

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**CRA-S-800-SB of 2004.  
Date of Decision: March 25, 2015.**

BIRMA DEVI

....APPELLANT.

**VERSUS**

STATE OF HARYANA

....RESPONDENT.

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**CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR**

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**Present:** Mr. R.K. Agnihotri, Advocate for the appellant.

Ms. Trishanjali Sharma, Assistant Advocate General,  
Haryana.

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**SNEH PRASHAR, J.**

1. This is an appeal preferred by appellant Birma Devi, assailing the judgment of conviction dated 22.03.2004 and order of sentence dated 23.03.2004 recorded by learned Sessions Judge, Faridabad, in case bearing First Information Report No.835 dated 09.10.2002 under Sections 498-A and 304-B of the Indian Penal Code (for short "I.P.C.") registered at Police Station Ballabgarh.

2. Precisely the story is that on 24.09.2002 at about 11:00 p.m. Hem Lata wife of Chakrapal Singh, resident of Mohan Singh Colony,

Ballabgarh was brought to Civil Hospital, Ballabgarh, in a burnt condition. She was medico legally examined by Dr. K.C. Goyal, Medical Officer, E.S.I., Faridabad. On receipt of information from the hospital, Head Constable Ganpat Ram was deputed for recording the statement of the injured. He gave an application to the doctor to obtain his opinion about the fitness of the injured, on which the doctor opined that she was unfit for making statement. Her condition being serious, she was referred to Safdarjang Hospital, Delhi. On the same day, i.e. 25.09.2002 Assistant Sub Inspector Krishan Kumar reached Safdarjang Hospital and gave an application seeking opinion of the doctor regarding condition of Hem Lata but again she was opined to be unfit for making statement. On the next day, i.e. on 26.09.2002 another application was given by Assistant Sub Inspector, on which the doctor declared her fit for making statement. Accordingly, the statement of injured Hem Lata was recorded in the presence of Sub Divisional Magistrate.

Later, Hem Lata succumbed to the injuries and died on 29.09.2002. Inquest report was prepared and on 30.09.2002 postmortem examination on the dead body of Hem Lata was conducted by the doctor. On 09.10.2002, Assistant Sub Inspector Kartar Singh, on receipt of statement of injured Hem Lata, recorded the First Information Report and a case under Sections 498-A and 304-B I.P.C. was registered. Investigations commenced. Statements of witnesses were recorded. Accused-appellant Birma Devi, mother-in-law of the deceased, was arrested.

3. The appellant was challaned, charge-sheeted and subjected to face trial for commission of offence under Sections 498-A and 304-B and in the alternative 302 I.P.C.

To substantiate the charges, the prosecution examined as many as 13 witnesses namely, PW1 Dr. K.C. Goyal, PW2 Sh. Peter Bara, SDM, PW3 Dr. Alexander F. Khakha, PW4 ASI Krishan Kumar, PW5 Sumer Singh, Inspector, PW6 Ram Baran Singh, PW7 Bimlesh, PW8 Kartar Singh, ASI, PW9 Sarwan Kumar, Draughtsman, PW10 Vinod Kumar, Sub Inspector, PW11 Jaibir Singh, Sub Inspector, PW12 Dr. Vunjhoih Ching Simte Stderja and PW13 Dr. Kaushlesh Kumar.

After closure of evidence of the prosecution, statement of appellant under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded and she was called upon to adduce evidence in defence. She examined one witness namely, Ganpat Ram, Head Constable as DW1.

4. Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant, learned trial Court came to the conclusion that the prosecution had successfully brought home guilt to the appellant and convicted her for commission of offence punishable under Sections 498-A and 304-B I.P.C. It was further held that the prosecution had failed to prove the alternative charge of murder punishable under Section 302 I.P.C. against the appellant beyond reasonable doubt. Learned trial court sentenced the appellant as under:-

*“Taking an over all view of the facts and circumstances in which the convict had committed the offence of this case, she is sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- under Section 304-B of the Indian Penal Code and in default of payment of fine she will further suffer three months rigorous imprisonment. She is further sentenced to rigorous imprisonment for two years with a fine of Rs.500/- under Section 498-A of the Indian Penal Code and in default of payment of fine she will have to further undergo R.I. for 2 months. Both the sentences shall run concurrently.”*

5. Feeling aggrieved by the impugned judgment of conviction dated 22.03.2004 and order of sentence dated 23.03.2004 passed by learned trial court, the appellant preferred the instant appeal.

