

Reserved Judgement

**IN THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL**

**Criminal Appeal No. 146 of 2004  
Dated of Decision: 22.03.2010**

Govind Ram and Surendra Prasad ...Appellants

Versus

State of Uttarakhand ...Respondent

CORAM:- **HON'BLE MR. JUSTICE B.C. KANDPAL  
HON'BLE MRS. JUSTICE NIRMAL YADAV**

Present: Mr. U.P.S. Negi, learned counsel for the appellants.  
Mr. Amit Bhatt, learned A.G.A. for the State.

**Nirmal Yadav, J.**

Accused-appellants Govind Ram and Surendra Prasad were tried, convicted and sentenced under Section 302 read with Section 34 of the I.P.C. for committing murder of Smt. Urmila Devi, wife of Satish Chandra (PW-1) by putting her on fire vide judgment and order dated 31.03.2004 passed by the Additional Sessions Judge (F.T.C.) Pauri Garhwal in Sessions Trial No. 64 of 2002. They have been sentenced to undergo life imprisonment and Rs. 5,000/- as fine. In case fine was not paid, the accused were ordered to further undergo six months imprisonment.

Appellant no. 1 Govind Ram is the father-in-law while appellant no. 2 Surendra Prasad is the brother-in-law (husbands' brother) of the deceased. Primary evidence against the appellants is in the shape of dying declaration (Ex. Ka-4) allegedly made by Smt. Urmila (deceased) to Madan Lal Nautiyal, Tehsildar, Kotdwar (PW-2) in Rajkiaya Sanyukt Chikitsalay, Kotdwar (hereinafter referred to be as 'Chikitsalay) in the presence of Dr. R.S. Thakur (PW-6).

Briefly it was the case of the prosecution that on 22<sup>nd</sup> March 2002 at about 6:00 a.m. Govind Ram alongwith his son Surendra Prasad and his wife had given beatings to Urmila Devi and thereafter set her ablaze by sprinkling kerosene oil. Satish Chandra, husband of the deceased (PW-1) was working as a bus driver while deceased and their children were living in village Sukhali. On 23<sup>rd</sup> March 2002 Satish Chandra came to know about the occurrence late in the night when he reached his house after his duties. He went to Kotdwar and found his wife in the Chikitsalaya. Smt. Urmila (Deceased) disclosed the entire incident to him that his father Govind Ram and brother Surendra Prasad had given beatings to her and set her ablaze by sprinkling kerosene oil. She received 54% burn injuries at the upper part of her body. She herself extinguished the fire and reached Chikitsalaya at about 11:45 a.m. where she was admitted. Dr. R.S. Thakur (PW-6) medico-legally examined the injured and sent information to the police with regard to Urmila having been admitted in the Chikitsalaya in a burn condition. Madan Lal Nautiyal, Nayab Tehsildar (PW-2) reached the hospital and recorded the statement of Smt. Urmila (Ex. Ka-4) in question answer form in the presence of Dr. R.S. Thakur (PW-6), who has given the certificate that patient was fit for giving the statement.

Thereafter Satish Chandra (PW-1) submitted a written report (Ex. Ka-1) before Patwari, Patti Badlapur Talla and chick F.I.R. was registered against the accused persons under Sections 323, 504, 307 and 452 I.P.C. Kailash Ravi, Patwari (PW-4) initiated the investigation and recorded the statements of the witnesses. On the pointing out of the complainant site plan of the place of occurrence (Ex. Ka-7) was prepared. He also took into possession an 'empty can' of kerosene oil, half burnt clothes and picked up blood stained earth vide Ex. Ka-2. On 23<sup>rd</sup> April 2002 Smt. Urmila succumbed

to her injuries in the Chikitsalaya. Thereafter F.I.R. was converted under Sections 302, 452 and 506 I.P.C. The postmortem of the deceased was conducted on the same day at about 3:00 p.m., the postmortem report is Ex.-Ka-10.

