SJA NEWSLETTER

Monthly Newsletter published by the
Jammu & Kashmir State Judicial Academy

Volume - 2, Issue 9 **September, 2009**

Contents

SUBSCRIPTION RATES

Single Copy : Rs. **20.00**
Annual : Rs. **240.00**
(Payment only through D.D. in favour of the Jammu & Kashmir State Judicial Academy)

The Editor
SJA Newsletter
Jammu & Kashmir
State Judicial Academy
Janipur, Jammu-180001
Ph: Jammu: 0191-2530871
Srinagar: 0194-2472078
Fax: Jammu: 0191-2530783
Srinagar: 0194-2472078
E-mail : jkja@nic.in

Compiled, Composed & Layout by :
Pankaj Kumar Gupta
Deputy Registrar

Topic of the Month

"The Constitution of India, which according to Granville Austin is primarily a social document, encapsulates the aspirations and hopes of the people of this great nation and guarantees fundamental rights to every citizen.

India presents a mosaic of different cultures, a confluence of diverse religious and schools of philosophy and a synthesis of different ethnical and linguistic groups. However, the largest and greatest democracy in the entire world where all the global convergent influences, including Hinduism, Islam, Christianity, Sikhism, Jainism, Buddhism, Secularism, Liberalism, democracy, socialism, Gandhism run parallel. It is extremely distressing to point out that all people do not have a level playing field.

The law which dictates as well as shapes the social behaviour of the population of any society is a close ally of liberty and constitutes important means of fostering personal freedom, safeguarding human rights and furthering broad social goals of equality and general well being. Law and life are symbiotic, law touches us at all points. It is an indubitable structure, organic and living and, in essence, nothing but synonym for fundamental principles of equity and fair play. The judges and lawyers have the undeniable duty to uphold and defend the law. Equal justice has to be delivered irrespective of caste, creed, religion, sex, place of birth, socio-economic status. This is also our Constitutional mandate".

(Taken from speech delivered on 11-11-2005 at All India Seminar on Social Responsibility of Legal Fraternity by Hon'ble Dr. Justice A.R. Lakshmanan, Former Judge, Supreme Court of India.)

ACADEMY NEWS

One day workshop was conducted by the State Judicial Academy on 17th of September, 2009 in the Conference hall of Saddar Court, Srinagar on the topic of "Adjudication of Compensation cases under Motor Vehicle Act". All the Presiding Officers of Motor Accident Claims Tribunals of Kashmir province except Leh, Kargil and Bandipora participated in the Workshop.

Workshop in Session

The workshop was conducted in three sessions. Session one pertained to "Production of evidence, Quality of Evidence and Proof required in Motor Accident Claim cases". Sessions 2nd pertained to "Statutory defenses available to the Insurance Companies and also to the Private Respondents". Sessions 3rd pertained to "Award of compensation including the grant of compensation as per the structured formula and also the identification of bottlenecks in the expeditious and effective disposal of Motor Accident Claim cases".

