

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRA-D-1101-DB-2010**

**Date of decision : September 24, 2015**

Mahesh

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN  
HON'BLE MR.JUSTICE GURMIT RAM**

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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Present : Mr. R.S. Sahota, Senior Advocate with  
Mr. Ashok Sharma, Advocate and  
Mr. B.R. Rana, Advocate  
for the appellant.

Mr. Vijesh Sharma, Deputy A.G., Haryana.

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**GURMIT RAM, J.**

1. This appeal is preferred by abovesaid appellant-Mahesh against the judgment dated 23.12.2009 and order of sentence dated 24.12.2009 passed by the Court of learned Additional Sessions Judge, Faridabad in criminal case bearing FIR No.38 dated 31.01.2008 under Section 302, IPC, Police Station, City Ballabgarh, District Faridabad, vide which accused was held guilty for the offence punishable under Section 302, IPC and convicted thereunder.

2. The case as put forth by the prosecution before the learned trial Court in brief was that on 31.01.2008 an information was received

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telephonically in the Police Station that a lady had burnt due to fire in Kumharwara, Ballabgarh, who had been taken to Government Hospital, Ballabgarh. On this ASI, Jai Kishan, In-charge, Police Post, Agarsen Chowk, Ballabgarh went to said hospital and obtained *ruqa* and MLR of injured-Manju. The Doctor reported her to be fit to make statement and in the presence of the Doctor, he recorded the statement of injured-Manju wife of Mahesh, which was as under:-

*“That she is resident of Kumharwara, Ballabgarh. Her marriage with Mahesh son of Devi Ram resident of House No.560, Kumharwara, Ballabgarh was solemnized about 15 years back. She is having four children. Today on 31.01.2008 she was present at her house, in the morning at about 10:00 A.M. Her husband was also present in the house. He has left two of her children with her sister-in-Law (Nanand) at Ghaziabad and told her that he does not want to keep her. On this there took place an altercation between her and her husband in the house. On this episode, her husband put her on fire after pouring kerosene on her with intention to kill her. On hearing her noise, her sister-in-law (Jethani) Satwati and her husband got her admitted in the hospital. She has made the statement while in her full senses. Prayer was made to take strict action against her husband Mahesh.”*

After recording her said statement it was read out to her, upon which she put her left thumb impression, since her right thumb was burnt

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after admitting it to be correct and the same was certified by Dr. Man Singh, Medical Officer, General Hospital, Ballabgarh (Faridabad) and attested by ASI Jai Kishan.

3. Upon this statement of injured-Manju, ASI Jai Kishan made his endorsement and sent ruqa to Police Station on the basis of which a case under Section 307, IPC, was registered against accused-Mahesh. Injured expired on 01.02.2008 while under treatment at Safdarjung hospital, New Delhi. Then the offence under Section 302, IPC, was added in this case. Inquest proceedings with regard to dead body were conducted in the said hospital. Post-mortem on the dead body of deceased was also conducted in the same very hospital. Accused was apprehended in this case. Statements of witnesses were recorded. Investigating Officer visited the spot of occurrence and prepared the rough site plan. On the completion of investigation as well as receipt of the report of Chemical Examiner, challan against the accused was presented in the Court of learned Illaqua Magistrate, Faridabad, who further committed this case to the Court of learned Sessions Judge, Faridabad for its trial after making compliance of the provisions of Section 207, Cr.P.C.

4. A case under Section 302, IPC, was found to have been made out against the accused and as such, he was charge-sheeted accordingly, by the learned trial Court vide order dated 04.06.2008 to which he pleaded not guilty and claimed trial.

5. During trial of the case, the prosecution examined as many as eleven witnesses in all in order to prove the guilt of the accused.

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6. Then as per the provisions of Section 313, Cr.P.C., accused was duly examined and during his examination, entire incriminating evidence as brought on the file against him during trial of the case was put to him, which he denied in toto and pleaded his innocence and false implication in this case by the Police in collusion with Doctor.

