

Kishan Lal Sethi

Vs

Jagan Nath and Others

Criminal Appeal No. 464 of 1984

(S. R. Pandian, K. Jayachandra Reddy JJ)

17.04.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. This appeal on special leave being granted by this Court is directed against the judgment of the Punjab and Haryana High Court acquitting the accused, the respondent herein.
2. The accused were tried for offences punishable under Sections 302/34, 120-B and 506 IPC. The learned Sessions Judge, Karnal convicted all the three and sentenced them to undergo imprisonment for life under the first two charges and sentenced to six months' rigorous imprisonment under the third charge. The High Court reversed the same.
3. The prosecution case is that the deceased Smt. Kanchan was the wife of one Arun Kumar, respondent 2, respondent 1 is his father and respondent 3 is his mother. Arun Kumar's sister Prem Lata was also tried along with them but was acquitted by the trial court. It is alleged that the deceased did not bring with her the necessary dowry and on that account the accused were ill-treating her and bore grudge against her. On June 28, 1983 at about 6.30 a.m. all the accused inspired to do away with the life of Smt. Kanchan. Consequently they sprinkled oil on her and set her on fire and shut her up in the bathroom. The deceased cried for help whereupon the neighbours reached and the accused said to them that there has been a short circuit and a towel has been burning and he insisted that it was their household affair. About half an hour later the deceased was brought on a cot in a burnt condition and was taken to the hospital, where her dying declaration was recorded by the Judicial Officer at about 9 a.m. PW 1, Dr. A. N. Bajaj who admitted her in the hospital, treated her. Later she succumbed to the burn injuries. The police, who was already in the picture continued the investigation and held the inquest. One Dr. O. P. Chugh, PW 8 Director of the Forensic Science Laboratory. Haryana also inspected the spot and prepared a rough site plan and took photographs. After completion of the investigation the charge-sheet was laid. The prosecution examined 14 witnesses. The accused denied the offence. Their plea was that it was an accident.
4. The case rests mainly on the circumstantial evidence. In the dying declaration which was recorded by the Judicial Officer, the deceased, however, stated that she caught fire while preparing tea and her husband, mother-in-law and sister of her husband came to her rescue and the mother-in-law brought her to the hospital. The learned Sessions Judge was not prepared to accept this dying declaration. He held that the deceased made her statement due to fear of death of her children at the hands of the accused and accordingly he has excluded the same from consideration. Relying on the other circumstantial evidence he excluded the theory of accident and suicide and held that it was a case of homicide. He further held that the three respondents conspired and they were responsible for

the death of the deceased. He acquitted the sister of Arun Kumar respondent 2.

5. The High Court elaborately dealt with the dying declaration and reached the conclusion that in view of the said statement the accused cannot be held guilty and accordingly acquitted them. In this appeal, Shri Yogeshwar Prasad, learned counsel strenuously contended that the circumstances are conclusive and the reasoning of the trial court in convicting the accused is very sound and the appellate court grossly erred in interfering with the judgment of the trial court.

6. A perusal of the judgment of the Sessions Court shows that the learned Judge mainly relied on the particulars of the scene recorded by Dr. Chugh. PW 14, the Inspector recovered a piece of skin sticking to the door of the bathroom and rubber band, wax and burnt hairs. The learned Sessions Judge also referred to the particulars of the bathroom and it was opined that the doors of the bathroom were bolted from outside and not from inside. Dr. Chugh in his observation report has also noted that the deceased caught fire or was burnt in the bathroom and on the basis of these findings the trial court ruled out the theory of accident and also the theory of suicide. The learned Sessions Judge, as already noted excluded the dying declaration and relying on these circumstances held that the chain is complete and is sufficient to hold the accused guilty. The High Court dealt with the dying declaration elaborately and disagreed with the trial Judge that the deceased at the time of making the statement was under the influence on the accused. It held the declaration was voluntary.

7. The dying declaration read thus :

"I caught fire while preparing tea. I was preparing tea today June 28, 1983, at 6.30 a.m. None else was present in the kitchen. Nobody had put me ablaze. When I caught fire all had come to my rescue. My husband, my mother-in-law, and the sister of my husband had come. My mother-in-law etc. had brought me to the hospital. My saree had caught fire from the stove. On catching fire when I raised shrieks all had reached there. I do not know if any neighbour had come or not.

I am making this statement with full senses and without any outside pressure.

Sd/- Randhir Singh J.M.I.C. (Duty) June 28, 1983 9 a.m."##

The statement is recorded by a responsible Judicial Officer. PW 1, the doctor deposed that when he was on casualty duty the deceased was brought to the hospital in a seriously burnt condition and she was followed by her husband, mother-in-law etc. He examined her and sent an intimation to the police. He also deposed that the Magistrate also came at about 9 a.m. The Magistrate, who is examined as PW 3, deposed that he went to the casualty ward and recorded the dying declaration of the deceased in the presence of the doctor and that before recording the dying declaration he obtained the opinion from the doctor that the deceased was in a fit condition to make a statement. In his cross-examination he also asserted that he was satisfied that the deceased made the statement voluntarily without any fear, persuasion or pressure.

8. In *Kushal Rao v. State of Bombay* (1958 SCR 552 : AIR 1958 SC 22 : 1958 Cri LJ 106) it is held that a dying declaration properly recorded by a competent magistrate as far as practicable in the words of the maker stands on a much higher footing than a dying declaration which depends upon oral testimony.

9. Having examined the contents of the dying declaration carefully we are unable to see any reason

to interfere with the findings of the High Court particularly this being an appeal against acquittal. The learned Sessions Judge excluded the dying declaration under the impression that it was made in a sense of fear. We do not find any basis for the same particularly in view of the evidence of the magistrate referred to above. We find merits in this appeal. It is therefore dismissed.

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