

## FULL BENCH

Before S. S. Sandhwalia, C.J., C. S. Tiwana & S. S. Dewan, JJ.

STATE OF PUNJAB,—Appellant.

versus

SAVITRI DEVI,—Respondent.

Criminal Appeal No. 755-DBA of 1980.

April 4, 1983.

*Code of Criminal Procedure (II of 1974)—Section 378—Evidence Act (I of 1874)—Section 32—Prosecution evidence untrustworthy and dying declaration not inspiring confidence—Trial Court acquitting the accused—Appeal against acquittal—High Court—When justified in interfering with the order of acquittal—Dying declaration—Duty of the Court in scrutinising such a declaration.*

*Held*, that in an appeal against acquittal, a verdict of acquittal cannot be set aside merely on the ground that the Bench may have a different view than the one taken by the learned trial Judge. There has to be compelling reason to set aside the judgment of acquittal. If two views on evidence may be possible then the view taken by the learned trial Court cannot be departed from unless the conclusions reached by the trial Judge are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on the record then the view in support of the acquittal of the accused should be preferred. (Para 10).

*Held*, that a dying declaration is undoubtedly admissible under section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny of the closest circumspection of the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of imagination of the dying person. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailant and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. (Para 7).

*Case referred by Hon'ble Mr. Justice C. S. Tiwana to a larger Bench Under Section 392 Criminal Procedure Code dissenting his opinion on a question involved in the case while sitting in Division Bench consisting of Hon'ble Mr. Justice C. S. Tiwana and Hon'ble Mr. Justice S. S. Dewan on May 20, 1982. The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice C. S. Tiwana and Hon'ble Mr. Justice S. S. Dewan, finally decided the case on April 4, 1983.*

*Appeal from the order of Shri O. P. Saini, District and Sessions Judge, Ludhiana, dated 9th June, 1980, acquitting the accused (respondent).*

K. P. Singh Sandhu, Additional A.G. with Bachittar Singh, Advocate.

Ravinder Chopra, Advocate.

#### JUDGMENT

S. S. Dewan, J.—

(1) Smt. Savitri Devi accused-respondent was put on trial in the Court of the Sessions Judge, Ludhiana, under Section 302, Indian Penal Code, for having caused the murder of her daughter-in-law Smt. Kamal Kanta, a resident of Shivji Nagar, Ludhiana. The learned Session Judge after recording the evidence of the prosecution and hearing the arguments rejected the entire prosecution case and held that the prosecution had miserably failed to prove the case against the accused and he accordingly acquitted her by his lucid and an elaborate judgment dated June 9, 1980. The State of Punjab thereafter filed an appeal against the order of acquittal passed by the learned Sessions Judge, Ludhiana. The appeal was heard by a Division Bench of this Court consisting of C. S. Tiwana, J., and myself. After hearing the parties' counsel, this appeal was referred to a larger Bench for decision,—vide reference order dated May 20, 1982.

(2) For the reasons which will appear hereafter, it is necessary to maintain the homogeneity of this judgment by giving an independent narration of the facts. As has already been referred to, Smt. Kamal Kanta (deceased), aged about 16 years, was married to Inder Mohan son of Smt. Savitri Devi, accused-respondent about 6 months prior to the present occurrence. It is said that the accused was not satisfied with the dowry brought by the deceased at the time of her marriage. The prosecution version is that on 11th November, 1979 at about 10.00 a.m., Smt. Kamal Kanta and the accused were present in their house. Nand Kishore, husband of the accused, had gone to attend the Satsang. The accused asked

Smt. Kamal Kanta to prepare tea for her and the latter lighted the *Angithi* in the court-yard of the house and kept a pot containing water on it to boil. Thereafter, Smt. Kamal Kanta entered the kitchen, with a view to bring sugar and she found that the accused was following her into the kitchen. The accused started abusing Smt. Kamal Kanta and told her that she would set her on fire. After uttering these words, she picked up a container, sprinkled kerosene oil on the clothes of Smt. Kamal Kanta and set her on fire with a match-stick. Smt. Kanta, with her clothes on fire, came out of the kitchen and tried to run away in a bid to extinguish the fire and in that process, she stumbled and fell down in the lane. Her husband Inder Mohan and some persons residing in the neighbourhood extinguished the fire by putting sand on her.

