

CASE NO.:
Appeal (crl.) 142 of 2005

PETITIONER:
Ranjit Singh AND Co.

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 09/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

ORDER

Five appellants, namely, Rajit Singh, Santokh Singh, Roshan kaur, Vir Kaur and Bimla Kaur are before us, aggrieved by and dissatisfied with the judgment and order dated 2.3.2004 passed by the Division Bench of the Punjab and Haryana High Court in Criminal Appeal No. 282/2000, whereby and whereunder the judgment of conviction and sentence passed by the Additional Sessions Judge, Jalandhar On 23.5.2000 in Sessions Case No. 44/1999 was affirmed.

Appellants before us, together with Dalip Singh, elder brother-in-law of the deceased as also her husband Hari Singh, were tried for commission of an offence of murdering Harbhajan Kaur on 21.8.1997 at about 7.30 a.m. Before we advert to the factual matrix involved in this appeal, we may notice that whereas the aforementioned Ranjit Singh and Dilip Singh have since expired, Hari Singh husband of the deceased has been acquitted by the High Court upon grant of benefit of doubt.

The prosecution case rests on the dying declarations made by the deceased, the first of which was recorded by Onkar Singh, Investigating Officer on 21.8.1997 at about 11.30 a.m. the said dying declaration was treated to be the first information report and on the basis thereof investigation commenced. As we would have to consider the aforesaid dying declaration for the purpose of appreciation of evidence in this case, we would do better to take note of the same:

"I am resident of Mithu Basti and am doing domestic work. My husband is working in a factory. I have two sons named Mohinder Pal and Amar Pal and a daughter named Rupinder Kaur. Today in the morning I had sent my children to school after preparing meals. It was about 7-1/2 O' Clock in the morning. I was setting my clothes in the room then my father-in-law sprinkled kerosene oil from a stove on me and my mother-in-law Rooshan Kaur and my sister-in-law Vir Kaur W/o Dilip Singh, Bilma Kaur W/o Santokh Singh and brother of my husband namely Dalip Singh and Santokh Singh caught hold of me and mother-in-law Roshan Kaur set me ablaze with a match stick. My husband at the time had gone to the toilet. All of them with intention to kill me have set me ablaze after pouring kerosene oil on me. My body was badly charred. My husband and his aunt (sister of mother -in-law) namely Pathani brought me to the hospital and got me admitted there. All the above said persons keeping quarrel with me and they used to pick up quarrel with me on every lame excuse. I was married in 1984 and since then they had been harassing me but my husband never harassed me."

It is not in dispute that the dying declaration was also made before Smt. Preeti Sahni, Judicial Magistrate, 1st Class, Patiala. The said dying declaration was recorded on 22.8.1997 at about 8.30 a.m. which reads as under:

"Yesterday, about 8 A.M. There was a quarrel in our family. Prior to this also there remained of and tension in our house. Our family is residing as joint family. Our younger brother and one elder brother of my husband, father-in-law and mother-in-law also residing with us. Yesterday, at 8 A.M. In the morning my husband has a quarrel with me and he asked me to go away and there are many like you. My in-laws were always harassing me over the matter of dowry and used to quarrel with me on lame excuse. At that time of quarrel I asked my husband as to where I have to go to finish the quarrel I went in the room and started gathering the clothes. Therefore my mother-in-law Roshan Kaur came and followed my sister-in-law Bimla Kaur, Vir Kaur (wives of younger and elder brothers of my husband) also came. My father-in-law Ranjit Singh, younger and elder brother of my husband also came. My mother-in-law sprinkled kerosene oil on me. All the men were helping my mother-in-law. Then my mother-in-law set ablaze with a match stick,. My husband at the time was sitting in a latrine, what he did not say anything. He new everything. Then I did raised alarm of 'Bachao, 'Bachao', but none heard me. My children had gone to school at that time. Then on raising alarm by many people gathered from neighborhood. My neighborhood informed my parents about this. My parents are residing in a Basti Nau Jalandhar. My aunt (sister of my mother-in-law) brought me to hospital. None of my in-laws came here. It is my mother-in-law who set me ablaze and my husband, father-in-law, elder and younger brother of my husband and Dalip Singh and Santokh Singh and their wives and also with them and join this plan and all of them were present at home. All of them used to harass me over dowry."

