
(1988) 04 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 572-DB of 1986

Amro

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-04-1988

Acts Referred:

Citation : (1988) 2 AICLR 966 : (1988) 2 RCR(Criminal) 445

Hon'ble Judges : S.S.Dewan, J and H.S.Rai, J

Advocate : Mona Anand, D.N. Rampal, T.P.S. Mann, P. S. Mann, Advocates for appearing Parties

Judgement

S.S. Dewan, J.—Smt. Amro appellant along with the other two accused, namely, Madan Lal and Smt. Pushpa Devi was brought to trial before the Court of Session at Jalandhar on the charges of murder and raping the deceased Smt. Garo. Smt. Amro appellant stands convicted under Section 302, Indian Penal Code and sentenced to life imprisonment and a fine of Rs. 5000/ or in default to undergo further rigorous imprisonment for six months. Madan Lal and Smt. Pushpa Devi accused were, however, acquitted of the charges of murder and rape. Smt. Amro has challenged her conviction and sentence by filing Criminal Appeal No. 572DB of 1986. The State has challenged the acquittal of Madan Lal accused by filing Criminal Appeal No. 190DBA of 1987. Dass Ram has also filed Criminal Revision No. 734 of 1987 against the acquittal of Madan Lal and Smt. Pushpa Devi. This judgment will govern both the appeals and the revision.

2. The victim of the crime is Smt. Garo deceased. The prosecution case herein has no eyewitness of the alleged occurrence and rests entirely on gravely incriminating circumstantial evidence. It emerges therefrom that Smt. Garo deceased was the cousin sister of Sat Pal PW It is alleged that on 17th April, 1986 at about 8.30 A.M. Sat Pal was coming from outside and when he reached near the house of Chandu Ram, he heard that Smt. Garo daughter of Dass Ram had been burnt. When he reached near the house of Dass Ram, he saw Madan Lal, Smt. Amro and Smt. Pushpa Devi accused coming out of the house of Dass

Ram. In the meantime, Krishan Lal also arrived there. Sat Pal and Krishan Lal both entered the house of Dass Ram and found that Smt. Garo was burning in the court yard of the house and she was raising alarm "Save". Sat Pal and Krishan Lal threw blanket on the deceased to extinguish the fire but by that time she had already been burnt. Both these witnesses took Smt. Garo to the Civil Hospital, Jalandhar in an autorickshaw. On receipt of intimation Ex. PE regarding the admission of the deceased in the said hospital, Swaran Singh Assistant Sub Inspector went to the hospital and moved an application Ex. PF to record the statement of the deceased. The doctor declared her fit to make a statement vide his endorsement Ex. PF/I. Assistant Sub. Inspector Swaran Singh approached the District Magistrate who vide his order Ex. PJ/1 deputed Shri R.P. Gupta, Executive Magistrate to record the dying declaration of the deceased. The Executive Magistrate enquired from the doctor whether Smt. Garo was fit to make a statement. Dr. Iqbal Singh declared her fit to make a statement on 17.4.1986 at 12.51 P.M. and the Executive Magistrate recorded her statement Ex. PD/3. On receipt of the said statement of the deceased, formal F.I.R. Ex. PD/1 was recorded at Police Station Division No. 5, Jalandhar at 2.00 P.M. on the same day. Smt. Garo expired in the hospital at 1.28 P.M. on 17.4.1986. Swaran Singh went to the hospital, held inquest Ex. PC and sent the dead body to the mortuary for autopsy.

3. Dr. Mukesh Joshi PW 1 conducted autopsy on the dead body of Smt. Gare on 18.4.1986 at 12.30 P.M. and found 100% burns of various types on the dead body. Mostly burns were Grade 1 of Grade 11. Burnt skin at places was peeled off exposing subcutaneous tissues. The body was smelling of kerosene. Death was opined to be due to burns which were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was stated to be within six hours and between death and postmortem within 24 hours. After necessary investigation, the accused were challaned and committed.

