

SUPREME COURT OF INDIA

Gulzari Lal

Vs.

State of Haryana

Crl.A.No.92of 2016

(T.S.Thakur and V.Gopala Gowda,JJ.)

02.02.2016

JUDGMENT

V.Gopala Gowda, J.

(Arising Out of SLP (Crl) No.7406 of 2015)

1. Delay condoned.

2. Leave granted.

3. The present appeal arises out of the impugned judgment and order dated 29.05.2012 passed in Crl. Appeal No.367-DB of 2002 by the High Court of Punjab & Haryana at Chandigarh, whereby the High Court dismissed the appeal filed by the appellant upholding the judgment and order of the learned District & Sessions Judge, Fast Track Court, Hisar in Criminal Case No.37 S.C. whereby the learned Sessions Judge had convicted the appellant under Sections 302, 323 read with 34 of the Indian Penal Code (hereinafter referred to as "IPC") and sentenced him to undergo imprisonment for life, along with a fine of Rs.200/-. The appellant was also directed to pay a fine of Rs.200/- under Section 323 of IPC. In case of default of payment of fine of Rs. 400/-, the appellant was further directed to undergo rigorous imprisonment for one month.

4. Brief facts of the case are stated hereunder to appreciate the rival legal contentions urged on behalf of the parties:-

5. The prosecution case before the Trial Court was that on 28.05.1999 FIR No. 281 of 1999 was registered at Police Station, Sadar Hisar against Om Prakash, Gulzari and Kuldeep for committing murder of one Maha Singh, and voluntarily causing injuries to Dariya Singh (eldest son of Maha Singh) and that they have committed offences punishable under Sections 302,323 read with Section 34 of IPC.

6. According to the prosecution, on the intervening night of 26/27.05.1999, Maha Singh was brought to Civil Hospital, Hisar in an injured condition. At 2.15 am, the doctor on casualty duty gave his opinion stating that the injured victim was in a fit condition to make his statement. Head Constable Manphool Singh (PW-7) reached the hospital at 10:00 am and recorded the statement of Maha Singh. Thereafter, the statement of Maha Singh was sent to Police Station at 10.40 am on 27.05.1999 for recording with an endorsement that no cognizable offence has been made out.

7. Subsequently, the condition of Maha Singh started deteriorating and on the night of 27.05.1999 he was referred to PGI Hospital Rohtak. On 28.05.1999, he was transferred to the Government Hospital, Hisar where he was declared by the Hospital as brought dead. On the very same day, intimation was sent to the Police Station and a case was registered under Sections 302 and 323 read with Section 34 of IPC on the basis of the statement of Maha Singh recorded by the Head Constable Manphool Singh (PW-7).

8. The inquest proceeding was conducted and post mortem of the body was done in the Government Hospital. The scaled site plan as well as rough site plan was prepared and the three accused were arrested. On 04.06.1999, ASI Ram Kumar (PW-12) arrested Gulzari Lal (the appellant herein), Kuldeep Singh and Om Prakash (who were co-accused before the Sessions Court). On completion of the investigation by the investigation officer, challan was presented against the appellant and the co-accused before the learned Magistrate.

9. On 18.11.999, charges were framed against the accused persons under the provisions of Sections 302/323 read with Section 34 IPC by the Addl. District & Sessions Judge, Hisar.

10. The prosecution has examined the 14 witnesses at the time of trial and their testimony was recorded before the learned Additional Sessions Judge. The accused persons were examined under Section 313 Cr.P.C. in order to afford them a reasonable opportunity to defend themselves against the evidence on record.

11. On 11.03.2002, the Additional District & Sessions Judge passed the judgment and order by recording the finding that charges against the appellant proved and convicted him along with co-accused Om Prakash and sentenced them for life imprisonment under Sections 302 read with 34 IPC and imposed a fine on each accused of Rs.200/- and further held that accused shall also pay a fine of Rs.200/- under Sections 323 read with 34 IPC. In default of payment of fine of Rs. 400/- the defaulting accused would further undergo rigorous imprisonment for one month. The substantive sentences were ordered to run concurrently. It was further ordered that the period for which the accused have remained in jail as under trial, shall be adjusted against term of imprisonment. The co-accused Kuldeep Singh was acquitted of the charges framed against him.

