

**CASE COMMENTARY- BHAGWAN TUKARAM DANGE V STATE
OF MAHARASHTRA [2014(2) ACR1803(SC)]**

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Introduction

In the case *Bhagwan Tukaram Dange v State of Maharashtra*, wherein the issue is that whether Dying declaration is admissible or not. Dying declaration is a hearsay evidence and since hearsay evidence are not admissible hence the main issue here is that whether conviction based on dying declaration is an admissible fact or not. Dying declaration is undoubtedly admissible under Section 32 of the Indian Evidence Act but due care has to be given by the persons who record the statement. Dying declaration is an exception to the hearsay rule when it is made by the declarant at the time when it is believed that the declarant's death was near or certain¹. Section 32(1) is an exception to the general rule which has been laid down in the section 60 of the Indian evidence Act that hearsay evidence are not evidences unless they are cross-examined and then only reliance can be placed on it which then can form the basis of conviction.² Dying declaration are admissible mostly for two main reasons. The first reason is that it is a necessity as because the victim being the sole eye-witness of the crime and hence if his witness is not taken into consideration then it would defeat the ends of justice. The second reason being that the declaration is made by the victim on the expectations of death which are presumed to be true.³

In *R. v .Woodcack*- "Dying declarations are statement which are made in the extremity when the person is at the point of death; where every motive of falsehood is silenced and where every hope of this world is gone and when his mind is induced by the most powerful spiritual considerations to speak the truth."⁴ Hence dying declaration if found trustworthy and acceptable, can be the sole basis or conviction.⁵ But then dying declaration are not always admissible. For the admissibility of the Dying declaration there are certain conditions which are needed to be fulfilled. Hence in this case analysis the main issue will be proved by proving these conditions. Hence satisfying these condition will satisfy the issue in question here which is of admissibility of the dying declaration. This analysis will strictly scrutinize the conditions followed by the Court to reach to the opinion and how the dying declaration given here are admissible and can be the ground for conviction.

¹ *Bhagwan Tukaram Dange v State of Maharashtra*, 2014(2)ACR1803(SC)

² *Narain singh v State of Haryana*, 2004 CrLJ 1409 (SC)

³ Dr. V. Krishnamachari, *Law of evidence*, 7th Edition, Narender Gogia and Company, pg- 235.

⁴ (1789) 1 Leach 500: 168 E.R. 352

⁵ *Motilal S. Rathod V state of Maharashtra*, 2007 Cr. LJ 837 (bom)

Background

Here in this case what happens is that A-1 son and A-2 father returned to their house on 18.10.1998 at about 7.00 PM, fully drunk. On reaching home, they demanded Rs. 200/- to Rs. 300/- from the wife of A-1. On refusal, she was severely beaten up and asked to bring it from her parental house. A-2 then sprinkled kerosene from a plastic can over the body of the deceased and A-1 then lit a match-stick and set fire on the saree of the deceased. Deceased shouted for help and rolled down on the ground and ultimately succeeded in extinguishing the fire, but by the time she had suffered more than 80 per cent burns over the body.⁶ PW1 found that she was fully conscious and was in a condition to give statement.. Here the accused was guilty of murder, cruelty and harassment for dowry, dowry death. The main issue here is that the accused here was convicted on the basis of the dying declaration which was given by the wife of the accused. The main question here was relating to the admissibility of the dying declaration as it is a hearsay evidence and not a direct evidence and hence this cannot be the ground for conviction. But then dying declaration is an exception to the rules for hearsay evidence and hence this is admissible if it fulfills certain conditions. The first condition was that the declarant must have died. Such as for the admissibility of the dying declaration the declarant must have died. That is if the person who have gave the dying declaration somehow survived after giving the dying declaration then it would not be admissible. Secondly, the injuries must have caused the death. The person should die due to the injuries succumbed to him for which he gave the dying declaration but not of some other ailment. Then the declaration must be as to the cause of the death or as to any of the circumstances which has resulted in the death. The cause of the death must be in question, i.e for the dying declaration to be admissible the victim's cause of death should be in question and not the cause of death of some other person. Then the dying declaration must be complete. If the declarant dies even before making the statement or makes any incomplete statement then it would not be admissible under sec 32. Lastly the declarant must be in a fit condition to give the dying declaration which means that the victim must be in a fit state of mind before giving this dying declaration.⁷ In a case *Shakuntala v state of Haryana*⁸ where it was held that the admissibility of the dying declaration is based on the principle of "Nemo moriturus praesumitur mentire", i.e., a man will not meet his maker with a lie in his mouth⁹. Hence dying declaration being an exception to the hearsay evidence is admissible fulfilling certain conditions. There is no such rule for the Courts for not considering the dying declaration and asking for any corroborative evidence for convicting the accused. In the case of *Nidhan biswas v state of Tripura*¹⁰ which says that the person dies is admissible whether the death is homicidal or suicidal in nature provides that such declaration relates to the cause of

⁶ Bhagwan Tukaram Dange v State of Maharashtra, 2014(2)ACR1803(SC)

⁷ Dr. V. Krishnamaxhari, Law of evidence, 7th Edition, Narender Gogia and Company,

⁸ 2007 Cr. LJ 3747 (SC)

⁹ Ibid.