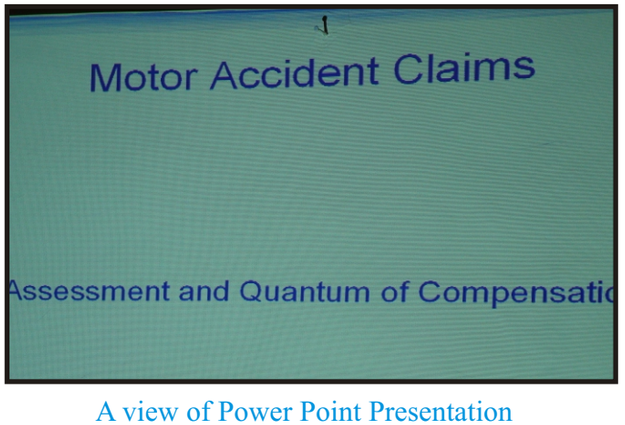
Workshop in Session

Discussion in the Ist Session was initiated by Shri Syed Javed Ahmed, Principal District & Sessions Judge, Budgam in his capacity as Presiding Officer of Motor Accident Claims Tribunal, Budgam. Discussion in the 2nd session was initiated by Mrs. Ghous-ul-Nisa Jeelani, Spl. Judge, Anti-corruption, Srinagar who participated in the workshop as Resource person as she had been the Presiding Officer of Motor Accident Claims Tribunal earlier. The 3rd Sessions was initiated by Mrs. Kaneez Fatima, Presiding Officer, Motor Accident Claims Tribunal, Srinagar. A healthy interaction took place in the workshop and participants showed a lot of enthusiasm in the discussion. Difficulties faced by the Presiding Officers of the Tribunal in expeditious and effective disposal of Motor Accident Claims cases

Workshop in Session

were aired in the workshop and remedial measures also suggested. The participants were of the view that the bottlenecks in the speedy disposal of cases can be overcome if the procedure as established by law for trial and disposal of such cases is strictly adhered to.

It will be in place to mention here that Shri Rajeev Gupta, Sub-Judge presently attached with State Judicial Academy had some days before this workshop, been to the National Judicial Academy where he had collected some material regarding the trial and disposal of Motor Accident Claims



A view of Power Point Presentation

Cases. He gave a Power Point presentation of the same in the Workshop which was highly appreciated by all present. Presentation in the form of compact discs were later on provided to all the participants which will be of tremendous help to the Presiding

Officers of Motor Accident Claims Tribunal. The programme was by and large very successful.

LEGAL JOTTINGS

(Cr. Appeal No. 634 of 2002 - Chikkarangaiah & Ors. v. State of Karnataka with Cr. Appeal No. 635 of 2002 State of Karnataka v. Chikkarangaiah & Ors.)

Date of Decision : 02-09-2009

Coram: Hon'ble Mr. Justice Dalveer Bhandari & Hon'ble Dr. Justice Mukundakam Sharma.

Subject Index: Delay in filing FIR. It is true that in all cases the delay in transmitting the FIR and its reaching the Magistrate late is not fatal to the prosecution. However, when there is some doubt with respect to the genesis of the complaint, the surest safeguard would be for the complaint to be received by the Magistrate expeditiously especially in a case as grave as this. When there is considerable doubt on the whereabouts of the informant, the delay in the FIR reaching the Magistrate would have bearing on the veracity of the prosecution case.

(Cr. Appeal No. 1199 of 2001 - State of U.P. v. Santosh Kumar)

Date of Decision : 03-09- 2009

Coram: Hon'ble Mr. Justice Dalveer Bhandari & Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Dying declaration. The basic consistency between the three dying declarations given to three different persons is that the accused Santosh Kumar brought kerosene oil, poured the same on the deceased and set her on fire and she died because of the burn injury. It is the real genesis of all the three dying declarations. It must be properly appreciated that the deceased gave these dying declarations in a state when she was having acute pain and minor inconsistencies in one dying declaration with another should not render the dying declarations void. Dying declarations must be construed in proper perspective.

(Cr. Appeal No.1695 of 2009 arising out of SLP [Crl.] No.6211 of 2007 - Md. Ibrahim & Ors. v. State of Bihar & Anr.)

Date of Decision: 04-09-2009

Coram: Hon'ble Mr. Justice R.V. Raveendran & Hon'ble Mr. Justice R. M. Lodha.

Subject Index: Section 420, 467, 471 and 504 IPC. Complaint filed by the complainant alleging that his land was sold by one of the accused to other by executing sale deed. When he confronted the accused to the sale deed so executed, they threatened him and insisted on taking forcible possession. Held : Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. The averments in the complaint if assumed to be true, do not make out any offence under sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under section 341 and causing hurt under section 323 of IPC.

(Civil Appeal No. 2213 of 2001 - Charan Dass (Dead) by L.Rs. v. Himachal PradeshHousing & Urban Development Authority & Ors. with 23 other connected Civil Appeals.)

