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SMT.LAXMI VS OM PRAKASH & ORS ON 9 JULY 2001 (AIR 2001 SC 2383)

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INTRODUCTION

This case was decided on the 9th of July 2001 by the bench consisting of justice R.C. Lahoti and justice Doraiswamy Raju. The case deals with the very important concept of dying declaration.

WHAT EXACTLY IS A DYING DECLARATION?

As per the general rule of evidence, hearsay evidence, i.e., testimony provided by a witness who has only second-hand knowledge of such fact or information, is not admissible as it is considered weak evidence. However, section 32 of the Indian Evidence Act forms an exception to the non-admissibility of hearsay evidence.

Section 32 deals with cases in which a statement of relevant fact by a person who is dead or cannot be found, etc., is relevant. This is when such statements made are related to the cause of death; or is made in the course of business; or against the maker; or matters of general interest; or is made in will or deed relating to family affairs; or in document relating to transaction mentioned in section 13, clause (a); or is made by several persons, and expressions feeling relevant to the matter in question. So the main circumstances in which hearsay evidence becomes admissible include Res Gestae, admissions and confessions, dying declarations, and evidence given in prior hearings. The concept of dying declaration is found in section 32 of the Indian Evidence Act, 1872. Section 32(1) specifically deals with the concept of dying declaration.

Section 32(1) of the Indian Evidence Act, 1872, recognizes the principle of *Leterm Mortem*, It means words made before death; the section states as follows: "When the statement is made by a person as to the 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 person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question"

A dying declaration enjoys a sacrosanct status, as one who is about to meet death is presumed not to lie. It finds its origin in the maxim *Nemo moriturus praesumitur mentire* which means that a man will not meet his maker with a lie in his mouth. A dying declaration is relevant and admissible as evidence, provided it has been made by the deceased while in a fit medical condition. Admissibility is founded on the principle of necessity. The court has to look into all the relevant circumstances and occasions before accepting the same as a relevant piece of evidence. A dying declaration, therefore, if found reliable, can form the basis of conviction and becomes an exception to the rule against the acceptance of hearsay evidence.

In the case of *Kundala Bala Subrahmanyam Vs. State of AP* [1], it was held that "Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration, by

itself, can be sufficient for recording conviction even without looking for any corroboration”.

The dying declaration so made becomes an important piece of evidence when it has been made by the deceased in a fit medical condition. A dying declaration stands in the position as if the deceased himself has made the statement in court had he been alive.

FACTS OF THE CASE

The deceased in this case is of the name Janak Kumari; she died an unnatural death as she succumbed to the severe burn injuries she had suffered the day before her death. The deceased was married to the accused for the past 6 years, and they lived along with the two co-accused, who respectively are the mother and sister of the accused, Om Prakash. Their marital relationship was strained, and a complaint was made by Janak Kumari under [Section 385](#) IPC and [Section 4](#) of the Dowry Prohibition Act, respectively, against these accused persons. Later divorce petitions were also initiated by Om Prakash against Janak Kumari, which ended in a compromise. On 7.3.1982, the accused, Om Prakash, informed the police control room by telephone that his wife had set herself on fire, having poured kerosene oil on herself. She was brought to the hospital but succumbed to her injuries and died at about 12 noon on 8.3.1982. Janak Kumari made a total of five dying declarations before her demise.

She made her first dying declaration to ASI Shiv Charan on the route to the hospital from the residence of the accused. The second dying declaration was made by Janak Kumari to Dr. C.M. Khanijau. The third dying declaration was recorded by SI Ramesh Chand. Ajit Shrivastava, sub-divisional magistrate, reached the hospital and recorded the statement of Janak Kumari, making it the fourth dying declaration. Kishan Lal was the brother of the deceased. A statement was made to him by the deceased, which is the fifth and the final dying declaration.

ISSUE RAISED

The issue in this case is whether the five dying declarations made by the deceased can be considered as evidence against the accused persons.

LEGAL ANALYSIS

Before taking up each of the dying declarations for consideration, we would also set out the nature of the injuries suffered and the condition of Janak Kumari after the incident when she is said to have made the dying declarations. The physical and mental condition of the deceased soon after the incident and before her death are as follows. The deceased, when brought to the hospital, was examined by the doctor, according to whom Janak Kumari had superficial burns involving the front of the trunk, both thighs, arms, part of the face and neck, scalp, and hair. This was a case of 85% deep burns and dehydration. She was on heavy sedation, antibiotics, and intravenous fluids. Her condition was constantly deteriorating, to which she later succumbed.

Looking at the five dying declarations made by the deceased, the first one made to Shiv Charan, ASI, who had proceeded to the place of the incident on being informed of a suicide having been committed by a woman, will stand discarded as it had not been transmitted promptly by ASI Shiv Charan to the Police Control Room and had not been recorded as a first information report of the incident disclosing commission of a cognizable offense by specified accused persons. The omission of ASI Shiv Charan has become fatal to his testimony.

The second dying declaration was made to Dr. C.N. Khanijau. This is not a dying declaration in the eyes of the law, as he has nowhere in his statement deposed to have actually talked to the deceased. The information received by him was from the police officers who brought the deceased to the hospital. He also stated that there were strangulation marks on the deceased's neck when in fact the postmortem proved otherwise. Therefore, due to lack of

corroboration, the dying declaration stands discarded.

