Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 537 OF 2003

State of Punjab Rep. through Secretary ..Appellant

Versus

Raj Kumar and Ors. ...
Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court directing acquittal of the respondents who had faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). Each was sentenced to undergo RI for life and to pay a fine of Rs.1,000/- each with default stipulation.

2. Background facts as projected by prosecution in a nutshell are as follows:

Sunita (hereinafter referred to as the 'deceased') had been married to accused-Raj Kumar about 1½ year prior to the occurrence and a son had been born to the couple though he had died some time later. Relationship between the parties was strained on account of the demands being made by Raj Kumar, as also by his parents. Ram Piari and Piara Singh and as Sunita and her parents had not been able to satisfy their demands, the three accused had maltreated her. Chaman Lal (PW.7), one of the brothers of the deceased had an unpleasant exchange with Ram Piari on account of her behaviour with his sister and this act had further incensed the accused. Around midnight on March 12, 1996, Ram Piari sprinkled kerosene oil on Sunita and set her on fire. The alarm raised by Sunita attracted her husband's brother and his wife and she was immediately removed to the Guru Nanak Dev Hospital, Amritsar by them. ASI, Harjinder Singh (PW.8) of Police

Station Sadar, Amritsar also reached the hospital and after ascertaining Sunita's fitness to make a statement from Dr. Sanjiv Kumar (PW.9) recorded the same (Exh. PM/2) at about 10.20 A.M. on March 13, 1996 and on its basis the FIR was registered at the Police Station at 10.45 a.m. ASI Harjinder Singh also made an application to the Deputy Commissioner for getting Sunita's statement recorded by a Magistrate. Naib-Tehsildar Lakhbir Slngh Kahlon (PW.6) was accordingly deputed to do the needful. He too went to the hospital and after getting the opinion of Dr. Kulwar Singh (PW.4) that Sunita was fit to make a statement recorded the same (Exh. PL) at 6.00 PM on March 13, 1996. Sunita died on March 14, 1996. On the completion of the investigation, the accused were charged for offence punishable under Section 302/34 IPC and as they pleaded not guilty, were brought to trial.

Prosecution examined witnesses to establish the accusations. Primarily reference was made to the evidence of PWs 5 and 7 (Ashok Kumar and Chaman Lal respectively) to whom she had made oral dying declarations about 10.30 a.m.

on March 13, 1996. Lakhbir Singh (PW-6) had recorded the dying declaration. Similarly, Harjinder Singh, ASI (PW-8) the Investigating Officer had recorded the dying declaration (Exh.PM/2) and Dr. Sanjiv Kumar (PW-9) had opined that the deceased was in a fit condition to make statement which had been recorded by PWs 6 and 8. Appellant No.1 pleaded alibi. He further stated that he had taken the deceased to the hospital in injured condition. Two witnesses were examined to prove the aforesaid stands. The trial Court observed that the dying declaration (Exh.PL and PM/2) made to ASI Harjinder Singh and Lakhbir Singh clearly proved the prosecution case beyond doubt. It also observed that it appears that last three lines of the statement Exh.PM/2 excluded Raj Kumar and Piara Singh from any wrong doing. It was clear from the subsequent statement (Ex.PL) that she had reiterated the facts already mentioned in the earlier statement (Exh.PM/2) and again there was manipulation in the statement Exh.PM/2). The trial Court relied on oral dying declaration made to PWs 5 and 7 at 10.30 a.m. on 13.5.1996. Referring to the evidence of the doctor and PW-8 it was observed that the deceased was in

a conscious and fit state of mind to make the dying declaration. Referring to the fact that the FIR had been lodged promptly, conviction was recorded.

Conviction was challenged before the High Court. It was the stand of the appellants (respondents herein) that dying declaration (Ex.PL) in which manipulations were done had been recorded after deliberation between the deceased and her brothers PWs 5 and 7.

The State supported the judgment of the trial Court.

The High Court observed that as an after thought the deceased might have added that her mother-in-law set fire on her and her father-in-law was present in the house, though in dying declaration (Ex.PL) the deceased had clearly inculpated all the accused persons in the actual incidence. The High Court accepted the stand of the accused persons that the last three lines in the dying declaration (Exh.PM/2) appear to have been interpolated. It was however noted that though the

mother-in-law had been stated to have set her on fire, but there was no reference whatsoever to the other two accused persons. The High Court held that in case of eye-witnesses, there can be dissection of a statement to find out as to what part can be believed. But in the case of dying declarations same cannot be done.

3. Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. Even if it is accepted that there was some manipulation as urged by the accused persons, the effect of the dying declaration (Exh.PL) has not been dealt with at all. In the said dying declaration A-2 was named. Both the dying declarations clearly referred to A-2.

4. This is a case where the basis of conviction of the accused by the trial Court was the dying declarations. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that

the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

5. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any

further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. 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 & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)]

(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 Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)]

(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 and Anr. v. The 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 Madhya Pradesh (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 Kaka 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 and Ors. 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. Krishnamurthi 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 Oza and Ors. 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 eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (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 and Ors. (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 and Ors. v. *State of Haryana* (2007 (9) SCC 151).

6. As rightly contended by learned counsel for the appellant-State even if the so-called interpolations are kept out of consideration the effect of the statement made in the dying declaration (Exh.PL) cannot be lost sight of.

7. Considering the principles set out above and the factual scenario, it is crystal clear that the prosecution has been able to establish the accusations so far as respondent No.2 is concerned. But the question is whether it is a case under Section 302 IPC. According to us the factual scenario shows that a case at hand would be covered by Section 304 Part II IPC. Custodial sentence of 6 years would meet the ends of justice. The sentence has been imposed considering the age of the respondent No.2. He shall surrender to custody forthwith to serve the remainder of sentence. Appeal stands dismissed vis-à-vis other respondents.

8. The appeal is allowed to the aforesaid extent.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(G.S. SINGHVI)

New Delhi,
August 11, 2008