

PETITIONER:
BABU RAM AND ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 05/03/1998

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Nanavati. J.

The three appellants were tried in the court of Sessions, Behindis in Sessions Case No.73 of 1987 for the offence punishable under Section 302 read with Section 34 IPC. The charge against them was that appellant No.2 - Krishna Devi, the mother-in-law of Santosh Rani, poured kerosene on her and Babu Ram, the father-in-law, threw a lighted match stick on her and when Santosh Rani was trying to run out of the room, her husband - Rajinder Kumar - appellant No.3 had tried to hold the door. It was also the prosecution case that all the three had set her on fire because they felt that sufficient dowry was not to her by her parents.

The defence of appellant - Babu Ram was that he was not in the house at the relevant time as he had already left at about 8.30 a.m. for the shop in which he was working. Krishna Devi's defence was that she was washing clothes in the court yard of their house and was not present in the room on the first floor where the incident of the burning had taken place. The defence of the husband was that he was taking bath on the ground floor at that time.

The trial court believed the pleas of Babu Ram and Krishna Devi but disbelieved the explanation to Rajinder Kumar. It, therefore, acquitted Babu Ram and Krishna Devi but convicted Rajinder Kumar of the offence punishable under Section 302 IPC.

Rajinder Kumar filed Criminal Appeal No.389-DB/88 before the High Court challenging his conviction. The State also filed Criminal Appeal NO.138/89 challenging the acquittal of Babu Ram and Krishna Devi. Both the appeals were heard together by the High Court and by a common judgment they were disposed of. The High Court confirmed the conviction of Rajinder Kumar and also set aside the acquittal of Babu Ram and Krishna Devi as it held that both the dying declarations made by Santosh Rani were true and there was no good reason to disbelieve them.

Aggrieved by their conviction, all the appellants have filed this appeal. It was submitted by the learned counsel for the appellants that Santosh Rani could not have made the

dying declaration as she could not have been in a fit state of mind as she had received 60% burns and was given an injection of Morphin about an hour before her dying declaration was recorded. However, this contention cannot be accepted in view of the categorical evidence of the Doctor who has stated that she was in a fit state of mind when she made the statement. The Judicial Magistrate, who recorded the dying declaration, has also stated that he had enquired from the Doctor whether she was in a fit state of mind and after Doctor Garg certified her to be so and finding her fit he had recorded the statement.

We, therefore, see no reason to doubt the genuineness of the dying declaration - Ex.PG/1. The second dying declaration - Ex.PH was recorded by ASI, Jagdish Singh, sometime after the dying declaration Ex.PG/1 was recorded by the Judicial Magistrate. In that dying declaration also, Santosh Rani had given the same version. In fact, it was recorded as the First Information Report and subsequently treated as dying declaration after she had died. We are, therefore, of the opinion that the High Court was right in relying upon both the dying declarations.

In the two dying declarations, what Santosh Rani had stated was that her mother-in-law had poured kerosene over her and the father-in-law had thrown a lighted match stick and set her on fire. The only part stated to have been played by the husband was that when she was trying to go out of the room, he had attempted to bolt that door so as to prevent her from going out of the house. Therefore, even accepting the two dying declarations as (****), it cannot be said with reasonable certainty that the husband was also a party to the commotion of the offence. The version of the husband was that at the time of the incident, he was taking bath on the ground floor. It, therefore, appears that on coming to know that sometime had happened on the first floor, he went there and seeing her in flames, he had tried to bolt the door with a view to prevent outsiders from committing to know about the incident. Nothing else was alleged against the husband. The evidence against the husband was thus not sufficient to warrant his conviction under Section 302 read with 34 IPC. This aspect has been overlooked by the High Court.

We, therefore, dismiss the appeal of Babu Ram and Krishna Devi and allow the appeal of Rajinder Kumar, Appellant - Rajinder Kumar is acquitted of the charge levelled against him and his bail bonds are ordered to be cancelled. Appellants - Babu Ram and Krishna Devi were also released on bail during the pendency of the appeal. Their bail is cancelled and they are ordered to surrender to custody to serve out the remaining part of the sentence.