Munnu Raja and Another Vs The State of Madhya Pradesh

Court: Supreme Court of India

Date of Decision: Nov. 20, 1975

Acts Referred: Evidence Act, 1872 â€" Section 32(1)
Penal Code, 1860 (IPC) â€" Section 302, 34

Citation: AIR 1976 SC 2199 : (1976) CriLJ 1718 : (1976) JLJ 599 : (1976) 3 SCC 104 : (1976) SCC(Cri) 376 : (1976) 2 SCR 764 : (1976) 8 UJ 154

Hon'ble Judges: Y. V. Chandrachud, J; A. C. Gupta, J

Bench: Division Bench

Advocate: Mohan Behari Lal, for the Appellant; Ram Panjwani, N.S. Parihar and I.N. Shroff, for the Respondent

Final Decision: dismissed

Judgement

@JUDGMENTTAG-ORDER

Y.V. Chandrachud, J.
The appellants, Munnu Raja and Chhuttan, were tried by the learned Sessions Judge, Chhatarpur on the charge that

at about 10 a.m. on April 30, 1969 they committed the murder of one Bahadur Singh. In support of its case, the prosecution relied upon the

evidence of Santosh Singh (P.W. 1) and Mst. Gumni (P.W. 4) who claimed to be eye witnesses and on three dying declarations alleged to have

been made by the deceased. The two eye witnesses were permitted to be cross-examined by the Public Prosecutor as they supported the case of

the prosecution only partly. Santosh Singh stated that he saw Chhuttan assaulting Bahadur Singh with a spear but that he did not see Munnu Raja

at all. On the other hand, Mst. Gumni stated that it was Munnu Raja and not Chhuttan who assaulted the deceased. Since the two principal

witnesses turned hostile, the learned Sessions Judge thought it unsafe to rely on their testimony and, in our opinion, rightly. The learned Judge was

also not impressed by any of the dying declarations, with the result that he came to the conclusion that the prosecution had failed to establish its

case beyond a reasonable doubt. In that view of the matter, the appellants were acquitted by the learned Judge.

2. Being aggrieved by the order of acquittal, the State Government filed an appeal in the High Court of Madhya Pradesh, which was allowed by a

Division Bench of that Court by its judgment dated September 8, 1972. The High Court did not discard the evidence of the eye-witnesses but

utilised it by way of corroboration to the dying declarations alleged to have been made by the deceased. Setting aside the order of acquittal, the

High Court has convicted the appellants u/s 302 read with Section 34 of the Penal Code and has sentenced each of them to imprisonment for life.

The appellants have filed this appeal u/s 2(1) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

3. We have heard Mr. Mohan Behari Lal on behalf of the appellants at some length and we have considered each of his submissions carefully. It is

however unnecessary to discuss every one of the points made by him because, basically the scope of this appeal-act forgetting that the appellants

had a right to file this appeal in this Court-lies within a narrow compass. As we have indicated earlier, no exception can be taken to the view taken

by the learned Sessions Judge that it is not safe to place reliance on the testimony of Santosh Singh and Mst. Gumni. They resiled from their police

statements and it is evident that they have no regard for truth. Their evidence cannot be used to corroborate the dying declarations either.

4. We are thus left with the three dying declarations made by Bahadur Singh and since the prosecution has placed great reliance on them, we

thought it necessary to hear the learned Counsel fully on the facts and circumstances leading to the dying declarations.

5. In regard to these dying declarations, the judgment of the Sessions Court suffers from a patent infirmity in that it wholly overlooks the earliest of

these dying declarations. which was made by the deceased soon after the incident in the house of one Barjor Singh. The second statement which

has been treated by the High Court as a dying declaration is Ex P-14, being the first information report which was lodged by the deceased at the

police station. The learned Sessions Judge probably assumed that since the statement was recorded as a first information report, it could not be

treated as a dying declaration. In this assumption, he was clearly in error. After making the statement before the police Bahadur Singh succumbed

to his injuries and therefore the statement can be treated as a dying declaration and is admissible u/s 32(1) of the Evidence Act. The maker of the

statement is dead and the statement relates to the cause of his death.

