

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal No.D-319-DB of 2010

Raj Kumar @ Raju

... **Appellant**

v.

State of Haryana

... **Respondent**

2.

Crl. Appeal No.D-320-DB of 2010

Sonu @ Soni

... **Appellant**

v.

State of Haryana

... **Respondent**

Date of decision: September 02, 2015.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters? yes*
3. *Whether the judgment should be reported in the Digest?*

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Argued by: S/Shri Mohit Garg, Pankaj Mehta and K.D.S. Hooda,
Advocates, for the appellants.

Shri Vivek Saini, Assistant AG, Haryana
for the respondent-State.

Raj Rahul Garg, J.

These appeals have been preferred by appellants-accused Raj Kumar @ Raju son of Nafe Singh and Sonu @ Soni son of Tara Chand against judgment of conviction dated 20.1.2010 whereby both the appellants were held guilty for the offence punishable under Section 302 read with Section 34 IPC. Vide order of sentence dated 22.1.2010, each one of the

accused was sentenced to undergo imprisonment for life and fine of Rs.15,000/-, in default of payment of fine, to undergo rigorous imprisonment for two years, for committing murder of Ram Niwas.

Briefly, prosecution case is like this: that on 2.1.2009, on receipt of medical ruqa Ex.P9 from Community Health Centre, Tosham about admission of injured Ram Niwas son of Shish Pal, ASI Chhote Lal went there. He collected the MLR of Ram Niwas and moved application Ex.P10 before the doctor for seeking his opinion as to if RamNiwas was fit to make statement or not. Doctor vide report Ex.P11, opined that the injured was fit to make statement, whereupon, statement of Ram Niwas was recorded as Ex.P12 by the police.

Ram Niwas stated that he was residing in a rented accommodation along with Puranmal, Raju and Soni. On the day of occurrence at about 5.30 p.m., he came back after meeting his sister at village Alakhpura. At that time, Satbir son of Prabhu Ram, Soni and Raju were sitting in the room. After about half an hour, Satbir had gone away. Soni stated that he forgot the gas cylinder in the bus. At this, complainant stated that Soni usurped the gas cylinder. On account of it, Soni and Raju started quarreling with the complainant. Raju poured diesel and set him on fire. Two bottles of diesel were taken out from the tractor in order to burn hearth. In order to extinguish the fire, the complainant ran towards the house of Satbir Singh raising a noise. Thereafter, the complainant was brought to Community Health Centre, Tosham for treatment by his family members including Krishan. Raju and Soni escaped from the spot. The

above stated statement Ex.P12 was recorded by the police and the doctor made an endorsement on this statement that the same was recorded in his presence. ASI Chhote Lal after making his endorsement Ex.P20 on this statement, sent the same to the Police Station for registration of the case on the basis of which formal FIR was recorded for the offence punishable under Section 307 read with Section 34 IPC.

On 3.1.2009, ASI Chhote Lal visited the spot and prepared rough site plan of the spot as Ex.P21. Burnt clothes Ex.P28, empty bottle smelling diesel Ex.P27 and match box Ex.P26 were taken into police possession vide memo Ex.P6. On that very day, accused Raj Kumar was arrested.

On 26.2.2009, ruqa Ex.P22 was received from Civil Hospital, Hansi regarding death of Ram Niwas. Information Ex.P24 was sent to the Police Station Tosham. Under these circumstances, offence under Section 302 IPC was added. Inquest Report Ex.P18 was prepared. The dead body was sent for autopsy along with application Ex.P17. Scaled site plan Ex.P3 was got prepared. Statements of witnesses were recorded. After completion of necessary investigations, the challan was put in Court for trial.

Finding prima facie case against both the accused, they were charge sheeted for offence punishable under Section 302 read with Section 34 IPC, to which the accused did not plead guilty but claimed trial.

After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. was recorded wherein each prosecution allegation was denied by the accused and they pleaded their innocence.

They also pleaded that the case is false against them.

After hearing both the counsel for the parties and appraising the entire evidence and material on record, the trial court recorded aforementioned judgment of conviction and order on sentence.

We have heard Sarv Shri Mohit Garg, Pankaj Mehta and K.D.S. Hooda, Advocates appearing for the appellants and Shri Vivek Saini, learned Assistant Advocate General, Haryana for the respondent-State and have also gone through the record.

