

State of Punjab

Vs

Amarjit Singh

Criminal Appeal No. 433 of 1987

(G. L. Oza, K. Jagannatha Shetty, J.)

01.09.1988

JUDGMENT

JAGANNATHA SHETTY, J. -

1. This appeal by special leave is from a judgment of the High Court of Punjab & Haryana in Criminal Appeal No. 479-DB of 1985. The accused Amarjit Singh, respondent herein, was convicted by the trial Judge for his wife being 'put on fire'. He was sentenced to imprisonment for life. On appeal, the High Court, acquitted him. The validity of the order of acquittal is challenged in the appeal.

2. The prosecution case runs like this : Amarjit Singh was married to Balwinder Kaur on November 28, 1984. He had once gone abroad before the marriage. He wanted to go again. But he was short of money. He was pressing his wife to get him Rs. 16,000 to cover his foreign travel expenses. On March 10, 1985, her brother, Sarwan Singh, came to take her to his village. But she was not allowed to go by her husband. He was actually insulted. Balwinder Kaur then told the brother that she was being pressurised and also throttled for not satisfying the dowry demand. Sarwan Singh returned to his village. It is in Bassi Kalan, District Hoshiapur. He apprised the matter to his father, Nasib Singh. On March 20, 1985, Balwinder Kaur when in the kitchen was found in flames. On hearing her shrieks, neighbours collected and extinguished the fire. She was taken to Civil Dispensary, Bhogpur at 10.15 a.m. Dr. Jaswinder Singh, PW 4 found 60 per cent burn injury on her body. After giving her first aid, he advised that she be taken to Civil Hospital, Jullundur. Simultaneously he sent intimation to Station House Officer, Bhogpur Police Station.

3. Balwinder Kaur was taken to Civil Hospital, Jullundur where she was admitted for treatment. Dr. Jasbir Singh, PW 5, admitted her and gave her morphia injection. It may be stated that she was also given a similar injection by Dr. Jaswinder Singh at the Civil Dispensary, Bhogpur. Upon intimation about the incident, ASI Kashmira Singh, PW 9 reached the Civil Dispensary, Bhogpur. He was informed that the patient was taken to Jullundur. He straight proceeded to the Civil Hospital, Jullundur. He reached there at 1.30 p.m. and enquired from the doctor whether Balwinder Kaur was in a fit condition to make statement. Dr. Jasbir Singh, who received the application to that effect informed the ASI in the negative. The ASI returned to the police station.

4. The doctor at Jullundur Hospital also could not provide proper treatment to Balwinder Kaur. He referred her case to Dayanand Medical College Hospital, Ludhiana. Thereupon, she was taken to that hospital. She was admitted on the same day at 10.40 p.m. by Dr. Ashok Kumar Gupta, PW 2. It appears that a message was flashed to Bhogpur Police Station that she was admitted in the Medical College Hospital, Ludhiana. ASI, Bhogpur reached the Medical College Hospital at about 4.00 p.m.

on March 21, 1985. After obtaining certificate of fitness from Dr. Rajnish Talwar, PW 3, he recorded the statement of Balwinder Kaur. The statement was attested by the doctor. That statement became the basic of the first information report in this case.

5. Balwinder Kaur did not survive. On March 23, 1985 at 8.30 p.m., she succumbed to burn injuries. Her death was intimated to the police station at Bhogpur. ASI again came there, and conducted the necessary investigation.

6. The post-mortem report reveals that Balwinder Kaur had burns all over the body except at the lower limbs below the knees and some areas on the back. There was, however, no smell of kerosene oil. In the opinion of the doctor, the death was due to shock and haemorrhage as a result of antemortem extensive burns which were sufficient to cause her death in the ordinary course of nature.

7. The prosecution relied upon two types of evidence in this case : (i) The testimony of Nasib Singh, (PW 6) as an eye-witness and (ii) The dying declaration of Balwinder Kaur recorded by the ASI. Besides, the prosecution examined Sarwan Singh, PW 7, to speak about the motive for murder. The prosecution has also examined four doctors who have treated the deceased at Bhogpur, Jullundur and Ludhiana. The other witnesses examined at the trial are of formal nature. On behalf of the defence, one witness was examined. He is Avtar Singh, DW 1, neighbour of the accused. He has given altogether a different version of the incident.

8. The trial Judge accepted the prosecution case and refused to rely on the defence. He convicted the accused under Section 302 of the IPC and sentenced him to imprisonment for life with fine of Rs. 2000.

