

MEESALA RAMAKRISHAN
v.
STATE OF ANDHRA PRADESH

APRIL 13, 1994

[R.M. SAHAI AND B.L. HANSARIA, JJ.]

Evidence Act, 1872 :

Section 32—Dying declaration—Recorded by Magistrate on the basis of nods and gestures—Evidentiary value of—Nods given by the deceased were effective and meaningful and clearly suggesting that the accused set her on fire—Held such a dying declaration was not only admissible but also processed evidentiary value.

Sections 3 and 119 :

Evidence—Includes oral evidence—Evidence by sign is oral evidence and is admissible—Development of ‘Sign language’ discussed.

Indian Penal Code, 1860 :

Section 302—Murder—Accused setting wife on fire—Dying declaration by wife made by nods and gestures—Dying declaration meant that accused killed her—No suspicious circumstance to disbelieve dying declaration—Corroborating materials to implicate accused—Conviction held valid.

The appellant was prosecuted for the murder of his wife by setting her on fire. The principle evidence against him was the dying declaration made by wife. As the deceased was not in a position to speak at the relevant time her dying declaration was recorded by a Magistrate on the basis of nods and gestures made by her. However, the answers given by the deceased in nods and gestures in response to the questions put by the Magistrate left no doubt that she meant the appellant-accused was the person who set her on fire. Apart from the dying declaration there was material on record to lend credence to the prosecution case that it was the appellant who murdered his wife; one of the material witnesses deposed that the appellant had done nothing to put down the flames on his wife.

A The motive for the crime was strained relationship between the couple.

The Trial Court convicted the appellant and sentenced him to imprisonment for life. On appeal to the High Court the majority - two Judges - took the view that the deceased wanted to say that it was the appellant who had set her on fire and consequently dismissed the appeal. On the other hand, the minority gave benefit of doubt to the accused and ordered his acquittal. The accused preferred appeal to his Court.

Dismissing the appeal, this Court

C HELD: 1. A dying declaration recorded on the basis of nods and gestures is not only admissible but possessed evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - whether they were simple or complicated - and how effective or understandable the nods and gestures were. [506-H, 507-A]

D 2. In the present case the questions being simple and short, the recorder being Magistrate, the certifier of mental conscious state of the deceased being a doctor, nods being effective and meaningful, full reliance could have been placed on the statement of the deceased to find the appellant guilty. Therefore, there is no hesitation in endorsing the view taken by majority in the High Court that the deceased meant her husband as the person who had burnt her. There is no suspicious circumstance also to disbelieve the dying declaration. This apart, there are corroborating materials to implicate the appellant. Accordingly, the majority judgment of the High Court is confirmed. [501-B, 504-H, 507-C]

F *Khushan Rao v. State of Bombay*, AIR (1958) SC 22; *Khusha v. State of Orissa*, AIR (1980) SC 559; *A.P. Chandrasekera v. The King*, AIR (1937) Privy Council 24; *Darpan v. Emperor*, AIR (1938) Pat. 153 and *Gajendra v. State of Orissa*, [1973] Cr. L.J. 1058, referred to.

G 3. The "sign language" has developed so much by now that it speaks quite well. [506-A]

H *Encyclopedia Britannica* Vol. 7 1968 Edn. pages 120-123 Vol. 10, 796 & *Encyclopedia Americana* Vol. 8 1983 pages 558 to 560 and Vol. 24 page 800, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 171 of 1987. A

From the Judgment and Order dated 26.9.86 of the Andhra Pradesh High Court in CrI. A. No. 286 of 1985.

P.K. Rao, A. Naga Bhushanam, R. Santhan Krishnan and K.R. Nagaraja for the Appellant. B

K. Mahava Reddy and G. Prabhakar for the Respondents.

The Judgment of the Court was delivered by C

HANSARIA, J. This appeal on certificate would require our decision, *inter alia*, on the question of evidentiary value of dying declaration made by gestures. This question arises, because from what is being stated later, it would be clear that the conviction of the appellant under section 302 IPC is principally based on dying declaration of deceased, Meesala Ramanamma @ M Venkata Ramanamma, who was none else than the wife of the appellant. As the deceased was not in a position to speak at the relevant time her dying declaration came to be recorded by a Magistrate on the basis of some nods and gestures made by her. It is this dying declaration which has led in the main to find the appellant guilty of murder of his wife which has resulted in his being sentenced to R.I. for life - the minimum punishment provided by law. D E

