

Before M. Jeyapaul & Inderjit Singh, JJ.

SANTOKH SINGH AND ANOTHER—Appellants

versus

STATE OF PUNJAB—Respondent

CRA No. D - 861- DB of 2009

May 20, 2013

Indian Penal Code (45 of 1860) - S. 302, 34 - Appellant convicted and sentenced under Section 302 with read Section 34 IPC - Prosecution case that accused set the deceased on fire - Accused pleaded that deceased took liquor and immolated himself - The Trial Court relied upon dying declaration recorded by JMIC, Faridkot and convicted the accused - High Court held that the dying declaration was recorded in a casual manner - JMIC did not make any observation that the deceased who had suffered third degree burns was conscious and was fit to make a statement - No question put by the JMIC to the deceased to ascertain his state of mind - Appeal allowed.

Held, that in a case where the Judicial Magistrate on a requisition emanated either from the hospital directly or from the police authorities, proceeds to record dying declaration, he is supposed to obtain the opinion of the doctor as to the conscious and fit state of mind of the patient. In

case the Judicial Magistrate finds that the delay in securing the opinion of the doctor would completely thwart the very purpose of recording dying declaration, he can straightway proceed to record the dying declaration after satisfying himself about conscious and fit state of mind of the deponent. In a case where the doctor's opinion could be obtained without any loss of time, the Judicial Magistrate shall obtain the opinion of the doctor as to the conscious and fit state of mind of the deponent. The doctor shall certify at the first instance and also after recording the dying declaration that the patient was in a conscious and fit state of mind to give statement and remained so throughout the proceedings. The Judicial Magistrate is supposed to put certain questions to the patient and ascertain the consciousness and fit state of mind of the deponent, even if the doctor has given a positive opinion and thereafter he should proceed to record dying declaration. The opinion of the learned Judicial Magistrate who virtually recorded the dying declaration will have the final say in the matter.

(Para 12 & 13)

Further held, that the version of the deceased Bhinder Singh in the dying declaration is also found to be totally unnatural and unbelievable. It is the version of the deceased that his father held him tightly, facilitating his wife to sprinkle petrol on him. If a person had held the victim tightly, the petrol sprinkled on the victim would equally spread on the person who held the victim tightly as well. Secondly, it was stated by the deceased that his father lit the fire and threw stick on him. A person cannot light a match stick and throw it on the victim by holding the victim tightly from behind. If the victim had been released for few seconds to enable the accused to light a match stick, the victim who was in the grip of fear of death would have run away utilizing the stamina in his command. A woman could not have stopped him and caught hold of him facilitating a male accused to light fire and throw on him. Very strangely, it has been stated by the deceased that after he was set on fire by his father, his wife held him tightly for some time till the fire engulfed him and thereafter he was set free.

(Para 15)

Vinod K. Kataria, Advocate, *for the appellants.*

B.S. Bhalla, Additional Advocate General, Punjab.

M. JEYAPPAUL, J.

(1) The accused appellants Santokh Singh and Karamjit Kaur were convicted and sentenced under Section 302 read with Section 34 of the Indian Penal Code and were sentenced to undergo life imprisonment and to pay a fine of ₹10,000/- each and in default to undergo a further period of two years rigorous imprisonment.

(2) The 1st appellant Santokh Singh died in prison while undergoing sentence, therefore, the appeal qua appellant Santokh Singh abated.

(3) It is the case of the prosecution that Bhinder Singh (deceased) was the husband of the appellant Karamjit Kaur and son of the 1st appellant Santokh Singh. Appellant Santokh Singh developed some illicit intimacy with 2nd appellant Karamjit Kaur. On 2.7.2006 at about 4.00 to 5.00 P.M. Bhinder Singh saw his wife Karamjit Kaur sitting with his father on a cot. Bhinder Singh abused his father. Accused Santokh Singh caught hold of Bhinder Singh tightly. Accused Karamjit Kaur sprinkled petrol on his person. Thereafter, accused Santokh Singh set him on fire. Accused Karamjit Kaur caught hold of him for some time till the fire engulfed him. Bhinder Singh escaped from their clutches and ran and fell into the water tank. Thereafter, Bhinder Singh became unconscious. He was consoled by his brother in law Gurpreet Singh. He sprinkled flour on his body. Thereafter, he was admitted to the hospital at about 8/9.00 P.M.

