

SUPREME COURT OF INDIA

Ashok Kumar Kalia

Vs.

State of Punjab

CrI.A.No.1039 of 2003

(B. N. Agarwal and H. K. Sema JJ.)

13.07.2004

JUDGMENT

B.N.Agarwal, J.

1. Heard learned counsel for the parties.
2. The sole appellant along with four other persons was tried and by judgment rendered by the trial Court other four persons were acquitted while the appellant was convicted under Section 302 of the Penal code and sentenced to undergo imprisonment for life. Against the order of acquittal, no appeal was preferred by the State of Punjab whereas conviction of the appellant has been maintained by the High Court of Punjab & Haryana on appeal being preferred by the appellant. Hence this appeal by special leave.
3. The conviction of the appellant was primarily based upon the dying declaration recorded on 10.12.1993 at 6.35 p.m. by the Executive Magistrate P.W.-5. In our view, the High Court has committed a serious error in upholding the conviction by placing reliance on the aforesaid dying declaration which was recorded four days after the alleged occurrence. The prosecution has got exhibited another dying declaration in the present case as Exhibit DB which was also recorded by an Executive Magistrate on the date of occurrence itself, i.e. on 6.12.1993 at 2.55 p.m. in which the victim has clearly stated that she received burn injuries in accidental fire when she was putting oil in the stove and at that time, the stove caught fire while she had gone to the kitchen to boil the water on the stove. In the earliest version, the prosecution has disclosed a case of accidental fire and there is nothing to doubt the veracity of the statement made in the first dying declaration, Exhibit DB, therefore, no reliance can be placed upon the second dying declaration which has been recorded after four days of the occurrence. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding conviction of the appellant.
4. In the result, the appeal is allowed, conviction and sentence of the appellant are set aside

and he is acquitted of the charge. The appellant who is in custody is directed to be released forthwith, if not required in any other case.