

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

**CRA-S-831-SB of 2004.
Date of Decision: July 08, 2015.**

RAM GOPAL		APPELLANT.
	VERSUS	
STATE OF HARYANA		RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Sumeet Sheokand, Advocate for
Mr. R.S. Tacoria, Advocate for the appellant.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

SNEH PRASHAR, J.

This appeal was preferred by appellant Ram Gopal, assailing the judgment of conviction dated 20.12.2003 and order of sentence dated 23.12.2003 recorded by learned Sessions Judge, Kurukshetra, in case bearing First Information Report No.248 dated 06.11.2002 under Section 306 of the Indian Penal Code (for short "I.P.C.") registered at Police Station Kurukshetra University, Kurukshetra.

2. Precisely, the story presented by the prosecution was that on 04.11.2002 (the day of Diwali festival) Krishna Devi wife of Ram Gopal was brought to Lok Nayak Jai Parkash Hospital, Kurukshetra, in a burnt condition. Dr. G.D. Mittal conducted her medico legal examination and found superficial deep burns all over the body except soles of both feet and pubic region. Smell of kerosene was coming and some half burnt

clothes were present on the body. The doctor sent a Rukka to the police in response to which Assistant Sub Inspector Jai Parkash of Police Station Kurukshetra University, Kurukshetra reached the hospital. On an application given by the police, the doctor opined that Krishna Devi was fit to make statement. Further, on request of the police, Shri R.S. Dhanda, Duty Judicial Magistrate, Kurukshetra recorded the statement of Krishna Devi.

The victim stated that she had set herself afire after pouring kerosene. About 6-7 days back her husband had given her severe beatings and had tied her and thrown away. So out of rage on that count she had set herself afire. The victim added that her husband was still telling her to go away with her brother when he would come at *Bhaiya Dooj* festival.

Victim-Krishna Devi succumbed to her burn injuries on 05.11.2002 at 9:45 p.m. On receipt of information, a formal First Information Report based on the statement of the deceased (dying declaration) was recorded on 06.11.2002 and inquest report was prepared and the dead body was got postmortemed. Statements of witnesses were recorded. The accused was arrested and was sent for trial.

3. The appellant was charge-sheeted under Section 306 I.P.C., to which he pleaded not guilty and claimed trial. The prosecution examined PW1 Dr. G.D. Mittal, PW2 Shri R.S. Dhanda, Judicial Magistrate, PW3 Head Constable Mukesh Kumar, Draftsman, PW4 Assistant Sub Inspector Taken Raj, PW5 Dr. C.R. Khatri, PW6 Dr. Vivek Aggarwal, PW7 Dr. Sarah Aggarwal, PW8 Head Constable Karam Chand,

PW9 Inder Singh and PW10 Ex.Assistant Sub Inspector Jai Parkash. 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 by putting to him the incriminating evidence available on record. He pleaded innocence and contended that he was falsely implicated in this case. He also examined DW1 Dr. Satyawati Lumba, DW2 Ram Kumar, Store-keeper, DW3 Dr. Pawan Goyal, DW4 Rattan Pal, DW5 Fakir Chand Sarpanch, DW6 Dr. N.K. Jhamb and DW7 Karambir.

4. Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant, learned trial Court finding the charges successfully proved against the appellant beyond the shadow of reasonable doubt, convicted and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2000/- for commission of offence punishable under Section 306 I.P.C. In default of payment of fine, he was to further undergo rigorous imprisonment for four months.

5. Feeling aggrieved by the impugned judgment of conviction dated 20.12.2003 and order of sentence dated 23.12.2003 passed by learned trial court, the appellant preferred the instant appeal.

6. The submissions made by Mr. Sumeet Sheokand, learned counsel representing the appellant and Mr. Neeraj Poswal, Assistant Advocate General representing the State of Haryana have been heard and record has been perused.

7. Learned counsel for the appellant argued that in his statement recorded under Section 313 Cr.P.C. the appellant admitted that he was married to Krishna Devi (deceased) about 25-26 years ago and that no child was born out of their wedlock. He also admitted that Krishna Devi lived at her parental home for about two years and came to the matrimonial home only about 15 days before her death. She was left at the matrimonial home by her brothers. However, he denied the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent. He specifically mentioned that the deceased was tense and under depression and because of that she had committed suicide when she was alone in the house and he had gone to work. He was informed about the incident by the village Sarpanch. Learned counsel contended that the Sarpanch of the village of appellant namely Fakir Chand appeared as DW5 and affirmed the aforesaid statement of the appellant. He deposed that in 2002 on the day of *Diwali* festival, he had heard an alarm in the village that the house of the appellant had caught fire. There was some smoke coming out of the house and the doors were shut from inside. They went over the roof and broke open the door in the presence of the police who had been called telephonically. He further stated that in a room, wife of Ram Gopal was burning. She was taken out and on query she told them that she was upset because she was unable to bear a child and because she had also caught one or two diseases. Her husband, who was away to work, was called and he reached there. Brothers of the deceased were also called and then she was taken to

Government Hospital, Kurukshetra. Learned counsel pointed out that DW5 Sarpanch categorically stated that relations between the appellant and his wife were very cordial and that the appellant was a teetotaler.