(4) PW3 Shri Sat Pal, learned Judicial Magistrate 1st Class, Faridkot having ascertained the conscious and fit state of mind of Bhinder Singh recorded his dying declaration on 3.7.2006. Based on the dying declaration given by Bhinder Singh, a formal First Information Report was registered. Burnt clothes of the deceased were recovered. A match box was also recovered from the pocket in the shirt of the deceased. The Investigating Officer having completed the investigation laid a final report as against the accused appellants.

(5) Appellant Karamjit Singh took up a stand in his statement under Section 313 Cr.P.C. that the deceased used to torture her by beating. He having taken liquor from a wine shop self immolated himself.

(6) On the side of the defence DW1 to DW4 were examined to drive home the defence that Bhinder Singh committed suicide. The trial Court having heavily relied upon the dying declaration recorded by PW3 Sat Pal, Judicial Magistrate 1st Class, Faridkot in the background of the medical evidence convicted the accused.

(7) The learned counsel appearing for the appellant Karamjit Kaur would submit that Gurpreet Singh who appeared on the scene immediately after the occurrence was not examined by the prosecution. The brother of the deceased who was examined as PW1 also turned hostile. The dying declaration does not pass the test of reliability. The medical admission records would go to show that the deceased was admitted to hospital with the history of accidental fire. He would also submit that the evidence of DW1 to DW4 would go to establish that it was a case of self immolation. It is his last submission that the prosecution has come out with an artificial version through the dying declaration.

(8) We heard the submission made by the learned Additional Advocate General appearing for the State, supporting the verdict of conviction passed by the trial Court.

(9) PW3 Shri Sat Pal, Judicial Magistrate 1st Class, Faridkot had recorded the dying declaration of Bhinder Singh on 3.7.2006. The dying declaration was marked as Ex.P6. On a careful perusal of the dying declaration Ex.P6, we find that the learned Judicial Magistrate had recorded the dying declaration in a casual manner. The doctor had certified simply that the patient Bhinder Singh remained fit during his statement. Nothing has been whispered by the doctor as to the conscious condition or the fit state of mind of Bhinder Singh during the course of recording dying declaration. It is to be kept in mind that it is the case of third degree burns. Heavy dose of pain killers and antibiotics would be normally administered the moment a patient with third degree burns is admitted to hospital. Under such circumstances the doctor should assess the consciousness and the fit state of mind of the deponent.

(10) The learned Judicial Magistrate also has not made any observation in the dying declaration recorded by him that the patient in his estimation was conscious and fit enough to give statement. Not even a single

question was put by the Judicial Magistrate to the patient to test the consciousness and fit state of mind. We are not happy with the way in which the dying declaration was recorded by the learned Judicial Magistrate.

(11) It is a trite law that the information passed on by a dying person relating to the cause of his death would become a dying declaration. The person who comes into contact with a dying person is not obliged to secure the advice of the doctor as to the conscious and fit state of mind of the dying person. The Court will have to test the dying declaration on the touch stone of reliability and credibility. If the evidence on record indicates that the dying person would not have been conscious and fit to give statement, the dying declaration alleged to have been given by the dying person shall be rejected.