7. In defence, he also examined two witnesses.

8. On the culmination of trial, learned trial Court heard learned PP for the State as well as learned defence counsel and thereafter, held the accused guilty for the offence punishable under Section 302, IPC, vide the impugned judgment and convicted him thereunder by awarding the sentence as detailed below:-

*“Rigorous Imprisonment for life along with fine of ₹5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for a period of six months”.*

9. Feeling aggrieved from this impugned judgment of conviction and order of sentence, the appellant has come up before this Court by way of instant appeal, notice of which was given to the respondent. Record was also requisitioned.

10. The learned counsel for both the parties were heard.

11. The learned counsel for the appellant has mainly contended that learned trial Court has convicted the appellant merely while relying upon dying declaration Ex.P7 and testimonies of PW-5, Dr. Man Singh and PW-11, ASI Jai Kishan by totally ignoring other evidence on record. Then his other contention is that the Court has also failed to deal with the fact as to

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whether a person who has sustained 100% burn injuries could have been in a fit state of mind to make his statement within few hours of the entire occurrence as alleged by prosecution. It is also his contention that the alleged dying declaration was neither recorded in accordance with law nor the same is reliable. It is further his submission that it was the case of prosecution that deceased had suffered 100% burn injuries in the alleged occurrence and in such a situation the opinion of the Doctor that she was in a fit state of mind and conscious did not inspire any confidence and hence liable to be rejected outrightly. Then he has also submitted that defence version in this case is probable as well as reasonable, but the same was declined by the learned trial Court without assigning any cogent reason. Herein, he has contended that the alleged marriage of deceased with accused was 15 years old and they were blessed with four children. In fact the alleged occurrence was the result of kerosene stove burst which is also so supported by DW-1 and DW-2 in their respective statements. Then he has also referred to the cross-examination of PW-5, Dr. Man Singh, wherein he has stated that possibility cannot be ruled out if kerosene stove burst and fire spread due to burning of clothes on the entire body. The statements made by both the abovesaid DWs coupled with this opinion of PW-5 Dr. Man Singh, are quite compatible with defence version that the alleged occurrence was the result of kerosene oil stove burst which theory was wrongly ignored by the police during investigation of the case and also discarded by the learned trial Court without any reason. Relating thereto, it is also his contention that the alleged defence version was quite convincing and was

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also upto the mark to turn the scale of justice in favour of the appellant and to grant him the benefit of doubt.

12. But on the other hand, learned State counsel while controverting the abovesaid contentions of learned counsel for the appellant contended that it was proved beyond shadow of reasonable doubt during trial of the case, that the appellant had poured kerosene on his wife (since deceased) and thereafter set her on fire which evinces clearly that his intention in doing so was to cause her death. In support of his contention, he has referred to the statement of prosecution witnesses examined during the trial of the case particularly to the depositions of PW-5, Dr. Man Singh and PW-11 ASI Jai Kishan, the I.O.

13. In the case in hand, it is admitted fact that the alleged occurrence took place inside the house of the appellant wherein he and his wife Manju were present at the time of the alleged occurrence. It is not the case of the appellant that he was not present in his house at the time of the alleged occurrence. Rather in the dying declaration Ex.P7, it was found recorded that injured (Manju-deceased) was got admitted in Government Hospital, Ballabgarh by her sister-in-law (Jethani) Satwati and her husband Mahesh.

14. For the proper evaluation and appraisal of the above referred rival contentions of both the parties, we deem it essential to discuss the evidence of both the parties in brief which is as under:-

PW-5, Dr. Man Singh, Medical Officer, Government Hospital, Ballabgarh stated that he medico legally examined injured Manju wife of

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Mahesh on 31.01.2008 and found as under:-

*“Superficial to muscle deep burns present all over the body. Peeling of skin present at various places of the body. Burns about 100%. Referred to Burn Unit, B.K.H./Safdarjung Hospital. History of burn injuries as put on fire by her husband as told by the patient. Patient was conscious and GC Poor.*

*Copy of his report is Ex.P4 which bears his signatures. Smell of kerosene was also present over the body.”*

He sent ruqa Ex.P5 to the Police Station. On the application Ex.P6 of ASI Jai Kishan, he gave his opinion that injured is fit to make her statement. Then her statement Ex.P7 was recorded by said ASI Jai Kishan in his presence.

