

Balbir Singh

Vs

State of Punjab

Criminal Appeal No. 759 of 1998

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

19.08.1999

JUDGMENT

G.T. Nanavati, J. –

1. The appellant had married Sukhwinder Kaur (the deceased) about four years before the date of incident which took place on 10.12.1990. The prosecution case was that neither the appellant nor other family members liked Sukhwinder Kaur and all of them had desired that she should die so that the appellant can marry again. It was also the prosecution case that on 10.12.1990, the appellant gave some tablets to Dhan Kaur, his mother, for giving them to Sukhwinder Kaur who was not feeling well. As a result of taking those tablets she became restless and was required to be taken to Civil hospital at Barnala on the same day in the evening. On being informed about the condition of Sukhwinder Kaur, the police had gone to the hospital and recorded her statement (Exhibit PW 8/B) and on the basis thereof an offence was registered under Section 304-B I.P.C. against the appellant and Dhan Kaur. Her dying declaration was also got recorded through a Judicial Magistrate on 11.12.1990 when she was in the hospital at Ludhiana. Sukhwinder Kaur expired on 12.12.1990 and the offence, which was earlier registered under Section 304-B IPC was converted into an offence under Section 302 IPC.

2. The appellant and Dhan Kaur were than charge-sheeted and tried for the offence punishable under Section 302 read with Section 34 IPC and in the alternative under Section 304-B read with Section 34 IPC. The Trial Court convicted both under Section 302 read with Section 34 IPC. They challenged their conviction by filing an appeal in the High Court but the same was dismissed. The present appeal is filed by Balbir Singh, the husband, and he is challenging his conviction on the ground that he could not have been convicted under Section 302 read with Section 34 IPC on the basis of the evidence led in this case.

3. The only evidence against the appellant was an extra judicial confession stated to have been made by the appellant before the Sarpanch of the village, the dying declaration of Sukhwinder Kaur recorded by the Police on 10.12.1990 and the dying declaration recorded by the judicial Magistrate on 11.12.1990. Both the Trial Court and the High Court relied upon the two dying declarations and also the extra judicial confession for the purpose of convicting the accused. It was submitted by the learned counsel for the appellant that the Courts below have committed a grave error in relying upon the extra judicial confession as it was highly improbable that in absence of any relationship with the sarpanch or for any other good reason, the appellant would have gone to the Sarpanch and confessed that he had purchased the poisonous tablets which led to the death of Sukhwinder Kaur. If what the Sarpanch has deposed was really true, the investigating officer would have then tried to find out from whose shop the tablets were purchased. No such attempt was made. The evidence of

Sarpanch is not such as could have been accepted without any independent corroboration. Even the trial Court and the High Court have not considered the said extra judicial confession as sufficient to prove the guilt of the appellant. It has been regarded as a piece of evidence furnishing independent corroboration to the dying declarations. An extra judicial confession even if believed is considered a very weak piece of evidence and ordinarily is not accepted without independent corroboration. In this case, it was of a doubtful character and therefore it was wrong to rely upon it and hold that it afforded good corroboration to the dying declarations.

4. The two dying declarations are also not consistent as regards the part played by the appellant. In the First Information Report-cum-Dying declaration, Sukhwinder Kaur had stated that on 10.12.1990 both the appellant and Dhan Kaur had administered tablets to her. When that statement is scrutinised carefully it becomes apparent that what Sukhwinder Kaur had stated against the appellant was by way of an inference and not as a statement of fact because in that statement itself she had stated that the tablets were given to her by Dhan Kaur and it was Dhan Kaur who had forced her to take those tablets. Moreover, in the second dying declaration Sukhwinder Kaur had not stated a word against her husband as regards giving of tablets to her. In that dying declaration she referred only to Dhan Kaur as the person who had given tablets to her. Thus, there was not clear and sufficient evidence against the appellant to warrant his conviction under Section 302 read with Section 34 IPC. In our opinion Courts below were not justified in holding him guilty for the offence of murder.

5. We, therefore, allow this appeal set aside the judgments of the courts below and also the order of conviction and sentence passed against the appellant.