(12) In a case where the Judicial Magistrate on a requisition emanated either from the hospital directly or from the police authorities, proceeds to record dying declaration, he is supposed to obtain the opinion of the doctor as to the conscious and fit state of mind of the patient. In case the Judicial Magistrate finds that the delay in securing the opinion of the doctor would completely thwart the very purpose of recording dying declaration, he can straightway proceed to record the dying declaration after satisfying himself about conscious and fit state of mind of the deponent. In a case where the doctor's opinion could be obtained without any loss of time, the Judicial Magistrate shall obtain the opinion of the doctor as to the conscious and fit state of mind of the deponent. The doctor shall certify at the first instance and also after recording the dying declaration that the patient was in a conscious and fit state of mind to give statement and remained so throughout the proceedings.

(13) The Judicial Magistrate is supposed to put certain questions to the patient and ascertain the consciousness and fit state of mind of the deponent, even if the doctor has given a positive opinion and thereafter he should proceed to record dying declaration. The opinion of the learned Judicial Magistrate who virtually recorded the dying declaration will have the final say in the matter.

(14) Unfortunately, in the instant case the learned Judicial Magistrate cared not to put any question to the patient to ascertain the conscious and fit state of his mind. Nor had he expressed his opinion with respect thereto.

(*M. Jeyapaul, J.*)

(15) The version of the deceased Bhinder Singh in the dying declaration is also found to be totally unnatural and unbelievable. It is the version of the deceased that his father held him tightly, facilitating his wife to sprinkle petrol on him. If a person had held the victim tightly, the petrol sprinkled on the victim would equally spread on the person who held the victim tightly as well. Secondly, it was stated by the deceased that his father lit the fire and threw stick on him. A person cannot light a match stick and threw it on the victim by holding the victim tightly from behind. If the victim had been released for few seconds to enable the accused to light a match stick, the victim who was in the grip of fear of death would have run away utilizing the stamina in his command. A woman could not have stopped him and caught hold of him facilitating a male accused to light fire and throw on him. Very strangely, it has been stated by the deceased that after he was set on fire by his father, his wife held him tightly for some time till the fire engulfed him and thereafter he was set free.

(16) The father who held the deceased tightly before ever petrol was sprinkled on him would have also received the petrol sprinkling. Such a person cannot light a match without self suffering with fire. There is nothing on record to show that Santokh Singh also sustained fire injury. The wife who allegedly caught hold of the deceased even after he was set on fire would have also sustained fire injury but there is nothing to show that second appellant Karamjit Kaur sustained any fire injury in the occurrence. In view of the above, we find that the deceased has come out with a totally artificial and unbelievable story. We are not prepared to accept such a version recited out by the deceased.

(17) The admission record would go to show that the deceased was admitted to the hospital with the history of fire accident. Such a history recorded by the doctor also creates a doubt in our mind.

(18) It is the version of the deceased that his brother in law Gurpreet Singh surfaced immediately after the occurrence consoled him. For reasons best known to the prosecution, the important witness Gurpreet Singh was not examined. Non examination of such a vital witness goes to the very root of the case of the prosecution.

(19) The Investigating Officer did not recover any remnant of petrol from the scene of occurrence. It appears that the Investigating Officer had proceeded to the scene of occurrence very leisurely.

(20) Matchbox was found in the pocket of the deceased. There is no explanation as to how the matchbox come to the pocket of the deceased.

(21) PW1 Pushwinder Singh, the brother of the deceased had also betrayed the deceased and turned hostile as regards the first and foremost dying declaration given by the deceased.

(22) The defence has set up a plea that it was a case of self immolation. The Court is not prepared to accept such a version, as the accused could procure such evidence with a view to wriggle out of the complicity in the crime. But at any rate, we find that the prosecution miserably failed to establish beyond reasonable doubt that the accused appellant Karamjit Kaur committed the murder of her husband. The accused appellant Karamjit Kaur is entitled to acquittal.

(23) In view of the above, the judgment of conviction and sentence passed by the trial Court as against Karamjit Kaur stands set aside. She is found not guilty of the charge of murder. She be set at liberty forthwith, if her custody is not required in connection with any other case. Consequently, the appeal is allowed.

A. Jain