(3) Smt. Kamal Kanta was removed to the C.M.C. Hospital, Ludhiana, by her husband where she was admitted at about 11.10 a.m. Dr. R. K. Pandey, who examined her in the hospital, sent intimation to the Station House Officer, Police Station Division No. 3, Ludhiana. Sub-Inspector Manohar Lal, Station House Officer, Police Station Industrial Area, Ludhiana, reached the C.M.C. Hospital at about 5.30 p.m., to record the statement of Kamal Kanta, who was then lying in the Burn-Unit of the hospital. Dr. Rakesh Khazanchi, Registrar, Department of Surgery, declared her fit to make a statement at 5.50 p.m. Sub-Inspector Manohar Lal then recorded her statement, Exhibit P.Q., which formed the basis of the formal first Information Report, Exhibit P.Q./2 registered at the police station at 6.45 p.m. Manohar Lal went to the house of the accused at about 7 p.m. and recovered a container containing about 2 litres of kerosene oil lying in the kitchen and a *chunni*, which was partially burnt, from the court-yard of the house, Manohar Lal moved an application for recording the dying declaration of Smt. Kamal Kanta. Shri A. C. Aggarwal, Judicial Magistrate 1st Class, Ludhiana, visited the hospital at about 2.30 p.m. for recording her statement but she was found unfit to make a statement. Smt. Kamal Kanta expired in the hospital on 14th November, 1979 at about 3 a.m. The Sub-Inspector held inquest and sent the dead-body to the mortuary for autopsy.

(4) Dr. Suresh Kumar, Medical Officer, Civil Hospital, Ludhiana, conducted autopsy on the deadbody of Smt. Kamal Kanta and found the following :—

“Whole of the body, except the head, the right knee joint area, the right arm and the right foot had been burnt. The burns had become septic at the lower part of the

abdomen and back. The burnt body surface was more than 90 per cent. There were burnt hair at the hairline above the forehead.

On dissection, I found that the brain membranes were congested. Pleura was also congested. Both lungs too were found congested."

Death was opined to be due to shock as a result of extensive burns which were sufficient to cause death in the ordinary course of nature. After necessary investigation, the accused was challaned and committed.

(5) The prosecution examined as many as 8 witnesses to establish its case of circumstantial evidence. In her statement under Section 313 of the Code, the accused-respondent denied the prosecution allegations and pleaded *alibi* and averred that she was falsely implicated due to enmity with the parents of the deceased.

(6) It would appear from the record that the conviction of the respondent depends entirely on the reliability of the dying declaration, Exhibit P.Q., allegedly made by the deceased Smt. Kamal Kanta. This dying declaration was rejected by the learned Sessions Judge holding that it presents suspicious features. The arguments of the learned counsel for the appellant is naturally centred round the reliability of Exhibit P.Q.—the dying declaration recorded by the Sub-Inspector Manohar Lal, P.W., in the hospital. It was contended by him that the learned Sessions Judge had gone wrong in rejecting the dying declaration which was both true and voluntary and the correctness of which had been testified by the doctor. On the other hand, the learned counsel for the respondent argued that the High Court could not interfere with an order of acquittal in appeal without displacing the reasons given and the circumstances relied upon by the trial Court and certainly not in a case where two views were possible. It was also stressed that the dying declaration was recorded in suspicious circumstances, which went to show that it was not a voluntary or true disclosure by the deceased but was the result of tutoring and prompting by her relations.

(7) The dying declaration is undoubtedly admissible under S. 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strictest scrutiny of the closest circumspection of the statement

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before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of imagination of the dying person. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailant and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. The law on the subject has been clearly and explicitly enunciated by their Lordships of the Supreme Court of India in *Khushal Rao v. State of Bombay*, (1).

