

STATE OF U.P.

v.

AMEER ALI

APRIL 3, 1996

[K. RAMASWAMY, S.P. BHARUCHA AND
K.S. PARIPOORNAN, JJ.]

Indian Penal Code, 1860 :

S. 302—Dying declaration as a basis for conviction—Accused causing death of his wife by setting her on fire—Dying declarations made to Magistrate and Investigating Officer—Trial Court recording conviction accepting statements of witnesses declared hostile as far as they were consistent with dying declarations—Acquittal by High Court on the ground that witnesses came and attested the statement of deceased made to Investigating Officer after the statement had been recorded—Held, dying declarations were sufficient to base conviction independent of evidence of witnesses turned hostile—Medical evidence corroborates dying declarations—High Court erred in doubting dying declaration recorded by Magistrate—Accused convicted of the offence and sentenced to imprisonment for life—Evidence Act—Dying declaration.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 474 of 1996.

From the Judgment and Order dated 30.8.90 of the Allahabad High Court in CrI. A. No. 781 of 1984.

A.S Pundir and Parshant Kumar for the Appellant.

Shakil Ahmed Syed for the Respondent.

The following Order of the Court was delivered :

Leave granted

We have heard learned counsel on both sides.

This appeal by special leave arises from an order of acquittal passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No. 781/84 on August 30, 1990. The case of the prosecu-

tion is that the deceased is the wife of the respondent. On October 20, 1983, between 7.00 and 8.00 p.m. after the accused had come home, he found the deceased preparing food with dal. He brought fish and asked her to make curry. When she was preparing spices to prepare curry, he asked her as to whom she had already prepared the food with dal to which she had stated that she had prepared the food for him and that she did not know that he would bring fish for preparing curri. He suspected her fidelity and called the deceased inside the room beat her and poured kerosene oil on her and lit fire. He came out and shut the door. When she was crying for help, the neighbours had come to rescue her and taken her to the hospital. In the hospital when Executive Magistrate was summoned to record her statement she gave statement at about 9.30 a.m. on October 21, 1983 thus :

"Smt. Wazihunnishan w/o Amir Ali r/o village Barhar Kot P.S. Utraula stated on oath that my husband Amir Ali used to commit much harassment to me. He had brought me before the second marriage was performed. He wanted to marry someone else. He poured kerosene oil upon me and put to fire. I was kept inside the house and so I could not run. I have a son aged about 2 years. When I was burning, the other women of the village had come and started pouring water to extinguish the fire...."

Subsequently, the Sub-Inspector (PW-6) had recorded her statement under Section 161 Cr.P.C., which now turned out to be the second dying declaration and is consistent with the first dying declaration with more details. At the trial, apart from the witnesses who had supported the prosecution case during investigation and examined under Section 164 Cr.P.C. have turned hostile at the trial, the Sessions Judge believed the oral testimony of hostile witnesses and separated that part of the statements which were favourable to the accused and accepted their statement which were consistent with the dying declarations recorded by the Magistrate and also by the sub-Inspector. Based thereon, he convicted the accused for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life.

On appeal, as stated earlier, the High Court has acquitted the respondent giving him the benefit of doubt. The High Court has reasoned that in the second dying declaration though the names of two witnesses have been mentioned, they were not present at the time of recording the

statement. After the statement was recorded, the witnesses have come and attested the statement. Therefore, investigating officer having had an interest in recording the statement, fabricated it. On that premise, the dying declarations were rejected. We have carefully scanned the dying declarations. Even excluding the evidence of the witnesses who turned hostile, we find that the dying declarations are sufficient to base a conviction. She has categorically stated that her husband put her in the room, poured kerosene oil and lit fire and when she was on fire, she was kept inside the room and was prevented by him from coming out of the house but after she was rescued by the neighbours, her life could not be saved. Under these circumstances, it is clear that the accused had an intention to kill her deliberately by pouring kerosene oil on her head and then set her to fire. Death took place on account of the intentional act of the respondent. The High Court, therefore, was wholly unjustified in doubting the correctness of the declaration recorded by the Magistrate. No reasons have been given to disbelieve dying declaration recorded by the Magistrate. Even with regard to the dying declaration recorded by the investigation officer, we do not find any reason to discard it. No doubt, as stated, the witnesses had come subsequent to recording of the statement of the deceased by the investigating officer but that does not mean that investigating officer had fabricated the statement. As seen, the statement given to the Executive Magistrate is quite clear and is a categorical statement. It gets corroboration, if at all it is needed, from the subsequent dying declaration recorded by the investigating officer. It is settled law that a dying declaration, if found truthful, is sufficient to base a conviction without any further corroboration. In this case, the medical evidence corroborates her dying declarations. It is not necessary that it should be recorded in the form of questions and answers as contended for the accused. The doctor has certified that she was in a mentally fit condition to give the statement. Taking the declarations into consideration, we find no valid or legally sustainable reasons from the judgment of the High Court to uphold acquittal. We hold that the prosecution has proved its case beyond any shadow of doubt. The judgment and order of acquittal passed by the High Court is set aside and that of the Sessions Court stands confirmed. Consequently, the respondent is convicted for an offence punishable under Section 302 IPC and is sentenced to undergo imprisonment for life.

The appeal is accordingly allowed.

Appeal allowed.