Before proceeding further in the matter we may notice that before the second dying declaration was recorded, an attempt was made also to record the dying declaration of the deceased by the Judicial Magistrate on 21.8.1997, but as the condition of the deceased was not such so as to enable her to make any statement, the same could not be recorded. We may, at this stage, notice that an oral dying declaration was also made by the deceased before her brother Harbhajan Singh who examined himself as PW-7. The defence has examined one Gurmukh Singh (DW-4) to show that a dying declaration was also made before him by the deceased to the effect that she got burn injuries from an accident.

The learned Sessions Judge as also the High Court relied fully on the aforementioned dying declarations to arrive at their respective findings in their judgments of conviction and sentence as noticed hereinbefore.

Learned counsel appearing on behalf of the appellants, in support of the appeal, raised the following contentions:

(1) A perusal of the dying declarations, which were recorded by the Investigating officer and by the Judicial Magistrate, would establish that she was tutored and in any event there were possibilities of tutoring the deceased and in that view of the matter the same should not have been relied upon.

(2) The deceased having all along been under the treatment of Dr. Kuldeep Singh, who examined himself as PW-3, there was absolutely no reason as to why certificate in regard to the physical and mental condition of the deceased was obtained from Dr. Rupinder Kaur (PW-12).

(3) Evidence of Harbhajan Singh (PW-7) is not at all reliable in so far as he had improved his story of introducing the purported harassment meted out to the deceased for non-fulfilment of the demand of dowry which was not even stated by the deceased in her dying declaration.

(4) PW-7 was inimically disposed towards one of the accused, as he had

taken a loan of Rs. 35.000 from him.

(5) The investigation carried out by the Investigation Officer was not a fair one inasmuch as he merely recovered a stove from the place of occurrence but failed to take any photograph of the place of occurrence, failed to seize any burnt pieces of clothes and also failed to record the statements of the neighbourers as also Gurmukh Singh (DW-4).

(6) The learned Sessions Judge although was of the opinion that the second dying declaration was not truthful, but despite the same, wrongly proceeded to rely upon the first dying declaration to convict and sentence the appellants before us. In this connection our attention has also been drawn to the judgment of the High Court wherein, despite noticing the inconsistencies in the two dying declarations, the High Court opined that the conviction of the appellants would be permissible in law as their involvement in the occurrence is proved.

The learned counsel appearing for the State, on the other hand, supported the judgment.

The deceased was running a shop. It is also not in dispute that there used to be frequent quarrels between the husband and wife. On more than one occasion, the disputes and differences between the deceased and her husband were settled through the intervention of the Panchayat. In fact, on one such occasion a compromise was recorded by the said Panchayat which was marked as Ext. DL.

We may furthermore notice that, indisputably, at the time the occurrence took place, the husband was in the latrine. The grievance of the deceased as against her husband appears to be that despite calling, he did not come at the spot. It however, appears from her first dying declaration that she was taken to the hospital by her husband and his aunt, namely, Pathani - sister of the mother-in-law of the deceased.

The prosecution case must be judged in the aforementioned factual backdrop. It is solely based on the dying declaration of the deceased. Corroboration thereto, if any, can be sought from the fact that it was established that they had been quarreling on earlier occasions also. In both her dying declaration, the genesis of the occurrence is stated to be the same, however the mode and the manner in which the same was done as also the role played by the appellants and her father-in-law Ranjit Singh, are somewhat inconsistent.

Learned counsel for the appellants, as noticed hereinbefore, laid emphasis on the fact that keeping in view the said inconsistencies in the dying declarations, this Court should not at all rely thereupon.

It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards correctness or otherwise of the said dying declaration, the Courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the court shall lean more towards the first dying declaration than the second one.

We, however, are not in a position to persuade ourselves to accept the submissions of the learned counsel for the appellants that we should not accept any of the dying declarations at all or any part thereof.

The submissions of the learned counsel for the appellants to the effect that PW-3 being the attending physician, there was no reason for her to grant any certificate, cannot be accepted. She deposed on the basis of the bed-head ticket. Even in the bed-head ticket, it was stated at the time when the second dying declaration was recorded by the learned Judicial

Magistrate, and endorsement had been made by Dr. K.K. Chahar that when the Magistrate recorded the statements of the patient she had been in a fit medical condition. Only because she treated the deceased all along, the same would not mean that she would examine the patients in the hospital throughout the day and night.

PW-12 Dr. Rupinder Kaur is also a responsible doctor. In her deposition she has stated that when the doctor examined the deceased, she was fully conscious and though she was having pain she was fit to make the statement.