The third dying declaration was made to Ramesh Chand, SI. When he recorded the statement of Janak Kumari, the doctor attending to her was not present, nor did he have the statement attested by the doctor. The statement is a detailed statement and claims to have been signed by the deceased. However, the deceased was under heavy sedation on account of 85% deep burns. She had sustained severe burns on her hands, which caused the skin to peel off; this begs an explanation as to how she could have signed the statement. Therefore, due to serious doubts regarding the mental and physical conditions that make it almost impossible for her to have made such a statement, this declaration also is to be discarded.

The fourth dying declaration was recorded by Ajit Shrivastava, SDM. At the end of the statement, the following is recorded as the words of Janak Kumari: "I have given this statement in my full consciousness and senses. Read over to me and found correct". This statement, however, does not bear any endorsement by any doctor of the hospital verifying the physical and mental condition of the injured so as to make her fit to make such a statement. Moreover, as mentioned before, her condition was seriously deteriorating, making her unfit medically to make such a statement. The absence of proper medical certification indicating the deceased's ability and capacity to make such a statement causes the fourth dying declaration to also be discarded.

The fifth dying declaration was made to Kishan Lal, who was the brother of the deceased. He, however, on being informed of such a horrible incident by his dying sister, did not try to contact or give any information so received to the investigating authorities. Moreover, there exists the grave doubt that the deceased, Janak Kumari, was in a position to make such a statement due to her deteriorating condition.

Therefore, the final dying declaration also stands discarded.

The base of the principle of dying declaration rests on the rule of necessity and is hence an exception to the rule against the admissibility of hearsay evidence. In *Tapinder Singh Vs. State of Punjab* [2], the court held that the weak points of a dying declaration serve to put the court on its guard while testing its reliability and impose on the court an obligation to closely scrutinize all the relevant attendant circumstances. This is to ensure that there is no abuse of the process of law.

This leads us to the question as to what is a reliable dying declaration. One of the important tests of the reliability of the dying declaration is to satisfy the court that the deceased was in a fit state of mind capable of making a statement at the point in time when the dying declaration is to have been made or recorded. The length of the statement made or the number of such statements made is irrelevant. As long as the statement was made by the deceased, who was in a fit state of mind so as to speak medically, the court can consider the statement as a fit dying declaration.

In *Kake Singh @ Surendra Singh Vs State of M.P.* [3], the dying declaration in question was discarded by the court as there was no specific statement by the doctor that the deceased, after being burnt, was conscious so as to have made a coherent and valid statement.

In *Mohar Singh and Ors. etc. Vs. State of Punjab* [4], in this case the dying declaration was recorded by the investigating officer. It was discarded by the honorable court due to the failure of the investigating officer to get the dying declaration attested by the doctor of the hospital. A dying declaration made to a police officer is admissible in evidence; however, this practice has been highly discouraged, and it is ideal that the investigating officers avail themselves of the services of a magistrate for recording dying declarations if it is possible to do so. The only exception to this is when the

deceased was in such a precarious condition that there was no other alternative but for the statement to be recorded by the investigating officer.

JUDGMENT

Hon'ble Justice R.C. Lahoti in Smt. Laxmi vs. Om Prakash and Others laid down the test for the reliability of dying declarations. The judgment states that the length of the statement does not matter; the important factor here is a 'fit state of mind.' If the court finds that the narrating capacity of the victim is impaired so as to state the fact of occurrence, or if there exists a serious suspicion about the mental state of the victim while conveying the declaration, the court can deny to act on it. The essentials of a dying declaration are outlined below.

- The statement in the declaration should have a connection with the cause of death.
- The declarant should be competent to make such a dying declaration.
- The statement should not be inconsistent with the facts of the case.
- The statements must be free from any external influence.
- The declaration must be complete and capable of answering the relevant questions.
- A medical certificate proving that the deceased is capable of understanding the meaning of the statement he makes.

Due to the absence of corroborative evidence and the lack of a fit medical condition for making a valid dying declaration, the honorable court held that for the aforesaid reasons, all five of the dying declarations so made by the deceased shall stand discarded. The appeal was henceforth dismissed.

CRITICAL ANALYSIS AND CONCLUSION

In this case comment we have dealt with each of the five dying declarations to find out their

worth. We have found the second dying declaration to be no dying declaration, the first and third ones having been made to the investigation officers and having failed to prove their worth. We have the fourth and fifth dying declarations, which are unfit, as there exist grave doubts whether the injured Janak Kumari was in a position to make any statement at the time at which these statements were purported to be made, along with there being an absence of a properly certified medical certificate proving the deceased's ability to make such statements. Overall, there is a lack of corroborative evidence to back the dying declarations along with inconsistencies in the statements made. None of the five statements stated to have been made by Janak Kumari and coming from the mouth of different witnesses can therefore be held worthy of being accepted as a dying declaration so as to form a legal basis to convict the accused thereon. Hence it is not the number of dying declarations that matters. A single dying declaration free from any uncertainty may be acted upon by the courts, while multiple dying declarations having uncertainties and made by the decided-to-be-infirm if it has failed the test of reasonability.

Therefore, the honorable court has rightly taken the decision to dismiss the appeal in the interest of justice. Moreover, the test of reliability laid down ensures that only dying declarations proving their worth would be accepted as evidence in a court of law.

This ensures that the ideals of justice are met and prevents the making and falsifying of fake dying declarations, especially those made in a fit of hysteria under unfit medical conditions. Therefore, ensuring the proper adducing of evidence in order to prevent wrongful conviction of the accused.

CITATIONS

- [1] 1993 (2) SCC 684
- [2] 1971 (1) SCJ 871
- [3] AIR 1982 SC 1021
- [4] AIR 1981 SC 157