ASI Jai Kishan was IO in this case, who appeared as PW-11 during the trial of the case. His statement was to the effect that on 31.01.2008 he was posted at Police Post, Agarsen Chowk, Ballabgarh. On that day, he received a telephonic message that a lady who was set on fire had been taken to Government Hospital, Ballabgarh. Thereupon, he went to said hospital and obtained ruqa along with medico legal report of injured Manju mentioning 100% burns. On his application regarding fitness of injured, Doctor gave his opinion Ex.P6 that she was fit to make her statement. Then he recorded her statement Ex.P7 in the presence of Dr. Man Singh, who stated that her husband Mahesh had poured kerosene and then set her on fire. The said police official made his endorsement

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Ex.P13 on this statement of injured, on the basis of which the formal FIR Ex.P8/1 was recorded under Section 307, IPC. Then the injured was referred to Safdarjung Hospital, New Delhi, where she expired. Then offence under Section 302, IPC, was added in this case vide report Ex.P14. Further he visited the spot of occurrence and prepared rough site plan Ex.P15, besides, effecting recovery of plastic *Canny* and a match box from the spot. He recorded the statements of witnesses and also arrested the accused in this case on 01.09.2008. He also proved the case property i.e. Jug Ex.PA and match box Ex.PB.

PW-7, ASI Mahesh Chand stated that an information was received at Police Station, Sarojini Nagar, New Delhi on 31.01.2008 from Safdarjung Hospital regarding death of Manju wife of Mahesh. After receiving report Ex.P8, he went to said hospital and conducted inquest proceedings Ex.P9 on 01.02.2008 in respect of dead body which was identified by Balbir and Rishi Pal. He also recorded statement of both of them Ex.P10. Then he moved an application Ex.P2 for conducting postmortem on the dead body of deceased upon which Doctor conducted the postmortem on her dead body vide report Ex.P1. Ex.P9 and Ex.P10 are bearing his signatures.

Statement of PW-6, O.P. Panghal, ASI was to the effect that statement Ex.P7 endorsed by ASI Jai Kishan was received in the Police Station on 31.01.2008 on the basis of which he recorded formal FIR Ex.P8.

PW-1, Inspector Om Parkash was posted as SHO Police Station, City Ballabgarh at the relevant time and prepared the report under

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Section 173 Cr.P.C. on the completion of investigation.

PW-2, Shyam Singh was the witness to the alleged recovery of plastic jug and match box, which were taken into police possession vide a recovery memo.

PW-3, Dr. Yogesh Tyagi of Safdarjung Hospital, New Delhi stated that he conducted postmortem examination on the dead body of Manju wife of Mahesh on 01.02.2008. The alleged history of sustaining burn injuries on 31.01.2008 at 10:30 A.M. and declared dead on the same date at about 4:15 P.M.. His observation with regard to dead body was as under: -

***“General Observation:*** *Rigor mortis was present. Postmortem staining was indistinguishable. Singeing of scalp and body hairs were present. Bald burn patches were present over scalp and smell of kerosene oil was present in scalp hairs.*

***External Injuries:*** *Superficial to deep flame burns were present all body surface except patches over scalp. Superficial burns were present over both palms. Blue in stain was present over left thumb. Approximate percentage of burn injury was 98%.*

***All internal organs were congested.”***

In his opinion cause of death was due to ante-mortem flame burns involving about 98% surface area. Scalp hair was preserved for chemical analysis. He proved the postmortem report as Ex.P1.

