

Naeem
v.
State of Uttar Pradesh

(Criminal Appeal No. 1978 of 2022)

05 March 2024

[B.R. Gavai* and Sandeep Mehta, JJ.]

Issue for Consideration

Conviction of the appellants-accused for offences punishable u/ss.302 and 34, Penal Code, 1860 based solely on the dying declaration, if justified.

Headnotes

Evidence – Dying declaration, sole basis of conviction – Appellants convicted for offences punishable u/ss.302 and 34, Penal Code, 1860 – Correctness:

Held: Dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court – Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination – There cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless corroborated – Rule requiring corroboration is merely a rule of prudence – Where the Court is satisfied that the dying declaration is true, voluntary, free from any effort to induce the deceased to make a false statement and it is coherent and consistent, it can base its conviction without any further corroboration– Material placed on record revealed that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination – Dying declaration (Ext. Ka-6) was cogent, consistent, trustworthy and reliable to base the conviction on the same – No reason to interfere with the concurrent findings of fact that the dying declaration was true and free from any effort to induce the deceased to make a false statement – No legal impediment to make it the basis of conviction without there being any independent corroboration – However, in the

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dying declaration, the motive attributed by the deceased was to accused No.1-deceased's devar who she had a quarrel over partition of the house and the role of pouring kerosene on the victim and setting her ablaze was also attributed to him – Insofar as accused No.2 (wife of accused No.1) and her brother-accused No.3 are concerned, the statement of the victim only states that they aided accused No.1 however, no specific role of how they assisted him could be found in the dying declaration – Thus, the said dying declaration can be the sole basis of maintaining the conviction of accused No.1 – Accused No. 2 and accused No. 3 entitled to the benefit of doubt and are acquitted – Impugned judgment upholding the conviction and sentence in respect of the said appellants is quashed and set aside – Appeal qua accused No.1 is dismissed. [Paras 7, 11, 14-16]

Case Law Cited

Atbir v. Government of NCT of Delhi, [\[2010\] 9 SCR 993](#) : (2010) 9 SCC 1 : 2010 INSC 491 – relied on.

List of Acts

Penal Code, 1860.

List of Keywords

Dying declaration; Sole basis of the conviction; Corroboration rule of prudence; Voluntary dying declaration.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1978 of 2022

From the Judgment and Order dated 17.12.2019 of the High Court of Judicature at Allahabad in CRLA No.7393 of 2017

Appearances for Parties

Sharan Thakur, AAG, Dr. Sushil Balwada, Kaushal Yadav, Nandlal Kumar Mishra, Srilok Nath Rath, Ms. Reena Rao, Mohd Adeel Siddiqui, Bipin Kumar Jha, Ms. Komal Jha, Ms. Nandani Gupta, Dr. Mrs. Vipin Gupta, Sudeep Kumar, Mustafa Sajad, Ms. Rupali, Ms. Keerti Jaya, Advs. for the appearing parties.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****B.R. Gavai, J.**

1. These appeals challenge the judgment and order dated 17th December 2019, passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal Nos. 1589 of 2018 and 7393 of 2017, whereby the Division Bench dismissed both the criminal appeals preferred by the appellants, namely, Pappi @ Mashkooor (accused No.1), Naeema (accused No.2) and Naeem (accused No.3) and upheld the order of conviction and sentence dated 24th October 2017 as recorded by the learned Sessions Judge, Moradabad (hereinafter referred to as the 'trial court') in Sessions Trial No. 260 of 2017.
2. Shorn of details, the facts leading to the present appeals are as under:
 - 2.1. On 1st December 2016, the Police Station Katghar, District Moradabad received a written report at 08:15 pm which was a transcription of the complaint made by Shahin Parveen (deceased) who had been admitted in the District Hospital, Moradabad on 1st December 2016, at 02:20 pm with 80% deep thermal and facial burns. In her complaint, the deceased had alleged that she had been set ablaze by the accused/appellants who had been pressuring her into entering the profession of immoral trafficking and prostitution. On the basis of the written report (Ext. Ka-3), a First Information Report ("FIR" for short) was registered at Police Station Katghar, District Moradabad vide Case Crime Number 1332 of 2016 for the offence punishable under Section 307 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). On the same day, Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar, Sadar, Moradabad was telephonically summoned by the Tehsildar to record the statement of Shahin Parveen (deceased), after she was admitted in the hospital. Between the hours of 08:48 pm and 09:15 pm, dying declaration of Shahin Parveen (deceased) (Ext. Ka-6) came to be recorded by PW-5. Subsequently, the victim was admitted in Safdarjang Hospital, New Delhi on 2nd December 2016, where she eventually succumbed to her injuries at 07:55 pm. Consequently, the Case Crime No. 1332 of 2016 was altered to the offence punishable under Section 302 of IPC.

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According to the Post-Mortem Report (Ext. Ka-11), the cause of death was shock as a result of ante-mortem burn injuries.

