

Before Uma Nath Singh and A. N. Jindal, JJ.

SITAL SINGH AND ANOTHER,—Appellants

versus

STATE OF PUNJAB,—Respondent

Crl. A. No. 166/DB of 1993

14th May, 2008

Indian Penal Code, 1860—Ss. 306 and 498-A—Dying declaration—2 days delay in registration of case—No plausible explanation for not making efforts to procure presence of Magistrate for recording statement of deceased—Dying declaration by Investigating Officer—Absence of specific medical evidence showing if deceased was in a fit mental state or physical condition to make statement—No recovery of kerosene cane effected from the place of occurrence—Dying declaration does not find corroboration either from medical evidence or any other independent source—Appeal allowed, while acquitting accused of charges framed against them.

Held, that the facts and circumstance coming out of the evidence emanate much pointing towards prompting and tutoring of the deceased to make such statement. Had the prosecution been true to its version, then the Investigating Officer or the doctor, who saw the author, would have made efforts to record her statement without wasting any time or the Investigating Officer would have preferred it to call for the Magistrate for recording her statement. But, nothing of that sort was done by him. Absence of any specific medical evidence to show if Ranjit Kaur was in a fit mental state or physical condition to make the statement also adds to suspicion and excites us to form an opinion against the prosecution. No recovery of kerosene cane was effected from the place of occurrence and the fact that the son of the complainant is a police man also adds to our suspicion. The inconsistency and unsustainable truth of some of the recitals contained in the dying declaration and also the blurred nature of the thumb impression over the said document do not permit the conscience of the Court to accept

the same as safe to act upon. It is further highlighted that the alleged dying declaration does not find corroboration either from the medical evidence or any other independent source, therefore, we are constrained to disbelieve the dying declaration and form different view than what was observed by the trial Court.

(Para 21)

Vikas Behl, *Advocate for the appellants.*

Ms. Gurveen H. Singh, Addl. A.G. Punjab *for the respondent.*

A. N. JINDAL, J.

(1) Marriage is sacramental and is believed to have been ordained in heaven. The religious rites performed in the marriage altar clearly indicate that the man accepts the woman as his better-half by assuring her protection as guardian; ensuring food and necessities of life as the provider. Similarly, the wife and her parents on transfer of her in the custody of the boy and his parents should consider them as part of their family. This process has to be natural one and there should be display of cooperation and willingness from every side, otherwise, how would this transplant succeed. It is also often seen that due to variety of reasons i.e. cruelty on the part of the husband or wife, abrupt transplantation from one family to the other; non- adjustment of the temperament behaviour; previous equations, alliances and affiliations of the girl prior to her marriage an irretrievable breach in the marriage occurs, consequently the untoward incident takes place. The apathy is that the people from the girl side instead of condemning themselves try to take shelter of the protective legislation in favour of the bride and in order to satisfy their conscience and to have revenge of unnatural death of the bride at bridegroom's house entangle their family. Though the legislature in order to protect the atrocities upon the women, prevent the increase in the dowry and to avoid the dowry deaths, has enacted various laws, yet the Courts should sit with an open eye and check lest any innocent be not held guilty and such protective legislation may not be misused that is not only the real spirit of role of law but is the real spirit of the criminal justice delivery system. For this purpose, not only the Court must display greater sensibility to criminality but also avoid

on all counts 'soft justice'. The investigating agency should also display a live concern after sharpening their wits and penetrate into every aspect of evidence and take care what is distant-litis or persons having no concern or getting no benefit from the dowry so demanded or received, may not be made a scapegoat or lest the law be made device in order to satisfy the revenge of the aggrieved relatives of the deceased.