¹⁰ 2006 Cr. LJ 2429 (Gau)

death.¹¹ But then there are certain other conditions if fulfilled gives assurance and strength to the credibility of the dying declaration. Firstly the dying declaration must be recorded by a competent magistrate. But then if not recorded before a magistrate this can not only be the ground for discarding the dying declaration.¹² Secondly the dying declaration must be recorded in the exact words as it is made. The dying declaration should be made soon after the incident occurs such that there can be no coloration.

Court's Opinion

Mr. Ranjan Mukherjee from the accused side contented that the evidence submitted is insufficient as there are no direct evidences which was provided. Even the learned council also pointed out that there are various inconsistencies in the dying declaration and hence conviction solely on the basis of the inconsistencies in the dying declaration cannot be sustained. He also contended that. Unless there is corroborative evidence, no reliance could be placed on the inconsistent versions given by the deceased in the dying declaration. Hence concluded that the case cannot fall under sec 302 of the Indian Penal Code. The case may fall either Under Section 304 Part I or Section 304 Part II. The learned council made reference to the exception 4 of 300 of IPC as the accused was under the influence of liquor and hence he had no intention to kill. The learned council made reference to certain judgements of Sukhbir Singh v. State of Haryana MANU/SC/0116/2002 : (2002) 3 SCC 327 and Sandesh alias Sainath Kailash Abhang v. State of Maharashtra MANU/SC/1128/2012 : (2013) 2 SCC 479¹³ The learned council, Mr. Shankar Chillarge, who contended that both the high Court and the trial Court had examined the evidences, oral as well as documentary evidence, the dying declarations. Learned Counsel pointed out that both the dying declarations have been properly recorded and the doctor had certified that the deceased was in a sound state of mind to give her version and the statements of the deceased were correctly recorded in the dying declarations. He also said that the dying declaration made before the magistrate is also consistent with the statement made before the police and the doctor. The Court held that that the dying declaration was corroborated with the circumstantial evidences and the doctors who have done the post-mortem report also held that the burn injuries were sufficient to cause death. The Court held that dying declaration is admissible as because no corroborative evidence is required to substantiate dying declaration.¹⁴

Analysis

The main issue in this case is that whether the dying declaration given by the deceased was admissible or not. Dying declaration of the deceased in this case must be admissible as because it satisfies the conditions for the admissibility of the dying declaration. Firstly, the

¹¹ Dr. V. Krishnamaxhari, Law of evidence, 7th Edition, Narender Gogia and Company

¹² Balbir Singh v State of Punjab, 2006 Cr. LJ 4646 (SC)

¹³ Bhagwan Tukaram Dange v State of Maharashtra, 2014(2) ACR 1803(SC)

¹⁴ State of Uttar Pradesh v. Ram Sagar Yadav and Ors. MANU/SC/0118/1985: (1985) 1 SCC 552

person must have died. Herein the deceased after giving the dying declaration died because of 80 percent of burn injuries, doctors who did the post-mortem they confirmed that the reason of death was the burn injuries which the victim has suffered and gave dying declaration for and hence satisfying the second clause that injuries must have caused the death. The circumstances need to be brought up to prove the death. Evidences must be given on circumstances which are proximate in nature and must be related to the actual occurrences. The circumstances must be in transaction to the cause of death.¹⁵ Here in this case the woman was put on fire and she had 80 percent burnt injuries which resulted in the cause of her death. The death of the accused herein was in question and the reason for her death and hence her dying declaration would be admissible as because it was of the burnt injuries. The last condition is that the declarant must be in a fit condition and state of mind to give the dying declaration. Herein in the case, “Dr. Barge, PW1 treated her and informed Head Constable Shelar (PW5) regarding the admission of the deceased, in an injured condition. PW1 found that she was fully conscious and was in a condition to give statement. PW5, in the presence of PW1, recorded the dying declaration.”¹⁶ Hence she was in a fit state of mind to give the dying declaration. Hence it is admissible. Next discussing the evidentiary value of the dying declaration it is said that the dying declaration must be given before a magistrate, though not compulsory but in this case the deceased gave the dying declaration before special judicial magistrate. The dying declaration here was also recorded in the exact words and was sealed in an envelope and was given to the office of the chief judicial magistrate. Hence the facts of the case satisfying all the conditions for admissibility of the dying declaration and also the evidentiary value of the dying declaration.

The Court in its opinion has also supported the admissibility of the dying declaration and held that no- doubt the dying declaration would be admissible under sec 32 here and hence the decision of conviction given by the trial Court as well as the high Court was correct and hence the appeal was dismissed by the Supreme Court.

Conclusion

Hence the Supreme Court dismisses the petition on the ground that dying declaration given by the deceased was admissible and hence conviction based on that ground was valid and hence the judgment given by trial Court as well as the high Court was valid and hence they must be convicted. After scrutinizing the Evidence, the Court could not find any reason to discard the dying declaration and hence dying declaration was admissible.

¹⁵ Dr. V. Krishnamaxhari, Law of evidence, 7th Edition, Narender Gogia and Company

¹⁶ Bhagwan Tukaram Dange v State of Maharashtra, 2014(2)ACR1803(SC)