Date of Decision: 07-09-2009.

Coram: Hon'ble Mr. Justice D.K. Jain & Hon'ble Mr. Justice Asok Kumar Ganguly.

Subject Index: Land Acquisition Act Sections 23 and 24. in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to work out the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise, yet the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard.

(Cr. Appeal No.1732 of 2009 arising out of S.L.P. (Crl.) No. 8565/2008 - Hazari Lal v. State of West Bengal & Anr.

Date of Decision: 8-9-2009

Coram: Hon'ble Mr. Justice Tarun Chatterjee & Hon'ble Mr. Justice R.M. Lodha.

Subject Index: Cancellation of bail. Considerations for rejecting bail application and for cancellation of bail granted earlier are not the same. Both of these have to be considered and dealt with on different basis. Courts are required to keep in mind the considerations set out in "Dolat Ram & Ors. v. State of Haryana, (1995) 1 SCC 349". Strong, cogent and overwhelming circumstances are required for cancellation of bail.

(Cr. Appeal No. 569 of 2003 - Saumindra Bhattacharya v. State of Bihar & Anr.)

Date of Decision: 10-09-2009

Coram: Hon'ble Mr. Justice Harjit Singh Bedi & Hon'ble Mr. Justice J.M. Panchal.

Subject Index: Food Adulteration Act. Complaint filed by a private complainant regarding some adulteration in bottles of cold drink. Cognisance taken by the Magistrate. Held by Supreme Court - The Food Adulteration Act itself provided a specific means and method whereby a complaint by a private party relating to food adulteration had to be entertained and in the absence of the stipulated procedure having been followed, the Magistrate was not justified in even entertaining the complaint. Section 11, 12, and 14 have to be considered, and Section 20 is categoric and brooks no ambiguity in that a prosecution for an offence under the Act can be instituted by a purchaser only if the report of the public analyst is produced alongwith the complaint.

(Cr. Appeal No. 1758 of 2009 arising out of SLP(Crl.) No. 1735 of 2007 - State th. Central Bureau of Investigation v. Parmeshwaran Subramani & Anr.)

Date of Decision: 11- 09-2009.

Coram: Hon'ble Mr. Justice R.V. Raveendran & Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Prevention of Corruption Act Sanction for prosecution. Respondents were booked for commission of offences under Sections 12 Prevention of Corruption Act and 120-B IPC. Challan presented in the proper Court. Court refused to take cognisance of the case holding that previous sanction as required under Section 19 of PC Act was not obtained. High Court also confirmed the order of trial Court. Challenged before Supreme Court. Held Section 19 does not provide for obtaining sanction for offence under Section 12. Though Section 12 pertains to abetment of any of offences mentioned under Sections 7, 10, 11, 13 and 15 of the Act, but Section 12 itself is a distinct offence. Any sanction required for offences under Sections 7, 10, 11, 13 and 15 of the Act would not mean to be required for offence under Section 12.

(Case No: Civil Appeal Nos. 4849-4850 of 2000 - Sita Ram Bhandar Society, New Delhi v. Lt. Governor, Govt. of N.C.T. Delhi and others)

Date of Decision : 15-09-2009.

Coram: Hon'ble Mr. Justice Dalveer Bhandari and Hon'ble Mr. Justice Harjit Singh Bedi.

Subject Index: Land Acquisition Act - Sections 4, 5A and 6 - notification and declaration of land acquisition and exempted land - notification issued - appellant filed objections under Section 5A that the land be exempted from the proposed acquisition - possession of 1933 Bighas and 2 Biswas taken by the collector and handed over to the beneficiary department - held that while taking possession of a large area of land with a large no. of owners, would be impossible for the Collector or the Revenue official to enter each Bigha or biswas and to take possession - no question ever been raised by the appellant with regard to the presence of a wall, in the objections - assuming that the appellant had re-entered the land on account of the various interim orders granted by the courts, or even otherwise, it would have no effect for two reasons, (1) that the suits/petitions were ultimately dismissed and (2) that the land once having vested in the Government by virtue of Section 16 of the Act, re-entry by the land owner would not obliterate the consequences of vesting - appeals dismissed with costs at Rs. 2 lacs.

