Dharam Pal

Vs

State of Punjab

Criminal Appeal No.534 of 1981

(M. M. Punchhi, B. P. Jeevan Reddy JJ)

26.03.1992

JUDGMENT

1. This appeal under S.379 of the Code of Criminal Procedure is against the judgment and order of the Punjab and Haryana High Court passed in Criminal Appeal No. 920 of 1978 where by the acquittal of the present appellant recorded by the Additional Sessions Judge, Ludhiana was upset and the appellant was convicted for offence under S. 302, I.P.C. on the verdict that he had caused the murder of his wife by burning her.

2. The case predominantly rests on the dying declaration of the deceased named Kamlesh Kumari made before Shri Baldev Singh P.W. 3, a Judicial Magistrate, 1st Class, Ludhiana, recorded at the instance of the Investigating Officer. That statement reads as follows:

> "I was married to Shri Dharam Pal Kaushal on 19th August, 1976. My parents live at Kaithal, where the marriage was solemnised. I have not given birth to any child. Today I have been caught by fire. Kerosene oil is coming out of my clothes. My husband had thrown kerosene oil. My husband has put me on fire with the match box. I was alone in the room. It was about 3 p.m. I had raised raula. All had come on hearing the raula. My sus (mother-in-law) had also come. My jeth (husband's elder brother) had also come. My, two ninands (husband's sisters) had also come. Mother-in-law and husband's sisters had put cloth on me. My husband had gone from that place. Thereafter I was brought to the hospital. Sometimes I had a quarrel with my husband. The quarrel used to occur in the house for one reason or the other.
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> The trial Judge believed Shri Baldev Singh P. W. 3 to the effect that he had recorded such statement and that his evidence was otherwise unquestionable. The trial Judge, however, picked holes in the dying declaration by dissecting it to the point of hair splitting terming (trimming) most of it as wholly unnecessary and entertained the doubt that perhaps it had been tutored. The High Court, however, reiteratingly kept believed Shri Baldev Singh P.W. 3 but accepted the dying declaration discovering no cause to treat it tutored.

3. As is evident, the deceased had in her dying declaration positively accused her husband, the appellant herein, of putting her to fire after throwing kerosene oil on her. Significantly, the deceased even though mentioning that there were temperamental differences between her and her husband never involved her husband's family members such as his mother, elder brother or sisters to have

anything to do with the crime. According to Shri Baldev Singh, the deceased made a statement without any interruption and without any guiding. It is possible to visualise and grasp the mental and physical condition of the deceased while making the statement close as she was to her death. The mere fact that when she had occasion to mention about the appellant to the two Doctors attending on her and before whom she had merely blamed her fate to be responsible for her agony is no reason to term the dying declaration as made up or tutored. It remains unquestioned that the immediate family of the deceased were residents of Kaithal, a town in the adjoining State of Haryana and by the time the dying declaration had been recorded none of them had reached Ludhiana. Suggestion was put that one Anju, a friend of the deceased who was also married at Ludhiana had coerced in the meantime the deceased to name her husband as the culprit. We cannot accept such a suggestion even for a moment. Substitution of the culprit is almost unknown; addition is known to be possible. We cannot be led to believe that the deceased substituted her husband as the culprit of the crime in place of, another. As said before, the deceased had completely left out the other members of the family of her husband who could possibly have been added as instigators or participators if the dying declaration was a tutored one. These arguments are accordingly repelled.

4. The theory of suicide of deceased even though suggested is totally ruled out. It, is difficult to believe that on mere temperamental differences, as admitted by the deceased, she had led herself towards ending her life that fateful afternoon when the immediate cause of it is not evident either from the dying declaration or any other material on the record. Her marriage being hardly a year old was in the course of the usual "wear and tear". There is circumstantial evidence that the occurrence did take place at about 3 p.m. on the fateful day, when she was lying on the cot on which she had spread a mattress and a bed sheet. Those were found by the Investigation Officer to be soiled with kerosene. At that napping moment, the deceased was an easy victim to be poured over kerosene oil, instantly drenching her clothes and putting her on fire. Nor much time would be required to accomplish such an act and having achieved his purpose the appellant leisurely could walk away from that place. Such is suggestive from the subsequent conduct of the appellant.

5. We have been advised by. learned counsel for the appellant that we should opine that the learned trial Judge took a reasonable view and so we should restore that view in place of the one taken by the High Court. We do not accept this argument. The judgment of the High Court reveals how it has met point by point and step by step the reasoning of the trial Judge. In our opinion, the High Court's view is not only a reasonable one but is the only reasonable view possible in the circumstances. As an appellate Court to correct errors, the High Court was justified and right in the present set of circumstances to upset the order of acquittal. We concur with the same even on our own analysis of the situation.

6. Accordingly, for what we have said above, this appeal fails and is hereby dismissed. Appeal dismissed.

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