Supreme Court of India
Jai Prakash And Ors vs State Of Haryana on 30 July, 1998
Author: Nanavati.
Bench: G.T Nanavati, S.P. Kurdukar

PETITIONER:
JAI PRAKASH AND ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 30/07/1998

BENCH:
G.T NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T Nanavati. J.

The four appellant are challenging in this appeal the judgement and order passed by the High court of Punjab and Haryana. in Criminal appeal No. 242 DB of 1994. All of them were convicted by the trial court under Section 302 read with Section 34 IPC. The High Court confirmed their conviction.

What has been held proved against the appellant is that in view of a dispute regarding their share in the land belonging to the family, they caused the death of Sushma, their brother's wife, by calling her at their house and after pouring kerosene over her head body and setting her abalze. There was no direct evidence. The prosecution had relied upon direct evidence. The prosecution had relied upon the dying declaration Ex. P.J to prove its case. The trial court accepted the dying declaration as genuine and true and convicted all the four appellant. The High Court also on reappreciation of the evidence accepted the dying declaration as genuine and true and thought it safe to confirm their convection on the basis thereof.

It was urged by the learned counsel for the appellant that no reliance whatsoever should have been placed upon the said dying declaration as it was recorded on 7.10.90; no further attempt was made to get her regular dying declaration recorded by a Magistrate. In our opinion, the submission made

by the learned counsel is misconceived. As Sushma was taken to the hospital with burns, the hospitals authorities informed the police. The police after going there, recorded the statement of Sushma. It was then in the nature of a complaint and was later treated as a dying declaration because she died. Whether police could have recorded a regular dying declaration or not was a matter for cross-examination of the Investigating Officer. In absence of such cross-examination, it cannot have any bearing on the correctness or otherwise of the statement recorded on 7.10.90. The said statement was sent to the police station at about 1.30 p.m. and the FIR was recorded at 3.30 p.m. A copy of the said FIR was received by the Magistrate on 8.10.90 at about 10.00 a.m. Therfore, there is no scope for doubting genuineness of that statement in this case. We are emphasising this aspect because it was also contended by the learned counsel by the dying declaration - Ex. PJ was not her statement at all. Only a vague suggestion was made to the investigating officer and to the Doctor that no statement at all was made by the deseased. This suggestion was denied by both of them. There is nothing on the basis of which it can be said that there is any substance in that suggestion.

It was next contended that no weight ought to have been given to that statement as it was not attested by the doctor and no endorsement was made thereon to show that the statement was made by Sushma while she was mentally and physically fit to make such a statement. This submission is also misconceived as it proceeds on an erroneous assumption that what was recorded by the police officer was a dying declaration. As he recorded a complaint, it was necessary for him to keep any doctor present or obtain any endorsement from him.

It was next submitted that when she was taken to the hospital at 7.30 a.m she was not replying to the questions properly as deposed by the first doctor who had examined her. This submission has also no substance because thereafter she was given treatment and the evidence shows that thereafter she was in a fit condition to make a statement. It was not even suggested to the Police Officer that she was not able to speak clearly. No attempt was made in the cross-examination of the doctor to show that her condition had not improved between 7.30 a.m. and 1.30 p.m. and, therefore, this submission also deserve to be rejected .

It was next contended by the learned counsel that the statement as not recorded in question and answer from and therefore no weight should be attracted to it. It also deserves to be rejected as misconceived because a complaint is required t be recorded in question and answer from even though there is a possibility that later on it might be treated as dying declaration receives corroboration from the site inspection report and also by the application - Ex. PL referring to the compromise arrived at n the previous day.

The decision relied upon by the learned counsel,namely, Munna Raja and anr. vs. State of M.P. (1976 (2) SCR 764) Dalip Singh and ors. vs. State of Punjab (AIR 1979 SC 1173) State (Delhi Admn. ) vs. Laxman Kumar and ors. (AIR 1986 SC

250) have no relevance to the facts of this case. In those cases dying declarations were recorded by the police officers during the course of investigation and were found too be suffering from defects of the kind submitted by the learned counsel.

As we find no substance in any of the contentions raised by the learned counsel, this appeal is dismissed.