(Case No: Cr. Appeal No. 1766 of 2009 with Cr. Appeal No. 1767 of 2009 - D. Venkata Subramaniam & ors. v. M.K. Mohan Krishnamachari & anr. And Abinesh Babu & ors. v. M.K. Mohan Krishnamachari & anr.

Date of Decision : 14-09-2009.

Coram: Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice B. Sudershan Reddy.

Subject Index: Code of Criminal Procedure, 1973 - Section 482 - inherent powers of High Court - IVR entered into a Memorandum of Understanding (MOU) with respondent for sale of 600 acres of land at Rs. 28 lakhs per acre - respondent transferred only 64 acres of land in favour of IVR - IVR issued legal notice to the respondent to complete the sale but no response - IVR terminated the (MOU) and purchased the whole land from the owners of the land - respondent lodged FIR against appellants alleging commission of offences under Section 406 and 420 of IPC - while investigation was in progress, respondent moved to High Court seeking directions to the police to seize Rs. 2,28,00,000/- from the appellants - whether High Court under Section 482 of CrPC interfere with the statutory power of investigation by police into a cognizable offence? - statutory obligation and duty of the police to investigate the crime and the Courts ought not to interfere and guide the investigating agency - as to in what manner the investigation has to proceed - the power under Section 482 of the Code can be exercised by the High Court either *suo motu* or on an application (i) to secure the

ends of justice; (ii) the High Court may make such orders as may be necessary to give effect to any order under the Code; (iii) to prevent abuse of the process of any Court - High Court not recorded reasons for which the matter required interference - impugned order of the High Court set aside - appeal allowed.

NEWS AND VIEWS

Mutual consent divorce gets easier

A Hindu marriage can be dissolved under the provision of mutual consent even if one of the parties withdraws approval of the dissolution before the statutory period of six months expires following the application for divorce.

By law, both the parties are required to re-confirm their mutual consent after six months.

The court used its extraordinary powers under Article 142 to virtually re-write the law on divorce by mutual consent under Section 13 B of the Hindu Marriage Act, 1955. But the court made it clear that high courts or civil courts could not pass such orders because they did not have these extraordinary powers. A Supreme Court bench headed by Justice Altamas Kabir granted divorce by mutual consent to a couple from Chhindwara in Madhya Pradesh despite the wife having withdrawn her consent.

According to Section 13 B of the Act, a divorce by mutual consent can be jointly filed by the parties on the grounds that they have been living separately at least for a year.

The court took note of the fact that the wife had made it clear that she would not live with the petitioner (husband) but also she was not agreeable to divorce by mutual consent.

In the present case, the wife withdrew her consent and accordingly, the second additional district judge, Chhindwara, dismissed the petition for divorce in 2005. The husband challenged the verdict in the Madhya Pradesh High Court, which upheld the trial court's order.

(HT/03.09.2009)

Small fire enough for insurance claim : SC

The Supreme Court has ruled that insurance has to be paid for the damage caused by a fire that lasted just for a fraction of second and not long.

"As long as there is a fire which caused the damage, the claim is maintainable, even if the fire is for a fraction of a second," the court said.

A bench headed by Justice Markandey Katju upheld a National Consumer Disputes Redressal Commission's decision in the case of agri-inputs firm Zuari Industries and said it was the incident of fire and not the duration that was required for claiming compensation from the insurance companies.

According to the court, there was no direct decision of the apex court on the issue of the proximate cause of the damage due to fire. It said that various decisions of the foreign courts and a predominant view appeared to be the proximate cause was not the cause which was nearest in time or place "but the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the intervention of any other force working from an independent source."

Justice Katju dismissed the insurance companies plea and said the fire was the efficient and active cause of the damage.