- 2.2. After the death of the husband of the deceased two years prior to the incident, she had been residing at her matrimonial house with her two children along with Pappi @ Mashkooor (accused No. 1) who was her brother-in-law (*devar*) and his wife Naeema (accused No.2). Naeem (accused No.3) is Naeema's brother. The prosecution case is that, after the death of the husband of the deceased, the accused/appellants started pressuring her into entering the profession of immoral trafficking and prostitution. As the deceased did not concede to the same, she was physically and sexually assaulted and asked to vacate the house. On the day of the incident at about 01:30 pm, the accused/appellants caught hold of the deceased and poured kerosene on her. Pappi @ Mashkooor (accused No.1) and Naeema (accused No.2) ignited the matchstick and threw it at her. Thereafter, the accused/appellants surrounded her so that she could not escape. On being set ablaze, the deceased ran out of the house whereafter her neighbours put out the fire and informed her mother and brother namely, Islam @ Babli (PW-2) who took her to the hospital. This version of events was brought out in the complaint made by the deceased which was transcribed by Faisal Zamal (PW-3). On the basis of PW-3's written report, bearing the thumb impression of the deceased, the FIR came to be registered at 08:15 pm on 1st December 2016. Thereafter, on the same day, between 08:48 pm and 09:15 pm, PW-5 recorded the dying declaration of the deceased (Ext. Ka-6) wherein she stated that there was an outstanding dispute between her and Pappi @ Mashkooor (accused No.1) with regards to the partition of their shared residence. On the date of the incident at about 12:30 pm, another quarrel broke out between the deceased and the accused/appellants, during which accused No.1 poured kerosene on the deceased and set her ablaze. He was accompanied and assisted by his wife Naeema (accused No.2) and Naeem, brother of Naeema (accused No.3). She was taken to the District Hospital, Moradabad by her brother Islam @ Babli (PW-2) and thereafter shifted to Safdarjang Hospital, New Delhi, where she eventually succumbed to her injuries.

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- 2.3. After completion of the investigation, a charge-sheet came to be filed before the Court of Chief Judicial Magistrate, Moradabad. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the learned Sessions Judge.
 - 2.4. Charges came to be framed by the learned Sessions Judge for the offences punishable under Sections 302 and 34 of the IPC. The accused pleaded not guilty and claimed to be tried.
 - 2.5. The prosecution examined 8 witnesses to bring home the guilt of the accused persons. While Papi @ Mashkooor (accused No.1) took the defence that he was absent from the spot of the incident at the relevant time and that the deceased had committed suicide since she was depressed after the death of her husband, Naeema (accused No.2) and Naeem (accused No.3) set up the defence of bare denial. The defence did not lead any evidence.
 - 2.6. At the conclusion of the trial, the trial court found that the prosecution had proved the case against the accused/appellants beyond reasonable doubt and accordingly convicted them for offences punishable under Sections 302 and 34 of the IPC and sentenced them to undergo imprisonment for life along with fine.
 - 2.7. Being aggrieved thereby, the accused/appellants preferred appeals before the High Court. The High Court by the impugned judgment dismissed the same and affirmed the order of conviction and sentence awarded by the trial court. Being aggrieved thereby, the present appeals.
3. We have heard Shri Mohd. Adeel Siddiqui, learned counsel appearing on behalf of the appellants and Shri Sharan Thakur, learned Additional Advocate General (AAG) appearing on behalf of the respondent-State.
 4. Shri Mohd. Siddiqui submits that the conviction is based only on the dying declaration of the deceased (Ex. Ka-6). He submits that the dying declaration (Ext. Ka-6) is not free from doubt. It is submitted that the Discharge Slip (Ext. Ka-7) would show that the deceased was discharged from the District Hospital, Moradabad on 1st December 2016 at 05:00 pm. It is therefore impossible that the dying declaration (Ext. Ka-6) could have been recorded between 08:48 pm and 09:15 pm. The learned counsel therefore submits that the said dying declaration (Ext. Ka-6) cannot be said to be

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trustworthy, reliable and cogent so as to base the conviction solely on the basis of the same.

5. Per contra, Shri Thakur submits that, both the trial court and the High Court, on the correct appreciation of evidence, rightly convicted the accused/appellants and as such, no interference would be warranted with the concurrent findings of the trial court and the High Court. The learned AAG submits that Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar, has deposed about the dying declaration (Ext. Ka-6). Shri Thakur submits that the dying declaration (Ext. Ka-6) also contains the certification by Dr. A.K. Singh, Emergency Medical Officer, District Hospital, Moradabad regarding the medical fitness of the victim both prior to and after recording the dying declaration (Ext. Ka-6).
6. Undisputedly, in the present case, the conviction is based solely on the dying declaration (Ext. Ka-6). The law with regard to conviction on the sole basis of dying declaration has been considered by this Court in a catena of judgments. After considering the earlier judgments, this Court, in the case of *Atbir v. Government of NCT of Delhi*¹, has laid down certain factors to be taken into consideration while resting the conviction on the basis of dying declaration. It will be apposite to refer to para (22) of the said judgment, which reads thus:

“22. The analysis of the above decisions clearly shows that:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) 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.