(2) Here is the case registered against the accused-appellants Sital Singh husband and Piar Kaur mother-in-law (hereinafter referred to as 'the accused'), under Section 302 IPC, on the basis of the dying declaration Ex. PC made by Ranjit Kaur (deceased) wife of Sital Singh accused before A.S.I., Baldev Singh, Police Station Garh Shanker on 19th June, 2001, at about 12.00 p.m., wherein she disclosed as under :—

"It is stated that I am living at the above address and I am house hold lady, I was married with Sital Singh son of Chanan Singh Adharmi resident of village Hayatpur P. S. Garhshankar, District Hoshiarpur for the last 1-½ year prior to the occurrence. Marriage was performed according to Hindu rites. My parents gave dowry according to their capacity. My mother-in-law Piar Kaur and my husband used to complain me to do the labour work in the fields. Two months before female child was born from this wed-lock and due to that I was not feeling well. On that day, a great pain created in my abdomen. At this my husband took me to Kaleran PHC. When we came back to the house, my mother-in-law had come to house after doing the work in the fields. On seeing me, she began to call me by name and started taunting to me why she did not go to the fields for doing the labour work. At this, I showed her my compulsion. Then my mother-in-law asked me that you were talking too much. At that time, 10.00 a.m., she brought the cane of kerosene and poured upon my clothes and my husband Sital Singh set me on fire by lighting the match stick from the match box. At that time, my Jethani was also present but she was taking bath. When

I raised hue and cry, my Jethani and a neighbourer Bhago came there and extinguished the fire. Then my husband Sital Singh first took me to hospital at village Daha Kaleran for my treatment and after that I was referred to D.M.C. Hospital, Ludhiana. At that time my clothes had burnt with fire and whole of the body had also burnt with fire. My husband and my mother-in-law Piar Kaur are responsible for this incident. Statement heard and is correct.

Attested

*Sd/-
Baldev Singh*

*Sd/-
Ranjit Kaur”*

(3) On the basis of the dying declaration made before A.S.I. Baldev Singh, FIR Ex.PG/2 was registered at Police Station Garhshanker on 19th June, 2001. Consequently, Ranjit Kaur died on 21st June, 2001 at 11.40 a.m. at D.M.C., Hospital, Ludhiana. On receipt of the said information, A.S.I. Baldev Singh reached the hospital; conducted the autopsy on the dead body; prepared rough site plan; recorded statements of the witnesses and arrested the accused. The completion of the investigation was followed by a report under Section 173 Cr.P.C. against Sital Singh alone, whereas accused Piar Kaur was declared innocent and was placed in column No. 2.

(4) On commitment, the accused was charged under Section 302 read with Section 34 IPC, to which he pleaded not guilty and opted for trial.

(5) Pursuant to the application under Section 319 Cr.P.C. on the basis of the statement of PW-1 Rajinder Kaur, accused Piar Kaur was also summoned to face trial and charge was amended accordingly.

(6) In order to substantiate the charge, the prosecution examined Dr. Amarjit Singh (PW1), Dr. Sheikha Aggarwal (PW2), Rajinder Kaur (PW3), Lokesh Kumar Draftsman (PW4) and Inspector Baldev Singh (CIA) (PW5).

(7) Both the accused denied the allegations in their statements recorded under Section 313 Cr.P.C. Accused Sital Singh further explained as under :—

“I am innocent. On 17th June, 2001 I had taken my wife Smt. Ranjit Kaur deceased to PHC Kukran for treatment as she was feeling unwell. We had left for PHC Kukran early in the morning. After taking medicine we came back to the village. I stayed enroute with the villagers where the Panchayat was constructing a platform whereas my wife went to our house. After some time we heard cries that my wife had caught fire and I and some other persons including Satpal Sarpanch came to our house. We found that Smt. Ranjit Kaur had sustained some burns. Smt. Bhago and Smt. Kamla Devi my brother’s wife told us that they had extinguished the fire. Smt. Ranjit Kaur was removed to Dahan Kaleran hospital for treatment and on their advice she was taken to DMC Ludhiana. On my enquiry enroute Smt. Ranjit Kaur told that she caught fire from cooking gas stove while working in the kitchen. My mother-in-law Joginder Kaur and her son named Daljit Singh reached hospital. They had tutored Smt. Ranjit Kaur to make statement against us for sustaining burns. Satpal Sarpanch and others had moved an application against our false implication. My mother-in-law was not challaned by police. However, I was challaned although I was innocent.”