4. The prosecution examined as many as 13 witnesses in support of its case. When examined under Section 313 Cr.P.C. the accused denied the prosecution allegations and pleaded false implication in the case. Smt. Amro however gave her own version in the following terms

"Chemical Examiner's report on the file Ex. DC may kindly be read in evidence. Prior to this case there was a case registered u/s 376 I.P.C. against Madan Lal accused at the statement of Garo and Madan Lal was acquitted by Shri G.S. Khurana, Addl. Sessions Judge, Jalandhar. After the decision of that case the parents of Garo compelled me, my husband and my son that Madan Lal should marry Caro but we refused to do so and for that reason they had become inimical towards us. On the day between 16.4.1986 and 17.4.1986, Caro remained in the house of one Sohan Lal where Jagrata was going on and after Jagrata when she reached home her parents and relatives suspected that Caro must had remained with Madan Lal for the night and they beat and tortured her and put her to great pains and due to that she committed suicide The relatives

and parents of Caro had got false case registered against me, my daughter and son. Caro did not make any dying declaration and in conspiracy with the police her declaration had been written falsely."

Jaswant Singh Record Keeper and Constable Amarjit Singh were examined by the accused in defence.

5. The trial Court on the basis of the material placed before it convicted and sentenced Smt. Amro accused as indicated above and hence the appeal at her instance.

The prosecution evidence consists of (a) the statement of Smt. Garo deceased (b) the statement of Satpal PW who saw the accused coming out of the house of Dass Ram, father of the deceased;; and(c) the medical evidence. As regards (a) there is the statement of Smt. Caro deceased as to the cause of death under Section 32 (1) of the Evidence Act. The incident took place in the early hours of the morning on 17 4.1986. The deceased was removed to the Civil Hospital, Jalandhar at about 9 A.M. on the same day.On receipt of intimation Ex. PE from the doctor regarding the admission of the deceased in the said hospital, Swaran Singh Assistant Sub Inspector went to the hospital and moved an application Ex. PF to record the statement of the deceased. Dr. Iqbal Singh declared her fit to make a statement. Swaran Singh immediately approached the District Magistrate who vide his order Ex. PJ/1 deputed Shri R. P. Gupta, Executive Magistrate to record the dying declaration of the deceased. The Executive Magistrate enquired from Dr. Iqbal Singh whether Smt. Caro was fit to make a statement and the doctor declared her fit to make a statement at 12.51 P.M. and the Executive Magistrate recorded her statement Ex. PD/3. which is in the following terms :

"Today, early in the morning I went outside to answer the call of nature and after coming back to the house, I went to the house of someone in the Mohalla for taking Parshad of Jagrata. When I returned to the house, my parents were not present in the house. One boy named Madan Lal son of Desa who resides at a distance of two houses from our house, followed me up to my house and committed sexual intercourse with me. Thereafter mother and sister of the boy came. They said to me, "You have exploited our boy. You are characterless." I was preparing tea on the stove. His mother and sister asked me to die by setting myself on fire. Amro mother of the boy picked up the cane containing keroseneoil on which was lying near the stove, The mother of the said boy sprinkled keroseneoil upon me while the boy set me on fire. Pushpa sister of the boy was also present at that time. My Chachas (father's younger brothers) and tayas (father's elder brothers) removed me to the Hospital.

I have made my above statement willingly. I have not made it under, any coercion. Prior to it also the said boy used to tease me and harass me. Previously, my parents had lodged a protest in respect of this teasing to his parents. They (my parents) had quarrelled also. The family members of the boy have not behaved with me fairly. Except this I do not want to say anything more."

This statement recorded as dying declaration shows that on the fateful day while the deceased was returning to her house, she was chased and subjected to rape by Madan Lal accused and that after the said incident, the mother and the sister of Madan Lal came to the house of the deceased and they accosted her that she was of ill repute and had spoiled Madan Lal and that while the deceased was preparing tea on a stove, Amro accused picked up a cane of kerosene oil and sprinkled it on her and Madan Lal set her on fire. This dying declaration is to be closely scrutinised as it was not given on oath nor it was subjected to crossexamination.

