2019 INSC 598

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 903 OF 2018

POONAM BAI … APPELLANT

Versus

THE STATE OF CHHATTISGARH … RESPONDENT

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. This appeal calls into question the judgment dated 06.04.2018 passed by the High Court of Chhattisgarh at Bilaspur in ACQA No.205 of 2010, by which the judgment of the trial court was set aside and the appellant was convicted under Section 302 of the Indian Penal Code (in short, "the IPC") for committing the murder of the deceased Vimla Bai and sentenced to undergo rigorous imprisonment for life and to a fine of Rs.500/-.

2. The case of the prosecution in brief is as follows:

The deceased Vimla Bai was the wife of Pilaram Sahu (P.W. 3). The appellant Poonam Bai is the daughter of Balaram, P.W. 3's brother, and thus the niece of the deceased. On the date of the incident, i.e. 01.11.2001, around noon, the appellant Poonam Bai came to the house of the deceased when she was alone, quarreled with her, poured kerosene on her body and lit a fire with a match-stick. Vimla Bai sustained burn injuries and succumbed thereto in the hospital. The matter was reported to Police Station Gurur on the same day by Lalita Sahu (P.W. 2, the daughter of the deceased) at about 12.05 p.m.

3. The trial court, on evaluation of the material on record, acquitted the appellant of the charges levelled against her. Feeling dissatisfied with the order of the trial court, the State preferred an appeal before the High Court, which vide the impugned judgment, as mentioned above, convicted the appellant under Section 302 of the IPC.

4. Mr. Siddhartha Dave, learned senior counsel appearing on behalf of the appellant, has taken us through the entire material on record. He submitted that the prosecution has not proved its case beyond reasonable doubt, there are no eye

witnesses to the incident in question and the case of the prosecution mainly rests on two dying declarations. According to the learned senior counsel, the motive for the offence has not been proved, and the High Court was not justified in reversing the judgment of acquittal passed by the trial court, particularly when the judgment of the trial court cannot be said to be perverse. According to him, the trial court was fully justified in acquitting the accused since the sole circumstance of the dying declarations relied upon by the prosecution has not been proved.

5. Per contra, Mr. Sumeer Sodhi, learned counsel for the respondent-State vehemently argued in support of the judgment of the High Court.

6. We have heard the rival submissions of the learned counsel for the parties and carefully perused the record.

7. The prosecution mainly relies upon the dying declaration (Exhibit P-2), which is stated to have been recorded by the Naib Tehsildar-cum-Executive Magistrate (P.W.1) in the hospital. The oral dying declaration made by the deceased before Lalita Sahu (P.W. 2), Pilaram Sahu (P.W. 3) and Parvati Bai (P.W. 4) has also been relied on.

8. Undisputedly, and as is clear from the evidence of Dr. J.S. Khalsa (P.W. 11), who conducted the post-mortem examination, the deceased had sustained 100% burn injuries all over the body. He also deposed that due to her severe burn injuries, the deceased was in a state of shock.

9. As mentioned supra, as compared to the oral dying declaration, more emphasis was laid on the dying declaration (Exh.P-2) stated to have been recorded by the Naib Tehsildar-cum-Executive Magistrate in the hospital and the panchnama (Ex.P-1) prepared by him regarding the recording of this dying declaration. As a matter of fact, the case of the prosecution mainly depends on the same.

10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts

and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the sole basis for conviction, it should be of such a nature that it inspires the full confidence of the court. In the matter on hand, since Exh. P2, the dying declaration is the only circumstance relied upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the well-established principles regarding the acceptability of dying declarations.

11. The Naib Tehsildar-cum-Executive Magistrate (P.W.1) has deposed that the police had sent a requisition to the Tehsildar (as per Exh. P-3), who in turn requested P.W.1 to go to the spot and record the statement of the injured. P.W.1 has also deposed that he received such requisition at 12.15 p.m. on the date of the incident, and immediately thereafter, he went to the hospital and recorded the statement of the victim (Exh.P-1). He has also deposed that he drew the panchnama regarding the recording of the dying declaration in the presence of three persons. It is to be

noted that the dying declaration (Exh.P-2) as produced before the Trial Court is only a photocopy, which is not admissible in evidence. The original copy of the dying declaration has not been produced before the Trial Court. Also, though it has been stated by the Naib Tehsildar-cum-Executive Magistrate (P.W.1) that he had taken the signature of three witnesses, the photocopy of the dying declaration does not contain the signature of any witness.