2. The appellant alone had faced the trial relating to murder of his wife. The Sessions Judge, Vishakapatnam, found the appellant guilty under section 302 and sentenced him as aforesaid. On appeal being preferred before the High Court of Andhra Pradesh, the same came to be heard by a Division Bench consisting of Justice Jayachandra Reddy (as he then was) and Justice Sardar Ali Khan. The learned Judges differed in their ultimate conclusions. Justice Reddy gave the benefit of doubt and ordered to acquit the appellant. Justice Khan on the other hand was of the view that the charge of murder has been brought home and so he dismissed the appeal. On the papers being placed before the Chief Justice of the High Court, it was ordered to place the appeal for hearing before Justice Rama Rao who agree with the view expressed by Justice Khan, because of which the appeal ultimately came to be dismissed by the High Court. However, being of the F G H

A view that the case is fit for appeal to this Court on the question mentioned above, a certificate was granted under Article 134 (1)(c) of the Constitution.

B 3. Before addressing ourselves on the question on which certificate has been granted, we have to see whether the conviction as ultimately upheld by the High Court is sustainable on the basis of materials on record. As already indicated, the principal evidence is the dying declaration to which we shall advert a little later to decide whether on the basis of the declaration as made the conviction was warranted.

C 4. Though the law is well settled that conviction can be founded solely on the basis of dying declaration if the same were to inspire full confidence, which has been the view of this Court ever since the decision in *Kushpal Rao's case*, AIR (1958) SC 22, which view was reiterated in *Kusha v. State of Orissa*, AIR (1980) SC 559, which legal position has not been questioned
D by the learned counsel for the appellant, we may nonetheless state that apart from the dying declaration there are materials on record to lend credence to the prosecution case that it is the appellant who had murdered his wife. This material has been provided by PWs 1, 2 and 3, who are immediate neighbours of the appellant. According to PW1 he heard some
E shouts coming from the house of the deceased on the day of occurrence (17.6.84) at about 12.30 p.m. when he was taking lunch. This brought him to the house of the appellant and entering inside the house he found the appellant standing by the side of his wife who was in flames. On being
F questioned, the appellant stated that he could not put down the flames as he was afraid. It is this witness who covered the deceased thereafter with a bed sheet and put down the flames and then took her inside the main room in which action he was assisted by the appellant. On advice being given to the appellant to take his wife to the hospital it was so done. According to PW2 she heard shouts and saw the deceased in flames and the appellant standing near the door. Of course, she admitted in cross
G examination that she did not enter the house and that she had peeped through the window. To the similar effect is the evidence of PW3.

H 5. The aforesaid shows that though what was stated by PWs 2 and 3 is not material, the statement of PW1 that the appellant had done nothing to put down the flames does show his guilty mind, as otherwise, if a

husband would have seen his wife in flames he would have made all efforts to put down the flames. It may however, be stated that PW1 when examined during the course of investigation had stated that the accused on being asked why he had not put down the flames had replied that he had covered the deceased with a "Bonths" (blanket). This statement is however not admissible. Even if some benefit is given to the appellant about his probable act of having covered his wife with blanket at some point of time, that is not very material inasmuch as on the face of the burnt injuries sustained by the deceased which ultimately proved fatal, he must have taken steps to remove the deceased to the hospital which was only done when asked by PW1 and not voluntarily. We do, therefore, think that the appellant had stood almost as silent spectator when his wife was in flames.

6. Another supporting material is the motive of the crime which, in the present case, according to the prosecution, was the strained relationship between the couple about which evidence has been given by PW5, the mother of the deceased. As per her evidence the appellant was addicted to drinking and use to squander his earnings in drinks and the in-laws family would therefore be asked to provide fund for maintenance which used to be done to the extent possible. The ill treatment even led the deceased to live with her parents. A fortnight prior to the occurrence, the appellant is said to have come in drunken state and abused PW5 apart from beating the deceased. This shows that the appellant was left with no love and affection for his wife would not have at all been unhappy if she were to leave the world.

7. We now come to the main material which according to the prosecution fastens the guilt of murder on the appellant. The same is, as already indicated the dying declaration of the deceased which consisted of nods and gestures made when the deceased was questioned by the Magistrate who recorded the declaration. The Magistrate started recording the same from about 4.45 p.m. of 17.6.84 and finished the same at about 5.25 p.m. It would be necessary to note the entire recording as put on record by the Magistrate, who was examined as PW11. The same reads as below :

"Q. What is your name?

