

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R.A-S No.1023-SB of 2001 (O&M)
Date of Decision : 07.01.2015**

Paramjit Singh

..... Appellant

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. D.K. Nagar, Advocate
for the appellant.

Mr. A.P.S. Gill, A.A.G., Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the trial Court dated 13.08.2001 whereby the appellant has been convicted under Sections 498-A & 304-B IPC and sentenced to undergo rigorous imprisonment of 10 years.

The case of the prosecution was that the deceased Malkiat Kaur was married to the appellant on 26.07.1998. On 12.08.1998 at 4.30 P.M. the appellant-Paramjit Singh proceeded to bring milk from the market for preparing tea and when he came back, he started quarreling with Malkiat Kaur. Thereafter he started abusing her and asking her to bring money from

her parents. On this Malkiat Kaur told him that her parents are poor persons and they had already given whatever they could give and now they were not in a position to give more. On this, the deceased-Paramjit Singh brought kerosene oil container, sprinkled the kerosene on the body of Malkiat Kaur and put her on fire. While burning, Malkiat Kaur came out in the street raising alarm on which large number of people collected and they extinguished the fire. Then the appellant brought his wife Malkiat Kaur in the Civil Hospital, Nabha, and got her admitted there. The statement of Malkiat Kaur was recorded in the presence of Naib Tehsildar. It was read over to said Malkiat Kaur. She admitted the same to be correct and thumb marked it. On its basis a case under Sections 307/498-A IPC was registered against the appellant. During the investigation, the said Malkiat Kaur died on 14.08.1998. After necessary formalities the appellant was sent for trial and ultimately found guilty and convicted. Hence the present appeal.

The thrust of the argument of learned counsel for the appellant is that in the present case it was actually the appellant who had tried to save the life of the deceased and in that process, he suffered injuries on his person as well and the appellant also had shifted the deceased to the hospital. He has further argued that his wife having suffered with 95% burn injuries, who died within two days of the date of occurrence, could never remain conscious to make a valid dying declaration. Further the doctor who alleged to have declared her fit to make a statement, never opined that she was conscious and was in a sound mind to make a statement. He has further argued that the deceased had made two separate statements. Her

first version was that she suffered injuries in an accidental shape without pointing any accusing finger against the appellant, and the second statement had been procured by the police at the behest of the relatives of the deceased, who were having hostile relationship with the appellant.

Learned Assistant Advocate General, on the other hand has argued that mere fact that the appellant took his wife to the hospital would not tend to exculpate him because that could well have been a ploy to save himself from the charges of having killed her. As regards the argument that the deceased could not have made a dying declaration, the learned Assistant Advocate General has argued that in the present case the doctor had specifically opined that she was fit to make the statement, the statement was recorded in the presence of the doctor and the Executive Magistrate also testified that she had recorded the statement and was convinced from all the attendant circumstances that the deceased was fit to make the statement. As regards the allegation that the deceased had made two separate statements he has argued that there is a possibility that the statement recorded in the bed head ticket viz, the complainant gave complete history of alleged occurrence while saying that her husband had gone to take milk; could have been the version given by the husband at that time and, in any case this unconfirmed statement could never out weigh the dying declaration.

In support of his argument regarding capacity of the deceased to make a statement, learned counsel for the appellant has relied upon the judgment passed in *Paparambaka Rosamma versus State of Andhra Pradesh 1999(4) RCR Crl. 104*, wherein the Hon'ble Supreme Court held as

follows in paras No. 8 and 9 :-

8. *“The main question is as to whether she was conscious and was in a fit mental condition to make a voluntary disclosure of the incident. Dr. K. Vishnupriya Devi (PW10) who was attached to Tenali Government Hospital examined Smt. Venkata Ramana on 4th March, 1994 at 1.30 pm. She then sent a requisition (Ex. P9) to the Magistrate Shri K. Lakshamana Rao (PW13) to record the dying declaration of the injured. All that Dr. K. Vishnupriya Devi has stated is that injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It has come on record that Smt. Venkata Ramana has sustained 90% burn injuries. K. Lakshamana Rao (PW13) who recorded the dying declaration has made a note in Ex.P-14 the dying declaration after putting some preliminary questions to the injured and it reads as under:-*

“On the basis of answers elicited from the declarant to the above questions I am satisfied that she is in a fit deposing state of mind to make a declaration.”

