

A

SURINDER KUMAR AND ANR.

v.

STATE OF HARYANA

APRIL 28, 1992

B

[KULDIP SINGH AND M. FATHIMA BEEVI, JJ.]

*Indian Penal Code, 1860:*

C

*Sections 34, 302 and 498-A—Death on account of burn injuries—Dying declaration made by deceased in hospital before Judicial Magistrate—Doctor certifying that patient remained conscious at the time of recording of statement—Whether there was any infirmity in recording of dying declaration—Conviction based on such dying declaration—Whether justified.*

D

The first appellant's second wife died of burn injuries sustained by her. The first appellant and his son from his first wife were tried for the murder of the deceased and also for subjecting her to cruelty. The trial court convicted both of the them under sections 302 and 498-A read with Section 34 of the Indian Penal Code on the basis of the dying declaration made by the deceased before the Judicial Magistrate. The High Court, on appeal, maintained their conviction and sentence under Section 302 read with Section 34 Indian Penal Code but acquitted them of the offence under Section 498-A read with Section 34.

E

F

In the appeal, by special leave, on behalf of the appellants-accused it was contended that the statement made by the deceased before the doctor, who had admitted her in the hospital, giving cause of her death as burn injuries sustained by her while cooking food on gas stove was the earliest version and amounted to a dying declaration, and there being two contradictory statements made by the deceased, the dying declaration recorded by the Magistrate was not worthy of credit and conviction of the appellants could not be based on it.

G

Dismissing the appeal, this Court,

H

HELD : 1.1. The conviction of the appellants is based on the dying declaration made by the deceased in the hospital before a Judicial Magistrate. The doctor certified that the patient remained conscious

during the period her statement was recorded. The Judicial Magistrate recorded a certificate that the statement of the deceased was recorded by him and it contained true version of her statement and she had thumb marked the same. In view of the doctor's certificate, there is no infirmity in the recording of the dying declaration by the Magistrate and the same inspires confidence. [912 C-D]

1.2. It was the first appellant who brought his wife, deceased, to the hospital and he remained present while the deceased was examined by the doctor. It is nowhere mentioned in the record that what was recorded by the doctor was stated by the deceased. Therefore, what was recorded by the doctor could not be the version of deceased herself. Had it been so, the doctor may not have used the word "alleged" while recording that the patient received injuries while cooking food on gas-stove. The doctor, did not mention anywhere of the record about the state of mind of the deceased, whether she was conscious or not. It is more probable that what was recorded by the doctor was at the instance of the husband who was accompanying his wife at the time of her examination by him. Therefore, the courts below have rightly rejected the defence plea that what was recorded by the doctor was at the instance of the deceased. The trial court has also rightly rejected the evidence of defence witnesses. There is no infirmity in the judgments of the courts below. [912 G-H, 913 A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 150 of 1992.

From the Judgment and Order dated 21.8.1991 of the Punjab and Haryana High Court in Criminal Appeal No. 210-DB of 1989.

U.R. Lalit, B.S. Katial and S. Muralidhar for the Appellants.

Ms. Indu Malhotra for the Respondent.

The following order of the Court was delivered :

Sheema, second wife of appellant Surinder Kumar, sustained 70 per cent burn injuries in an occurrence which took place on May 16, 1987 and ultimately succumbed to those injuries on May 22, 1987. Surinder Kumar and his son Sanjiv from his first wife were tried for the murder of Sheema and also for subjecting her to cruelty. The trial court convicted both of them under Sections 302/34 and 498-A/34 of the Indian Penal Code. They

A were sentenced for life and a fine of Rs. 500 on the first count and rigorous imprisonment for two years and a fine of Rs. 200 on the second count. The High Court, on appeal, maintained their conviction and sentence under Section 302/34 Indian Penal Code. They were, however, acquitted by the High Court of the offence under Section 498-A/34 Indian Penal Code. This appeal by way of special leave is by the appellants against their conviction and sentence.

C The conviction of the appellants is based on the dying declaration made by the deceased in the hospital before a Judicial Magistrate. The doctor certified that the patient remained conscious during the period her statement was recorded. The Judicial Magistrate recorded a certificate that the statement of Sheema was recorded by him and it contained true version of her statement and she had thumb marked the same. We have been taken through the text of the dying declaration. We are satisfied that in view of the doctor's certificate, there is no infirmity in the recording of the dying declaration by the Magistrate and the same inspires confidence.

E Mr. U.R. Lalit, learned senior advocate appearing for the appellants has vehemently contended that Dr. Ashok Tandon who admitted the deceased in the hospital recorded that the patient 'allegedly' got burns while cooking food on gas-stove. Mr. Lalit further contended that Dr. Ashok Tandon appearing as PW 11 has deposed that at the time of his examination the patient was conscious and she told him that she got the burn injuries while cooking food on gas-stove. Mr. Lalit has argued that the statement made by Sheema before the doctor giving cause of her death is the earliest version and amounts to a dying declaration. According to F him there being two contradictory statements by the deceased the dying declaration recorded by the Magistrate is not worthy of credit and conviction of the appellants cannot be based on the same. We do not agree. It was accused Surinder Kumar who brought his wife Sheema to the hospital and he remained present while the deceased was examined by the doctor. G It is nowhere mentioned in the record that what was recorded by the doctor was stated by the deceased. It is evident that what was recorded by Dr. Tandon could not be the version of Sheema herself. Had it been so the doctor may not have used the word "alleged" while recording that the patient received injuries while cooking food on gas-stove. Dr. Tandon did not mention anywhere on the record about the state of mind of Sheema. H It was nowhere recorded whether she was conscious or not. It is difficult

to believe that the doctor made his deposition in the court on the basis of his memory. It is more probable that what was recorded by Dr. Tandon was at the instance of the husband who was accompanying his wife at the time of her examination by Dr. Tandon. On the above reasoning both the courts below have rejected the defence argument that what was recorded by Dr. Ashok Tandon was at the instance of the deceased. We see no ground to differ with the conclusions reached by the courts below.

Mr. Lalit has further argued that the evidence of defence witnesses was not taken into consideration by the High Court. We have read the statements of the defence witnesses along with Mr. Lalit. We are not impressed by their testimony. The trial court rightly rejected their evidence.

We see no infirmity in the judgments of the courts below. We agree with the reasoning and the conclusions reached by the High Court.

We, therefore, dismiss the appeal.

N.P.V.

Appeal dismissed.