

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-1019-DB of 2009

DATE OF DECISION: JANUARY 28, 2015

RAJIV KUMAR

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. VINOD GHAI, SR. ADVOCATE
WITH MR. BIRINDER SINGH, ADVOCATE
FOR THE APPELLANT.

MS. TANISHA PESHAWARIA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. Aggrieved by the conviction and sentence passed by the trial Court under Section 302 IPC, accused Rajiv Kumar has preferred the present appeal.

2. It is the case of the prosecution that on 29.5.2007, PW5 ASI Ramphal received a wireless message at the police station that Meena Kumari daughter of Lala Ram was admitted in the General Hospital in a burnt condition. He proceeded to the hospital and found, based on the opinion expressed by PW7 Dr.Kuldeep Singh, that she was unfit to make any statement. Injured Meena Kumari was referred to Sardarjung Hospital, New Delhi. On 30.5.2007, PW1 ASI Mahesh Chander of Police Station Sarojni Nagar, New Delhi received intimation from the Burn Ward of Safdarjung Hospital, New Delhi regarding admission of Meena Kumari. He

proceeded to the hospital and got an opinion from PW10 Dr. N.N.Singh as regards the fitness of Meena Kumari to suffer a statement. He declared the patient fit for giving statement. Thereafter, he recorded the dying declaration of Meena Kumari. Meena Kumari suffered a statement before PW1 to the effect that on 29.5.2007 at about 8.00 p.m. accused Rajiv brought her to his kiriyana shop located at village Khandsa in his car and asked her to sit in the car which was parked near his shop. Accused Rajiv entered into his shop. After some time, Meena Kumari went to his shop. Questioning the propriety of Meena Kumari to enter into his shop, he gave a slap to her and asked her to get out of the shop. After she came out of the shop, accused Rajiv poured kerosene oil and set fire to her. Meena Kumari fell in love with accused Rajiv who promised to marry her. However, the members of the family of the accused engaged him for marriage with someone else. Therefore, the accused brought her to his shop after inducement and having decided to kill her poured kerosene oil and set her ablaze.

3. Based on the above dying declaration of Meena Kumari, a case was registered at Police Station Gurgaon. The accused was arrested. Based on the disclosure statement suffered by him, an empty can from his house was recovered. PW4 Dr.Sunil Kumar Sharma conducted post mortem examination on the dead body of Meena Kumari. He opined that she had died due to ante mortem burn injuries caused by flame.

4. The accused set up a plea in his statement under Section 313 Cr.P.C. that Meena Kumari was deeply in love with him. She also wrote love letters Mark 'A' and 'B' and gave her photograph Mark 'C'. The

parents of Meena Kumari having come to know about her affair, fixed her marriage with someone else. Meena Kumari used to give threat to the accused that she would commit suicide if accused did not marry her. The parents of the accused also fixed his marriage with someone else. Thereafter, Meena Kumari gave further threat of suicide. On 29.5.2007 at about 8.00 p.m. Meena Kumari came in front of Siri Ram Clinic of Dr.Yogesh in village Khandsa and set herself on fire and thereby committed suicide. She also disclosed to him on the way that she set herself ablaze as her parents had fixed her marriage with someone else.

5. On side of the defence, 8 witnesses were examined.

6. The trial Court having completely relied upon the dying declaration suffered by deceased Meena Kumari, in the background of medical evidence on record, returned a verdict of conviction as against the accused.

7. We heard the elaborate submissions made by Mr.Vinod Ghai, learned Sr. Advocate, vehemently attacking the judgement of conviction recorded by the trial Court based on the dying declaration suffered before PW1 ASI Mahesh Chander of Delhi Police. We also heard the submissions made by learned DAG for the State supporting the conviction and sentence passed by the trial Court based on the dying declaration suffered by deceased Meena Kumari.