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- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
 - (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
 - (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
 - (viii) Even if it is a brief statement, it is not to be discarded.
 - (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
 - (x) 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 the basis of conviction, even if there is no corroboration.”
7. It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that 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 the basis of conviction, even if there is no corroboration.
8. A perusal of the material placed on record would reveal that Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar has deposed that

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he was directed by the Tehsildar on phone to record the statement of the victim Shahin Parveen at the District Hospital, Moradabad. He came to the hospital and asked the Chief Medical Officer of the hospital about the condition of the victim Shahin Parveen, who informed that Shahin Parveen was in a sound condition and was also fit to give her statement. He further deposed about the certificate issued by the doctor. He also deposed that, after recording the statement, the deceased put her thumb impression. He has further deposed that the deceased answered in full sense and she was understanding the questions. The deposition of PW-5 would also reveal that he had taken care to ensure that none of the relatives of the deceased were present when the dying declaration (Ext. Ka-6) was being recorded.

9. Insofar as the contention of the learned counsel for the appellants that the dying declaration (Ext. Ka-6) was recorded between 08:48 pm and 09:15 pm and the Discharge Slip (Ext. Ka-7) was issued at 05:00 pm is concerned, no question was put to that effect in the cross-examination of Raj Kumar Bhaskar (PW-5), the then Naib Tehsildar. As such, his testimony, in spite of cross-examination, has gone unchallenged on the material aspect of recording of the dying declaration.
10. A perusal of the dying declaration (Ext. Ka-6) would reveal that before recording the dying declaration (Ext. Ka-6), the victim was examined by Dr. A.K. Singh, Emergency Medical Officer at District Hospital, Moradabad on 1st December 2016 at 08:45 pm, who has certified her to be fully conscious and fit to give the statement. After the dying declaration (Ext. Ka-6) was recorded, a certification by Dr. A.K. Singh, Emergency Medical Officer at District Hospital, Moradabad is recorded once again to the effect that the deceased was fully conscious while giving the statement (Ext. Ka-6). It can thus clearly be seen that the material placed on record would reveal that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
11. We have no reason to interfere with the concurrent findings of fact that the dying declaration (Ext. Ka-6) is true and free from any effort to induce the deceased to make a false statement. The dying declaration (Ext. Ka-6) is coherent and consistent and as such, there

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should be no legal impediment to make it the basis of conviction without there being any independent corroboration. We find that the dying declaration (Ext. Ka-6) is cogent, trustworthy and reliable to base the conviction on the same.

12. That leaves us with the question as to whether the conviction of all the three accused is tenable or not.
13. It will be apposite to refer to the relevant part of the dying declaration (Ext. Ka-6), which reads thus:

“Answer: I had been into a dispute with my *devar* (husband’s younger brother) Mashkoor Hussain s/o Maqdoom Hussain over partition of the house for many days. Today i.e. 01.12.2016 at 12:30 O’clock I had a quarrel with my *devar* over partition of the house, during which he poured kerosene on me and set me ablaze. In commission of the act, my *devrani* (husband’s younger brother’s wife) Naeema Parveen and her brother Naeem aided my *devar* (husband’s younger brother). When they set my body ablaze, I ran outside the house. People from the neighbourhood doused fire engulfing my body and saved me. Residents of the locality informed my mother and brother, thereafter, my brother and mother brought and admitted me to the hospital.”

14. The statement of the victim would therefore reveal that the motive attributed by the deceased is to accused No. 1 Pappi @ Mashkoor. She stated that she had a quarrel with her *devar* Pappi @ Mashkoor over partition of the house. It can further be seen that the role of pouring kerosene on the victim and setting her ablaze is also attributed to accused No. 1 Pappi @ Mashkoor.
15. Insofar as other two accused i.e. Naeema (wife of accused No.1 Pappi @ Mashkoor) and her brother Naeem are concerned, the statement of the victim only states that they aided her *devar* Pappi @ Mashkoor. However, no specific role of how they assisted accused No. 1 Pappi @ Mashkoor could be found in the dying declaration (Ext. Ka-6). We therefore find that, though the said dying declaration can be the sole basis of maintaining the conviction of accused No. 1 Pappi @ Mashkoor, in the absence of any specific role attributed to accused No. 2 Naeema and accused No. 3 Naeem, they are entitled to the benefit of doubt.

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16. In the result, we pass the following order:

- (i) Criminal Appeal No. 1978 of 2022 qua appellant Naeem and Criminal Appeal No. 1979 of 2022 qua appellant Naeema are allowed. The order of conviction and sentence dated 24th October 2017 passed by the trial court and maintained by the High Court vide impugned judgment and order dated 17th December 2019 in respect of the aforesaid appellants is quashed and set aside. They are acquitted of all the charges charged with and are directed to be released forthwith if not required in any other case
- (ii) Criminal Appeal No. 1979 of 2022 qua appellant Pappi @ Mashkooor is dismissed.

17. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Divya Pandey

Result of the case:
Criminal Appeal No. 1978 of 2022
qua accused No.3 and Criminal Appeal
No. 1979 of 2022 qua accused No.2
are allowed. Criminal Appeal No. 1979
of 2022 qua accused No.1 is dismissed.