On completion of the investigation, final report under Section 173 Cr.P.C., was put in the Court, for trial. The appellants were charge sheeted for commission of crime under Section 302 read with Section 34 of the I.P.C. They pleaded not guilty and claimed trial.

To prove its case, the prosecution produced as many as seven witnesses and also placed on record various documents. Satish Chandra, husband of the deceased (PW-1) reported the matter to the Patwari with regard to the incident, Madan Lal Nautiyal, Naib Tehsildar, Kotdwar (PW-2) recorded the statement of Smt. Urmila (dying declaration), S.I. Kunwar Pal Singh (PW-3) prepared the Panchayatnama (Ex.Ka-3), on receipt of information with regard to death of Smt. Urmila, Kailash Ravi (PW-4) conducted the investigation, Chhotey Lal (PW-5) was working as Ward-boy in the Chikitsalaya, who produced the register with regard to the medical examination of Smt. Urmila, Dr. R.S. Thakur (PW-6) medically examined Smt. Urmila on 22<sup>nd</sup> March 2002 and Dr. S.K. Chauhan (PW-7) conducted the postmortem.

On conclusion of prosecution's evidence, statements of the appellants were recorded under Section 313 Cr.P.C. They denied all the allegations of prosecution and claimed innocence and false implication. In defence the accused produced Smt. Ganga Devi (DW-1) daughter in law and Jagdish Prasad (DW-2), son of Govind Ram.

We have heard Mr. Mr. U.P.S. Negi, learned counsel for the appellants and Mr. Amit Bhatt, learned A.G.A. for the State.

In the present case there is no eye-witness account of the occurrence and the conviction has been based primarily by relying upon the dying declaration (Ex.Ka-4) of Smt. Urmila (deceased). Learned counsel for the appellants has challenged the veracity of dying declaration and argued that conduct of Smt. Urmila (deceased) itself makes the dying declaration unreliable. It was argued that the incident took place in the middle of the village but no one from the close vicinity has supported the prosecution case.

Learned counsel argued that it is not possible that after having set on fire, Smt. Urmila (deceased) was able to extinguish the fire herself. He referred to the dying declaration (Ex. Ka-4) wherein Smt. Urmila stated that she ran towards the river for extinguishing the fire. Learned counsel pointed out that as per the statement of Satish Chandra (PW-1), the river was at a distance of two kilometers from his house and it is highly impossible for the injured to go to the river in the state of burning to such a long distance. Learned counsel further pointed out that it also does not appeal to reason that deceased would carry clothes from her house to change after extinguishing the fire at the river.

Learned counsel for the appellant further argued that it appears from the facts as on record that either Smt. Urmila had herself set fire on her body or it was the work of some other bad elements of Kotdwar. He further argued that the statement of Smt. Urmila that her father-in-law is a person of bad character and he had tried to molest her, does not appear

to be plausible as accused Govind Ram is more than 85 years of age.

After pointing out the above circumstances, the learned counsel for appellants submitted that the dying declaration alone could not have been made the basis for conviction. It is highly improbable, unreliable and is not corroborated by any independent evidence. Lastly the learned counsel submitted that the incriminating circumstances as mentioned in the dying declaration were not put to the accused in the statement under Section 313 Cr.P.C. and therefore, the accused persons have to be given the benefit of doubt.

In the present case, it is true that there exists no ocular evidence to corroborate the dying declaration made by the deceased. However, it is well established that if the dying declaration is trustworthy, conviction can be based upon the same without any further corroboration since the author of the dying declaration is no more. Authenticity of such statement cannot be put to test by the process of cross examination. In view of these circumstances, the court is supposed to look into the contents of the statement, mode and manner of its recording, the fitness of the author of the statement, in a very minute manner. The law relating to dying declaration i.e. relevancy, admissibility and its probative value is fairly settled. Dying declaration made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction, which resulted in his death is relevant under Section 32 of the Evidence Act and is also admissible in evidence. Though dying declaration is indirect evidence, yet it is an exception to the rule against admissibility of evidence. Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused.