(HT/04.09.2009)

Result delayed? You can't sue exam board : SC

Students can no longer take examination boards to consumer courts for delay in publication of results or discrepancy in mark sheets, the Supreme Court has ruled.

The court said the Consumer Protection Act, 1986 was not intended to cover discharge of a statutory function of holding an examination, but for services only.

"The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity)," a bench of justices R.V. Raveendran and Markandey Katju said. The bench reversed a decision of the National Consumer Disputes Redressal Commission, which had upheld a state commission's verdict justifying a penalty of Rs 12,000 imposed by the district consumer forum on the Bihar School Examination Board for not declaring the result of a student, Rajesh Kumar. The verdict clears confusion on this issue as the national consumer court had given divergent verdicts-some holding examination boards to be within the ambit of the Act, while others beyond.

The bench agreed with the Board's argument that it was not a service provider and therefore was out of the ambit of the Act. It said the Board was a statutory authority entrusted with certain specific functions and hence cannot be treated as a service provider as defined under the Act.

"When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a student, who participates in the examination

conducted by the Board, hire or avail of any service from the Board for consideration," the SC said.

"In the course of conduct of the examination or evaluation of answer-scripts or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, BUT it does not convert the Board into a service-provider for a consideration nor does it convert the examinee into a consumer ," said the Bench.

(HT/05.09.2009)

CASE COMMENTS

State of U.P. v. Sheo Lal & Ors.
AIR 2009 SC 1912

Many a times during a trial of criminal cases, plea is raised by the defence that the circumstances in which the offence was alleged to have been committed, are such that there could have been the possibility of non-identification of accused by the witnesses. The most common instance in this regard is the incident taking place at night and there having no source of light sufficient enough for eye witnesses to identify the accused. In such circumstances courts are confronted with a situation where the courts have to take into consideration the overall view of the circumstances and to ascertain from such circumstances as to whether in normal course of events it would be possible for witnesses to identify the accused. Such circumstances are of vital importance since the question of identity of accused is involved. Unless identity of accused is established, accused cannot be possibly connected with the commission of offence.

In the case under discussion, similar circumstances were brought before the trial court showing that at the time of occurrence, it was 08:00 p.m., it was quite dark and only a lantern was burning. However, further circumstances were brought on record that accused and complainant party were related to each other.

It was held by the Hon'ble Supreme Court that non-mentioning of source of light in the FIR itself was of no significance. Accused and complainant party were closely related. Accused persons were not strangers to the witnesses. Therefore, in these circumstances it cannot be said that it was not possible for the witnesses to have identified the accused persons.

Further the Hon'ble Supreme Court has considered various judgments rendered by it from time to time on the subject, which give a clue as to how to appreciate the intervening circumstances in the situations of like nature.

(Ajay Gupta)
Judge Small Causes Court, Srinagar

Sanichar Sahni v. State of Bihar
(2009)7 SCC 198

In this case, the Hon'ble Supreme Court of India had an occasion to deal with a case where only one co-accused was charged under section 120-B I.P.C for hatching a conspiracy. Other co-accused were charged for commission of other offences. An important point for consideration arose as to whether only one person could be charged for conspiracy. It was urged before the Supreme Court that a single person can not conspire, at least two persons are required for hatching a conspiracy.

It was held by the Hon'ble Supreme Court that accused did not challenge the order of charge, did not raise this objection at the time of recording of his statement under section 313 Cr.P.C and there had been evidence of hatching the conspiracy of impeccable character. It was further observed by the Hon'ble court that it was merely a case of defective framing of charges. Other accused as well ought to have been charged u/s 120-B I.P.C for hatching conspiracy. Therefore, the law on the issue can be summarized to the effect that unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities.