PW-4, Sarwan Kumar, Draftsman, CIA Staff, Faridabad proved

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the scaled site plan Ex.P3 which he prepared after visiting the spot on 06.02.2008.

PW-8, Jitender Singh, police official, delivered the special report Ex.PA/1 to learned Magistrate and other higher police authorities, which was entrusted to him on 01.02.2008.

So far as PW-9, Balbir and PW-10, Rishi Pal are concerned they were the father and brother of the deceased, respectively, but they did not support the prosecution version during trial of the case, so there is no need to discuss their statements being having no significance in this case.

15. DW-1, Satwati is the sister-in-law (*Jethani*) of the deceased. In her statement, she deposed about defence version that the alleged occurrence was the result of a kerosene stove burst. When she reached at the spot, a stove in burst condition was lying and Manju was on fire. Mahesh husband of Manju was present there, who was trying to extinguish the fire and she also joined him in extinguishing the fire. When Manju was taken to hospital, she was unconscious. Manju and her husband Mahesh were living peacefully and there was no dispute at all between them. The police did not record her statement despite her request.

DW-2, Anupam Sharma was neighbour of accused-Mahesh. He also corroborated the above discussed statement of DW-1 and supported defence version.

16. As above discussed, the main contention of learned counsel for the appellant is that as per the case of the prosecution, the deceased had suffered about 100% burn injuries and as such, she was neither conscious

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nor in a fit state of mind to make any statement. Resultantly, her alleged dying declaration Ex.P7 is not reliable at all and also for the reason that the same was not recorded in accordance with law. No doubt the victim had suffered 98/100% burns in the alleged occurrence, but there is no hard and fast rule that a person who has suffered 100% burns does not remain conscious and in a fit state of mind to make his/her statement, as the case may be. A victim of burn injuries generally remains in a fit state of mind to tell about the alleged occurrence for some time after the occurrence on account of pains of burns. Such like burns deepen into the body of the victim with the passage of time whereby effecting the functioning of the main organs of the victim rendering him/her unconscious and unable to speak. So in the case in hand the most important fact which is to be seen is the time gap between alleged occurrence and recording of the alleged dying declaration of the victim. As above discussed in the case in hand, the alleged occurrence took place in the house of the appellant at about 10:00 A.M. and immediately the victim was taken to General Hospital, Ballabgarh. The Doctor attending her in the hospital sent intimation in this regard to the Police Station, City Ballabgarh, upon which ASI Jai Kishan, In-charge, PP, Agarsen Chowk, Ballabgarh reached in the hospital. After obtaining opinion of the Doctor regarding fitness of the injured, he recorded her statement Ex.P7, i.e. dying declaration in the presence of Doctor. After recording her statement, the said police official made his endorsement Ex.P13 and sent ruqa to the police station for the registration of the case. The time mentioned below Ex.P7 is 10:45 A.M. and the time mentioned

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below his endorsement of sending ruqa to Police Station is 11:00 A.M. So this record shows that alleged dying declaration of the deceased Ex.P7 was recorded immediately after the alleged occurrence by about 10:40 A.M. The occurrence in this case as alleged took place at about 10:00 A.M. So in this case, there is very short gap of time between the alleged occurrence and the recording of the alleged dying declaration of the deceased and resultantly, the above contention of learned counsel for the appellant is rejected being found not sustainable.

17. Then it was also plea of the appellant in his statement recorded under Section 313 Cr.P.C. that he was involved in this case by the police in collusion with Doctor but during the trial of the case the appellant miserably failed to bring on the record any sort of evidence to establish that ASI Jai Kishan, IO of the case was inimical towards him or was having any other motive or interest for his false implication in this case. So it is difficult to believe that he was involved in this case falsely by the Police in collusion of Doctor. Moreover, it is duty of the police officials to apprehend the criminals and to present the challan against them in the Court after necessary investigation as well as verification to bring them to book. Similarly, it is also duty of the Doctor to attend the victim/patient whenever brought before him to provide him/her necessary medical aid.

