



2023 INSC 1069

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 565/2012

SURJIT SINGH

APPELLANT(S)

VERSUS

STATE OF PUNJAB

RESPONDENT(S)

J U D G M E N T

ABHAY S.OKA, J.

1. Heard the learned counsel appearing for the parties.
2. The appellant, who is the husband of the deceased, was convicted by the Trial Court for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, the "IPC"). He was sentenced to undergo life imprisonment by the Trial Court. The conviction of the appellant has been confirmed by the High Court by the impugned judgment.
3. According to the prosecution case, there used to be constant disputes between the deceased and the appellant (her husband) from the day of their marriage. Though the couple was blessed with a son and a daughter, the disputes continued.
4. As per the prosecution case, on 6th July, 1999, in the

evening, while giving drinking water to the deceased, the appellant mixed certain substance in the water. It is alleged that thereafter her health started deteriorating. On 7th July, 1999, Kaushalya Devi (PW-7), the mother of the deceased, came to the matrimonial home of the deceased to enquire about her health. It was Kaushalya Devi (PW-7) who took the deceased to Dr. Pirthipal Memorial Hospital, Kotkapura. On the next day i.e., 8th July, 1999, the deceased was taken to the Civil Hospital, Kotkapura. After the deceased was taken to the Civil Hospital, Dr. B.K. Kapoor (PW-1) found that the case was of suspected poisoning and the condition of the deceased was very serious. Therefore, after sending an intimation to the Police Station, Dr. B.K. Kapoor (PW-1) referred the case to GGS Medical College, Faridkot. On receipt of the information, Surjit Singh, ASI (PW-10) went to GGS Medical College and submitted an application to the doctor to certify the fitness of the deceased to make a statement. Accordingly, on the application itself, the doctor certified her fitness at 4:30 p.m. Thereafter, Surjit Singh (PW-10) proceeded to record her statement, which is treated as the dying declaration in which the deceased stated that it was the appellant who administered poison to her. The cause of death, as certified by the Forensic Department, was poisoning due to aluminium phosphide. Initially, an offence was registered under Section 307 of the IPC which was converted into Section 302 of the IPC after the deceased died at 6:50 p.m on

8th July, 1999.

5. Both the Courts believed the prosecution case regarding the dying declaration recorded by Surjit Singh (PW-10). The Courts discarded the testimony of Dr. Manvir Gupta (PW-13), who was running Dr. Pirthipal Memorial Hospital. The Courts have also relied upon the testimony of Kaushalya Devi (PW-7), the mother of the deceased.

6. The learned counsel appearing for the appellant has taken us through the evidence of the material prosecution witnesses and the documents on record. According to him, as the doctor has not certified that the deceased was fit enough to give a statement when Surjit Singh (PW-10) allegedly recorded her dying declaration, the same will have to be discarded. He urged that the first dying declaration has been made before Dr. Manvir Gupta (PW-13), who was the prosecution witness. He stated that the deceased disclosed to him that she herself consumed the aluminium phosphide tablets. The learned counsel pointed out several lacunae in the prosecution case.

7. On the other hand, the learned counsel appearing for the State submitted that the Courts have rightly discarded the testimony of Dr. Manvir Gupta (PW-13) on the ground that while informing the Police regarding the medico-legal case admitted to his Hospital, he did not inform the Station House Officer (SHO)

about the disclosure allegedly made to him by the deceased. Moreover, the learned counsel submitted that one hour before the dying declaration was recorded by Surjit Singh (PW-10), a doctor attached to the Hospital gave fitness certificate. Therefore, there is no reason to discard the testimony of Surjit Singh (PW-10) and the genuineness of the dying declaration recorded by him. He would, therefore, submit that the Courts have rightly appreciated the evidence and no interference is called for.

8. The case of the prosecution mainly rests on the dying declaration of the deceased recorded by Surjit Singh (PW-10). It is not in dispute that at the instance of Kaushalya Devi (PW-7), the deceased was taken to Dr. Pirthipal Memorial Hospital, which was being run by Dr. Manvir Gupta (PW-13). In the evidence of Dr. Manvir Gupta (PW-13), he has stated that the deceased was brought to his Hospital at 12 noon on 7th July, 1999 by the appellant. In his examination-in-chief, Dr. Manvir Gupta (PW-13) has stated thus:

" ... There were not recoded. I asked the patient as what has happened to her. She told that she got vomiting since yesterday night. Condition of the patient was so bad, therefore this could not be the cause of vomiting alone. On my persistent, she told me that she had a fight a night before with her husband and she took aluminum phosphide tablets herself. After that I found it a medical legal case and I asked the person who brought her to take her away. The mother of the patient came and she and husband of that lady started fighting. Scene was created, many people collected there. They all requested me to tell her till the matter is sorted out. Husband gave me the consent to treat his wife and inform the police. The said consent is Ex. PW.I

inform the police vide Ex. PX. The police came and treated her. Her condition was very bad. She was given lot of drug. She started moving. On 8.7.99 who stood improved somewhat and the family wanted to take her away, particularly mother wanted to take her. Thana Singh one of the relative of the deceased took her after discharge. Though I told that her condition was very serious. ..."