First of all, it was argued by learned Counsel for the appellants that it is a case of no evidence. Satbir PW1 did not support the prosecution case. Likewise Mahabir Parsad PW2 was also declared hostile. Krishan who took the injured to hospital, also did not support the prosecution case at all. The trial court has convicted the accused only on the basis of statement of Ram Niwas Ex.P12 treating it as a dying declaration, which is wrong. This statement cannot be considered as a dying declaration. At the time when the statement Ex.P12 was recorded, there was no imminent danger to the life of the deceased. As such, the very rule that a dying man will never tell a lie on the death bed, is not applicable to this case. Occurrence took place on 2.1.2009 whereas Ram Niwas died on 25.2.2009, i.e., after about two months. At the time of his death, he was not even admitted in the hospital. He was discharged from the hospital, as such, for want of treatment he had died. Had he been treated properly in the hospital, he would not have died. As such, for this reason as well, the appellants-accused cannot be convicted.

The above contention of learned Counsel for the appellants is not sustainable. It is a case in which the accused had sprinkled diesel from the bottle on Ram Niwas and then set him on fire. Dr. Ashish Gupta, Medical Officer PW8, medico-legally examined Ram Niwas on 2.1.2009. As per this doctor, there were 50% burns with diesel involving chest, abdomen, thighs, lower extremities and sexual organs (private parts). He thus proved the copy of MLR as Ex.P8. Dr. Rajnish Sehgal, PW9 proved post-mortem report of deceased Ram Niwas as Ex.P15. As per this report, cause of death given by the doctor was septicemia/hypovolemia leading to shock and internal organ failure secondary to burns. The burns were ante-mortem in nature and sufficient to cause death. Thus Ram Niwas was suffering from 50% burns, that too on account of fire from diesel. In such circumstances, the chances of survival are very very bleak and it cannot be said that there was no imminent danger to the life of deceased when he made his statement Ex.P12. Even otherwise, since Ram Niwas was not alive, therefore, the statement made by him, which is Ex.P12, is to be considered as a dying declaration. If the trial court has considered the statement of Ram Niwas as dying declaration, there is no illegality in it. Further, as the cause of death was on account of burns, it cannot be said that since Ram Niwas had died after about two months of receipt of burns, therefore, he had not died of burns.

It was next argued by learned Counsel for the appellants-accused that the statement of Ram Niwas recorded by the police cannot be said to be dying declaration. A dying declaration is to be recorded by a

judicial Magistrate. In this case, so has not been done. Even the family members of the deceased were present at that time when his statement was recorded. The possibility of giving of tutored version cannot be ruled out.

This argument of learned Counsel for the appellants is again not sustainable as ASI Chhote Lal categorically stated that no judicial Magistrate was posted at Tosham, as such the statement of Ram Niwas was not got recorded from a judicial magistrate. Even otherwise, as per law, a dying declaration can be recorded by any body and it can be made even by gestures. The statement of Ram Niwas was of course recorded by police but the same was recorded in the presence of Dr. Ashish Gupta who appeared as PW8 and corroborated this fact. With this evidence on record, the statement Ex.P12 cannot be said to be of any doubt.

There is nothing on record to show that at the time of recording of statement Ex.P12 any member of the family of Ram Niwas was present or that the same was the result of tutoring, in any manner. PW11 ASI Chhote Lal deposed that when he went to the hospital, no body was near the injured. However, doctors and other staff members were present. Dr. Ashish Gupta PW8 deposed that at the time of recording of statement of Ram Niwas, Ex.P12, he had not put any questions to the injured. Police people were putting questions. Thus, with this evidence on file, it cannot be said that Ram Niwas gave only tutored version or that Ex.P12 is not the statement of Ram Niwas.

Shri Pankaj Mehta, Advocate, counsel for appellant-accused Soni, argued that as per statement Ex.P12, Raju alone poured diesel and set

the deceased on fire. There is no allegation against accused Soni that he either poured diesel on Ram Niwas or set him on fire. Mere presence of Soni would not make him liable for the offence under Section 302 IPC.

On the other hand, learned Counsel for the State argued that if we read the statement Ex.P12 as a whole, it would become clear that the real dispute was with Sonu @ Soni. He is the one who usurped the gas cylinder. He and Raju gave beatings to Ram Niwas. In the end of his statement Ex.P12, he specifically stated that the persons who set him on fire, i.e., Raju and Soni had fled away from the spot and he wanted legal action against both of them. Thus, it is clear that Raju and Soni, both set Ram Niwas on fire. If Soni was not involved in this crime, there was no point for Raju to commit this crime. Accepting the argument advanced by learned Counsel for the State, we are of the view that the argument advanced by learned counsel for Soni is devoid of any force. Raju and Soni both are involved in this case and they both committed this crime by setting Ram Niwas on fire.

For the reasons recorded above, finding no merit in these appeals, therefore, maintaining judgment of conviction dated 20.1.2010 and order on sentence dated 22.1.2010, both the appeals are ordered to be dismissed.

September 02, 2015.
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[**Raj Rahul Garg**]
Judge

[**Hemant Gupta**]
Judge