18. So far as the defence version that the alleged occurrence was the result of kerosene oil stove burst is concerned, it is also not substantiated on the record. Jai Kishan ASI/IO of the case visited the spot of the occurrence after alleged occurrence and did not find any such stove at the spot. If as

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per the defence version, this police official was conducting partial investigation in this case, then in that eventuality the accused as well as DW-1 and her family members could have approached the higher police authorities against this police officer for the transfer of the investigation of this case from this IO to some other police official for the sake of fair investigation of this case. They did not approach any higher police officer in this regard nor did they file any complaint in this connection, so their this act and conduct does not justify the alleged defence version to be plausible and acceptable.

19. No material substance was brought on record during the trial of the case by the defence to substantiate the plea that the alleged opinion of the Doctor that '*victim was fit to make statement and conscious*' was incorrect.

20. No doubt PW-9, Balbir, father of victim and her brother PW-10 Rishi Pal did not support the case of prosecution, but that does not mean that prosecution version as alleged is either false or tainted with any ulterior motive. After the alleged occurrence, there might be some sort of compromise effected between the parties and hence they (complainant party) had thought not to support the version of prosecution in order to safeguard the interest of four minor children of appellant while appearing in the Court as witness during trial of the case.

21. It was very unfortunate that the appellant had burnt his wife by pouring kerosene upon her person, of whom he was to be a savior for all intents and purposes.

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22. The dying declaration Ex.P7 in the case in hand is found to be quite compact, brief as well as impressive leaving no doubt about its legal sanctity and validity. Then it is the settled law that if the dying declaration in any case is found to be genuine and valid one, then the same alone is sufficient to hold the accused guilty and to convict him. On this point, there are certain case laws as rendered by Hon'ble Apex Court, which are discussed as under: -

i. ***Ashabai and anr. vs. State of Maharashtra, AIR 2013 SC 341***, wherein it was held as under:-

*There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination.*

*.....The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is*

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*satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration.*

ii. ***State of Rajasthan vs. Santosh Savita, AIR 2013 SC 3731.***

Para No.19 of this authority is found to be relevant for the case in hand, which is as under: -

*“The High Court has taken a view in the present case that the Magistrate should have been requisitioned for recording the dying declaration and has considered this lapse on the part of the prosecution as a reason for not believing the dying declaration. The Constitution Bench of this Court in Laxman vs. State of Maharashtra (AIR 2002 SC 2973) has, on the other hand, held that there is no requirement of law that a dying declaration must necessarily be made to a Magistrate and what is essentially required is that the persons who records the dying declaration must be satisfied that the deceased was in a fit state of mind. In this case, the Constitution Bench, however, has held that what evidential value or weight is to be attached to a dying declaration necessarily depends on the facts and circumstances of each particular case.*

23. Then in this case a bunch of hair of deceased was taken as a sample, the parcel of which was prepared and duly sealed. It was sent to

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Forensic Science Laboratory, Madhuban, Haryana for the chemical test and report of this laboratory during trial of the case was produced as Ex.P16. After the chemical analysis, it was reported vide this report that kerosene residues were detected in Exhibit-1 which was containing bunch of hair of scalp hair of deceased Manju. This fact also shows that kerosene was poured on her body from head to foot and then she was set on fire. Had it been a case of kerosene oil stove burst, then kerosene residues were not to be detected from the bunch of hair pertaining to scalp hair of deceased, which also falsified the defence version.

24. In the light of above discussion and the principles laid down in the case laws cited (supra), this appeal stands dismissed being devoid of merit. Impugned judgment and order of sentence under appeal stands affirmed and this appeal stands disposed of accordingly.

**September 24, 2015.**  
*Gaurav Sorot*

**( T.P.S.MANN )**  
**JUDGE**

**( GURMIT RAM )**  
**JUDGE**