The Apex Court in ***Smt. Laxmi Vs. Om Prakash and others***, AIR 2001 Supreme Court 2383; while dealing with importance of dying declaration, has observed thus:-

“The law is well settled; dying declaration is admissible in evidence. The admissibility is founded on principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that declaration is not a cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the Court, the same may be refused to be accepted as forming safe basis for conviction.”

The Apex Court in ***Ravi Kumar alias Kutti Ravi Vs. State of Tamil Nadu*** 2006, Criminal Law Journal, 1625; has elaborated the circumstances, under which reliance can be placed upon statement made by the deceased. It reads thus:

*“4. Section 32 of the Indian Evidence Act, 1872 is an exception to the general rule against hearsay. Clause (1) of Section 32 makes the statement of the deceased admissible which is generally described as ‘dying declaration.’ The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense impending death produces in man’s the same feeling as that the conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and mind induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be in guard to see that the statement of the deceased was not the result of either tutoring or prompting or product of imagination. The Court has also to see and ensure that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the Court is satisfied that the declaration was true and voluntary, it*

*undoubtedly, can base its conviction on dying declaration without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely the rule of prudence. These well settled principles have been recognized and reiterated by this Court in the cases Smt. Paniben Vs. State of Gujrat, (1992) 2 SCC 474; Uka Ram Vs. State of Rajasthan, (2001) 5 SCC 474; Laxman Vs. State of Maharashtra, (2002) 6 SCC 710; P.V. Radhkrishna Vs. State of Karnataka (2003) 6 SCC 443; State of Maharashtra Vs. Sanjay D. Rajhans, AIR 2005 SC 97; and Muthu Kutty and another Vs. State by Inspector of Police, Tamilnadu (2005) 9 SCC 113.”*

Now we shall analyse the evidence on record keeping in view the parameters, as enunciated in the judgments, referred above. As per the prosecution, the deceased received burn injuries in her house at the hands of her father in law, Govind Ram and brother in law, Surendra Prasad. A perusal of the site plan of the place of occurrence shows house of Satish Chandra, husband of Smt. Urmila (deceased) is at point A, which falls in village Sukhali and the house of Surendra Prasad is also at a very short distance. At point B is the small waterfall (Gadhera), which is very close to the house of the deceased. The said waterfall meets further in the river at point C. In dying declaration, Smt. Urmila (deceased) has stated that after receiving burn injuries, she went to the waterfall (Gadhera) to extinguish the fire. The argument of learned counsel for the appellants that the deceased could not have run for a distance of two kilometers for extinguishing her fire in river is demolished in view of the position of Gadhera

(waterfall) shown in the site plan. The waterfall was flowing just next to her house, therefore, she could very conveniently extinguish the fire herself in the water.

On careful consideration of the dying declaration (Ex. Ka-4) of the deceased, it is apparent that the dying declaration is in the question answer form, Dr. R.S. Thakur made the endorsed his certificate just below the statement, that the patient was fit for giving statement. A bare reading of the dying declaration (Ex.Ka-4) clearly shows that Smt. Urmila (deceased) specifically levelled allegations against her father-in-law Govind Ram and brother-in-law Surendra Prasad. It has come in her statement that she herself extinguished the fire in the river. The fact that she extinguished the fire is also corroborated from the statement of Mr. Kailash Ravi (PW-4), who recovered a cotton sari and a blouse in burnt condition belonging to Smt. Urmila (deceased) near the waterfall (Gadhera). He was informed by Satish Chandra, husband of deceased (PW-1) that Smt. Urmila (deceased) had disclosed to him about extinguishing of fire by her in the waterfall (Gadhera) and where her half burnt clothes were also lying and thus, clothes were recovered at his pointing out by Kailash Ravi (PW-4).