8. It is a well settled proposition of law that dying declaration can be acted upon even without any corroboration to record conviction. But the Court should be satisfied that the dying declaration was true and voluntary. The Court also will have to see whether there was any tutoring or prompting

before dying declaration was suffered by the victim. In case the dying declaration is found to be suspicious, the same cannot be relied upon without corroborative materials. If any infirmity is found in the dying declaration, it cannot be the sole basis for recording conviction.

9. PW7 Dr.Neelam Thapar had medico-legally examined Meena Kumari daughter of Lala Ram who was brought by ASI Jaswant Singh. It is quite unfortunate that ASI Jaswant Singh was not examined by the prosecution. Had ASI Jaswant Singh been examined, he would have spoken something about the first statement suffered by the deceased. At any rate, in the face of dying declaration suffered by Meena Kumari before PW1, in our considered view, the case of the prosecution is not adversely affected by non-examination of ASI Jaswant Singh.

10. ASI Jaswant Singh had admitted Meena Kumari to General Hospital, Gurgaon on 29.5.2007 at about 8.00 p.m. PW7 Dr.Neelam Thapar on examination found that Meena Kumari had sustained 80-90% burn injuries on her body. The most crucial aspect that is reflected in the evidence of PW7 is that Meena Kumari was very much conscious and infact she had even given her parentage and the telephone number. But quite unfortunately, PW7 never enquired as to how she sustained burn injuries. In other words, PW7 had examined her medically and not medico-legally. PW7 infact gave a very casual answer during the course of cross-examination that she did not remember if she had asked the patient as to how she suffered burns on her body. It is to be noted that a Doctor who subjects a patient for medico-legal examination, is duty bound to ascertain the cause of the injury the patient had sustained.

11. PW5 ASI Ramphal is found to be a yet another lethargic police official. The fact remains that ASI Jaswant Singh who brought Meena Kumari never attempted to set the law in motion by lodging a complaint. PW5 ASI Ramphal was actually irresponsible in not recording the statement of at least the close relatives of Meena Kumari to set the law in motion. Surprisingly, he had taken shelter under the opinion expressed by PW9 Dr.Kuldeep Singh who opined that Meena Kumari was not fit enough to make statement vide his opinion Ex.PJ/1.

12. It is to be noted that a patient suffering from even 100% burn injuries is normally conscious till death. Only in cases where excessive pain killers are administered, the patient will remain sedative. At any rate, PW9 Dr.Kuldeep Singh without referring to the medical records, jumped to a sudden conclusion that Meena Kumari was not in a fit state of mind to suffer any statement. In the facts and circumstances of this case, we have no hesitation to come to a conclusion that PW9 Dr.Kuldeep Singh had given such an opinion just to save PW5 ASI Ramphal who faced embarrassment in the aftermath of the dying declaration recorded by PW1 ASI Mahesh Chander of Delhi Police at Safardarjung Hospital. Anyway, we find that such an approach of the police official or the Doctor does not cause any dent in the case of the prosecution.

13. We have all appreciation for PW1 ASI Mahesh Chander of Delhi Police, but for him the whole case of the prosecution would have fallen flat. The moment he received a communication on 30.5.2007 from the Burn Ward of Safdarjung Hospital, New Delhi, he rushed to the said ward and contacted PW10 Dr.N.N. Singh and with the fitness certificate

issued by the Doctor, he recorded the dying declaration of Meena Kumari in the very presence of PW10 Dr.N.N.Singh. PW10 Dr. N.N. Singh also would depose that not only he certified the conscious state of mind of Meena Kumari, but he was also present throughout the proceedings recorded by PW1.