It was sought to be argued that the said doctor did not issue any certificate of recording of dying declaration in the beginning but it was not necessary. The statement of the deceased was taken only when the learned Magistrate as also the attending doctor satisfied themselves about her condition to make statement. Mrs. Preeti Sahni, Judicial Magistrate, 1st Class, Patiala, who examined herself as PW-1, made a categorical statement that before her statement was recorded she had put questions to her in order to ascertain whether she was capable of understanding the same and was in a position to make statement voluntarily. It is of some significance to note that the Investigating Officer, Executive Magistrate as also the doctors were taking extreme care in that behalf as is evident from the fact that although after recording the first information report, an endeavor was made on 21.8.1997 to get the statement of the deceased recorded by the Executive magistrate but as she was not found to be in a fit condition to make statement, the same was not recorded. It is therefore not correct to suggest that the judicial magistrate recorded the statement of the deceased although she was not in a fit condition to make the statement.

We may, at this juncture, notice the discrepancies, which were considered by both the learned Trial Judge as also the High Court. Whereas the deceased in her first dying declaration ascribed the role of her father-in-law as pouring kerosene on her and the role of ablaze by a match stick to her mother-in-law, but in her statement before the learned Judicial Magistrate, she stated that the mother-in-law sprinkled kerosene on her and then she set ablazing her with a match stick. It is, therefore, evident that the role of Roshan Kaur (mother-in-law) in lighting the match stick is consistent.

We, however, are not in a position to accept the statement of the deceased as regards the roles played by the other accused persons, namely, the brother-in-laws of the deceased and their respective wives.

The role ascribed to Vir Kaur, wife of Dalip Singh (since deceased), and Bimla Kaur wife of Santokh Singh, together with their husbands is that they had allegedly caught hold of her.

Whereas in the second dying declaration, the deceased alleged that while after quarreling with her husband, she wanted to leave the house and for that purpose she started gathering clothes, her father-in-law came, followed by her sister-in-law Bimla Kaur. Ranjit Singh, her father-in-law and brothers of her husband, namely, Dalip Singh and Santokh Singh, had also come there. According to her, all the men were helping her mother-in-law and at that point of time her mother-in-law set her ablaze with a match stick. The inconsistency in the roles ascribed to her brother-in-law and sisters-in-law is, therefore, evident. In her first dying declaration, the role of catching hold of her was ascribed to all of them, other than the mother-in-law; but in the second statement it was ascribed only to the men, namely her brothers-in-law alone.

We are, therefore of the opinion that in a case of this nature, the rule of caution should be applied and therefore benefit of doubt should be given to appellant Nos. 2, 4 and 5, namely, Santokh Singh, Vir Kaur w/o Dalip Singh and Bimla Kaur w/o Santokh Singh, respectively.

As for the purpose of arriving at the aforementioned conclusion, we have not taken into consideration the purported oral dying declaration made by the deceased before PW-7, we do not think it necessary to discuss his evidence. We may, however, observe that the statement of Gurmukh Singh (DW-4), has rightly been disbelieved by the learned Sessions Judge as also by the High Court. There was also no reason as to why any statement shall be made before him by the deceased. If his statement was correct then it was expected that he would also come to the hospital. It was furthermore expected that he would get his statement recorded by the Investigating Officer. It is too much to contend that he gave his statement before the Investigating Officer but the same had not been recorded. Not even such suggestion was made to PW-13, although a lot of suggestions have been thrown at him as regards his conducting one-sided investigation.

The submission of the learned counsel for the appellants, that the investigation is faulty, is not a matter, which, in our considered opinion, is of any importance. The first information report was based on the dying declaration. The evidence of the accused was that she caught fire accidentally. The learned Sessions Judge as also the High Court has considered the matter at great length. Whether the deceased received burn injuries accidentally or otherwise may be a matter in issue but that she received burn injuries is not an issue. It was, therefore, not necessary to take photographs or seize the alleged pieces of burnt clothes. In any view of the matter, the same has not caused any prejudice to the appellants.

For the reasons aforementioned the appeal of Roshan Kaur, appellant No.-3, is dismissed and the appeal filed by appellant No.2 - Santokh Singh, appellant No.4 - Vir Kaur and appellant No.5 - Bimla Kaur, is allowed. Appellant No. 3 - Roshan Kaur is directed to surrender and she be taken into custody immediately. Appellant Nos.2, 4 and 5 are on bail. They are discharged from their bail bonds.