

action or recurring loss was not required to be raised before the Apex Court.”

(15) In view of what has been stated herein above, the suit praying that the appellant’s salary be re-fixed by grant of the annual increments as the orders of punishment were void was within time and the first appellate Court, committed an error of jurisdiction and of law in dismissing the suit as barred by limitation.

(16) Consequently, the appeal is allowed, judgment and decree dated 11th February, 1985 passed by the first appellate Court is set aside and the judgment and decree dated 19th September, 1984 passed by Sub Judge Ist Class, Batala is restored. There shall, however, be no orders as to costs.

R.N.R.

Before K. S. Garewal and Jitendra Chauhan, JJ.

RAJ KUMAR @ RAJU,—Appellant

versus

STATE OF PUNJAB,—Respondent

Criminal Appeal No. 409-DB of 1998

30th October, 2008

Indian Penal Code, 1860—Ss.324/323/302—Deceased’s first wife and son separated—Charges against son causing injury to his father—FIR on basis of dying declaration—No corroboration to dying declaration—No explanation as to why and under what circumstances deceased left SGTB Hospital and got himself admitted in Kakkar Hospital, where he ultimately died—Case against appellant not proved beyond reasonable shadow of doubt—Appeal allowed, order of conviction and sentence set aside.

Held, that there is no explanation as to why and under what circumstances the deceased left the SGTB Hospital and got himself admitted in Kakkar Hosiptal, where he ultimately died. There is no

explanation of the status of the health and medical facility availed of by the deceased during the interregnum period i.e. between the period he left SGTB Hospital against the medical advice and his admission in Kakkar Hospital. There is nothing on record to show as to what was the medical facility or help made available to the deceased in the two hospitals. Moreover, brother of the deceased has very categorically denied that he did not accompany the deceased to the Hospital for admission. In these circumstances, the statement of deceased, which is read as dying declaration, loses its strength and truthfulness. We are constrained to disagree with the finding of the learned trial Court that death was the direct result of injury No. 1. As such, as a cumulative effect of the facts and circumstances of the present case, the case against the accused-appellant is not proved beyond the reasonable shadow of doubt.

(26, 27, 28 and 30)

D. S. Pheruman, Advocate *for the appellant.*

Gurveen Singh, Addl. Advocate General, Punjab.

JITENDRA CHAUHAN, JJ.

(1) Raj Kumar @ Raju was tried by learned Additional Sessions Judge, Amritsar for the murder of Uttam Chand. Raj Kumar @ Raju was convicted on 20th August, 1998 and sentenced to life imprisonment, and has filed the present appeal.

(2) Uttam Chand son of Piara Lal, the deceased, was running a cloth shop at Lakkar Mandi Chowk, Amritsar. His first wife separated from him about 16-17 year ago. At the time of separation, the couple had a 4/5 years son. The son, named Raj Kumar, had been staying with his mother. He nursed grudge against his father on account of desertion of his mother.

(3) On 27th March, 1996, at about 8.15 P.M., when deceased Uttam Chand was returning home after closing his shop, he was stabbed on the back of his neck by his son Raj Kumar @ Raju. His elder brother Madan Lal and younger brother Gopal Krishan rushed to the spot when the victim raised an alarm. Uttam Chand, the deceased, was admitted

to the SGTB Hospital by his brother Madan Lal. The statement, Exhibit P10, of Uttam Chand, the deceased was recorded by PW7 Bachitter Singh, the Investigating Officer, which after his death, was treated as dying declaration.

(4) On the basis of the statement made by Uttam Chand, the deceased, a ruqa was sent from Civil Hospital to the police station at 12.30 P.M. An FIR was registered on 28th March, 1996 at 1.30 P.M. under Sections 324/323 of the Indian Penal Code at Police Station Kotwali, Amritsar.

(5) The case was investigated by PW12 A.S.I. Tarsem Raj. Dr. Sukhwinder Singh, PW10 declared injury No. 1 as dangerous to life and accordingly, the offence was converted from Section 324/323 of the Indian Penal Code to Section 307 of the Indian Penal Code. On 9th April, 1996, a telephonic message from the brother of the deceased Gopal Krishan PW1 was received by A.S.I. Tarsem Raj, PW12 regarding the death of Uttam Chand at Ram Saran Dass Kishori Lal Charitable Trust (commonly known as Kakkar Hospital), Amritsar. Accordingly, the offence was converted from Section 307 to the one under Section 302 of the Indian Penal Code. The inquest report, Exhibit PO, was prepared by PW12 in the presence of Madam Lal son of Piare Lal and Hari Om son of Piare Lal, PW2 and PW4 respectively, the other brothers of the deceased.

