

PALWINDER SINGH

v.

BALWINDER SINGH & ORS.

(Criminal Appeal No. 1681 of 2008)

OCTOBER 20, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ]

Code of Criminal Procedure, 1973:

s. 227 – Application for discharge of persons accused of murder – Rejected by trial Court – Allowed by High Court in revision petition – HELD: High Court committed a serious error insofar as it entered into the realm of appreciation of evidence at the stage of framing of charges – Jurisdiction of the Sessions Judge while exercising power u/s 227 is limited – Charges can be framed also on the basis of strong suspicion – Marshalling and appreciation of evidence is not in the domain of the Court at that point of time – Furthermore, it was not the stage where the High Court would prefer one dying declaration to the other – Indisputably, the deceased in her first dying declaration had identified the accused – Judgment of High Court set aside – Penal Code, 1860 – s.302 – Dying declaration. [para 12 and 15-16]

State of Orissa Vs. Debendra Nath Padhi 2004 (6) Suppl. SCR 460 = (2005) 1 SCC 568 - relied on.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1681 of 2008

From the final Judgment/Order dated 14.12.2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. Revision No. 2250 of 2003

Satinder S. Gulati, Kamaldeep Gulati, Dr. Kailash Chand, Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu for the Appellant.

A R.P. Gupta, Kamakshi S. Mehlwal and Prabhat Pachauri
for the Respondents.

The following Order of the Court was delivered by

Leave granted.

B

1. These appeals are directed against the judgment and order dated 14.12.2005 passed in Criminal Revision No.2250 of 2003 by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh whereby and whereunder the revision application filed by respondents-accused herein questioning the correctness of the order dated 30.10.2003 passed by the learned Sessions Judge refusing to discharge them in exercise of its jurisdiction under Section 227 of the Code of Criminal Procedure was allowed.

C

D

2. Husband of the deceased - Darshan Kaur is before us questioning the legality or validity of the said order.

3. Indisputably, the parties are neighbourers. It is, furthermore, not in dispute that the deceased was a dumb lady.

E

4. First Information Report proceeded on the basis that as they have no other place in their house for easing themselves, the deceased used to use the land of the respondents for that purpose. On 6.4.2001 early in the morning when she went to the land of the respondents, she was caught and set on fire after pouring kerosene on her.

F

5. Appellant before us was attracted by fire and brought her to the hospital. On the same day i.e.6.4.2001 itself, her dying declaration was recorded by the Executive Magistrate, Chamkaur Sahib. She identified respondents herein. The questions put to her and answers given thereto with sign are as under:

G

"Q. Whether you set on fire before rising the sun?"

H

Ans. Yes, with sign of head.

Q. Who set on fire you? A

Ans. Two persons set on fire me one of them was open beard and one was with cutting beard.

Q. Whether you can identify the person who set on fire you? B

Ans. Yes, with signs. And then she identify Daljit Singh and Balwinder Singh sons of Faqir Singh resident of Dholran with sign of head.

Q. In which place and how you put on fire? C

Ans. With signs these two persons forcibly set me on the fire in their cattle shed.

Q. Whether they set on fire you after pouring Kerosene? D

Ans. No "

6. It, however, appears that another dying declaration was recorded by the Sub-Divisional Magistrate, Ropar on 11.4.2001. The material portion whereof reads as under: E

"Aged 45-50 years. I have two sons and one daughter. Today morning at 5 a.m. I had gone out. Two persons came. Both were sikhs and were wearing turban tied and both were 6 Ft. in height. One of them was 40 years old and one of them is less aged whose name is not known. F
They are from my village. I don't know that, if there is any enmity with me or not. There is no toilet in the house to go out. They have caught hold me from the arms taken inside by opening the door. I was shouted at 5 A.M. but nobody heard my noise. There was no quarrel with these persons at any time. I was not even quarreled with my own family. G
They have not caught me with bad intention but caught me to put on the fire. After putting the fire my husband reached in 10-15 minutes and those persons ran away after putting the fire. I can recognise those persons and there is no H

A quarrel in the house at any time and I was never went out from the house by quarreling. We are doing agriculture and there is no dearth of money. Tehal Singh is my Dewar and we are living in the house together. I can recognise to those persons.”

B 7. Nine persons, thereafter, appear to be produced before her and she is said to have identified Kashmir Singh son of Gurbachan Singh and Satwinder Singh son of Mohinder Singh.

C 8. It, however, appears that her left thumb impression was not taken on the foot of the page. The left thumb impression of the deceased appears only on the first page and that too only after the signatures of the Sub-Divisional Magistrate wherafter the fact that nine persons produced for the test identification parade before her was recorded.

D 9. As indicated hereinbefore her left thumb impression was not taken at the end of the said statement. An application for discharge was filed before the learned Sessions Judge which, as noticed hereinbefore, has been dismissed.

E 10. Respondents themselves in their Memo of Revision filed before the High Court of Punjab and Haryana contended that the deceased-Darshan Kaur was deaf lady, who was paralytic also. By reason of the impugned judgment, the High Court while allowing the said revision application, inter-alia, opined that the deceased was both deaf and dumb and she was paralytic also.

F 11. Inter-alia, on the aforementioned premise and furthermore upon considering the acceptability of one or the other dying declaration, it was held;

G (i) as the deceased has identified only Kashmir Singh and Satwinder Singh, there is no reason for the learned Sessions Judge to frame charges against the respondents;

H (ii) the dying declaration recorded by the learned Sub-

Divisional Magistrate should be preferred to that of the dying declaration recorded by the learned Executive Magistrate.

(iii) It was not necessary for the learned Sub-Divisional Magistrate, Ropar to take the left thumb impression of the deceased on all pages.

(iv) There was no cause for the Sub-Divisional Magistrate, Ropar to make out a false case of test identification parade conducted on 11.4.2001.

12. Having heard learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa Vs. Debendra Nath Padhi -(2005) 1 SCC 568 wherein it was held as under:

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra’s Case holding that the trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

13. Learned counsel appearing on behalf of the respondents, however, would submit that keeping in view the fact that the deceased was both deaf and dumb, no reliance can be placed upon the first purported dying declaration recorded by the learned Executive Magistrate, Chamkaur Sahib. If that be so, no reliance can be placed on the second dying declaration also.

A 14. It appears that the observation of the High Court that the deceased was both deaf and dumb is not based on any material. Apart from the other materials on record, as indicated by us heretofore, even the respondents in their Memo of Revision had described the deceased merely as dumb and a paralytic person and not a deaf person.

B 15. Furthermore, it was not the stage where the High Court would prefer one dying declaration to that of the other. Indisputably, in her first dying declaration the deceased had identified respondents - Balwinder Singh and Daljit Singh. They were brought to the hospital for the purpose of identification and the learned Executive Magistrate recorded her statement on the basis of the signs made by her.

C 16. In this view of the matter, we are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeals are allowed. However, all the contentions of the parties shall remain open. The learned trial Judge is directed to dispose of the Sessions Case pending before him as expeditiously as possible.

D E R.P.

Appeals allowed.