6. Mr. P. S. Mann, learned counsel for the appellant has contended that this dying declaration cannot form the sole basis of the conviction, unless it is corroborated by some reliable evidence. This contention is not well founded. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis for conviction unless it is corroborated. It is also not correct to lay down as a general proposition that a dying declaration is weaker kind of evidence. A dying declaration stands on the same footing as any other piece of evidence and has to be judged and tested in the light of the surrounding Circumstances and with reference to principles governing the weighing of evidence. In order to test the reliability of a dying declaration, the Court has to see the circumstances in which the dying declaration has been made for example, the opportunity of the dying man for observation, whether the capacity of the dying man to remember the facts stated had not been impaired at the time he was making the statement and also if the statement was made at the earliest opportunity and was not the result of tutoring by interested parties. In order to pass the test of the reliability dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by crossexamination. But once the Court has come to the conclusion that the dying declaration is a truthful version as to the "circumstances of the death and the identity of the assailants of the victim, there is no question of further corroboration. In this view we are fortified by a decision in case *Khushlal, Rao v. State of Bombay* AIR. 1958 S.C. 22.

7. It is next contented by the learned counsel for the appellant that this dying declaration was not recorded in a question and answer form and therefore, it is not safe to rely thereon. We find no substance in this contention. It is not an indispensable requirement of law that it should be recorded in a question and answer form. Recording of a dying declaration in a question and answer form is perhaps a better mode but, there can be no hard and fast rule.

8. Having dealt with these preliminary contentions, we would next consider the circumstances in which the dying declaration was made. Dr. Iqbal Singh recorded the certificate Ex. PD/2 to show that the deceased was fit to make a statement and then the Executive Magistrate started recording the dying declaration of the deceased at 12.51 P. M. and the same was completed at 1.10 P.M. On the basis of

the statement of the deceased, the First Information Report Ex. PD/1 was recorded at 2.09 P.M. at Police Station Division No. 5, Jalandhar. About the spontaneity and promptitude in lodging the First Information Report, there can be no doubt. In this case there is some evidence to incriminate the appellant. It is in the evidence of Satpal PW that on the fateful day at about 8.30 A.M. while he was returning to his house from outside, he heard the cries of Smt. Garo and that when he reached near the house of Dass Ram, he, saw Smt. Amro appellant and the other two accused coming out of the house of Dass Ram. Satpal has further stated that when he accompanied by Krishan Lal entered the house of Dass Ram, they saw that Smt. Garo was lying in the court yard and was burning and that they then threw blanket on her and extinguished the fire. According to this witness, the Investigating Officer took into possession a plastic cane Ex. P. 1, stove Ex. P. 2 and some pieces of semibrunt clothes from the place of occurrence. Dr. Mukesh Joshi who conducted autopsy on the dead body of Smt. Garo found 100% burns of various nature on the body of the deceased and she was smelling of kerosene oil. Death was opined to be due to burns which were sufficient to cause shock and cardiorespiratory failure. Thus, the dying declaration made by the deceased reads consistent with the medical evidence.

9. In view of these circumstances, we are satisfied that the evidence in this case is sufficient to warrant the conviction of the appellant, on a charge of murder. The dying declaration Ex. PD/3, in our opinion, is categoric in character and unmistakably accuser the appellant of the crime and we have no hesitation in accepting it. In the result, Criminal Appeal No. 572DB of 1986 fails and is dismissed.

10. The State of Punjab has filed Criminal Appeal No. 190DBA of 1987 against the acquittal of Madan Lal accusedrespondent. We do not find any reason to interfere with the order of the learned trial Judge who after due consideration of the facts and circumstances of the case acquitted the said accused. The State appeal (Criminal Appeal No. 190DBA of 1987) and Criminal Revision No. 734 of 1987 are, therefore, dismissed.