

Harjit Kaur

Vs

State of Punjab

Criminal Appeals No. 822 of 1997 with No. 823 of 1997

(G. T. Nanavati S. N. Phukan JJ)

22.07.1999

JUDGMENT

NANAVATI, J. -

1. The three appellants, in these two appeals, have been convicted under Section 302 IPC for causing death of Parminder Kaur. The appellant in Criminal Appeal No. 822 of 1997 is Harjit Kaur, the mother-in-law of Parminder Kaur. The two appellants in Criminal Appeal No. 823 of 1997 are Charan Singh and Sukhjeet Singh, the father-in-law and husband of Parminder Kaur.

2. What has been held proved against them is that they were not satisfied with the dowry brought by Parminder Kaur and, therefore, they used to ill-treat her and beat her also. Ultimately on 30-4-1992 at about 2.00 a.m. they killed her by pouring kerosene over her body and then applying a lighted matchstick to her clothes.

3. The trial court convicted the three appellants and one Gurjit Singh, brother-in-law of Parminder Kaur, mainly relying upon the dying declaration made by Parminder Kaur on 3-5-1992. The High Court has also believed the dying declaration and confirmed the conviction of the appellants, but gave benefit of doubt to the brother-in-law.

4. The contention of the appellants in these appeals is that the dying declaration made by Parminder Kaur does not deserve to be accepted and in any case cannot be made the sole basis of conviction of the appellants. The dying declaration, Exhibit PL, was recorded by Additional District Collector, Vijay Kumar Janjua (PW 7), who was then working as Sub-Divisional Magistrate at Ludhiana. He has deposed that on 2-5-1992, he had received an application addressed to the District Magistrate and sent to him by the District Magistrate, for recording the dying declaration of Parminder Kaur. He had forwarded it to the Tehsildar but as the Tehsildar was not available it was returned. He then sent it to the Executive Magistrate for taking action on it. He was also not available. So on 3-5-1992, he went to the hospital and recorded her dying declaration. He has also stated that he enquired from the doctor-in-charge as to whether she was in a fit condition to make a statement. After the doctor confirmed that she was fit and made an endorsement to that effect on the application, he proceeded with the work of recording the dying declaration. He had put questions to Parminder Kaur to ascertain whether she was able and willing to make a statement. Only thereafter he recorded what she had to state. He has, further stated that she spoke in Punjabi and he wrote down what she had stated after translating it in English. Thereafter the statement was explained to her and her thumbmark was obtained on it.

5. It was submitted by the learned counsel for the appellants that about hundred persons had

approached the District Magistrate for getting the dying declaration of Parminder Kaur recorded and that some of the relatives of the deceased had even accompanied the SDM (PW 7) while he was going to the hospital for recording her dying declaration. He also submitted that the evidence of this witness discloses that three to four persons were present in the room where Parminder Kaur was kept. According to the learned counsel these two circumstances clearly indicate that PW 7 had recorded the dying declaration under pressure and in the presence of those persons who were interested in Parminder Kaur. We do not find any substance in this contention because this witness has categorically stated in his examination-in-chief that when he was recording her statement, nobody was present in the room and even the nurse attending on her was asked to get out of that room. What he has stated in cross-examination is that when he had reached that place, three or four persons were seen sitting in the room. Therefore, it is not correct to say that the dying declaration was recorded in the presence of some relatives of the deceased. The other circumstance that there was an agitation by the relatives of Parminder Kaur for recording her statement cannot lead to an inference that PW 7, who was an IAS officer and holding high position of Sub-Divisional Magistrate had recorded it under pressure and as desired by the relatives of the deceased. There was no reason for him to do so. As regards the condition of Parminder Kaur, the witness has stated that he had first ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect. Merely because that endorsement was made not on the dying declaration itself but on the application, that would not render the dying declaration suspicious in any manner. The said endorsement made by the doctor was produced by him and it has become evidence in the case.

6. It was further submitted by the learned counsel that the statement of Parminder Kaur was not recorded by the witness in question and answer form. The evidence of the witness is that she narrated the incident and therefore the dying declaration is not in the question-answer form. It was then contended by the learned counsel that the dying declaration bears her thumbmark but according to the medical evidence, the skin over the two thumbs was burnt and, therefore, the SDM could not have obtained her thumb impression on it. Whatever impression could be taken was taken by the SDM. The medical evidence in this case does not disclose that she could not have put her thumbmark on the dying declaration. We fail to appreciate how this circumstance can create any doubt regarding the evidence of this witness or genuineness of the dying declaration. PW 7 was an independent witness and was holding a high position and had no reason to do anything which was not proper or correct. Except a bare suggestion made to him that the dying declaration was manufactured by him after her death, we do not find anything in his cross-examination as would create any doubt regarding the truthfulness of what this witness has deposed. We fully agree with the finding recorded by the courts below that the dying declaration was voluntarily made by Parminder Kaur and that it was correctly recorded by PW 7.

7. It was then contended by the learned counsel that this dying declaration should not be accepted as true because in her first dying declaration made to the police officer on 30-4-1992, Parminder Kaur had stated that she had received burns as a result of an accident and that no one else was responsible for the same. Both the courts below after considering this inconsistency have thought it fit to rely upon the second dying declaration. It has been rightly held as an attempt on her part to save her husband and the in-laws. The circumstance clearly indicates that she was not a free person then. The reasons given by the trial court and the High Court for not considering the first dying declaration as voluntary and true are quite convincing and we see no reason to differ from them. Therefore, the second dying declaration cannot be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second dying declaration appears to be more probable and natural. If she had really received injuries at 2.00 a.m., because of bursting of

stove, then her in-laws would have taken her to the hospital immediately and would not have waited till 7.30 a.m. They would have informed the parents of Parminder Kaur as early as possible. They were not informed for two days in which hospital their daughter was admitted. All the circumstances indicate that the first dying declaration made before the police officer was not a correct one. As we find that the appellants have been rightly convicted, both these appeals are dismissed.