12. Being aggrieved by the judgement and order passed by the learned Additional Sessions Judge, the accused moved the High Court of Punjab and Haryana by filing Crl. Appeal No. 367-DB of 2002 questioning the correctness of the finding on the charge and sentence

imposed on them. The co-accused Om Prakash died during the pendency of the appeal before the High Court.

13. On 20.5.2012 after re-appreciation of evidence on record, the High Court observed in its order that the case in hand was not only based on the dying declaration of the deceased but also on the un-shattered testimony of the injured eye witness which was deemed to be the base pillar to prove the charges against the accused. The Court further relied on the testimony of Rajinder Singh (PW-11) who stated that he had seen the appellant coming out of the house of Maha Singh (deceased) through the main door. He also claimed to have seen another person climb over and jump the boundary wall of the house. He further stated that he has seen Maha Singh (deceased) and Dariya Singh in an injured condition inside the house. The High Court observed that this proves the fact that the occurrence had taken place on the cot within the house from where, after suffering injuries, the deceased had fallen down. Barring minor contradictions in the evidence which in any case, does not affect the substratum of the prosecution case, the evidence of the abovementioned prosecution witness is quite natural and corroborates the other evidence on record, including the report of the Forensic Science Laboratory as well as the recovery of the murder weapon. The High Court, after hearing the arguments of the learned counsel for both parties, dismissed the appeal having found no merit in it. Hence, the present appeal.

14. Ms. Shalu Sharma, the learned counsel appearing on behalf of the appellant contends that the High Court erred in considering the motive as alleged by the prosecution did not fit in with the pattern of crime for the reason that there was no enmity of the appellant with Maha Singh (deceased). In-fact, the deceased had been witness in a case where the appellant and co-accused were accused. The deceased got the matter compromised resulting in acquittal of Om Prakash (the co-accused) and Dharam Raj. Thus, the deceased had saved the appellant and motive cannot be attributed to the appellant.

15. The learned counsel further contends that the alleged dying declaration of Maha Singh (deceased) is nothing but a concocted story. In fact, deceased did not make any such statement against the appellant during his life time and it was brought into existence after his death so as to lend more weight to the story of the prosecution. His thumb impression was put on paper and it was converted into dying declaration and the statement of Manphool Singh, Head Constable (PW-7) clearly shows the concoction in the prosecution case because of the reason that the injuries on Maha Singh were of such nature that he was not in a condition to make a coherent statement either to the Sub-Divisional Magistrate or any authorised officer.

16. The learned counsel further placed reliance on the Constitution Bench judgement of this Court in the case of *Tarachand Damu Sutar v. The State of Maharashtra*¹, wherein it was held as under:

"21... A dying declaration is not to be Believed merely because no possible reason can be given for accusing the accused falsely. It can only be believed if there are no grounds for doubting it at all."

17. Further reliance has been placed on the judgement of this Court in *Waikhom Yaima Singh v. State of Manipur*², wherein it was held as under:

"20. There can be no dispute that the dying declaration can be the sole basis for conviction however, such a dying declaration has to be proved to be wholly reliable, voluntary and truthful and further that the matter thereof must be in fit medical condition to make it..."

The learned counsel further placed reliance on the decision of this Court in the case of *Nanhar & Ors. v. State of Haryana*³, wherein the Division Bench of this Court opined as under :

"33... The dying declaration should be such, which should immensely strike to be genuine and stating true story of its maker. It should be free from all doubts and on going through it, an impression has to be registered immediately in mind that it is genuine, true and not tainted with doubts."

Further, the reliance was placed in the case of *P. Mani v. State of Tamil Nadu*⁴, wherein the Division Bench of this Court held that:

"14. Indisputably conviction can be recorded on the basis of the dying declaration alone but therefore the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on record suggests that such dying declaration does not reveal the entire truth, it may be considered only as piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them..."