6. The submissions made by Mr. R.K. Agnihotri, learned counsel representing the appellant and Ms. Trishanjali Sharma, Assistant Advocate General for the State of Haryana have been heard and record has been perused.

7. Admittedly, deceased Hem Lata was married to Chakrapal son of appellant Birma Devi on 17.04.2002. She was residing at her matrimonial home and on 24.09.2002 in the evening she sustained burn injuries within the four walls of her in-laws house. She was taken to Government Hospital, Ballabgarh where she was medico legally examined by PW1 Dr. K.C. Goyal. The medico legal report proved by PW1 is

Ex.PA, according to which the deceased was accompanied by her husband Chakrapal.

The main document relied upon by the prosecution for proving its charge against the appellant that the deceased was subjected to harassment and cruelty on account of demand of dowry and was killed by her by pouring kerosene oil and setting her ablaze, is the dying declaration dated 26.09.2002 made by deceased Hem Lata before the Sub Divisional Magistrate.

8. In her dying declaration Ex.PB, the deceased stated that her mother-in-law had started harassing and maltreating her from the very beginning of her marriage. She had been pressurizing her to get the land of her share from her uncle or in lieu thereof to bring some valuable goods from his house. She used to taunt her saying that she had not brought anything in her marriage and, therefore, why should they respect her. She added that her husband was a gentleman and had never said anything to her but her mother-in-law had been beating her very often. In two years of her marriage not even once she was allowed to go to her parental home. Her father-in-law had also never ill-treated her or made any demand.

With regard to the occurrence, during which she suffered burn injuries, deceased Hem Lata stated that she was preparing '*Chapatīs*' on a '*Chulha*', her mother-in-law Birma Devi came, dragged her to another room, poured kerosene oil on her and set her on fire.

9. The medical evidence came in the form of statement of PW1 Dr. K.C. Goyal, Medical Officer, ESI, Faridabad, who medico legally

examined the deceased when on 24.09.2002 at 11:00 p.m., Hem Lata was brought to Government Hospital, Ballabgarh in a burnt condition; the medico legal report Ex.PA prepared by PW1, statement of PW13 Dr. Kaushlesh Kumar of Jeevandeep Charitable Trust, Jai Nagar, Madhuban, who proved death summary of Hem Lata Ex.P5 as he was working as Junior Resident doctor in Safdarjang Hospital, New Delhi on 29.09.2002 when Hem Lata died; statement of PW3 Dr. Alexander F. Khakha, Head of Department of Forensic Medicines, Safdarjang Hospital, New Delhi, who conducted the postmortem examination on the dead body of Hem Lata on 30.09.2002; lastly PW12 Dr. Vunjhoih Ching Simte Sderja who proved his opinion Ex.PD/3 given on 26.09.2013 that patient Hem Lata was fit for making statement.

The opinion with regard to the cause of death of Hem Lata given by PW3 Dr. Alexander F. Khakha was as under:-

*“In my opinion, death in this case was due to septicaemia, caused by ante-mortem thermal burn injuries. The time since death was approximately about 30 hours.”*

10. Learned counsel for the appellant argued at the very outset that there are three dying declarations of the deceased relied upon by the prosecution which are not in consonance with each other and, therefore, none of them inspires truth. At the first instance when the deceased was taken to the hospital by her husband and she was subjected to medico legal examination, the history given to the doctor was *“burn due to excessive stove flaming during cooking in the house”*. PW1 Dr. K.C.

Goyal stated that the history was given to him by the patient, which means that was the first dying declaration.