14. The dying declaration suffered by Meena Kumari which gave rise to the registration of the case reads as follows:-

“I am resident of above address and have been living with my parents and brother Ramveer. My father is engaged in service in Security service, who is retired personnel from CRPF. My brother is a Driver. I am student of BA Final. On 29..5.07 at about 8.00 PM night Rajeev son of Rohtas who also belongs to village Sikanderpur took me to his Retail shop at V.Khandsa making me to sit in his car. He parked the vehicle on a side and asked me to remain sitting there and he himself went to the his shop. After sometime I also alighted from the Car and went to his shop. Upon which he asked me as to why I had come to his shop. Saying so he gave me a slap and asked me to go out and so I came out of his shop and then Rajeev put on me Kerosene oil and put me on fire. I know Rajeev earlier and was in love with him. He too used to say that he loves me and would marry me but his parents got him engaged somewhere else and so he allured me by making false promise brought me to his own shop and to finish me he put Kerosene oil on me and put me on fire so as to remove me. I want legal action against

him.”

15. The dying declaration suffered by Meena Kumari would disclose that the accused was engaged for marriage by his parents with somebody else in spite of the assurance he had given to her to get her married out of the deep love affair he had with her. She had been very categorical in stating that the accused took her from her house in his car and parked the vehicle near his shop and when she entered into his shop, the accused slapped her and sent her out and thereafter he set her on fire after pouring kerosene on her at about 8.00 p.m.

16. The occurrence had place taken near the shop of the accused. The engagement of the accused for marriage with somebody else had already taken place. The accused had slapped the deceased Meena Kumari just before the occurrence. Under such circumstances, we do not doubt the dying declaration suffered by Meena Kumari that the accused in order to put her to death poured kerosene and set her on fire.

17. Learned senior counsel appearing for the appellant would vehemently submit, referring to the evidence of PW9 Dr.Kuldeep Singh, that the deceased was not fit to suffer any statement. But fortunately, PW1 had recorded the dying declaration upon the positive opinion expressed by PW10 Dr.N.N. Singh of Safdarjung Hopsital, New Delhi. Firstly, we find that in almost 99% of burn injury cases, the victim would be very much conscious and fit to suffer a statement. At any rate, there is an opinion expressed by PW9 Dr.Kuldeep Singh which we chose to reject as a piece of evidence purposely introduced by PW5 to avoid an embarrassment caused by not registering the case by recording the statement of any of the relations

of the deceased. Even otherwise, the evidence of PW10 cannot be rejected as he having thoroughly examined Meena Kumari, arrived at a definite conclusion that she was fit to make her statement. PW10 also had been present throughout the recording of dying declaration by PW1. It is beyond imagination that PW1 and PW10 would have created some medical records in order to implicate the accused. Therefore, we do not doubt the conscious and fit state of mind of Meena Kumari to suffer the dying declaration which is the sheet-anchor of the case of the prosecution.

18. It was argued by learned senior counsel appearing for the appellant that PW10 was not the Doctor who actually gave treatment to the victim. There is no rule that only the Doctor who gave treatment alone should certify the fitness of the victim. Any Doctor for that matter can on request, assess the fitness of a patient and certify the fitness or otherwise of the patient. In the instant case, PW10 was not a stranger to the treatment being given to by the deceased. It is found that he was serving as a Senior Resident Doctor in Burns and Plastic Department, Safdarjung Hospital, New Delhi. PW10 is a competent witness, in our view, to give a certificate of fitness.

19. It is true that the medical records were not seized and produced before the Court for perusal. We are not concerned with the treatments given to the victim. We are more concerned with the dying declaration suffered by the victim in her fit state of mind. Therefore, non-production of the medical records may reflect on the style of the investigation done by the Investigating Official. But it would not affect the material case projected by the prosecution.

20. Learned senior counsel appearing for the appellant would vehemently submit that no Magistrate was associated for the purpose of recording the dying declaration. The Magistrate is associated for recording the dying declaration to accord more sanctity to the dying declaration recorded from the victim. But, in the instant case, we are of the considered view that the dying declaration had been recorded by PW1 only after ascertaining the mental condition of the deceased. It is found from the testimony of the witnesses examined that no relative of the deceased had been present at the time of recording the statement. Therefore, the voluntariness and truthfulness of the dying declaration suffered by the victim cannot at all be effectively challenged.