9. The High Court in the appeal, found difficulty to believe Nasib Singh as an eye-witness to the occurrence. The High Court was of opinion that he could not have been at Bhogpur so early at 8.00 a.m. covering a distance of 35 kms from his native village. He was characterised as a chance witness and so his testimony was rejected. In support of that conclusion the evidence of Avtar Singh, DW 1, was relied upon. It was also observed that if the father has seen daughter in flames set by the accused, he would not have resisted the temptation to complain to the police. The fact that he did not do it at any place either in Jullundur or Ludhiana indicates that he did not know the person who was responsible for the crime. The High Court said :

This long silence on the part of Nasib Singh, PW 6 is vocal to indicate that as a matter of fact he had not witnessed any part of the occurrence. If he had seen anything then this could not be the normal conduct of a father. Even otherwise this was a very unusual coincidence that he reached from his village at the house of Amarjit Singh accused just at the moment when the accused was setting Balwinder Kaur deceased on fire.

10. As to the dying declaration, the High Court observed that the deceased must have been tutored by her father and brother to implicate the accused. The High Court observed :

We have doubted his presence at the time of the occurrence. The manner in which his name appears in the statement of Balwinder Kaur shows that she was tutored to mention her father as a witness. It is clear from this that she was amenable to the extraneous influence about the details of the incident and the panel of the witnesses.

She had introduced her father as a false witness in her statement. When one of the major details of her statement is false, it is difficult to accept that the dying declaration was truthful. The statement of dying person, before it is accepted, has to be wholly truthful and beyond suspicion and immune from any extraneous influence. Regarding sprinkling of kerosene oil on her, before she was set on fire, she is not corroborated by Dr. Jaswinder Singh PW 4 who did not find any smell of kerosene oil from her body at the time when he gave her first aid. For these reasons, we do not place reliance on the statement of Balwinder Kaur deceased which was recorded after a great delay.

11. With these and other conclusions, the High Court acquitted the accused.

12. Before us, it is contended inter alia, that the High Court has misconstrued the evidence and dying declaration. It is an error to state that the deceased had introduced her father as a false witness in her statement. In fact, she did not state that her father was an eye-witness to the occurrence. It is also argued that there is no basis for the conclusion of the High Court that Nasib Singh could not have reached Bhogpur at any time after the incident.

13. On behalf of the accused, it is argued that the so-called dying declaration made to ASI should not be believed. There was ample opportunity for the ASI to secure a magistrate to record the dying declaration but no attempt was made by him in that connection either at Jullundur or at Ludhiana.

14. We have carefully perused the records and gave our anxious consideration to contentions urged by both sides. This is undoubtedly a case of dowry death. The marriage took place on November 28, 1984. Within three months, the unfortunate death of the bride has taken place. The suggestion of the accused that the death might have been by an accident or suicide has absolutely no basis to support it. Motive for the crime has been satisfactorily established by the evidence of Sarwan Singh, PW 7. We have perused his evidence. He has narrated all that his sister had complained to him three days prior to the occurrence. The alleged demand of Rs. 16,000 by the accused, in the context, cannot be discounted. After the marriage he could not find finance to go abroad. The wife was convenient for him to extract money. The evidence of PW 7 receives full corroboration from the dying declaration as well.

15. It is true that Nasib Singh has deposed that he was an eye-witness to the occurrence. He must have overplayed his part and we may exclude his evidence. But that by itself is no ground to throw the case away if it is otherwise true. Recently, in State of U.P. v. Anil Singh (1988 Supp SCC 686) we observed : (SCC p. 692, para 17)

... that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses.

16. The High Court appears to have committed an error in stating that Balwinder Kaur has introduced her father in the dying declaration as an eye-witness to the occurrence. It is better that we set out hereunder the dying declaration (Ex.P.G.) in question :

On November 28, 1984, I was married to Shri Amarjit Singh son of Sant Ram, r/o

House No. 86-D, Mill Quarter, Bhogpur. After the marriage, I have been residing at the house of my in-laws. I had gone to my parents once only. Previously my husband had gone abroad. Now, he is residing at Bhogpur. He does not do any work. About one and half weeks back, my brother Sarwan Singh had come to take me. But, my in-laws misbehaved with him and insulted him. They did not allow me to accompany him. There days prior to the visit of my brother, my husband Amarjit Singh had pressed my neck by putting cloth into my mouth and asked me to bring Rs. 16,000 from my parents. Thereafter, on March 20, 1985 at 8.00 a.m., while I was working in the kitchen in my house, my husband set me on fire by sprinkling kerosene upon me. My clothes caught fire. He rushed outside. On hearing my shrieks, the neighbours gathered there who extinguished the fire and whom I do not know. Meanwhile, my father Shri Nasib Singh also came there. They removed me to hospital at Bhogpur. The cause of grudge is that my husband wanted me to bring money from my parents as he was to go to abroad. No other person was present in the home when my husband set me on fire. I have heard and understood the statement. It is correct.