Subsequently, on 25.09.2002, Hem Lata made statement Ex.D1 before Ganpat Ram, Head Constable which bears her thumb impression. In the said statement, her version was that after serving water to the buffaloes she was cooking on a gas stove, but as the gas in the cylinder finished and after some time her husband asked for food, she filled kerosene in the stove and when she tried to burn it, because of release of excessive kerosene from the stove, she caught fire. Her husband, mother-in-law and father-in-law extinguished the fire.

Learned counsel contended that Ex.PB was the third dying declaration in which Hem Lata indicted her mother-in-law for having burnt her by pouring kerosene oil on her. While making statement Ex.PB, she admitted that earlier her statement was recorded by a doctor and a constable at the place where she was admitted. In other words, she admitted having made statement Ex.D1 and in that statement, as noticed above, she had specifically stated that she was being maintained well by her husband and parents in law. More so, since the deceased made three different statements regarding the occurrence during which she suffered burn injuries, the statement Ex.PB alone cannot be treated as a dying declaration and also cannot be relied upon as it is shrouded by suspicious circumstances. To support his arguments, learned counsel relied upon ***Kashi Vishwanath vs. State of Karnataka, 2013(4) Recent Criminal Report 420*** wherein the Apex Court, finding that the deceased made three

dying declarations and all the three were contradictory, had acquitted the appellants.

11. Elaborating further, learned counsel urged that according to the medical documents the deceased had sustained 70% burns. No certificate was given by the doctor with regard to the mental condition of the deceased when her statement Ex.PB was recorded. There being nothing to show that the deceased was fit for making statement, the alleged dying declaration Ex.PB cannot be relied upon. In this context, learned counsel relied upon *Uka Ram vs. State of Rajasthan, 2001(2) Recent Criminal Report 416*.

12. Learned counsel further argued that the deceased assigned no reason in her dying declaration Ex.PB for which her mother-in-law took the step of pouring kerosene oil on her and setting her afire. She did not state anything indicating demand of dowry etc. by her mother-in-law immediately prior to the occurrence. Relying on *Panchanand Mandal @ Pachan Mandal and another vs. State of Jharkhand, 2013(4) Recent Criminal Report 591*, learned counsel contended that such deficiency in the evidence proves fatal to the prosecution case.

Last, but not the least, learned counsel asserted that the First Information Report was lodged after 9/10 days of the occurrence. The occurrence was alleged to have taken place on the night of 24.09.2002. Deceased Hem Lata died on 29.09.2002 whereas the First Information Report was lodged on 09.10.2002. No sufficient reason could be explained by the prosecution for such long delay. In the said set of facts,

there is every possibility that the evidence, oral and documentary, was manipulated to give the case a shape of dowry death. Apart from the dying declaration Ex.PB, the prosecution could produce no evidence to prove its allegations against the appellant. Rather, its evidence establishes that the appellant is innocent. PW6 Ram Baran Singh and PW7 Bimlesh stated that deceased Hem Lata was their niece. She used to live with them after the death of her parents and they performed her marriage with Chakrapal. After marriage, she was being treated properly by her in-laws. Both stated that Hem Lata caught fire when she was preparing food on a stove. PW7 Bimlesh categorically deposed that appellant Birma Devi never harassed Hem Lata on account of demand of dowry.

13. Having considered the arguments and the evidence available on record, there appears to be no force in the arguments of learned counsel for the appellant. Admittedly, deceased Hem Lata was married to Chakrapal son of appellant Birma Devi on 17.04.2002. It is an established/admitted fact that Hem Lata suffered burn injuries in her matrimonial home in the evening on 24.09.2002. She died five days after the occurrence i.e. on 29.09.2002 due to the burn injuries on her person.