6. The High Court has held that these statements are essentially true and do not suffer from any infirmity. It is well settled that though a dying

declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination there is

neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is

corroborated (see 284618 . The High Court, it is true, has held that the evidence of the two eye witnesses corroborated the dying declarations but

it did not come to the conclusion that the dying declarations suffered from any infirmity by reason of which it was necessary to look out for

corroboration.

7. It was contended by the learned Counsel for the appellants that the oral statement which Bahadur Singh made cannot, in the eye of law,

constitute a dying declaration because he did not give a full account of the incident or of the transaction which resulted in his death. There is no

substance in this contention because in order that the Court may be in a position to assess the evidentiary value of a dying declaration, what is

necessary is that the whole of the statement made by the deceased must be laid before the Court, without tampering With its terms or its tenor.

Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. Indeed, quite often, all that

the victim may be able to say is that he was beaten by a certain person or persons. That may either, be due to the suddenness of the attack or the

conditions of visibility or because the victim is not in a physical condition to recapitulate the entire incident or to narrate it at length. In fact, many a

time, dying declarations which are copiously worded or neatly structured excite suspicion for the reason that they bear traces of tutoring.

8. It was urged by the learned Counsel that after the attack, the deceased was all along accompanied by a large number of persons and one cannot

therefore exclude the possibility that he was tutored into involving the appellants falsely. We see no basis for this submission because not even a

suggestion was made to any of the witnesses that the deceased was tutored into making the statement. The deceased, on his own, did not bear any

enmity or hostility to the appellants and had therefore no reason to implicate them falsely. Indeed, none of the persons who were in the company of

the deceased after he was assaulted, is shown to have any particular animus for implicating the appellants falsely.

9. In regard to the second dying declaration, Ex. P-14, the main objection of the learned Counsel is that it was made to the investigating officer

himself and ought therefore be treated as suspect, In support of this submission, reliance was placed on a judgment of this Court in Balak Ram v.

State of U.P. AIR 1974 S.C. 2166 . The error of this argument consists in the assumption that the dying declaration, was made to an investigating

officer. The statement, Ex. P-14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information

was recorded, and indeed because of it that the investigation commenced and therefore it is wrong to say that the statement was made to an

investigating officer. The Station House Officer who recorded the statement did not possess the capacity of an investigating officer at the time when

he recorded the statement. The judgment on which the counsel relies has therefore no application.

10. We are in full agreement with the High Court that both of these dying declarations are true, We are further pf the opinion that considering the

facts and circumstances of the case, these two statements can be accepted without corroboration. Bahadur Singh was assaulted in broad day light

and he knew the appellants. He did not bear any grudge towards them and had therefore no reason to implicate them falsely. Those who were in

the constant company of Bahadur Singh after the assault, had also no reason to implicate the appellants falsely. They bore no ill-will or malice

towards the appellants. We see no infirmity attaching to the two dying declarations which would make it necessary to look out for corroboration.

11. We might, however, mention before we close that the High Court ought not to have placed any reliance on the third dying declaration, Ex. P-2,

which is said to have been made by the deceased in the hospital. The investigating officer who recorded that the statement had undoubtedly taken

the precaution of keeping a doctor present and it appears that some of the friends and relations of the deceased were also present at the time when

the statement was recorded. But, if the investigation officer thought that Bahadur Singh was in a precarious condition, he ought to have

requisitioned the services of a Magistrate for recording the dying declaration. Investigating officers are naturally interested in the success of the

investigation and the practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be

encouraged. We have therefore excluded from our consideration the dying declaration, Ex. P-2, recorded in the hospital.

12. The High Court was, therefore, justified in reversing the order of acquittal passed by the Sessions Court and in convicting the appellants of the

offence of which they were charged. In so doing, the High Court did not violate any of the principles governing appeal : against acquittal, to which

our attention was drawn by the appellants" counsel from time to time.

13. In the result, we confirm the judgment of the High Court and dismiss the appeal.