Learned counsel for the appellant argued that if the burn clothes were lying at Gadhera, how was it possible for the injured to travel in the bus without any clothes. The argument of learned counsel is without force as Dr. R.S. Thakur (PW-6) deposed that injured was having a shawl type cloth on the upper part of her body and she was wearing a petticoat on the lower part of her body. As per the medical examination and postmortem report the deceased had received burn injuries from her head and up to the upper half of the abdomen and

both the arms. She did not receive burn on the lower part of the body.

The dying declaration further finds support from the statement of Satish Chandra, husband of deceased. He categorically stated that he was working as driver. On 22<sup>nd</sup> March 2002 when he reached his house at about 10/11 O'clock in the night, he did not find his wife at her house and the house was also found in a helter skelter condition. He went to the house of the accused to enquire about his wife but they did not disclose anything. He was informed by some taxi drivers that he was being searched in Kotdwar by some drivers thereupon he went to Kotdwar and found his wife admitted in Chikitsalaya in a burnt condition. The entire incident was disclosed to him by his wife and, thereafter he reported the matter to the police. Dr. R.S. Thakur (PW-6) and Madan Pal Nautiyal (PW-2) the Magistrate who had recorded the dying declaration, are the independent witnesses. They would not in any manner like to falsely implicate any one. Even Satish Chandra (PW-1) would not involve his own family members i.e. father and brother nor he would like to spare any other persons if his wife was assaulted by some persons other than his own family members.

In their defence the accused produced Jagdish Prasad and Smt. Ganga Devi as DW-2 and DW-1 respectively. They are son and daughter in law of Govind Ram. A perusal of their statement clearly shows that they have made the statement in order to save accused persons Govind Ram and Surendra Prasad. According to them, they could not even disclose as to why Smt. Urmila was admitted in the hospital. Their statements appear to be totally unnatural

The medical evidence also fully supports the statement of Smt. Urmila (deceased). She received burn injuries

from top of the head and up to the upper half portion of the body, which clearly shows that someone poured kerosene oil on her and set her ablaze. Dr. R.S. Thakur (PW-6) explained the injuries, on the person of the deceased, as mixed burn injuries, which were possible on account of Smt. Urmila having dipped herself in the water.

The deceased in the dying declaration disclosed the motive for committing the crime. The reasoning given by the learned counsel for the appellants that the allegation of the deceased is not possible as Govind Ram was more than 85 years of age. The argument of learned counsel for the appellants cannot be accepted as it has been observed by the trial court that by appearance accused Govind Ram does not appear to more than 70 years of age and as per the record his age is 75 years.

We do not agree with the argument of learned counsel for the appellants that the contents of dying declaration were not put to the accused in the statement under Section 313 Cr.P.C. and therefore, they should be given the benefit of doubt. We have perused the question put to the accused. Question No. 4 is very specific that on 22<sup>nd</sup> March 2002 Smt. Urmila (deceased) has made statement to Madan Lal Nautiyal Tehsildar, Kotdwar in the presence of Dr. R.S. Thakur (PW-6). The answer to the question by accused is simple ignorance. All the documents were provided to the accused by the trial court before framing the charge and the accused must have also been given the statement of Smt. Urmila (deceased) dated 22<sup>nd</sup> March 2002 i.e. the dying declaration. The accused cannot take plea that they were not aware of the contents of the statement of dying declaration made by Smt. Urmila (deceased).

In view of the detailed discussion, we find the dying declaration to be reliable, convincing and truthful. Therefore, the trial court has rightly based the conviction of the accused persons on dying declaration (Ex. Ka-4). Accordingly we find no merit in the appeal and the same is dismissed. Conviction and sentence awarded against the appellants are affirmed. If the appellants are on bail, their bail bonds are cancelled and sureties discharged. They shall be taken into custody forthwith to serve out the sentence awarded by the trial court.

**(Nirmal Yadav, J.)      (B.C. Kandpal, J.)**

VKG

**22.03.2010**