Similarly, Piar Kaur accused made the following explanation :—

“I am innocent. My son Sital Singh had left the house early in the morning for PHC Kukran as his wife Ranjit Kaur was not feeling well. I had gone to field with my husband for sowing Maize while leaving my daughter-in-law Kamla Devi at house. I was informed in the fields that our daughter-in-law Ranjit Kaur had caught fire. We rushed to our house and found Ranjit Kaur in flames. Smt. Bhago our neighbour and Smt. Kamla Devi had extinguished the fire and told that she caught fire from gas stove. Smt. Ranjit Kaur

was removed to Dahan Kaleran hospital for treatment and on their advice she was shifted to DMC Hospital, Ludhiana. However, she succumbed to burns on 21st June, 2001. It appears that Smt, Ranjit Kaur had made a false statement implicating us under the influence of her mother and brother who had tutored her to do so. The Panchayat had made an application. Inspector Parsa Singh and D.S.P. had made an enquiry and I was found innocent. So, I was not challaned.”

(8) Bhago Devi (DW1) and Satpal (DW2) appeared in defence.

(9) The trial ended in conviction. Hence this appeal.

(10) Heard. The admitted and established facts as brought forth on the record are as under :—

- (i) Ranjit Kaur was married with accused Sital Singh about 1-½ years before the occurrence.
- (ii) There are no allegations of strained relations between the accused Sital Singh and deceased Ranjit Kaur. The dying declaration reveals that on the day of occurrence the accused had taken her for treatment of pain in abdomen to PHC Kukran.
- (iii) During her stay with in her in-laws' house, a child was born 2 months prior to the occurrence. The dying declaration as well as evidence of Rajinder Kaur indicate that Piar Kaur was compelling the deceased to work in the fields as labourer but she was not responding to her command due to illness.
- (iv) Dying Declaration Ex.PC, further reveals that Bhago, their neighbour, and her husband's elder brother's wife Kamla Devi were attracted to the occurrence. Kamla Devi has not been examined by the prosecution, whereas, Bhago while appearing as DW-1 has supported the defence version.

(11) The prosecution case banks upon only the dying declaration Ex.PC made by the deceased; testimony of Rajinder Kaur (PW3) and the medical evidence. The dying declaration appears to be shrouded by suspicious circumstances and could not pass the test of reliability. The incident in this case took place on 17th June, 2001. It is also the admitted case of prosecution that Rajinder Kaur (PW3) mother of the deceased had reached the hospital on the same day at about 3/3.30 p.m. There is nothing to suggest that the deceased was unfit to make the statement as Rajinder Kaur also admits that the deceased had disclosed her about the cause of quarrel but it is not explained as to why two days delay has been caused in recording the statement of Ranjit Kaur particularly when she was admitted in the hospital at Ludhiana, where the Courts of many Magistrates are located. Though the police proceedings reveal that A.S.I. Baldev Singh reached the hospital on receipt of the wireless message of Police Station Mambowal, Ludhiana but it is not established on record as to when wireless message was sent and when it was received at Police Station Garhshanker. Thus, this delay in recording statement of Ranjit Kaur, which was made the basis of the FIR, stands unexplained and creates a serious doubt over the prosecution case. It may also be noticed that due to the presence of Rajinder Kaur mother of the deceased and her other relatives in the hospital since 17th June, 2001 till the alleged recording of her statement may suggest any type of prompting and tutoring of the deceased.

