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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-145-DBA-2003
Reserved on: 30.07.2024
Date of decision: 05.08.2024

STATE OF HARYANA ...Appellant

Versus

GEETA DEVI AND ANR. ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Pawan Girdhar, Addl. A.G., Haryana.

Mr. L.K.Gollen, Advocate
for the respondents.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the State of Haryana, against the verdict drawn on 30.07.2002, upon Sessions Case No. 93 of 24.12.1999 by the learned Additional Sessions Judge, Rewari, wherethrough in respect of charges drawn for offences punishable under Sections 302/34 IPC, he made a verdict of acquittal qua both the accused.

FACTUAL BACKGROUND

2. The brief facts of the case are that on receipt of ruqqa on 11.06.1999 from Government Hospital, Rewari, ASI Jagat Singh along with HC Karan Singh reached there and made a telephonic call to the SDM, Rewari at his residence to inform him about the admission of Smt. Saraswati in the hospital in burnt condition with a request to record her dying declaration. The SDM,

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Rewari was not present and as such Tehsildar, Rewari was directed to record the statement of Smt. Saraswati. The statement of Smt. Sarawati wife of Satender, was recorded by the police in the presence of Tehsildar, Rewari. The said statement is ad verbatim extracted hereinafter.

"I am resident of the above given address. Today i.e. on 11.6.1999 at about 9/10-00 am. I was present in my house. My mother-in-law Geeta, my brother-in-law (Devar) Narender and my sister-in-law (Devrani) Kaushilya, came together, My brother-in-law Narender asked me to execute sale deed in respect of manure pit failing which I would be burnt alive by pouring kerosene oil. Narender was having a kerosene oil PIPI in his hands. On seeing kerosene PIPI I attempted to rush outside, upon which my mother-in-law Geeta and sister-in-law Kaushilya caught me. Kerosene oil was poured on my body upto below my neck. Thereafter, Narender put my Saree on fire. I came outside and raised alarm. Thereafter, I became unconscious. I do not know who had poured water on me and had put a blanket upon me."

3. Since evidently both the hands of Saraswati were burnt, thereby she became disabled to either sign or thumb-mark her statement (supra). The statement was attested by ASI Jagat Raj and also by Tehsildar, Rewari as Executive Magistrate. The doctor had also made his endorsement to the effect that patient Saraswati was semi conscious and that the statement was recorded in his presence.

INVESTIGATION PROCEEDINGS.

4. On the basis of the said statement, a criminal case under section 307 IPC read with section 34 IPC was registered against the accused persons. Subsequently, Smt. Saraswati had died on 11.6.1999 itself, as a result of the burn injuries sustained by her in the incident and as such offence was converted into

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under section 302 IPC. On completion of the investigation and necessary formalities, the challan against the accused was presented before the learned Committal Court.

COMMITTAL PROCEEDINGS

5. Since the afore offences were exclusively triable by the Court of Session, therefore, the learned committal Court, committed vide order dated 07.12.1999, the case for trial, to the Court of the learned Additional Sessions Judge, Rewari.

TRIAL COURT PROCEEDINGS.

6. On finding a *prima facie* case, charge under Section 302 read with Section 34 of the IPC became framed, against the accused, and, to which they pleaded not guilty, and, claimed trial.

7. In support of the prosecution case, the prosecution examined fifteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Rewari drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In their defence, the accused examined two witnesses.

8. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Rewari, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL.

9. The learned counsel for the State, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the

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charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

10. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

11. Before proceeding to delve into and also make an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

Case based on dying declaration.