- A A. She nods as if to say she cannot speak.
Q. I am II Addl. Munsif-Magistrate, Visakhapatnam, Understand ?
A. She nods her head as if she understood.
- B Q. how is your body burnt ?
A. She nods as if she cannot speak.
Q. Did your body burnt due to accident ?
- C A. She nods in the negative (nods heads sideways).
Q. Did any one burnt you ?
A. She nods in assent (from above downwards).
- D Q. Can you say who he was ?
A. She makes signs showing her neck and gesturing as if tying around her neck and placing her hands on her chest.
Q. You showed as tying around your neck. Did you opine it as
- E 'Thali' ?
A. She nods her head in assent.
Q. Can you write ?
- F A. She nods as if in assent.
Q. Write about the particulars of that person ?
A. She made some squibbles on the paper, vide paper enclosed herewith. (Her) eyes remain closed.
- G Q. When I asked you whether anyone burnt you, you answered yes in gestures, when I asked you who he is, you showed your neck tying, and placed your hands on the chest, when I asked you did it mean 'Thali' you said 'yes' by gesture. Did you mean that he is your husband ?
- H A. She nods assent (from above downwards)

Q. Can you sign now ?

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A. She nods in the negative (side ways).

L.T.I. of M. Venkataramanamma.

The questions put to the patient and the gestures made by the patient are recorded and read out to the deponent and admitted by her to be correct."

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8. Prior to the recording of the aforesaid statement the Magistrate had really been requisition once earlier. That was around 3.30 p.m., whereupon the Magistrate had come but finding that the deceased was not able to speak and was able to indicate the answers by nodding head, no statement was recorded. A second requisition was sent at about 4.35 p.m. and on being certified by the doctor that the injured was conscious, the aforesaid statement was recorded.

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9. This being the position, the first submission to be advanced by the learned counsel for the appellant is that the recording of dying declaration at the second attempt is suspicious. We do not find anything to suspect the recording inasmuch as on the second occasion also recording was on the basis of nods and gestures and not on the strength of any oral statement made. It may be that on the first occasion the Magistrate thought it was not advisable to record any statement on the basis of nods but on request being made again he made an effort and recorded the aforesaid statement.

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10. A perusal of the statement as recorded does not leave anything to doubt that deceased meant the appellant as the person who set her on fire. This is absolutely clear from the answer to the question as to who had burnt her to which the answer recorded was "She makes sign showing her neck and gesturing around her neck and placing her hand on chest". On being further asked as to whether by showing sign around her neck, did she mean "Thali" (also known as Mangalsutra) a rode in assent was given. We have been informed from the Bar that the custom among the class of people from which the couple came was, and still is, that the husband at the time of marriage ties a Thali (Mangalsutra) around the neck of his would be wife and the wife places the same on her chest. It is after these signs and nods were given that the Magistrate finally asked as to whether she meant the person who set fire to her was her husband and a nod from

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A above to downward was given, which has to be taken to be a sign of affirmation.

B 11. It is because of the above that the majority of the Judges in the High Court took the view that the deceased did want to say that it was the appellant, her husband, who had set her on fire. In this connection learned counsel for the appellant, however, reads out to us that part of judgment of Jayachandra Reddy, J. in which he has dealt with the dying declaration and the reasons given by the learned Judge in not being satisfied fully about the same meaning that it was the appellant who had set fire on her. We are not satisfied if the reasons assigned by the learned Judge are adequate and cogent to reject the dying declaration as having clearly indicated that it was the appellant who had murdered. This would be apparent from two observations made by the learned Judges in this connection. The first is related to first question and answer which is as below :

D "Q. What is your name.

A. She nods as if she cannot speak."

E 12. The learned Judge has observed that though it has been recorded that the deceased "nods" it has not been mentioned whether it is side-ways, upward or downward. But then, there is further observation in the first answer that the deceased noded as if to say she cannot speak. This clearly brings home what was the nodding meant to convey. We may then refer to the observation made by the learned Judge regarding the answer given to the last but one question which was whether the deceased meant her husband to which the Magistrate recorded : "She nods assent (from above downwards)". As to this the learned Judge observed that from this "can we say definitely that from this nodding that she meant that the accused killed her or that the accused did not kill her". We do not think if this question really arises as the nod being from above to downward has to be an answer in affirmative to the question.

G 13. We have, therefore, no hesitation in endorsing the view taken by Justices Ali Khan and Rama Rao that the deceased meant her husband as the person who had burnt her. We do not find any suspicious circumstance also to disbelieve the dying declaration. This apart, there are corroborating materials to implicate the appellant to which we have already referred.

