

BAWA RAM & ANR.

V.

STATE OF U.T. CHANDIGARH
Criminal Appeal No. 988 of 2007

MAY 5, 2009

[DR. ARIJIT PASAYAT, ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860 : S. 302 r.w. S. 34 – Conviction by courts below based on dying declaration – Parents and relatives of deceased who were stated to have witnessed the incident, resiled from statement made during investigation and deposed to the effect that deceased was of unsound mind and had suicidal tendency – Held : In peculiar facts of the case, conviction is set aside.

Prosecution case was that there was a previous enmity between the deceased and accused persons due to which accused persons poured kerosene on deceased. The incident was witnessed by the father, mother and uncle of the deceased. During the investigation, all of them resiled from their statements. Prosecution however relied upon the two dying declarations. Trial Court ordered conviction under Section 302 r.w. Section 34 IPC based on the two dying declarations, which was affirmed by High Court. Hence the appeal.

Disposing of the appeal, the Court

HELD: 1. It is true that the dying declaration can be the basis of conviction even when the eye witnesses do not support the prosecution case. In the peculiar facts of the case where the father, mother and other relatives and even a person who claimed to have sustained injuries resiled from the statements made during investigation and deposed to the effect that the deceased was of unsound mind and had a suicidal tendency the effect thereof cannot be lost sight of. The statement of a person

A with unsound mind has to be considered in that background. Thus it would not be safe to sustain the conviction on the basis of the dying declarations. The appellants are therefore, acquitted of the charges. [Para 7, 8] [593-G-H; 594-A-B]

B CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 988 of 2007

C From the Judgement and Order dated 08.05.2006 of the Hon'ble High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 864-DB of 2004

WITH

Criminal Appeal No. 924 of 2009

D A.P.S. Deol, (NP), Harikesh Singh, Kamal Gupta, with him for the Appellant.

Shomila Bakshi, Rani Mishra (for Ms. Kamini Jaiswal), for the Respondent.

The Judgement of the Court was delivered by

E DR. ARIJIT PASAYAT, J.

1. Leave granted in S.L.P.(Crl.) No 4210 of 2006.

F 2. Since both these appeals arise out of a common judgment and order of the High Court of Punjab & Haryana at Chandigarh, they are being disposed of by a common judgment.

G 3. Challenge in these appeals is to the judgment of the Division Bench of the Punjab & Haryana High Court upholding the conviction of the appellants for offence punishable under section 302 read with Section 34 of the Indian Penal Code (in short IPC).

H 4. The prosecution version as unfolded during the trial was that on 16.7.2000 on account of previous enmity the accused persons poured kerosene oil on Nazar Khan (hereinafter referred to as the deceased). He was set on fire by them. The

incident was witnessed by the father (PW-3), mother (PW-4), A
uncle (PW-5) and other persons, who are stated to be closely
related to the deceased (P.Ws.2, 3 and 7). After completion of
the investigation, charge sheet was filed and the accused
persons faced trial. They pleaded innocence and denied the
accusations. In order to establish the accusations the B
prosecution relied upon the testimony of the so called eye
witnesses (P.Ws. 2 to 7). Curiously, all of them resiled from the
statements made during the investigation. The prosecution,
however, relied upon two dying declarations recorded on C
16.7.2000. The first was recorded by the A.S.I. and the second
by the District Magistrate. The first one was recorded at 10.10
a.m. and the second at 11.40 a.m. on the same day. The Trial
Court noticed that though the relatives and the injured persons
had resiled from the statements made during investigation but
the dying declarations were sufficient to record the conviction. D
Accordingly, the accused persons were held guilty. In appeal
the High Court concurred with the views of the Trial Court.

5. In support of the appeal, it is submitted that the so called
dying declarations have to be tested on the background of what
the father, mother and the brother of the deceased deposed. E
They categorically stated that the deceased was mentally
unsound and was having suicidal tendency and it was natural
that he himself tried to commit suicide by pouring kerosene oil
on himself.

6. Learned counsel for the respondent, on the other hand, F
submitted that the dying declarations were reliable and on the
basis of dying declarations the conviction as recorded cannot
be sustained.

7. It is true that the dying declaration can be the basis of G
conviction even when the eye witnesses do not support the
prosecution case.

8. In the peculiar facts of the case where the father, mother H
and other relatives and even a person who claimed to have
sustained injuries resiled from the statements made during

- A investigation and deposed to the effect that the deceased was of unsound mind and had a suicidal tendency the effect thereof cannot be lost sight of. The statement of a person with unsound mind has to be considered in that background. In the peculiar facts of the case we are of the view that it would be safe to
- B sustain the conviction on the basis of the dying declarations. The appellants are therefore, acquitted of the charges. The appellants shall be released from custody forthwith unless required to be detained in connection with any other case.

9. The appeals are accordingly, disposed of.

D.G.

Appeal disposed of.