16. Admittedly, there was no eye witness of the occurrence. The entire prosecution case rests upon dying declaration Ex.PF. The prosecution has examined ASI Jagat Raj PW-15, Satender PW-14, Dr. Dharmender PW-6 and Naresh Sheokaran PW-5 to prove the dying declaration Ex.PF of the deceased. It is the settled law that where the prosecution is solely based upon the dying declaration of the deceased, the court has to consider carefully the dying declaration and the evidence of the witnesses supporting it and then to arrive at a proper conclusion whether the conviction of the accused persons can be based upon on the dying declaration only. In such circumstances, it is necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and also that the injured was in a fit state of mind while making the statement. xxxx xxxx

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17. Let us scrutinize the dying declaration EX.PF in the light of above mentioned authorities. It has come in the statements of the prosecution witnesses that dying declaration EX.PF was written by HC Karan Singh and was attested by ASI Jagat Raj and Tehsildar Naresh Sheokaran. **As per the opinion of the doctor given on EX.PF, Smt. Saraswati was not fully conscious rather she was in semi-conscious condition. As PW-6 the doctor has admitted this fact and further stated that the complete statement of Smt. Saraswati could not be recorded as she had become semi-conscious and thus statement EX.PF was incomplete statement.** The statement of Dr. Dharamender PW-6 is sufficient to show that dying declaration EX.PF is not a reliable piece of evidence to base conviction of the accused persons. Further it stands established from the prosecution evidence that Naresh Sheokaran PW-5, the then Tehsildar, Rewari, was not present at the time of recording of dying declaration. He had come afterwards on the spot and had made his attestation on the statement EX.PF. PW-6 Dr. Dharmender, who was on duty at that time, has deposed that the dying declaration was recorded by the HC on the dictation of the ASI. He further deposed that the Magistrate was not present at that time and that he had reached the hospital after the patient had already been referred to the Medical College and Hospital, Rohtak. PW-6 is the most material and relevant witness because, being a doctor, he was present by the side of the patient at the time of recording of her statement. Further, he has nothing to gain by deposing falsely against PW5 Sh. Naresh Sheokaran. **Not only this, PW14 Satender Kumar Advocate, the husband of the deceased, has made a categorical statement that Tehsildar was not present at the time of recording of dying declaration.** He further clarified in his cross-examination that Tehsildar had come to the hospital after about 15 to 30 minutes after recording the statement of Smt.Saraswati by ASI Jagat Raj. **It deserves to be pointed out that**

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video cassette EX.P8 was prepared at the time of recording of the dying declaration. Before recording the statement of PW14 Satender, EX P8 video cassette was displayed before him in the open court. After watching the video film, this witness stated that Tehsildar was not seen in the video film. xxxx xxxx

18. The statements deposed by PW6 Dr. Dharmender and Satender Kumar PW14 and also mere perusal of dying declaration EX.PF show that PW5 Naresh Sheokaran was not present at the time of recording of dying declaration statement. He was not noticed in video cassette EX.P8 also. It is well said that people may lie but not the circumstances. Shri Naresh Sheokaran PW-5 perhaps failed to notice that the entire sequence was being videographed. Had he been present at the time of recording of dying declaration he must have been seen in the video cassette. **The entire evidence, oral as well as documentary goes a long way to show that PW-5 Tehsildar Naresh Sheokaran was not present at the time of recording of dying declaration EX.PF.** He has made a false deposition in the court on 15.2.2001 deposing that dying declaration EX.PF was recorded in his presence.

19. The foregoing discussion of mine amply shows that the **dying declaration EX.PF cannot be made a base for the conviction of the accused persons.** At the time of recording of that statement the patient was not fully conscious nor she was in a fit condition to make her statement. Further alleged statement was recorded just after the patient was influenced by her parents and husband and thus statement EX.PF was not made voluntarily and was not the true reflection of the correct facts. Again the dying declaration was written by the HC on the dictation of ASI. The Tehsildar had come afterwards in the hospital and had merely attested the dying declaration. **Hence in such circumstances dying declaration EX.PF is nothing but a waste paper and cannot be relied upon to base the conviction of the accused persons.**

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**INFERENCES OF THIS COURT.**

12. For the reasons to be assigned hereinafter, the verdict of acquittal, as made by the learned trial Judge concerned, does not require any interference as the same is being made on a well consideration of the dying declaration of the deceased.