Attested Ex. PG/1 Ex. PG/2Sd/-Kashmira Singh Sd/-Balwinder Kaur Sd/-
Balwinder Kaur ASI (with her RTI) (with her LTI)##

17. It will be seen from the above statement that Balwinder Kaur did not state that her father was present when her husband set her on fire. She has stated that she rushed outside with flames. She cried. On hearing her shrieks, the neighbours gathered and extinguished the fire. She could not remember who they were. She has further stated : "Meanwhile my father Shri Nasib Singh also came there. They removed me to hospital at Bhogpur." It may be recalled that the incident occurred at 8.00 a.m. She was taken to Bhogpur Civil Dispensary at 10.15 a.m. The dispensary at Bhogpur was just about 200 yards from the house. She was therefore, lying in the house for about two hours. Nasib Singh might have reached there in that interval. It might be her impression when she saw him. His presence with his son PW 7 was admitted at the Jullundur Hospital and thereafter at Ludhiana.

18. The evidence of Avatar Singh, DW 1 has got to be referred only to be rejected. He is a total liar, as the trial court has correctly said so. He has stated that when he came to the house of accused, it was bolted from inside. If that is so, he could not have seen Balwinder Kaur in flames. He could not have entered the house to help her. He has stated that he went to Bhogpur Dispensary along with the accused. But he did not tell the doctor there that he had sustained burn injuries while extinguishing the fire on the deceased. He is a co-worker in the sugar mill at Bhogpur where the father of accused also works. He has produced a certificate from doctor of the Sugar Mill Dispensary stating that he had superficial burn injuries in his hand. But the doctor has not been examined to speak to the contents of the certificate. The trial court, therefore, was justified in discarding his testimony and the certificate as wholly unreliable.

19. It is true as this Court has observed in Dalip Singh v. State of Punjab ((1979) 4 SCC 332 : 1979 SCC (Cri) 968) that the practice of Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged and it would be better to have dying declaration recorded by Magistrate. But no hard and fast rule can be laid down in this regard. It all depends upon the facts and circumstances of each case.

20. In this case, ASI belongs to the police station at Bhogpur. Upon intimation by wireless message that Balwinder Kaur was admitted in Ludhiana Hospital, he straight went to that place. He met the

doctor and recorded Balwinder Kaur's statement. The FIR was issued on the basis of that statement. It was then an offence under Section 307 IPC. The investigation went on accordingly at Bhogpur. The police station at Bhogpur is 92 kms from Ludhiana and we are told that Bhogpur is in a different district altogether. In these circumstances, we cannot find fault with the ASI for not getting the dying declaration recorded by a magistrate.

21. The question now to be considered is whether the dying declaration was free from influence and faithfully recorded ? As we have earlier stated that the couple got married just three months prior to the murder. There appears to be no reason for Balwinder Kaur to implicate her newly married husband as an accused in the case. She has given reasons why she was set on fire. She has stated that she was subjected to ill-treatment and harassment by her husband for not satisfying the dowry demand. Apparently, there is no reason to discard these allegations.

22. The evidence of ASI PW 9 remains unchallenged. It is corroborated by the testimony of doctor PW 3. He has certified that Balwinder Kaur was in a fit condition to make statement. He has testified that ASI has correctly recorded the statement made by Balwinder Kaur. He has also stated that the statement was read over to Balwinder Kaur before she affixed her thumb impression. The doctor who was on duty and who treated Balwinder Kaur has signed the statement. He is the most acceptable witness in this case. His evidence ought not to have been discarded by the High Court.

23. The evidence on record also indicates that there was none else in the room except the doctor when ASI recorded the dying declaration. We have, therefore, no reason to doubt the correctness and authenticity of the dying declaration in question.

24. As to the legality of the dying declaration, this case is on a better footing. It was recorded before investigation commenced. Even the FIR was issued later. The ASI did not record the dying declaration in the capacity of an investigating officer. A dying declaration recorded under similar circumstances has been accepted by this Court in *Munna Raja v. State of Madhya Pradesh* ((1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764) Chandrachud, J. as he then was speaking for this Court observed at p. 767 : [SCC p. 107, SCC (Cri) p. 379, para 9]

In regard to the second dying declaration, Ex.P. 14, the main objection of the learned counsel is that it was made to the investigating officer himself and ought therefore be treated as suspect. In support of this submission, reliance was placed on a judgment of this Court in *Balak Ram v. State of U.P.* ((1975) 3 SCC 219 : 1974 SCC (Cri) 837) The error of this argument consists in the assumption that the dying declaration was made to an investigating officer. The statement, Ex.P. 14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information was recorded, and indeed because of it, that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House Officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the statement. The judgment on which the counsel relies has therefore no application.

25. In the result, we allow the appeal, reverse the judgment of the High Court and restore that of the trial court. The accused is custody. He shall undergo the remaining part of the sentence.

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