(12) Though the deceased remained alive for 4 days and the case was registered after 2 days on the statement of Ranjit Kaur, yet no efforts were made by the Investigating Officer, doctor or the mother of the deceased to call for the Magistrate for recording dying declaration. No plausible explanation for not making efforts to procure the presence of the Magistrate for recording statement of the deceased for two days excites us not to believe such statement made before A.S.I. Baldev Singh. A similar view was taken by the Division Bench of this Court in case **Radhey Singh versus State of Haryana**, (1). Sital Singh husband of the deceased was an ordinary labourer and father of two months old daughter. It was not the case where he had demanded any dowry from the parents of the deceased or that the demand of dowry

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was the cause of quarrel or death. On the day of occurrence, accused Sital Singh had taken the deceased to the hospital for her treatment which indicates that relations between them were cordial. The person who was taking care of his wife and child would not change his mind within a minute to commit atrocities upon his wife particularly when there was no previous history of dispute between them.

(13) The dying declaration reveals that Kamla Devi and Bhago were attracted to the spot. They had extinguished the fire but none of them was examined by the prosecution. However, Bhago while appearing in defence supported the defence version by disclosing that when she went there, she saw the deceased in flames. She put off the fire. Piar Kaur accused also came there and joined in putting off the fire. The deceased told her that she got burns while heating the milk on the gas stove in the kitchen. The other version given by the deceased in the dying declaration that kerosene was poured upon her and she was set on fire has also turned false when confronted with the statement of Dr. Amarjit Singh (PW1) before whom she was taken for the first time. He has stated that history as disclosed to him was that Ranjit Kaur had sustained burns from the flames of cooking gas stove in the kitchen and such burns could be possible with the flames of the gas stove. This fact stands corroborated by Dr. Sheikha Aggarwal (PW2). None out of the two doctors has stated that if the clothes of the deceased were emitting kerosene smell. In contradiction with the aforesaid medical evidence, the dying declaration as well as testimony of Rajinder Kaur (PW3) transpire that accused Piar Kaur sprinkled kerosene on her clothes and accused Sital Singh had ignited the match stick and set her ablaze. Thus, the medical evidence is contradictory with the dying declaration as well as ocular version which also puts a question mark about the validity of the dying declaration, rather it takes us to hold that dying declaration is the result of prompting, tutoring and imagination.

(14) The other improbability which shrouds the case is that, admittedly Sital Singh took the deceased to the hospital not only once, but first of all he took her to Dr. Amarjit Singh (PW1) residing at Faridkot and thereafter to DMC Hospital, Ludhiana, which indicates that the accused made best efforts to save the deceased. Had he been

guilty in his intentions, then he would not have made efforts for survival of his wife in order to create evidence against himself.

(15) The other aspect which damages the case of the prosecution is that according to Dr. Amarjit Singh (PW1) the deceased was having 100% burns of 2nd and 3rd degree. Dr. Sheikha Aggarwal (PW2) while explaining the condition of Ranjit Kaur deceased before her death, testified as under :—

“..... The patient remained sick throughout. On her arrival, her condition was critical. The patient was under respiratory discomfort. The patient’s condition was critical and she was given life saving drugs. In spite of the best treatment given by our hospital, she died on 21st June, 2001. During her admission the patient also regained consciousness. After her admission in hospital, her condition became deteriorated.

(16) Thus, according to her statement, the patient regained consciousness only on 17th June, 2001 i.e. on the day of admission and thereafter her condition was deteriorated. She has nowhere stated that the dying declaration was recorded in her presence or that she remained fit to make the statement during the period statement was recorded by A.S.I. Baldev Singh. A.S.I. Baldev Singh also did not get the said statement Ex.PC attested from the doctor. He admits that mother and brother of the deceased were present in the hospital on the day of recording of her statement.