18. On the other hand, Mr. Sanjay Kumar Tyagi, the learned Counsel appearing on behalf of the respondent-State sought to justify the concurrent findings of fact on the charges recorded in the impugned judgment and order passed by the High Court contending that Rajinder Singh (PW-11), who is an eye-witness to the entire incident of murder, has clearly narrated the whole incident in his Examination-in-Chief before the Trial Court and also successfully identified the accused in the Court. ASI Ram Kumar (PW-12), who partly investigated the case also deposed of the same. The deposition of the said witnesses and other prosecution witnesses were found to be reliable and trustworthy by the Trial Court and it has recorded the findings of fact on charges, with reason upon which the High Court also gave a concurrent finding of fact. Therefore, the same need not be interfered with by this Court in exercise of its appellate jurisdiction.

19. We have heard the learned counsel appearing on behalf of both the parties. After carefully examining the concurrent findings recorded by the Trial Court and the High Court

on the charges and on perusal of the material evidence on record, we find that there was no error on the part of the High Court in passing the impugned judgment and order. We concur with the view taken by the High Court in upholding the findings of the Trial Court on the charge of murder and convicting the appellant for offences punishable under Section 302 read with Section 34 IPC.

20. The question raised by the appellant on the issue that no blood stained earth was recovered from the place of crime is not relevant. On this count, the High Court has also noted the laxity on the part of the police and rightfully concluded that the conviction was valid in light of the statements made by the deceased and the witnesses. Further, reliance was placed on the case of *Ram Avtar Rai & Ors. v. State Of UttarPradesh*⁵, wherein the Division Bench of this court held as under:

”10. We agree with the High Court that the occurrence had taken place about 15 paces away from the house of the deceased and P.W.

1. It is true that blood-stained earth has not been recovered from the scene of occurrence by the investigating officer though as stated earlier, the deceased had sustained as many as 5 lacerated injuries besides a number of contusions and abrasion. From the failure of the investigating officer to recover blood stained earth from the scene of occurrence, it is not possible to infer that the occurrence had not taken place in front of the house of the deceased and P.W. 1. The evidence of P.Ws. 2 and 3 could not, therefore, be rejected as unreliable as has been done by the learned Sessions Judge. We agree with the High Court that as the occurrence had taken place in front of the house of the deceased P.Ws. 2 and 3 who are members of the family of the deceased and P.W. 1 are natural witnesses who would have come out of the house on hearing the alarm of the deceased who had received as many as 34 injuries...”

21. We find no infirmities with the statements made by the deceased and recorded by the Head Constable Manphool Singh (PW-7). A valid dying declaration may be made without obtaining a certificate of fitness of the declarant by a medical officer. The law regarding the same is well-settled by this Court in the decision of *Laxman v. State of Maharashtra*⁶, wherein this Court observed thus:

”3. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

Further, clarity on the issue may be established by the judgment of this Court in the case of *Paras Yadav & Ors. v. State of Bihar*⁶, wherein this Court addressed the question regarding the dying declaration that was not recorded by the doctor and where the doctor had not been examined to say that the injured was fit to give the statement. It has been held by this Court as under :

”8....In such a situation, the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not.”

In reference to the position of law laid down by this Court, we find no reason to question the reliability of the dying declaration of the deceased for the reason that at the time of recording his statement by Head Constable, Manphool Singh (PW-7), he was found to be mentally fit to Give his statement regarding the occurrence. Further, evidence of Head Constable Manphool Singh (PW-7) was shown to be trustworthy and has been accepted by the courts below. The view taken by the High Court does not suffer from any infirmity and the same is in order.

22. The conviction by the High Court was based not only on the statements made by Maha Singh (deceased) but also on the un-shattered testimony of the eye-witness Dariya Singh (PW-1) and the statement of the independent witness Rajinder Singh (PW-11).

23. For the reasons stated supra, this Court does not find any reason to interfere with the impugned judgment and order passed by the High Court of Punjab & Haryana. The appeal being devoid of merit is hereby dismissed.

Judgment Referred.

¹*AIR 1962 SC 0130*

²*(2011) 13 SCC 0125*

³*(2010) 11 SCC 0423*

⁴*(2006) 3 SCC 0161*

⁵*(1985) 2 SCC 0061*

⁶*(2002) 6 SCC 0710*

⁷*(1999) 2 SCC 0126*