(6) Dr. Ashok Chanana conducted the post mortem on the dead body of Uttam Chand, deceased, and found the following injuries :

“1.13 cms. long irregular wound obliquely placed with mettalic sutures (staples) was present on the back and upper part of the chest with 21 samples intact, 7 cms. below the hap of the neck in its mid-line.

On dissection; Reddish coloured foul smelling discharge came out. The right lamina of the third thorasic vertebrae was fractured with a tear in the underlying dura and spinal cord. Clotted blood was present at the site of fractured and injured structures. The depth of wound was 10 cm.

2. Reddish brown abrasion 4 x 1.5 cms was present on the front of right leg, in its upper one third.
3. A reddish brown abrasion 1.5 x 0.7 cms was present on the front of left leg, in its upper one third.
4. A reddish brown abrasion 1.2 x 0.6 cms was present on the left knee.

The larynx and trachea, both lungs, liver, spleen and kidney were pale. The heart, stomach and small intestines were empty. Large intestines contained feces and bladder contained 15 ml. of urine.

Cause of death was to be given after receiving the report of Professor and Head, Department of Microbiology, Government Medical College, Amritsar. I handed over to the police a stitched dead body after post-mortem examination with its belongings duly signed by me. A carbon copy of P.M.R. Police papers 1 to 26 duly signed by me. An envelope with four seals, addressed to professor and Head, Microbiology Department containing a requisition letter bearing the details of the specimen sent (a copy kept in the department for future record) and a sample of seal. An envelope with four seals addressed to professor and Head, Microbiology Department Government Medical College, Amritsar containing the specimen sent for culture.

Probable time that elapsed for death and post-mortem was 12 to 24 hours.

On receiving the report from Department of Microbiology, Medical College, Amritsar,—*vide* No. 1873, dated 10th April, 1996 and after analysing the report of Microbiology (No. 1873 dated 10th April, 1996), I was of the view that the cause of death in this case was infection as a result of injury No. 1 which was sufficient in ordinary course of nature, to cause death.”

(7) The accused-appellant was arrested on 10th April, 1996 in the presence of Hari Om, PW2 and A.S.I. Sukhwinder Singh by A.S.I. Tarsem Raj. The statements of Hari Om, A.S.I. Sukhwinder Singh and Gopal Krishan were got recorded. The special report was sent to the Magistrate at 11.00 P.M. on 8th April, 1996.

(8) After completing the investigation, the challan was produced. The learned Additional Sessions Judge, Amritsar summoned the accused to face trial under Section 302 of the Indian Penal Code.

(9) The prosecution, in order to prove its case, examined 15 witnesses. However, except the official witnesses, none of the witnesses supported the case of the prosecution. The learned trial Court convicted and sentenced the accused after treating the statement made by deceased as dying declaration.

(10) After the prosecution concluded its evidence, the accused/appellant was examined under Section 313 of the Code of Criminal Procedure, who pleaded not guilty and claimed trial. The accused, in response to question No. 22, stated that his father had turned out his mother from the house. He did not cause any injury to his father. His father was never unconscious and no statement was made by him (his father) before the police. He claimed that he was brought from Jalandhar and falsely involved in the present case.

(11) The precise point for determination is as to whether the appellant caused injury to his father and the injury caused by the appellant was sufficient, in the ordinary course of nature, to cause death; whether the death was not the result of the injury; whether the death occurred due to negligence on the part of the Doctor; and further whether the FIR registered at the instance of the deceased could be used as dying declaration and was sufficient to bring home the guilt to the accused when the eye witnesses have not supported the case of the prosecution.

(12) The learned counsel appearing for the accused-appellant submitted that there was no corroboration to the dying declaration made by the deceased. As per the statement of the deceased, PW1 to PW4 were the eye witnesses to the occurrence. These PWs denied having made statement to the police under Section 161 of the Code of Criminal procedure. The further contention was that initially the case was registered

under Section 324/323 of the Indian Penal Code and after the injury was found dangerous, case was converted under Section 307 of the Indian Penal Code and on 9th April, 1996, after death the case was further converted under Section 302 of the Indian Penal Code.

(13) It was argued that the instant case does not fall under Section 302 of the Indian Penal Code as the cause of death was not the direct result of the injury, in the first instance, the case was registered under Section 324/323 of the Indian Penal Code and at the most the case falls under Section 326 of the Indian Penal Code.