It will not be right to say that the deceased made three dying declarations before her death. At the first instance, on the date of occurrence i.e. 24.09.2002, when she was brought to the hospital with burn injuries on her person, according to the medical report Ex.PB, she was accompanied by her husband Chakrapal. PW1 Dr. K.C. Goyal, who medico legally examined the deceased, deposed about presence of her

husband alongwith 10-12 other persons. He stated that the history was disclosed to him by the patient herself and the other persons accompanying her. It is also apparent from Ex.PA that the burnt clothes were not present on the body of the patient, which means that she was brought to the hospital after her clothes etc. had been changed. It is quite apparent that the people accompanying her were in a position to influence her mind when she had been brought by them for treatment. At that stage, the deceased may not be knowing that her condition was so serious that she will die. In said situation, the deceased could not be expected to give a different history of injuries than what her husband and other accompanying persons were saying.

14. Coming to Ex.D1, which as stated by DW1 Ganpat Ram, Head Constable was recorded by him on 25.09.2002 and bears left toe impression of deceased Hem Lata, the same was neither recorded in due process of law nor appears to be a voluntary statement. DW1 Ganpat Ram, Head Constable stated that before recording the statement he obtained opinion of the doctor of Safdarjang Hospital about fitness of the patient, which he tendered in evidence as Ex.D2. However, he could not disclose the name of the doctor, whose opinion was taken. In Ex.D2 neither the name of doctor nor the name of hospital stands mentioned. DW1 admitted that the time when he took the opinion of the doctor was not mentioned by him in Ex.D2. Importantly, the time when he recorded the statement was not mentioned in the statement Ex.D1 also. DW1 had stated that when he recorded the statement, except for one nurse, no one

was present. Neither the nurse was named nor her signatures were obtained on the statement Ex.D1. The doctor, who gave opinion regarding fitness of the patient also, did not sign on Ex.D1.

15. Indeed, in her dying declaration Ex.PB, the deceased stated that earlier her statement had been recorded at the place where she was admitted but she specifically stated that the statement was recorded by a doctor and a constable. As already mentioned above, Ex.D1 was not recorded in the presence of any doctor. In fact, DW1 Head Constable, who obtained the opinion of the doctor, was unable to disclose the name/identification particulars of the doctor from whom he had obtained the opinion. As such, there is nothing to attach authenticity to the statement Ex.D1. No explanation was offered/given by DW1 Ganpat Ram, Head Constable why the statement was recorded in such haste that too when no doctor was present. Also there is nothing to explain non joining of the Magistrate in the proceedings at that stage. More so, as specifically deposed by PW13 Dr. Kaushlesh Kumar on 25.09.2002 on an application given by the police to enquire whether the deceased was fit for making statement, he had given his opinion Ex.PD/1 that she was unfit for making statement. The circumstances surrounding the statement are so suspicious that it can outrightly be rejected and by concluding that no such statement was given by the patient-deceased.

16. It is apparent from the facts and circumstances and the evidence on record that the statement Ex.PB is the only dying declaration made by deceased Hem Lata on a voluntary and sound state of mind. It is

proved from the opinion of the doctor Ex.PA/3 that the deceased was unfit for making statement on 24.09.2002. Again on 25.09.2002, as per opinion Ex.PD/1 of Dr. Kaushleh Kumar the deceased was still unfit for giving statement. The doctor did not mention the time when he gave his opinion Ex.PD/1 on 25.09.2002. Subsequently, on 26.09.2002, ASI Krishan Kumar again gave application Ex.PD/2 to seek opinion of the doctor whether Hem Lata was fit to make statement on which PW12 Dr. Vunjhoih Ching Simte Stderja gave opinion Ex.PD/3 that the patient was fit for giving statement. On this, the statement of Hem Lata was recorded by PW2 Peter Bara, Sub Divisional Magistrate, Basant Vihar, New Delhi. PW2 stated that it took about 20 minutes in recording the statement. The time given under the statement is 10:53 a.m. PW2 added that none of the family members of the injured was present when he recorded the statement. He also denied that the deceased was unconscious on 26.09.2002.