(17) Nevertheless, the law did not dis-entitle the police officer to record the dying declaration provided the circumstances were such that police officer had no time or opportunity to procure the presence of the Magistrate but where he had sufficient time and opportunity in this regard, then dying declaration should normally be not accepted. We find support to our this view from the Division Bench judgment delivered in case **Ramesh and others versus State of Haryana, (2)** wherein it was observed as under :—

“21. Another circumstance, which casts a doubt with regard to the recording of the declaration is that the same was not

recorded by a Magistrate, despite ample opportunity available in that regard. No doubt, as per law, dying declaration recorded by a police officer can be relied upon by a Court. There is no clear mandate of law that the police officer cannot record a dying declaration. However, in cases where the statement has been recorded by a Magistrate, it indicates towards its authenticity. If any magistrate is available it is desirable that he be summoned and the statement be recorded in his presence.....”

(18) Similar view was taken by the Division Bench of this Court in case **Manphool (since deceased) and Jagan versus State of Haryana, (3)** wherein it was observed as under :—

*“10. We are conscious of the fact that a dying declaration made to a police officer is admissible in evidence, but the practice of a dying declaration being recorded by an Investigating Officer has been discouraged and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the Investigating Officer or the Police Officer. In **Munna Raja versus State of M.P. AIR 1976 SC 2199**, it has been laid down by the Apex Court, which runs as under :—*

Investigating Officer are naturally interested in the success of the investigation and the practice of the Investigating Officer himself recording a dying declaration during the course of an investigation ought not to be encouraged.”

(19) No such condition or compulsion on the part of the Investigating Officer for not availing the opportunity of procuring the presence of the Magistrate has been explained, therefore, such dying declaration recorded by the Investigating Officer could be seen with suspicion.

(20) Even the Apex Court discouraged the practice of recording dying declaration by the police officer in case **Smt. Laxmi versus Om Parkash and others**, (4) while making the following observations :—

“30. A dying declaration made to a police officer is admissible in evidence, however, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or the police officer later on relied on as dying declaration. In **Munna Raja and another versus The State of Madhya Pradesh, AIR 1976 SC 21 99**, this Court observed - “Investigating officer are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to be encouraged”. The dying declaration recorded by the investigating officer in the presence of the doctor and some of the friends and relations of the deceased was excluded from consideration as failure to requisition the services of a Magistrate for recording the dying declaration was not explained. In **Dalip Singh versus State of Punjab, AIR 1979 SC 1173**, this Court has permitted dying declaration recorded by investigating officer being admitted in evidence and considered on proof ‘that better and more reliable methods of recording dying declaration of injured person’ were not feasible for want of time or facility available. It was held that a dying declaration in a murder case, though could not be rejected on the ground that it was recorded by a police officer as the deceased

was in a critical condition and no other person could be available in the village to record the dying declaration yet the dying declaration was left out of consideration as it contained a statement which was a bit doubtful.”

(21) But, in the instant case, the facts and circumstance coming out of the evidence emanate much pointing towards prompting and tutoring of the deceased to make such statement. Had the prosecution been true to its version, then the Investigating Officer or the doctor, who saw the author, would have made efforts to record her statement without wasting any time or the Investigating Officer would have preferred it to call for the Magistrate for recording her statement. But, nothing of the sort was done by him. Absence of any specific medical evidence to show if Ranjit Kaur was in a fit mental state or physical condition to make the statement also adds to suspicion and excites us to form an opinion against the prosecution. No recovery of kerosene can was effected from the place of occurrence and the fact that the son of the complainant is a police man also adds to our suspicion. The inconsistency and unsustainable truth of some of the recitals contained in the dying declaration Ex.PC and also the blurred nature of the thumb impression over the said document do not permit the conscience of the Court to accept the same as safe to act upon. It is further highlighted that the alleged dying declaration does not find corroboration either from the medical evidence or any other independent source, therefore, we are constrained to disbelieve the dying declaration and form different view than what was observed by the trial court.

(22) Consequently, we accept the appeal, set aside the impugned judgment, acquit the accused of the charges framed against them and direct that they be set at liberty forthwith if not required in any other case.