(14) It was further contended that no reliance could be placed on dying declaration in the instant case. As per the statement, Exhibit PX, made by Uttam Chand, the deceased, he was taken to the Hospital by his brother Madan Lal and Gopal Krishan. Madan Lal appeared as PW2 and did not support the version of the deceased. In this case, the ocular evidence could not be relied upon as none of the alleged eye witnesses supported the case of the prosecution.

(15) On the other hand, learned State counsel submitted that the occurrence was witnessed by Gopal Krishan and Madan Lal. As the mother of the accused-appellant had been deserted by the deceased, the appellant had nursed grudge against the deceased and had given threats to him (the deceased) about 4-5 months earlier as well.

(16) After considering the rival contentions of the parties, the learned trial Court held that the death in the instant case was the direct result of injury No. 1.

(17) In this back-ground, we evaluate the instant case.

(18) PW13 – Dr. Randhir Singh Boparai, who carried out the surgery on Uttam Chand, in cross-examination stated that the deceased left the Hospital on 28th March, 1996 at 1.30 P.M. without permission. In such like circumstances, the possibility of his death due to infection could not be ruled out.

(19) As per the statement of the deceased, he was taken to the SGTB Hospital by Gopal Krishan, PW1 and his elder brother Madan Lal, PW2. Both the brothers did not support the version of complainant, the deceased. The deceased was admitted to the SGTB Hospital on

27th March, 1996. The deceased left the SGTB Hospital and got himself admitted in Kakkar Hospital.

(20) Further, PW1 Gopal Krishan stated that his brother Uttam Chand, the deceased, told him that he could not see the assailant. In these circumstances, it is not safe to rely upon the dying declaration in the instant case in the absence of corroboration from any source.

(21) The death occurred after 14 days of the occurrence. As per the statement of Dr. S.S. Sandhu, the deceased was operated upon 2nd April, 1996. It is not clear from the record as to what was the nature of surgery that was carried out by the doctors at Kakkar Hospital when the deceased had already been operated upon by the doctors at the SGTB Hospital.

(22) In the circumstances, we are constrained not to agree with the findings of the learned trial Court that the death in the instant case was the direct result of injury No. 1.

(23) Apart from the above fact, the report of PW12 A.S.I. Tarsem Raj was also not free from doubts. As per this witness, the accused was arrested on 10th April, 1996 in the presence of Hari Om, PW4. However, PW4 has denied his presence at the time of arrest of the accused. The finding of the learned trial Court to the extent that history in the bed-head ticket was recorded at the instance of relations, is not based on facts as the FIR was registered on the statement made by the deceased himself which was later on treated as dying declaration.

(24) In view of the above, the finding of the learned trial Court that the history of the deceased was given to the hospital authorities by the relatives of the deceased is against the record and the same cannot be relied upon.

(25) Further, except the statement of the deceased that he was threatened 4-5 months back as well by the accused-appellant, there is no other evidence on record which establishes the fact that the accused had any grudge against the deceased. The PWs, who happened to be the brothers of the deceased, would not make an effort to shield the murderer of their brother.

(26) There is no explanation as to why and under what circumstances the deceased left the SGTB Hospital and got himself

admitted in Kakkar Hospital, where he ultimately died. There is no explanation of the status of the health and medical facility availed of by the deceased during the interregnum period, i.e., between the period he left SGTB Hospital against the medical advice and his admission in Kakkar Hospital.

(27) There is nothing on record to show as to what was the medical facility or help made available to the deceased in the two hospitals. Moreover, Madan Lal has very categorically denied that he did not accompany the deceased to the Hospital for admission.

(28) In these circumstances, the statement of deceased, which is read as dying declaration, loses its strength and truthfulness and points raised in para No. 10 stand answered. We are constrained to disagree with the finding of the learned trial Court that death in the instant case was the direct result of injury No. 1.

(29) In the case of **J. Ramulu versus State of Andhra Pradesh (1)**, it has been observed as under :

“The contents of the dying declaration are shrouded by doubts and suspicion and the entire evidence, discussed above, suggests that the dying declaration does not reveal the entire truth, it has to be considered only as a piece of evidence on which no implicit reliance can be placed and in which event conviction cannot be rested solely on the basis of such doubtful dying declaration.”

(30) As such, as a cumulative effect of the facts and circumstances of the present case, we observe that the case against the accused-appellant is not proved beyond the reasonable shadow of doubt.

(31) In the circumstances, the present appeal is allowed and the order of conviction and sentence dated 20th August, 1998 passed by the learned Additional Sessions Judge, Amritsar is set aside. The appellant is ordered to be set free forthwith, if his custody is not required in any other case.

R.N.R.

(1) 2008(2) RCR (Criminal) 842