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14. We now advert to the question relating to the evidentiary value of a dying declaration based on gestures. The Judges of the High Court themselves have noted some decisions in this regard. These are : (1) *A.P. Chandarasekera v. The King*, AIR (1937) Privy Council 24; (2) *Darpan v. Emperor*, AIR (1938) Patna 153; and (3) *Gajendra v. State of Orissa*, (1973) CR L.J. 1058.

15. The Privy Council decision is however the main judgment on which the learned Judges of the High Court have relied inasmuch as the two other decisions have relied on what was held by the Privy Council. In that case as well (which came from Ceylon) the appellant had been convicted of murder. The victim's throat had been cut and she was not in a position to speak but on being questioned regarding the person who committed it, she answered by signs and nods. The question which was examined by the Privy Council was whether the statement was relevant and admissible. It was held that the statement constituted a verbal statement resembling the case of a dumb person and was relevant and admissible. It was pointed out at page 26 that section 32 of the Ceylon Evidence Ordinance (Which is in *pari materia* with section 32 of our Evidence Act) has used the word "verbal" and not "oral". Reference was made to sections 3 and 119 of the Ordinance in this connection. (Parallel sections in our Evidence Act being also 3 and 119). In section 3, which is the interpretation clause, while defining "Evidence" it has been stated that it means and includes, *inter alia*, "oral evidence". Section 119 deals with dumb witnesses and states that he may give his evidence in any manner in which he can make it intelligible, as by writing or by signs. As to this evidence it has been stated the same shall be deemed to be oral evidence. These show that evidence given by signs as well is admissible and is taken to be oral evidence.

16. In the Patna case the victim was in a serious condition and had made dying declaration by signs of hand and head and the same was held to be admissible by relying on the above Privy Council case. The Court, however stated that the recording must be of the precise nature of the signs and not interpretation of the same. Here, we have recording of the nature of nods and gestures. In the Orissa case some signs and gestures were made, which were taken to be verbal statement encompassed by section 32.

A 17. We are, however, not much at the admissibility of the statement
but its evidentiary value. As to this, we would state that the "sign language"
has developed so much by now that it speaks quite well. We may refer in
this connection to what has been mentioned about this language at pages
B 120 to 123 of Encyclopaedia Britannica, Vol. 7, 1968 Edition, wherein the
history of the education of the deaf has been dealt with. A perusal of the
same shows that the educators of the deaf are divided into those who
favour the manual (sign-language) system supplemented by articulation
and those who favour the speech and lip reading, vetoing the manual
language. At page 796 of Vol. 10 of the aforesaid Encyclopaedia, something
C more has been said about "sign language". Reference has even been made
to what a certain Mehar Baba, an Indian religious figure, had done in this
regard. As to this Baba it has been noted that he abstained from speech
in the last decades of his life, but "dictated" voluminous writings to his
disciples, at first by pointing to letter on an English-language alphabet
board; but, after evolving a suitable sign language of gestures, he relied on
D that alone. If volumes can be dictated by this method, a short message of
the type at hand can definitely be conveyed by gestures.

18. We may also refer to what has been stated at pages 558 to 560
of Encyclopaedia Americana, Vol. 8 (1983). These pages contain a discus-
E sion on "Education and training of the deaf". It traces the history of modern
education of deaf and speak about sign language. It states that even today
there are educators of deaf who favour the manual system which includes
use of finger or sign language. At page 800 of Vol. 24 of this Encyclopaedia
there is a detailed discussion of 'Sign Language' and it has been stated that
F this language can "convey information, issue commands or tell stories". The
reader is further informed about the use of this language for utilitarian,
ritual, theatrical and comparative purposes. It has also been stated that
complete sign languages are still in use in parts of Asia and the Americas.

G 19. It may not be out of place to mention that the viewer of television
would find that even news are telecast for the deaf through sign language
and lip movements.

H 20. On the basis of what has been noted above, we hold that dying
declaration recorded on the basis of nods and gestures is not only admis-
sible but possesses evidentiary value, the extent of which shall depend upon

who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - whether they were simple or complicated-and how effective or understandable the nods and gestures were. A

21. In the present case, the questions being simple and short, the recorder being a Magistrate, the certifier of mental conscious state of the deceased being a doctor, nods being effective and meaningful, we are satisfied that full reliance could have been placed on the statement of the deceased as recorded by PW11 to find the appellant guilty under section 302. B

22. In view of the aforesaid, we confirm the majority judgment of the High Court and dismiss the appeal. C

T.N.A.

Appeal dismissed.