
(2008) 05 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 362-DB of 1999

Raj Kumar and Smt. Parkash Wati

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2008) 05 P&H CK 0044

Hon'ble Judges : S.D. Anand, J;A.K. Goel, J

Bench : Division Bench

Advocate : B.K. Mann, for the Appellant; Rajesh Bhardwaj, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

S.D. Anand, J.—Appellants Raj Kumar and Mst. Parkash Wati, son and mother inter-se, were indicted by the learned Trial Judge on a charge u/s 302/34 of the Indian Penal Code. The prosecution allegation, essentially based upon a dying declaration, upheld at the trial was that the appellants set Rajni Kumari, wife of the former appellant, afire on 19.02.1997 at about 3 p.m. The prosecution allegation was proved at the trial by the testimony of PW14 S.I. Surinder Kumar who recorded the dying declaration in the presence and on the certification of PW3 Dr. Harman Preet Kaur who remained present throughout the recording of that statement which (statement) was otherwise recorded in the presence of PW5 Lalit Kumar and PW12 Santokh Singh (latter turned hostile at the trial) and her other relations from the parental family (who were not examined at the trial) as well.

2. The learned counsel for the appellants vehemently criticised the implicit reliance placed by the learned Trial Judge upon the dying declaration by arguing that the deceased lady having sustained 100% burns (as noticed in the bed head ticket) could just not have been in a position to make a statement touching the circumstances leading to her death. Apart from describing that statement to be a

tutored affair, learned counsel argued that there is no documentation to prove that Rajni Kumari, who had been declared unfit to make a statement at 5 p.m. on 19.02.1997, had become fit to make a statement at 11 p.m. on that very day. While conceding that a dying declaration free from any doubtful circumstance can form the sole basis of a conviction, learned counsel argued that the present was a case in which the deceased lady could just not have been in a position to make a statement and, in fact, no statement of her's actually came to be recorded by the police.

3. We find ourselves in agreement with the learned counsel for the appellant. The reasons therefore are indicated as under:-

4. As would be apparent from a perusal of Ex.PH and Ex.PH/1, Dr. Harman Preet Kaur had certified on 19.02.1997 at 5 p.m. that Rajni Kumari wife of Raj Kumar was not fit to make a statement. Endorsement Ex.PH/1 is alleged to have been made by a Medical Officer on 19.02.1997 at 10.40 p.m. certifying that the patient was fit to make a statement. As apparent from the bed head ticket, Rajni had sustained 100% burns. Dr. Harman Preet Kaur (PW3) testified on oath that on her arrival at the Hospital on 19.02.1997 at 4.25 p.m. "she was having more than 90% burns. She was in a precarious condition." Though she made an averment in the course of her examination-in-chief that Rajni remained conscious throughout the period her statement was recorded, she also had to concede that Rajni could not put her signatures or thumb impression due to burns on her hands. Dr. Harman Preet Kaur (PW3) categorically stated that "I have not given any opinion that her condition is serious as such dying declaration of her be recorded. The Thanedar never gave any application to me for getting her dying declaration done." Further, she also testified that "it is correct that I have not given certificate at any place that I remained standing throughout the period the statement of deceased was recorded and that the patient remained conscious throughout during the period of her statement."

5. As already noticed, signatures/thumb impressions of Rajni Kumari could not be obtained on account of her serious condition. As evident from the testimony of PW3 Dr. Harman Preet Kaur, she had not issued the subsequent fitness certification that she remained present throughout the recording of the dying declaration or that the patient remained conscious throughout the recording of her statement. If she had been actually present, there is no understandable reason why she would not have made that endorsement.

6. Rajni Kumari was admitted to the hospital on 19.02.1997. She died on 23.2.1997. The dying declaration does not purport to bear her signatures or thumb impression. In the evening at about 5 p.m., she had been declared unfit to make a statement. However, that statement was recorded at 11 p.m. by a police officer. By the time that statement came to be recorded, parents of Rajni Kumari had already arrived. Faced with the predicament of having to explain why the dying declaration was not got recorded from a Magistrate, PW14 SI Surinder Kumar stated that "I sent HC Baldev Singh to procure the services of Naib

Tehsildar but that officer did not meet, as he was not available. I did not get any written document from the relations of the Naib Tehsildar."

7. The above quoted statement by the Investigating Officer is not buttressed by the production of HC. Baldev Singh who had been deputed to procure the service of Naib Tehsildar/Executive Magistrate. The testimony of the Investigating Officer is to the effect that the Naib Tehsildar was not found available at his house by HC Baldev Singh who conceded that he did not obtain any written document from the relations of the Naib Tehsildar to the above effect. The testimony of Investigating Officer, in the context of the steps taken by him to procure the services of a Magistrate who could record the dying declaration, is completely uncorroborated. The statement by the Investigating Officer that he had been told by the doctor that "the patient was about to die and her dying declaration be got recorded. The doctor further mentioned that the relatives of injured had arrived, from her parental side and it is proper to record her dying declaration", is falsified by that of PW3 Dr. Harman Preet Kaur who categorically indicated that "I have not given any opinion that her condition is serious as such dying declaration of her be recorded. The Thanedar never gave any application to me for getting her dying declaration done."

8. It is, thus, evident that Rajni Kumari was brought to the hospital with 100% burns. The dying declaration attributed to her does not bear her signatures/thumb impressions and it also does not bear any certification by the Medical Officer that she was fit to make a statement. If she was unfit to make a statement at 5 p.m., it would be unnatural to expect that she would have 'improved' to be able to make a dying declaration at 11 p.m. The author of the relevant endorsement (certifying her to be fit to make a statement at 11 p.m.) was not produced at the trial. If Rajni Kumar had 'improved' and was fit to make a statement, it was appropriate for the prosecution to produce the concerned Medical Officer so that the credibility of his testimony could be tested on the touch stone of cross-examination.

9. In view of the fact that the author of that endorsement was not examined at the trial, it is inferred that the endorsement does not properly stand proved.

10. Furthermore, it requires particular notice that in the course of the dying declaration, Rajni Kumari accused only her husband i.e. appellant Raj Kumar for having set her afire.

11. The following facts having a relevant bearing upon the adjudicatory exercise may be noticed as under:-

(a) The purported dying declaration had been recorded by a police officer.

(b) It (dying declaration) does not bear either the signatures or thumb impression of the deceased lady.

(c) It is proved to have been made in the presence of members of her parental family.

(d) She had sustained 100% burns and was in a precarious condition when she was brought to the hospital. At 5 p.m., she had been declared unfit to make a statement. The author of that endorsement has been examined at the trial. However, the author of the later certification (11 P.M.) declaring her to be fit to make a statement, has not been produced at the trial.

(e) Dr. Harman Preet Kaur has not owned the attribution by the Investigating Officer that she had asked the police to get her dying declaration recorded.

(f) The averment by the Investigating Officer that he did try to procure the services of an Executive Magistrate to record the dying declaration but that his efforts proved abortive on account of the non-availability of the officer, is all a verbal affair and is not corroborated by any documentation in the relevant behalf.

12. The only piece of evidence recorded upon by the learned Trial court having been disbelieved, we have no hesitation in holding that the impugned finding of conviction cannot be sustained. The appeal shall stand allowed. The finding of conviction recorded by the learned Trial Court shall stand set aside. The appellants shall stand acquitted of the charge.