

Jai Prakash and Others

Vs

State of Haryana

Criminal Appeal No. 742 of 1997

(G. T. Nanavati, S. P. Kurdukar JJ)

30.07.1998

JUDGMENT

NANAVATI, J. –

1. The four appellants are challenging in this appeal the judgment and order passed by the High Court of Punjab and Haryana in Criminal Appeal No. 242 DB of 1994. All of them were convicted by the trial court under Section 302 read with Section 34 IPC. The High Court confirmed their conviction.

2. What has been held proved against the appellants is that in view of a dispute regarding their share in the land belonging to the family, they caused the death of Sushma, their brother's wife, by calling her at their house and afterwards pouring kerosene over her body and setting her ablaze. There was no direct evidence. The prosecution had relied upon the dying declaration, Ex. PJ to prove its case. The trial court accepted the dying declaration as genuine and true and convicted all the four appellants. The High Court also on reappraisal of the evidence accepted the dying declaration as genuine and true and thought it safe to confirm their conviction on the basis thereof.

3. It was urged by the learned counsel for the appellant that no reliance whatsoever should have been placed upon the said dying declaration as it was recorded on 7-10-1990; and even though Sushma survived till 11-10-1990, no further attempt was made to get her regular dying declaration recorded by a magistrate. In our opinion, the submission made by the learned counsel is misconceived. As Sushma was taken to the hospital with burns, the hospital authorities informed the police. The police after going there, recorded the statement of Sushma. It was then in the nature of a complaint and was later treated as a dying declaration because she died. Whether the police could have recorded a regular dying declaration or not was a matter for cross-examination of the Investigating Officer. In the absence of such cross-examination, it cannot have any bearing on the correctness or otherwise of the statement recorded on 7-10-1990. The said statement was sent to the police station at about 1.30 p.m. and the FIR was recorded at 3.30 p.m. A copy of the said FIR was received by the Magistrate on 8-10-1990 at about 10.00 a.m. Therefore, there is no scope for doubting the genuineness of that statement in this case. We are emphasising this aspect because it was also contended by the learned counsel that the dying declaration, Ex. PJ was not her statement at all. Only a vague suggestion was made to the Investigating Officer and to the doctor that no statement at all was made by the deceased. This suggestion was denied by both of them. There is nothing on the basis of which it can be said that there is any substance in that suggestion.

4. It was next contended that no weight ought to have been given to that statement as it was not attested by the doctor and no endorsement was made thereon to show that the statement was made

by Sushma while she was mentally and physically fit to make such a statement. This submission is also misconceived as it proceeds on an erroneous assumption that what was recorded by the police officer was a dying declaration. As he recorded a complaint, it was not necessary for him to keep any doctor present or obtain any endorsement from him.

5. It was next submitted that when she was taken to the hospital at 7.30 a.m., she was not replying to the questions properly as deposed by the first doctor who had examined her. This submission has also no substance because thereafter she was given treatment and the evidence shows that thereafter she was in a fit condition to make a statement. It was not even suggested to the police officer that she was not able to speak clearly. No attempt was made in the cross-examination of the doctor to show that her condition had not improved between 7.30 a.m. and 1.30 p.m. and, therefore, this submission also deserved to be rejected.

6. It was next contended by the learned counsel that the statement was not recorded in question-and-answer form and therefore no weight should be attached to it. It also deserves to be rejected as misconceived because a complaint is required to be recorded in question-and-answer form even though there is a possibility that later on it might be treated as a dying declaration. This dying declaration receives corroboration from the site inspection report and also by the application, Ex. PL referring to the compromise arrived at on the previous day.

7. The decisions relied upon by the learned counsel namely, *Munnu Raja v. State of M.P.* ((1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764), *Dalip Singh v. State of Punjab* ((1979) 4 SCC 332 : 1979 SCC (Cri) 968 : AIR 1979 SC 1173) and *State (Delhi Admn.) v. Laxman Kumar* ((1985) 4 SCC 476 : 1986 SCC (Cri) 2 : AIR 1986 SC 250) have no relevance to the facts of this case. In those cases, dying declarations were recorded by the police officers during the course of investigation and were found to be suffering from defects of the kind submitted by the learned counsel.

8. As we find no substance in any of the contentions raised by the learned counsel, this appeal is dismissed.