(8) I would now examine the dying declaration, Exhibit P.Q., in the light of the principle enunciated above. To begin with, I would like to deal with the surrounding circumstances of the attendant factors which culminated in the dying declaration, Exhibit P.Q., in the hospital. It is clear from the prosecution evidence that Dr. R. K. Pandey sent intimation, Exhibit P.L., to the 'Police Station Division No. 3, Ludhiana, but the police machinery did not move till about 5 p.m. Sub-Inspector Manohar Lal, Station House Officer, Police Station Division No. 6, Ludhiana, reached the hospital at 5.45 p.m. to record the statement of Smt. Kamal Kanta. Dr. Rakesh Khazanchi declared her fit to make a statement at 5.50 p.m. and then the Sub-Inspector recorded her statement, Exhibit P.Q. Dr. Rakesh Khazanchi appended his certificate on that statement that Smt. Kamal Kanta remained conscious throughout, while her statement was being recorded. It also emerges from the statement of Dr. Khazanchi, that in those days, the friend and relations of the patients could visit them in the hospital from 3 p.m. to 5 p.m. It is thus manifest that the statement, Exhibit P.Q., was recorded after the relations of the deceased had an opportunity to meet her and to talk to her. Equally significant here is the fact that Dr. Khazanchi has deposed that glucose was continued to be administered to Smt. Kamal Kanta during the period, her statement was being recorded but he stands falsified by Sub-Inspector Manohar Lal, who has clearly stated that glucose was not administered to her at the time he recorded her statement. The doctor does not know if the Sub-Inspector recorded

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(1) A.I.R. 1958 S.C. 22.

her statement in his own hand or dictated it to some other police official. All these factors make it plain that the version of Dr. Khazanchi cannot possibly be accepted as a gospel truth. The learned Sessions Judge has rightly relied on these circumstances to come to the conclusion that the possibility of prompting the deceased by her parents could not be excluded. Once the dying declaration is disbelieved then there remains no legal evidence on the basis of which the accused-respondent could be convicted.

(9) The prosecution case also suffers from such glaring infirmity that no conviction could possibly be rested thereon. What first catches the eye is the patent improbability of the version propounded on behalf of the prosecution. It emerges from the dying declaration that when the deceased went to the kitchen to fetch sugar for preparing tea, the accused followed her and after abusing her, picked up a container, sprinkled kerosene oil on her clothes and set them ablaze with a match-stick. This version of the deceased appears to be improbable and the one given by Som Nath (D.W.), that immediately after the occurrence, on his enquiry Smt. Kamal Kanta told him that her clothes caught fire from the flames of a stove, appears to be true. Smt. Kamal Kanta was admittedly a young girl of 16/17 years. The learned Sessions Judge has rightly pointed out that it was inconceivable that in spite of the warning given by the accused to the deceased that she was going to set her clothes on fire, she kept on sitting in the kitchen till kerosene oil was sprinkled on her and her clothes were set on fire. These facts indeed cast an aura of deep suspicion over the very probability and even the possibility of the prosecution story.

(10) It has to be kept in mind that this is an appeal against acquittal in which a verdict of acquittal cannot be set aside merely on the ground that the Bench may have a different view than the one taken by the learned trial Judge. There have to be compelling reasons to set aside the judgment of acquittal. On merits, I do not find if the conclusions deduced by the learned trial Judge were such, which could not be derived from evidence. If two views on evidence may be possible then the view taken by the learned trial Court cannot be departed from. With regard to interference in appeal against acquittal, their Lordships of the Supreme Court have laid down in *Khedu Mohton and others v. State of Bihar*, (2) that unless the conclusion reached by the trial Judge are palpably wrong or based

(2) 1970 C.A.R. 400.

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on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on the record then the view in support of the acquittal of the accused should be preferred.

(11) After giving my due thought to the evidence in the case and the arguments addressed on behalf of the State, I do not think that the reasons which are necessary to set aside a judgment of acquittal are made out. Concurring with the view of the learned trial Judge, I dismiss the appeal.

S. S. Sandhawalia, C.J.—I agree.

C. S. Tewana, J.—I also agree with the ultimate conclusion.

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FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital & S. S. Sodhi, JJ.

TUL-PAR MACHINE & TOOL COMPANY, FARIDABAD,—*Petitioner.*

*versus*

SHRI JOGINDER PAL, WORKMAN and others,—*Respondents.*

Civil Writ Petition No. 4411 of 1982.

April 13, 1983.

*Industrial Disputes Act (XIV of 1947) (as amended by Haryana Act (39 of 1976)—Section 7-A(3) (aa)—Constitution of India 1950—Article 233 (2)—Appointment of a Presiding Officer of an Industrial Tribunal—Advocate or Pleader of a standing of seven years or more—Whether eligible to be appointed in the absence of a recommendation of the High Court—Award delivered by a Presiding Officer not eligible for appointment—Such award—Whether stands vitiated ipso facto.*

*Held, that from the language employed in section 7-A(3) (aa) of the Industrial Disputes Act, 1947 (as amended in the State of Haryana), it is plain that the legislature has still maintained the minimum modicum that*