21. PW4 Dr.Sunil Kumar Sharma had conducted the post mortem examination on the dead body of Meena Kumari and arrived at the unassailable conclusion that Meena Kumari had died due to shock on account of ante mortem burn injuries caused by the flame. The medical evidence also supports the case of the prosecution.

22. It was submitted by learned counsel appearing for the appellant that at best, it may be a case of suicide. We are not inclined to buy such an argument for the following reasons:-

- i) The occurrence had taken place in front of the shop of the accused. A person who determined to commit suicide would not have travelled about 4-5 kms. to commit suicide in front of the shop of the accused.
- ii) It is against the common sense that a person would have travelled about 4-5 kms. alongwith kerosene can for the

purpose of committing suicide. There is virtually no evidence to show that the victim had a tendency to commit suicide.

- iii) If at all, deceased Meena Kumari was in the process of committing suicide by pouring kerosene on her and put herself to fire, the accused being the lover of the deceased and the other neighbouring shopkeepers would have definitely made an attempt to save her life.

23. Therefore, we completely rule out the strange theory put forth by learned senior counsel appearing for the appellant that it may be a case of suicide.

24. DW1 Navin Girdhar was a neighbouring shopkeeper. The fact remains that he had not accompanied the deceased to the hospital. It was only ASI Jaswant Singh who had taken the victim to the hospital for treatment. Neither the accused in front of whose shop the victim was set on fire, nor the other shopkeepers took any efforts to admit the victim to the hospital. Therefore, we are not in a position to believe the evidence of DW1 Navin Girdhar. DW2 HC Vijay spoke about the complaint received from Rohtas Singh, father of the accused, alleging that it was a case of suicide, but his son was falsely implicated.

25. Every accused will make such an attempt through his relatives to escape from the charges. Therefore, the evidence of father of the accused is not acceptable. DW3 Lala Ram spoke about the engagement of accused Rajiv for marriage with somebody else. That is an admitted position of the prosecution. DW4 Raj Pal Yadav deposed that his car bearing registration No.HR-26-AC-9382 was not handed over to the accused. No question has

arisen for determination as to whose car was engaged by the accused to take the deceased just before the commission of murder. Therefore, the evidence of DW4 does not, in any way, strengthen the defence set up by the accused. DW5 Joni was also a neighbouring shopkeeper of the accused. He had also not accompanied the deceased to the hospital. He is found to be a witness brought up purposely to speak about the defence set up by the accused.

26. DW8 Vijay Rastogi is a Handwriting and Finger Expert, Gurgaon. He having compared the love letters written by the deceased to the accused, arrived at a conclusion that the love letters had been written only by the deceased to the accused. It is the admitted case of the prosecution that the deceased had fallen in love with the accused. No wonder, such letters had been written by her. Anyway, those letters do not create a doubt in the case of prosecution.

27. Learned senior counsel appearing for the appellant cited a decision of a co-ordinate Bench of this Court in **Sunita and another vs. State of Punjab, 2011(2) RCR(Criminal) 305**. That was a case where the marriage of the accused had already taken place. The victim who had given birth to a child through the accused even before any formal marriage with her, was left in the lurch by the accused. A sum of ₹15,000/- assured to be paid by the accused to maintain the child also was not parted-with by the accused. The deceased was in a trauma which culminated in her emotional disorder on account of the frustration. But those facts and circumstances do not apply to the given set of facts in the present case.

28. In our considered view, the trial Court has rightly placed reliance on the dying declaration suffered by the victim to the effect that it

was only the accused who poured kerosene on Meena Kumari and set her on fire. We do not find any infirmity in the judgement passed by the trial Court and therefore, confirming the judgement of conviction and sentence passed by the trial Court, the appeal stands dismissed.

(M. JEYAPPAUL)
JUDGE

January 28, 2015
Gulati

(DARSHAN SINGH)
JUDGE