(Manjit Singh Manhas)
Sub-Registrar, Srinagar

State of Karnataka
v.
Shantappa Madivalappa Galapuji & Ors.
AIR 2009 SC 2144

In the instant case, Hon'ble Supreme Court has detailed the circumstances under which deposition of a child witness can be relied upon. In this case, the trial court had based conviction of the accused persons on the deposition of the child witness, but the same conviction was set aside by the Hon'ble High Court of Karnataka. In this case, the Hon'ble Supreme Court while going through the varying judgments held as under :-

"The decision on the question whether the child witness has sufficient intelligence primarily

rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness".

(Kamlesh Pandita)
Sub Judge, Ramnagar

Santokh Singh v. State of Punjab
AIR 2009 SC 1923

Under the Penal Code, Right of Private Defence has been recognized as one of the exceptions to the criminality of the act. It recognizes that nothing is an offence which is done in one's right of private defence. Sections 99, 100 & 101 enumerate such circumstances where the right of private defence extends to the extent of causing death of the aggressor and also deal with as to when such right commences and when it ceases to exist.

The Hon'ble Supreme Court of India in the judgment AIR 2009 SC 1923 has laid useful observations which is worthwhile to court here. These observations give clear idea as to how to deal with a plea of private defence which extends to causing death. The observations are as under :

"8. .....The right given under Section 96 to 98 and 100 to 106 IPC is controlled by Section 99 IPC. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101 IPC define the limit and extent of right of private defence.

9. Sections 102 and 105 IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues.

11. Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary."

(Ritesh Dubey)
Sub-Judge, Leave Reserve,
High Court wing, Jammu

Vithal Eknath Adlinge v. State of Maharashtra
AIR 2009 SC 2067

When the case of prosecution depends solely on the circumstantial evidence, the burden on prosecution is higher as compared to the cases where ocular evidence is also available. To discharge such onus prosecution is required to complete the chain of circumstances without there being any loose end. Furthermore the conclusion drawn from such circumstances should invariably and unquestionably point towards the guilt of accused. It should emanate from these circumstances that it is only and none else than the accused who has committed the offence.

In the judgment AIR 2009 SC 2067, Hon'ble Apex court has considered and has made enlightening observations regarding the scope of circumstantial evidence in the criminal trial. It is worthwhile to note here the observations made by the court :

"13. ....The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the

accused, that is to say, they should not explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(Kikar Singh Parihar)
4th Addl. District & Sessions Judge
Srinagar

Kalavati v. State of Maharashtra
AIR 2009 SC 1932
and
Sasikumar v. State of T.N.
(2009)7 SCC 216

Dying declaration is one of the complex fields in the criminal jurisprudence. So far as evidentiary value of dying declaration is concerned, it stands on a higher pedestal as compared to other forms of oral evidence. Another important aspect concerning the dying declaration is that it can solely form basis for conviction of accused. However, the foremost important principle regarding its admissibility is that dying declaration should be found to be true and voluntary.

The Hon'ble Supreme Court in the two judgements under discussion has made similar and identical observations, summarizing the principles regarding the admissibility and the proof of dying declaration.

"This court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben v. State of Gujarat, AIR 1992 SC 1817.

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration (See Munnu Raja v. State of M.P, (1976)3 SCC 104.)

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416.)

(iii) [The] Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor, AIR 1976 SC 1994.)

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P., (1974)4 SCC 264).

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P., AIR 1982 SC 1021.)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P., (1981)2 SCC 654.)

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu, AIR 1981 SC 617.)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar, AIR 1979 SC 1505.)

(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P., AIR 1988 SC 912.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan, AIR 1989 SC 1519.)

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted". (See Mohanlal Gangaram Gehani v. State of Maharashtra, AIR 1982 SC 839 and Mohan Lal v. State of Haryana, (2007)9 SCC 151.)

(Rajeev Gupta)
Sub-Judge
J&K State Judicial Academy

Edited, Printed and published by Gh. Mohi-ud-Din Dar, Director, Jammu & Kashmir State Judicial Academy
on behalf of the Jammu and Kashmir State Judicial Academy, High Court Complex, Jammu / Srinagar