(underlines supplied)

9. Dr. Manvir Gupta (PW-13) was not declared as hostile. In a sense, Dr. Manvir Gupta (PW-13) was the first independent person who asked the deceased about the incident. There is nothing brought on record to show why Dr. Manvir Gupta (PW-13) would lie before the Court. There is no reason to discard his testimony. He has further stated the appellant gave consent to him to treat his wife and inform the Police. It is further stated that Thana Singh, one of the relatives of the deceased, took the deceased after her discharge from Dr. Pirthipal Memorial Hospital. According to him, at that stage, the condition of the deceased was very serious. But the said Thana Singh gave him a writing stating that he was voluntarily taking the deceased to another hospital. In fact, the writing of Thana Singh records that he was taking the deceased at his free will to the Civil Hospital on the ground that the deceased was alright. Thus, there is no reason to discard the testimony of Dr. Manvir Gupta (PW-13), especially about the dying declaration made before him by the deceased that she herself consumed the tablets containing poison. His version cannot be discarded only on the ground that he did not inform the Police in writing about the disclosure

made by the deceased.

10. Now, we come to the dying declaration relied upon by the prosecution which is recorded by Surjit Singh (PW-10). He recorded the alleged dying declaration at 5:30 p.m on 8th July, 1999. A request was made by him to the doctor attached to the GGS Medical College to certify whether the deceased was fit to make a statement. An endorsement, according to him, was made by Dr. Sudhir Sharma at 4:30 p.m recording that the patient was fit for making the statement. In the examination-in-chief, Surjit Singh (PW-10) has not stated that Dr. Sudhir Sharma examined the deceased before giving the fitness certificate. He has stated that Dr. Sudhir Sharma remained present by his side when he recorded the statement of the deceased. What is most relevant is the admission given by Surjit Singh (PW-10) in paragraph 2 of his cross-examination, which reads thus:

"2. It is correct that doctor remained beside Reeta Rani throughout when I recorded her statement. It is correct that I sought the opinion of the doctor regarding the fitness of Reeta Rani throughout her statement but he refused to give this certificate i.e. fitness certificate. ..."

(underlines supplied)

11. Thus, even according to Surjit Singh (PW-10), the doctor, who gave certificate at 4:30 p.m, declined to give a certificate that when the statement of the deceased was being recorded, she was fit to give a statement. There is nothing brought on record to show that Dr. Sudhir Sharma examined the deceased before giving certificate of fitness at 4:30 p.m. What is most crucial

is that Dr. Sudhir Sharma has not been examined as a prosecution witness. In view of the what is admitted by Surjit Singh (PW-10) in paragraph 2 in his cross-examination, which we have quoted above, an adverse inference will have to be drawn against the prosecution for not examining the said doctor. Therefore, for the aforesaid reasons, the dying declaration allegedly recorded by Surjit Singh (PW-10) will have to be discarded. Then the other dying declaration recorded by an independent doctor, namely Dr. Manvir Gupta (PW-13), holds the field.

12. Now, what remains is the evidence of Kaushalya Devi (PW-7), the mother of the deceased. It is a version of an interested witness. A serious doubt is created in the mind of the Court about the entire prosecution case as Dr. Manvir Gupta (PW-13), who was the prosecution witness, was not declared as hostile and as one of the most crucial witnesses i.e., Dr. Sudhir Sharma was not examined. The dying declaration before Dr. Manvir Gupta (PW-13) is completely contrary to the version of Kaushalya Devi (PW-7). According to Dr. Manvir Gupta (PW-13), when the deceased was shifted to the Civil Hospital, her condition was very serious. The deceased died within one hour of recording the alleged dying declaration by Surjit Singh (PW-10).

13. Therefore, we are of the considered view that the case made out by the prosecution is not free from doubt and, therefore, we have no hesitation in holding that the guilt of the appellant

has not been proved beyond a reasonable doubt.

14. Hence, the Appeal succeeds. The impugned judgments are set aside. The appellant is acquitted of the offence alleged against him. As the appellant is on bail, his bail bonds stand cancelled.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
DECEMBER 07, 2023.