

Babu Ram

Vs

State of Punjab

(G. T. Nanavati, V. N. Khare JJ)

05.02.1998

JUDGMENT

NANAVATI J

1. The three appellants were tried in the court of Sessions, Bhatinda in Sessions Case No. 73 of 1987 for the offence punishable under Section 302 read with Section 34 IPC. The charge against them was that appellant No.2 - Krishna Devi, the mother-in-law of Santosh Rani, poured kerosene on her and Babu Ram, the Father-in-law, threw a lighted match stick on her and when Santosh Rani was trying to run out of the room, her husband- Rajinder Kumar- Appellant No.3 had tried to bolt the door. It was also the prosecution case that all the three and set her on fire because they felt that sufficient dowry was not given to her by her parents.

2. The defence of appellant Babu Ram was that he was not in the house at the relevant time as he had already left at about 8.30 a.m. for the shop in which he was working. Krishna Devi's defence was that she was washing clothes in the court yard of their house and was not present in the room on the first floor where the incident of burning had taken place. The defence of the husband was that he was taking bath on the ground floor at that time.

3. The trial court believed the pleas of Babu Ram and Krishna Devi but disbelieved the explanation of Rajinder Kumar. It, therefore, acquitted Babu Ram and Krishna Devi but convicted Rajinder Kumar for the offence punishable under Section 302 IPC.

4. Rajinder Kumar filed Criminal Appeal No. 389/DB/88 before the High Court challenging his conviction. The State also filed Criminal Appeal No.138/89 challenging the acquitted of Babu Ram and Krishna Devi. Both the appeals were heard together by the High Court and by a common judgment they were disposed of. The High Court confirmed the conviction of Rajinder Kumar and also set aside the acquitted of Babu Ram and Krishna Devi as it held both the dying declarations made Santosh Rani were true and there was no good reason to disbelieve them.

5. Aggrieved by their conviction, all the appellants have filed this appeal. It was submitted by learned counsel for the appellants that Santosh Rani could not have made the dying declaration as she could not have been in fit state of mind as she had received 60% burns and was given an injection of Morphin about an hour before her dying declaration was recorded. However, this contention cannot be accepted in view of the categorical evidence of the Doctor who has stated that she was in a fit state of mind when she made the statement. The Judicial Magistrate, who recorded the dying declaration, has also stated that he had enquired from the Doctor whether she was in a fit state of mind and after Doctor Garg certified her to be so and finding her fit he had recorded the

statement.

6. We, therefore, see no reason to doubt the genuineness of the dying declaration -Ex. PG/1. The second dying declaration- Ex. PH was recorded by ASI, Jagdish Singh, sometime after the dying declaration Ex. PG/1 was recorded by the Judicial Magistrate. In that dying declaration also, Santosh Rani had given same version. In fact, it was recorded as the First Information Report and subsequently treated as dying declaration after she died. We are, therefore, of the opinion that the High Court was right in relying upon both the dying declarations.

7. In the two dying declarations, what Santosh Rani had stated was that her mother-in-law had poured kerosene over her and the father-in-law had thrown a lighted match stick and set her on fire. The only part stated to have been played by the husband was that when she was trying to go out of the room, he had attempted to both the door so as to prevent her from going out to the house. Therefore, even that accepting the two dying declaration as true if cannot be said with reasonable certainty that the husband was also a party to the commission of the offence. The version of the husband was that at the time of the incident, he was taking bath on the ground floor. It therefore, appears that on coming to know that something had happened on the first floor, he went there and seeing her in flames he had tried to both the door with a view to prevent the outsiders from coming to know about the incident. Nothing else was alleged against the husband. The evidence against the husband was thus not sufficient to warrant his conviction under Section 302 read with Section 34 IPC. This aspect has been overlooked by the High Court.

8. We, therefore, dismiss the appeal of Babu Ram and Krishna Devi and allow the appeal of Rajinder Kumar. Appellant - Rajinder Kumar is acquitted of the charge levelled against him and his bail bonds are ordered to be cancelled. Appellants Babu Ram and Krishna Devi were also released on bail during the pendency of the appeal. Their bail is cancelled and they are ordered to surrender to custody to serve out the remaining part of the sentence.