It is the case of the prosecution that P.W. 1 recorded the dying declaration in the hospital. But he has admitted in his cross-examination that none of the doctors were present on that day, and that the hospital was closed since it was a Sunday. He has also admitted in his cross-examination that he did not put any question to the victim to find out whether she was in a position to make a statement or not. He also did not try to verify whether the victim had the power to recollect the incident in question. Hence, it is clear that P.W. 1 did not satisfy himself about the fitness of the victim to make a statement. No verification or certification of the doctor regarding the fitness of the victim to make a statement can be found on the dying declaration either. In addition, absolutely no reasons are forthcoming either from the Investigating Officer (P.W. 12) or from

the Naib Tehsildar-cum-Executive Magistrate (P.W. 1) as to why the original dying declaration was not produced before the Trial Court.

12. Moreover, the records do not reveal a clear picture of what happened at the time of occurrence or subsequently. The Investigating Officer (P.W. 12) has admitted that he went to the spot of the offence at about 12.15 p.m., immediately after getting news of the incident at about 12 o' clock. When he arrived, the victim was unconscious, and her skin was peeling off. He was the first person to reach the scene of offence, and shifted her to the hospital while she was still unconscious. If it is so, it is quite unbelievable as to how the victim could have made such a lengthy statement as found in Exh.P-2 at about 12.15 to 12.30 p.m., that too in an unconscious condition, before P.W.1. To add to this, there is not even a whisper in the deposition of the Investigating Officer about the presence of the Naib Tehsildar-cum-Executive Magistrate (P.W.1) or about him recording the dying declaration at about 12:15 p.m. The Investigating Officer has spoken neither about the requisition sent by him as per Exh.P-3 nor about the alleged dying declaration (Exh.P-2) which is stated to have been recorded by P.W.1. Notably, the Naib

Tehsildar has deposed that when he went to the hospital, the police were already there. If it was so, and if he had really recorded the dying declaration as per Exh.P-2, the Investigating Officer would have deposed about the same before the Trial Court. But such records are not forthcoming. In such circumstances, the role of the Naib Tehsildar-cum-Executive Magistrate (P.W. 1) appears to be highly suspicious.

It is also curious to note that the Investigating Officer has deposed that he went to the spot immediately after getting the oral information about the incident, whereas the crime came to be registered based on the FIR of Lalita Sahu (P.W.2) at about 15:30 hours, i.e. 3.30 p.m.

13. The trial court has taken pains to evaluate the entire material on record and has rightly come to the conclusion that the so-called dying declaration (Exh.P-2) is unbelievable and not trustworthy. Valid reasons have also been assigned by the trial court for coming to such a conclusion. Per contra, the High Court while setting aside the said finding has not adverted to any of the reasons assigned by the trial court relating to the authenticity or reliability of the dying declaration. The view taken by the trial court, in our considered opinion, is the only possible view under

the facts and circumstances of the case.

14. As far as the oral dying declaration is concerned, the evidence on record is very shaky, apart from the fact that evidence relating to oral dying declaration is a weak type of evidence in and of itself. As per the case of the prosecution, the deceased had made an oral dying declaration before Lalita Sahu (P.W. 2), Pilaram Sahu (P.W. 3), Parvati Bai (P.W. 4), and others. Though P.Ws. 2, 3 and 4 have deposed that the deceased did make an oral dying declaration before them implicating the appellant, this version is clearly only an afterthought, inasmuch as the same was brought up before the trial court for the first time. In their statements recorded by the police under Section 161 of the Code of Criminal Procedure, these witnesses had not made any statement relating to the alleged oral dying declaration of the deceased. These factors have been noted by the trial court in its detailed judgment. Thus, the evidence of P.Ws. 2, 3 and 4 relating to the oral dying declaration is clearly an improved version, and this has been proved by the defence in accordance with law.

15. Since the evidence relating to the dying declarations has not been proved beyond reasonable doubt by the prosecution, in

our considered opinion, the High Court was not justified in convicting the appellant, inasmuch as there is no other material against the appellant to implicate her. The motive for the offence, as alleged by the prosecution, has also not been proved.

16. Having regard to the totality of the facts and circumstances of the case, we conclude that the judgment of the High Court is liable to be set aside, and the same is accordingly set aside and that of the trial court is restored. As the appellant is acquitted of the charges levelled against her and she is in custody, we direct that the appellant be released forthwith, if not required in connection with any other case.

17. The appeal is allowed accordingly.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(S. ABDUL NAZEER)

NEW DELHI;
APRIL 30, 2019.