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RAKESH KUMAR

v.

STATE OF HARYANA

(Criminal Appeal No. 446 of 2009)

B

MARCH 6, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

C

Penal Code, 1860 – ss. 304-B and 498-A – Conviction by Courts below – On the basis of evidence of complainant and letters written by the deceased – Held : Conviction was in disregard of dying declaration recorded by Executive Magistrate, and on the basis of letters which were conclusively established not written by the deceased – Therefore, not

D

sustainable.

E

Appellant-accused was convicted u/ss. 304-B and 498-A IPC by trial court alongwith co-accused. High Court affirmed his conviction, while setting aside those of the co-accused. It observed that investigation was lethargic and an attempt was made to screen the truth.

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In appeal to this Court appellant-accused contended that courts below lost sight of evidentiary value of dying declaration; that letters relied on were conclusively established to have not been written by the deceased; and that there was delay of 26 days in lodging FIR.

Allowing the appeal, the Court

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HELD: It is correct that shoddy investigation cannot be a foundation for the accused persons to take advantage of shoddiness. But in the instant case, there was no material brought on record by the prosecution to establish the accusations so far as the present appellant is concerned. There was a dying declaration recorded by

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the Executive Magistrate, who was present at the hospital. The authenticity of the dying declaration has not been questioned. It is the stand of the prosecution that police officer should have recorded it. But that cannot be a ground to discard the dying declaration recorded by the Executive Magistrate. Additionally, the prosecution laid great emphasis on the letters purported to have been written by the deceased to her relatives. Here again, handwriting expert's report clearly shows that the letters were not in the handwriting of the deceased. Above being the position, there is no evidence brought on record by the prosecution to establish the accusations. [Paras 5 and 6] [1193-G, H; 1194-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 446 of 2009.

From the Judgment and Order dated 15.2.07 passed by High Court of Punjab & Harayna, at Chandigarh in Criminal Appeal No. 605 of 1996.

K.V. Viswanathan, H.P. Sahu Abhith Kumar for the Appellants.

Manjit Singh, T.V. George for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court. Two appeals were disposed of by a common judgment. While the appeal filed by the appellant i.e. Criminal Appeal No.605-SB of 1996 was dismissed, the appeal i.e. Criminal Appeal No.542-SB of 1996 filed by the co-accused persons was allowed. The appellants before the High Court were convicted and sentenced to undergo rigorous imprisonment for various terms and fine for alleged commission of offences punishable

A under Sections 304-B and 498-A of the Indian Penal Code, 1860 (in short the 'IPC'). Allegation was that Kusum Lata who was daughter of Om Prakash (PW-2) and was married to the present appellant on 19.4.1988 had received severe burns in an accident which took place on 21.9.1991 in the matrimonial
B home at Ambala City. On 24.9.1991 she succumbed to the injuries in the Post Graduate Institute of Medical Education and Research, Chandigarh (in short the 'PGI'). The deceased was taken to the Civil Hospital, Ambala after the incident from where a ruqa was received by the police on the basis of which D.D.R.
C was recorded. The police tried to record the statement of the deceased, but she was found to be not totally fit. As her condition was critical she was removed to PGI Hospital for treatment. On 22.2.1991 a dying declaration Exh. DA/4 was recorded by Executive Magistrate, Chandigarh. The police on the basis of the dying declaration prepared a cancellation
D report. However, on the basis of grievance made by Om Prakash (PW-2) a First Information Report was registered on 17.10.1991. After completion of investigation, charge sheet was filed and since the accused persons pleaded innocence, trial was held.

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On the basis of the statement of Om Prakash (PW-2) an application was made by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (in short the 'Code') for summoning the accused persons. The trial Court by order
F dated 8.4.1994 accepted the application and accused Ramesh Kumar, Pardeep Kumar, Poonam, Sita Rani and Om Parkash who were appellants in connected Criminal Appeal were directed to face prosecution.

G In order to establish the accusations the prosecution primarily relied on the evidence of the complainant (PW-2) and the doctor who conducted post mortem. Additionally, certain letters purported to have been written by the deceased were brought on record vide Exhs. PC and PC/1. In the statements
H recorded under Section 313 the accused persons pleaded

innocence. In defence the accused persons examined six witnesses including the Executive Magistrate, Chandigarh, neighbours and certain other persons. A

The trial Court came to hold that the appellants were guilty of the charged offences. In appeal it was noted that though the matters were listed for hearing none appeared for the appellant and, therefore, an advocate was appointed as Amicus Curiae. B
The High Court held that the accusations were established so far as the present appellant is concerned while directing acquittal of the co-accused persons. The High Court noted that the investigation was somewhat lethargic and an attempt was made to screen the truth. Therefore, placing reliance solely on the evidence of PW-2 the complainant and certain letters purported to have been written by the deceased, the appellant's conviction is in order. C

3. In support of the appeal, learned counsel for the appellant submitted that the evidentiary value of the dying declaration Ext.DA/4 has been lost sight of. Additionally the letters were conclusively established to have not been written by the deceased. Interestingly, the FIR was lodged after about 26 days. D E

4. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court and submitted that since the investigation was not fair the accused cannot take advantage of any lapse of the investigating agency. F

5. It is true as contended by learned counsel for the State that shoddy investigation cannot be a foundation for the accused persons to take advantage of shoddiness. But in the instant case, there was no material brought on record by the prosecution to establish the accusations so far as the present appellant is concerned. It is to be noted that there was a dying declaration recorded by the Executive Magistrate, Chandigarh who was present at PGI hospital. The authenticity of the dying declaration has not been questioned. It is the stand of the G H

- A prosecution that police officer should have recorded it. But that cannot be a ground to discard the dying declaration recorded by the Executive Magistrate. Additionally, the prosecution laid great emphasis on the letters purported to have been written by the deceased to her relatives. Here again, handwriting expert's report clearly shows that the letters were not in the handwriting of the deceased.

6. Above being the position, there is no evidence brought on record by the prosecution to establish the accusations. That being so, the appeal deserves to be allowed which we direct.
- C The conviction of the appellant is set aside. The appellant be released from custody forthwith unless required to be in custody in connection with any other case.

K.K.T.

Appeal allowed.