13. Though the dying declaration is a sacrosanct and admissible piece of evidence for making thereons a verdict of conviction. However, the imperative sine qua none(s) for thus reliance with aplomb becoming placed upon it, are as follows:

- a) The deceased becoming declared by the attending or the operating doctor to be in a fit state of mind, so as to enable her to render an opinion about the cause of her demise, whereby he/she inculcates the accused.
- b) The declaration of fitness as made of the declarant, by the attending doctor, does also require the same becoming proved by the doctor concerned.
- c) The dying declaration to acquire utmost tenacity, also requires that the same becomes recorded in the presence of the Executive Magistrate concerned.
- d) Furthermore, the relatives of the deceased are to be proven to be thus not surrounding the deceased, at the relevant time or vis-a-vis the making of the dying declaration, so as to render open an inference, that thereby the said dying declaration was influenced and/or was may be a tainted dying declaration rather merely for falsely implicating the accused.

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14. Therefore, in the light of the above parameters governing the assignment of credence to a dying declaration, it is necessary to extract the contents of the cross examination, as made upon the operating/attending doctor PW-6, Dr. Dharmender Kumar, contents whereof become extracted hereinafter.

“ xxx xxx xxxx by Sh. R.K.Yadav, counsel for all the accused.

*The vital dates of the patient were not recorded on Ex. PF. In Ex.PF/1 I have not made a reference that the patient was not fit to make the statement. I had given my opinion separately to the police that the deceased was fit to make a statement. **The complete statement could not be recorded because she became semi conscious. Ex.PF is incomplete statement....**”*

15. A reading of the above declaration besides a reading of the testification of PW-6, who stepped into the witness box to prove the same, thus brings forth an inference, that there are complete wants of echings therein, to constrain this Court to conclude, that the apposite dying declaration was made by the deceased, thus in a fit cognitive state of mind. Imperatively PW-6, who stepped into the witness box to prove the same rather has made an unequivocal echoing in his testification, that the complete statement of the deceased rather could not be recorded, as she had become semi conscious. Resultantly since the dying declaration becomes an incomplete statement, besides when became rendered, than in the desired enlivened state of mind, rather in a semi conscious state of mind, therebys no evidentiary sanctity is to be assigned thereto.

16. Consequently, in the face of the above and with neither any thumb impression or the toe impression of the deceased becoming made on the dying declaration, which may have proved that as a matter of fact, somehow or the

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other, thus she had authored the same. Resultantly when therebys too, there was but a complete cognitive disablement besetting the deceased, which but also becomes supported by the above made declaration by the doctor, therebys but obviously it appears that the investigating officer concerned, made a concocted and tainted dying declaration of the deceased, rather merely for falsely implicating the accused.

17. An aggravated momentum to the above made conclusion, becomes marshalled from the further factum that, though the Executive Magistrate has appended his signatures, on the dying declaration, but the said appendings of signatures thereons by the Executive Magistrate, is also, thus from the hereinafter facts, rather ridden with a grave suspicion.

a) PW – 14 husband of the deceased making a categorical statement that the Tehsildar was not present at the time of the recording of dying declaration. If so, contrarily therebys, it appears that the deceased was surrounded by her close relatives, and therebys the dying declaration was but an engineered and invented version in respect of the cause of demise of the deceased. Therefore too, no evidentiary worth can be assigned to the dying declaration.

b) The factum of Executive Magistrate who stepped into the witness box as PW-5, also not being present at the time of the recording of dying declaration Ex PF, becomes mobilized from the fact that despite video graphings being made of the proceedings relating to the makings of dying declaration by the deceased, besides with the said video graphing being enclosed in video cassette Ex. P-8, moreover, when the said video cassette is stated in the impugned verdict to be played in open Court, but yet when it is firmly well

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stated in impugned verdict, that the Executive Magistrate PW-5 rather was absent during the proceedings relating to the drawing of the dying declaration by the deceased. As such therebys, it has to be concluded that the signatures as made on the dying declaration by PW-5, rather were not made in the hospital but were made elsewhere.

c) In sequitur, it has to be further concluded that the investigating officer concerned and the husband of the deceased who appeared in the witness box rather through deploying ill tactics and ill stratagems, rather ensured the making of a tainted and engineered dying declaration, thus only for falsely implicating the accused.

FINAL ORDER OF THIS COURT.

18. In consequence, there is no merit in the appeal, and, is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

19. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

20. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

05.08.2024
kavneet singh

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No