

Shakuntala

Vs

State of Punjab

Criminal Appeal No. 585 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

15.09.1992

JUDGMENT

1. Shakuntala, a lady, is the sole appellant herein. She was a teacher. She was found guilty for causing the death of Arun Bala, the deceased in this case, by pouring kerosene oil on her clothes and setting fire. The occurrence is said to have been taken place on 27-4-1978 at about 6.00 p.m.
2. The case rested mainly on the dying declaration alleged to have been made by the deceased Arun Bala and recorded by the Assistant Sub-Inspector, P.W. 11 in the hospital to which a certificate was appended to by a doctor, P.W. 7, who was said to be present at the time of recording the dying declaration. Along with the appellant one Devinder Kumar the brother of the husband of the deceased was also tried but he was acquitted. The trial court, entirely relying on the dying declaration, convicted the appellant and the same was upheld by the High Court.
3. The prosecution case is as follows:

The appellant, Shakuntala, aged about 44 years was a teacher. She was living in the neighbouring house along with her five children. The deceased along with her husband Vijay Kumar and his brother Devinder Kumar and her father-in-law Thakar Dass was living in a room on the ground floor of the another house. It was alleged that the appellant developed illicit relations with Thakar Dass, the widower, the father-in-law of the deceased. It was also suspected that the husband of the deceased or his brother Devinder Kumar, the other acquitted accused had also illicit intimacy with one of the daughters of the appellant. The further case of the prosecution was that the deceased objected to these illicit relations and, therefore, the appellant bore grudge against the deceased. On the day of occurrence at about 6.00 p.m. while the deceased was in the kitchen, the appellant is alleged to have come there and sprinkled kerosene oil on her clothes and set fire. The deceased ran out of the kitchen with the burning clothes. The neighbours including P.Ws. 2 and 3 gathered there and that the injured was taken to the hospital by her husband. P.W. 1, the doctor, who was present in the hospital admitted her, and he along with P.W. 7 who was in charge of the injured, noted that it was a case of cent per cent burns. An intimation was given to the police. P.W. 11, the sub-inspector of police came to the hospital. At about 8 p.m. she was found to be not in a fit condition to make any declaration. Then again at about 10 p.m. she seemed to have improved. P.W. 9 gave a certificate that she was in a fit condition to make a statement. P.W. 11 Assistant Sub-inspector, recorded the

dying declaration in the presence of P.W. 9. On the basis of this dying declaration the case was registered. On the same night the deceased died. The post-mortem was conducted and the medical evidence was to the effect that she died because of the third degree burns which were cent per cent. The accused pleaded not guilty. The trial court acquitted Devinder Kumar holding that no case is made out against him.

4. It is well settled that to base a conviction on the basis of dying declaration, the court must satisfy that it is wholly reliable and it should not suffer from any major infirmity. If there are some infirmities then the court should examine whether they are fatal or whether there is any corroborating evidence which supports the prosecution case and renders the dying declaration acceptable. In this case, the evidence of P.Ws. 2 and 3 would show that the deceased was in the kitchen and the door of the house was bolted from inside and that later it was broken. On that basis and on the basis of other circumstances it was contended before the courts below that it was a case of suicide. Both the courts below had rejected the same and this takes us to the question whether the dying declaration in question is reliable. The true translation of the dying declaration reads thus:

"Today, in the evening Shakuntala teacher came to our house. My brother-in-law (Devar) namely Bhola was also present at the house. Shakuntala sprinkled kerosene oil on my clothes and set on fire. My father-in-law Thakar Dass was also present at the house. They also gave me beating. My father-in-law has illicit relations with Shakuntala teacher while my husband has illicit relations with the daughter of Shakuntala. In order to kill me they have sprinkled kerosene oil on me. Om Parkash and Ram Dass neighbours and many others came there. Sd/- Kishori Lal, Assistant Sub-Inspector, Police Station Div. No. 3 Jullundur City. 26-4-78, 10-15 p.m.

She is fit to make statement.

Smt. Arun Bala above recorded in my presence. She remained fit throughout to recording of statement. All fingers are burnt badly hence thumb impression cannot be had.

Sd/- Shanagara Singh

26-4-78.

5. No doubt in the first part of the statement we find that the appellant sprinkled kerosene oil and set her on fire. But in the very next sentence she has stated that her father-in-law Thakar Dass who was said to have illicit relations with the appellant was also present in the house. Then the declaration said "They also gave me a beating"; and then she stated about the illicit relations between the appellant and Thakar Dass, her father-in-law. She then proceeded to say that her husband also had illicit relations with one of the daughters of the appellant while the prosecution case is that it was Devinder Kumar who had illicit relations with the daughter of the appellant and that was the reason why he was made an accused. Then there is also a statement that "In order to kill me they have sprinkled kerosene oil on me". This only means that all the people mentioned in the statement sprinkled kerosene and set her on fire. Thus there are inconsistencies in the dying declaration. The medical evidence shows that the burns were cent per cent and for some time she was unconscious and that she was not in a fit condition to make a statement. P.W. 9 in cross examination has admitted that even up to 8-15 p.m. she was not in a fit condition to make a statement. It also becomes doubtful whether she was in a proper mental condition or not while making such a statement. All

the documents also go to show that she was not in a fit condition to make a statement. Under these circumstances, we find that it is highly unsafe to base the conviction entirely on this kind of dying declaration. Consequently, we set aside the conviction and the sentence awarded against the appellant. The appeal is allowed.

6. We are told that the appellant is on bail. Her bail bond shall be treated as cancelled.

Appeal allowed.

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