17. The opinion of doctor Ex.PD/3 given at 10:30 a.m. proves that immediately before recording the statement of the deceased she was declared fit for making the statement by the doctor. The mere fact that the doctor did not make an endorsement underneath the dying declaration would not make the dying declaration suspicious when the statement was recorded by the Magistrate. It is important to note that the opening part and the second part of the statement is in question/answer form and the answers given by the deceased clearly indicate that she was very much conscious while making the statement. Neither the parents nor anyone

from the in-laws family of the deceased was present when the statement Ex.PB was recorded. So there is no reason to suspect that the statement was influenced by any person. Otherwise also, nothing such has been brought on record to indicate that at any stage anyone from the parental family of the deceased had tried to use any kind of pressure or influence on the deceased which had persuaded her to make the statement Ex.PB.

18. In her dying declaration Ex.PB, the deceased categorically stated that her husband is a gentleman and had never said anything to her but it is the mother-in-law who had often been beating her and had not allowed her to go to her parental home even once in the period of two years after marriage. On being asked, how she suffered burn injuries, she stated that when she was preparing meals, her mother-in-law Birma came and dragging her into a room, poured kerosene oil on her and set her ablaze. Stating the reason, why her mother-in-law used to harass her, the deceased mentioned that her parents had died and the land of her share was in possession of her paternal uncle who had brought her up. It was for the said land that to pressurize her to get the land or some expensive/valuable articles from her paternal uncle that her mother-in-law used to maltreat her.

19. Had the deceased been tutored by any person from her parental family, she could have indicted her husband and father-in-law also, but she very fairly she stated that her husband was a gentleman and had never said anything to her and also she had not much problem from her father-in-law. When asked to say something more about the

occurrence, the deceased only expressed desire that her mother-in-law should be given a lesson.

20. Indeed, PW6 Ram Baran Singh and PW7 Bimlesh, to whom the deceased was related as a niece, deposed that the deceased was being maintained properly by her in-laws and that she caught fire when she was preparing food on a stove, but their statements by no stretch of imagination can be preferred to the statement of the deceased herself i.e. Ex.PB which is her dying declaration.

It has been held by Hon'ble Apex Court in ***Prempal vs. State of Haryana, (2014) 10 Supreme Court Cases 336*** that, 'when reliance is placed upon dying declaration, the court must be satisfied that the dying declaration is true, voluntary and not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit statement of mind'. In ***State of U.P. v. Ram Sagar Yadav, (1985) 1 Supreme Court Cases 552***, this Court held that if the court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. In ***Nanhau Ram vs. State of M.P., 1988 Supreme Court Cases (Cri) 342*** it was held that normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion, but where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

21. It is a settled proposition of law that a great solemnity and sanctity is attached to the contents of a 'dying declaration' because it is

rightly believed that a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person. However, before abutting on the dying declaration the Court must be satisfied that the statement was not result of either tutoring or prompting etc. and that the deceased was in a fit statement of mind to make the statement. Being satisfied that the dying declaration is true and voluntarily, it can be used as sufficient for basing the conviction of the accused without any corroboration.

22. Last but not the least, it is a settled proposition of law that delay in lodging the First Information Report is not always fatal to the prosecution case. In the case in hand, the First Information Report was registered on the basis of dying declaration Ex.PB of deceased Hem Lata recorded by PW2 Sh. Peter Bara, Sub Divisional Magistrate on 26.09.2002. As mentioned in the endorsement at the bottom of the First Information Report, it was recorded on receipt of the statement of the deceased Ex.PB from the hospital. Otherwise also, when the First Information Report was based on the dying declaration of the deceased, the report did not suffer from any kind of addition, alternation or embellishment and its delay caused no prejudice to the accused.

Thus, finding that the prosecution had successfully brought home guilt to the appellant, the judgment of conviction dated 22.03.2004 recorded by learned trial court, convicting the appellant under Sections 498-A and 304-B I.P.C. is upheld. As regards, the quantum of sentence,

the sentence awarded to the appellant is appropriate/adequate and calls for no intervention.

The appeal is dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

March 25, 2015.  
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***Note: Whether to be referred to the Reporter or not? Yes/No.***