Thereafter, the learned Magistrate proceeded to record the dying declaration. At the end, Dr. K. Vishnupriya Devi (PW10) has appended a certificate saying “patient is conscious while recording the statement.” The question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to

make a declaration in the absence of a certificate by the doctor certifying the state of mind that existed before recording the dying declaration? In our opinion, in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration. It would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. It is a case of circumstantial evidence and only circumstance relied upon by the prosecution is dying declaration.

9. *It is true that the medical officer Dr. K. Vishnupriya Devi (PW-10) at the end of the dying declaration had certified “patient is conscious while recording the statement.” It has come on record that the injured Smt. Venkata Ramana has sustained extensive burn injuries on her person. Dr. P. Loteswara Rao (PW9) who performed the post mortem stated that injured had sustained 90% burn injuries In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (PW10) did not comply with the requirement inasmuch as she has failed*

to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that “patient is conscious while recording the statement.” In view of these material omissions, it would not be safe to dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and was made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below.”

As per the learned counsel for the appellant, the reading of the judgment advances following aspects; in the present case also, doctor only opined that the deceased was fit to make a statement but did not mention that she was in a deposing state of mind to make a declaration.

In the first place, it must be noticed that in the above cited case the relatives of the deceased had categorically stated that there was no dispute between the husband and wife and no demand had ever been made by the husband for dowry. In these circumstances, the only evidence in that case was the dying declaration. In the present case, the situation is different. The mother of the deceased Harjit Kaur-PW2 had categorically

deposed about the maltreatment met out by the deceased at the hands of the appellant for money. To my mind, the judgment cited by the learned counsel for the appellant would not apply in the present case. It must be reiterated that in the present case not only did the doctor give a categoric certificate that the deceased was fit to make the statement but he also repeated the same in his testimony and even the Executive Magistrate unequivocally stated about fitness of the deceased to make the statement.

Learned counsel for the appellant has further relied upon ***Ramesh @ Mahesh versus State of Rajasthan, 2004(3) RajCriC 1181***. In that case, the deceased had died within 5 hours of the occurrence and it was in these circumstances it was reported that 95-100% part of the body of the deceased was burnt. There were extensive superficial and deep burns all over body except both feet and soles. Skin peeled off mostly on back, buttocks, both upper arms and cause of death was shock due to extensive superficial and deep burns of various degrees. It must be mentioned that even in that case there was no other evidence. Further, the Court in that case found that the time of issue of the certificate regarding the condition of the deceased for making statement was not mentioned and the doctor had also deposed that he had not examined the deceased before the issuance of the fitness certificate. He has further relied upon ***State of Maharashtra versus Manohar, 2005(1) ALL MR(Cri) 469***. In that case there were deep burns and the trial court also acquitted the accused and the Division Bench did not interfere. He has also relied upon the judgment passed in ***Bhagwandas versus State of M.P. 1999(3) Crimes 201***. In that case, there was no

certificate by the doctor that the victim was in a fit condition to make a statement. Further in that case, another doctor appeared who had recorded the earlier dying declaration of the deceased had stated that he had not taken the thumb impression of the deceased because her thumbs were burnt. In these circumstances, the Division Bench held that the dying declaration was not proved beyond reasonable doubt.

In the present case, the issue is about the credibility of the doctor, the Executive Magistrate and the mother of the deceased. Both the doctor and the Executive Magistrate had categorically deposed that the victim was fit to make a statement and understood what she was saying. The mother also unequivocally testified that the appellant was troubling the deceased for dowry. Learned counsel for the appellant has not been able to convince this Court that the reliance placed by the trial Court on these three testimonies is vitiated.

In these circumstances, I see no reason to take a different view than taken by the trial court. Consequently, the appeal is dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

January 07, 2015
pooja saini

(AJAY TEWARI)
JUDGE