

PREM KUMAR GULATI VS. STATE OF HARYANA & ANR.:

CASE COMMENT

By *Kunal Garg*⁷⁴

FACTS OF THE CASE:

In this case two accused filed an appeal before the Supreme Court against the decision given by Punjab and Haryana High Court in which they were held guilty of offence under section 302/498-A⁷⁵ read with section 34⁷⁶ of IPC. Both the accused i.e. Prem Kumar Gulati (jeth) and Mahendra Kumar Gulati are brothers. The facts of the case are Rajni-deceased was married to an accused Mahendra Kumar Gulati and out of her wedlock they have 3 children. On 10.12.2013 she was admitted in the PGIMS, Rohtak in a burnt condition. In her dying declaration she said that on 9.12.2013 at about 9:30/10:00 P.M. her husband, jeth and jethani poured kerosene oil on her and burnt her. In her dying declaration she also said that her husband had illicit relationship with her jethani-Bimla (since deceased) and because of this she used to pick the quarrel with him and her husband used to beat her after consuming liquor. On 12.12.2013 the deceased died due to burnt injuries.

On the basis of above dying declaration a case was registered and after the investigation only accused Mahendra Kumar Gulati was arrested whereas afterwards Prem Kumar Gulati and Bimla were summoned by court to face the trial.

LAW AND ADMISSIBILITY OF DYING DECLARATION:

The dying declaration which is a statement of dying person is covered under section 32 of Indian Evidence Act, 1872. The Supreme Court in *Uka Ram vs State Of Rajasthan*⁷⁷ said that “When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question is admissible in evidence, such statements in law are called Dying Declaration.” Section 32 of the act says that when any statement made by any person on

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⁷⁵ Sec. 302 – Punishment for Murder, Sec. 498A - Husband or relative of husband of a woman subjecting her to cruelty

⁷⁶ Sec. 34 - Acts done by several persons in furtherance of common intention

⁷⁷ 2001(2)CR 416

the verge of his/her death regarding the cause of his/her is a relevant fact according to the India Evidence Act. Though it is not direct evidence yet it is admissible in the court of law as it comes under exception of general rule of hearsay evidence, on the principle of necessity.⁷⁸ The importance of dying declaration is based on a maxim “nemo moriturus prasumitur mennre” which means “no one at the time of death is presumed to lie and he will not meet his maker with a lie in his mouth.”⁷⁹ Though a dying declaration is not recorded in the court in the presence of the accused yet it is admissible in the court of law. It is an exception to the general rule of hearsay evidence.⁸⁰ The dying declaration does not need to be corroborated to be proved in the court of law. In *Umakant vs. State of Chhattisgarh*⁸¹, the Supreme Court of India said that “The dying declaration does not require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances. The whole point in giving lot of credence and importance to the piece of dying declaration, deviating from the rule of evidence is that such declaration is made by the victim when he/she is on the verge of death.” The deceased person at the time of giving the statement should be in a fit state of mind and the statement should be true and voluntary without any influence. Once it is proved the dying declaration can be admissible in the court of law without any further corroboration. In *K Ramachandra Reddy & Anr vs. The Public Prosecutor*⁸², the Supreme Court of India said that “The dying declaration is undoubtedly admissible under section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancor. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration.”

⁷⁸ In *Tapinder Singh v. State of Punjab*, (1970) 2 SCC 113

⁷⁹ <http://ijtr.nic.in/digest%20oct-dec%2014.pdf>

⁸⁰ Ibid

⁸¹ 2014 (6) Supreme 655

⁸² 1976 AIR 1994, 1976 SCR 542

The dying declaration does not always need to be in question answer form. The Supreme Court in *State of Karnataka v. Shariff*⁸³ said that if a dying declaration is not in a question answer form and in a narrative form, it cannot be a ground against its acceptability or realibility. Thus a dying declaration without in question answer form can also admissible in the court of law.

In *Khushal Rao v. State of Bombay*⁸⁴ the apex court laid down certain principles regarding admissibility of dying declaration. “These are:

- 1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated
- 2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made
- 3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence
- 4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence
- 5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character
- 6) that in order to test the reliability of a dying declaration, the Court has to keep in view the. circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it-; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

⁸³ (2003) 2 SCC 473

⁸⁴ 1958 AIR 22, 1958 SCR 552

If the dying declaration is recorded by any person other than magistrate then it is also admissible in the court of law but it is best if it is recorded by magistrate.⁸⁵

JUDGMENT ANALYSIS:

The appeal is partially allowed by the Supreme Court. The appellant Prem Kumar Gulati is acquitted by all charges but the conviction of Mahendra Kumar Gulati is upheld under section 302/498-A on the basis of the dying declaration of the deceased. The dying declaration given by the deceased is admitted by the court. According to me the apex court's judgment in this case is at its best because it complies with law on dying declaration and its admissibility is according to the rules laid down by the Supreme Court in other cases as we discussed earlier and according to the Indian Evidence Act, 1872.

The dying declaration given by the deceased in this case is recorded by the Additional Chief Judicial Magistrate, Rohtak after receiving doctor's certificate regarding fitness of the victim to give the statement.⁸⁶ So the fitness of the victim along with the person to whom it is made can't be questioned in this case. The apex court also did not consider the submission of appellant's advocate that the dying declaration should always be in question answer form. As we discussed earlier that in *State of Karnataka v. Shariff*⁸⁷, the Supreme Court said that it is not necessary that the dying declaration should always be in question answer form. The dying declaration without in question answer form can also admitted in the court of law.

The court acquitted the appellant Prem Kumar Gulati as except dying declaration no record strongly suggest the involvement of him in the commission of crime. After investigation he was not arrested by the police because there was no sufficient evidence found by the police against him and the statement of the witnesses also show that he was innocent.⁸⁸ There is nothing in the findings of the Trial Court also though which guilt of the accused Prem Kumar Gulati can be proved and this fact has been reiterated by High Court also. So he was given the benefit of doubt by the Supreme Court as there was no corroborative piece of evidence found to substantiate the charges made against him.

⁸⁵ CRITICAL APPRAISAL OF DYING DECLARATION by Dr. R.K. Gorea and Dr. O.P. Aggarwal ISSN: 0971-0973, <http://medind.nic.in/jal/t04/i1/jalt04i1p24.pdf>

⁸⁶ Page no. 1 of the Judgment

⁸⁷ *Supra* note 8

⁸⁸ Page no. 8 of the Judgment

But the Supreme Court upheld the conviction of the accused Mahendra Kumar Gulati because in the dying declaration it is clearly mentioned that he poured kerosene on her. Before that he used to beat the deceased under the influence of intoxication and subjected her to cruelty.⁸⁹ In the investigation and according to the statement of witnesses recorded by the investigation agency also he was found guilty and was arrested by the police. Later on he was subjected to trial and found guilty and therefore convicted under section 302/498-A of IPC. Statement of P.W. 7 (father of the deceased) also shows that the accused used to harass the deceased many times and a criminal case was also filed against him. Later on it was settled due to the intervention of Panchayat.⁹⁰ After taking into account the entire thing if we take the statement of witnesses corroboratively with the dying declaration, the guilt of the accused Mahendra Kumar Gulati is proved in the court of law and the admissibility of dying declaration also cannot be questioned because the apex court admitted it after testing its reliability.

After looking into all the things, I found the decision of the Supreme Court in this case is the right decision as it complies with all the laws and rules of dying declaration stated in various cases and admissibility of it also cannot be questioned because the apex court is right in admitting it and using it as a evidence against the accused.

THE LAW BRIGADE

⁸⁹ Page no. 2 of the Judgment

⁹⁰ Ibid