it is understood in law. The same was recorded by PW6, a police official. Though there was ample time, as the factual scenario shows, no effort was made to secure the presence of a magistrate if really a dying declaration was to be recorded. Furthermore PW7 has himself stated that the deceased had suffered 100% burns. It is highly improbable that the deceased was in a fit state of health and mind to give the dying declaration. There is no mention in the document treated as dying declaration that the deceased was in fit state of mind to give the statement. PW6 stated that attempt was made to get permission from the Chief Medical Officer. There is no material to substantiate the claim. On the contrary PW7 stated that though there was no requisition, being the doctor at the spot he had given the permission to record the dying declaration on request by PW6.

The post-mortem report stated that the burns suffered were second and third degree burns and with those types of burns it is unlikely that the condition of the deceased permitted making of a statement and putting of signature. On the basis of uncorroborated dying declaration, conviction should not have been made.

Strong reliance was placed on Munnu Raja and Anr. v. The State of Madhya Pradesh (1976 (3) SCC 104), Laxmi (Smt.) v. Om Prakash and Ors. (2001 (6) SCC 118) and Chacko v. State of Kerala (2003 (1) SCC 113) to contend that evidence recorded by a police official as dying declaration is of no probative value.

Further, it was contended that conviction is impermissible solely on the basis of dying declaration. By way of reply, learned counsel for the State submitted that dying declaration can be the sole basis for conviction if it is found to be credible and cogent. There is no hard and fast rule that the dying declaration should be recorded by a magistrate only. As a rule of caution it has been said that it would be advisable to have the statement recorded by a magistrate. There is nothing irregular or illegal if a police officer records a dying declaration.

At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration,

though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in R. v. Wood Cock (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

> "Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away, Even as a form of wax, Resolveth from his figure, Against the fire?
>
> What is the world should Make me now deceive, Since I must lose the use of all deceit? Why should I then be false, Since it is true That I must die here, Live hence by truth?"

(See King John, Act 5, Sect.4) The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri a man will not meet his maker with a lie in his mouth."

This is a case where the basis of conviction of the accused is the dying declaration. 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 eye-witness 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 a 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. This Court has laid down in several judgments the principles governing dying

declaration, which could be summed up as under as indicated in Smt. Paniben v. State of Gujarat (AIR 1992 SC 1817):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See State of Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See K. Ramachandra Reddy and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)]

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264)]

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [See Kaka Singh v State of M.P. (AIR 1982 SC 1021)]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See Ram Manorath and Ors. v. State of U.P. (1981 (2) SCC 654)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See Surajdeo Oza and Ors. v. State of Bihar (AIR 1979 SC 1505)

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)]

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See State of U.P. v. Madan Mohan and Ors. (AIR 1989 SC 1519)]

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See Mohanlal Gangaram Gehani v.State of Maharashtra (AIR 1982 SC 839)] In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of

untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration. [See Gangotri Singh v. State of U.P.{JT 1992 (2)SC 417), Goverdhan Raoji Ghyare v. State of Maharashtra (JT 1993 (5) SC 87), Meesala Ramakrishan v. State of Andhra Pradesh (JT 1994 (3) SC 232) and State of Rajasthan v. Kishore (JT 1996 (2) SC 595)] There is no material to show that dying declaration was result of product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility. It was observed by a Constitution Bench of this Court in Laxman v. State of Maharashtra (2002(6) SCC 710) that where the medical certificate indicated that the patient was conscious, it would not be correct to say that there was no certification as to state of mind of declarant. Moreover, state of mind was proved by testimony of the doctor who was present when the dying declaration was recorded. In the aforesaid background it cannot be said that there was any infirmity. Further if the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make a dying declaration then such dying declaration will not be invalid solely on the ground that is not certified by the doctor as to the condition of the declarant to make the dying declaration. [See Rambai v. State of Chhattisgarh (2002 (8) SCC 83)].

The residuary question whether the percentage of burns suffered is determinative factor to affect the credibility of the dying declaration and the improbability of its recording. There is no hard and fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the 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. As noted in Rambai's case (supra) physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement. On the facts of the present case the Trial Court and the High Court were justified in placing reliance on the dying declaration for the purpose of convicting the accused-appellant. We find no infirmity to warrant interference in this appeal, which is accordingly dismissed.