8. Elaborating his argument, learned counsel referred to the statement of DW4 Rattan Pal, brother-in-law (sister's husband) of the appellant and he submitted that DW4 Rattan Pal corroborated the version of DW5 Fakir Chand, Sarpanch that deceased Krishna Devi could not bear a child and used to remain ill. Her brothers had taken her to the parental home for her treatment about 1½ years ago and she had returned to the matrimonial home only 15-16 days before her death. DW4 also stated that because the appellant was living alone he had told parental family of Krishna Devi that she would be got treated at the matrimonial home. The witness (DW4) had added that since his marriage he had never seen any quarrel between the deceased and the appellant and their relationship was very cordial.

9. Learned counsel further made referred to the medical evidence and pointed out that DW1 Dr. Mrs. Satyawati Lumba proved O.P.D. Slips Ex.DC and Ex.DD issued by her regarding treatment of Krishna Devi. Vide receipt Ex.DC, prescription was made for swelling in uterus whereas the O.P.D. slip Ex.DD was for stomach problem (disorder). Similarly, DW3 Dr. Pawan Goyal, Medical Practitioner testified that in July 1988 he was posted as Medical Officer/Surgeon in Lok Nayak Jai Parkash Hospital, Kurukshetra and that Smt. Krishna Devi remained admitted in the said hospital from 04.07.1988 to 14.07.1988

vide Bed Head Ticket No.3133. She was operated upon on 05.07.1988 as she was suffering from haemato calpos with congenital abnormalities of uterus and ovaries. He also stated that cervix was absent and uterus was full of blood and dirty material. An opening was created in the lower part of uterus to remove the blood and dirty material. With the said diagnosis she was less likely to conceive. The version of DW6 Dr. N.K. Jhamb was that the deceased remained under his treatment for pulmonary tuberculosis with effect from December, 1995 till September 1997 as an outdoor patient. He produced the treatment index card as Ex.DE brought by him and the X-ray film shown by the defence counsel Ex.DF which was objected to by the prosecution.

10. Emphatically relying on the above evidence, learned counsel asserted that from the statement of independent and expert witnesses it was established that the deceased was unable to conceive because of the medical complications she was suffering from. In addition to it, her general health was also not good because of which she used to remain depressed. On her own and on persuasion of her brothers etc. she used to live at her parental home for long periods. She had joined the appellant at the matrimonial home just 15 days before her death. As far as her relationship with the appellant was concerned, it was proved that they were enjoying cordial husband-wife relationship and none of the relations or acquaintances had ever seen them quarreling. With the said facts in the backdrop it was apparent that owing to depression as she was unable to conceive and because she was unwell Krishna Devi had on her own

volition ended her life by committing suicide when the appellant was not at home and for that reason he could not be blamed for abetting commission of suicide.

11. Last but not the least, learned counsel argued that the prosecution had mainly relied upon the dying declaration Ex.PD and accepting the same learned trial court had convicted and sentenced the appellant. The circumstances in which the alleged statement Ex.PD of the deceased was recorded are suspicious as it is not proved that the deceased was conscious and in a disposing mind when she made the said statement. Otherwise also, DW5 Fakir Chand Sarpanch, who in the presence of the police, took out the deceased from the room by breaking open the door which was locked from inside, had stated that on query by him that why she committed suicide, the deceased had replied that she was upset for not bearing a child and had also got one or two diseases. That statement made before the Sarpanch was also a dying declaration and that contradicted the statement Ex.PD recorded by the Magistrate in the hospital. To support his argument, learned counsel relied upon 1993 Criminal Law Journal 304 (Supreme Court) 'Vishram and others vs. State of Madhya Pradesh' where even an oral dying declaration given to an interested witness was held to be reliable.

12. As already observed above, it is an admitted case that the deceased had gone to her matrimonial home only about 15 days before her death after spending 1½ / 2 years at her parental home. It is note worthy that DW4 Rattan Pal, a close relative of the appellant, stated that brothers

of Krishna Devi used to take her for treatment to the parental home. He also stated that having lived for 1½ years at the parental home she could not be cured. However, he did not mention the disease of which Krishna Devi was suffering from when in 2000/2001 she was taken to her parental home by her brothers. According to DW3 Dr. Pawan Goyal, Medical Practitioner the deceased had remained admitted in Lok Nayak Jai Parkash Hospital, Kurukshetra with effect from 04.07.1988 to 14.07.1988 and was operated upon on 05.07.1988 because of certain abnormalities of the uterus and ovaries. In case she was suffering from any other serious medical problem for 12 years thereafter, the relevant medical documents should have been produced. As per the prosecution evidence and also admitted by the appellant he and the deceased were married for the last 26/30 years. In case the deceased was got treated for some medical problem in 1984 or in 1988 and from 1995 to 1997, it could not be said that general condition of her health was bad or that she used to remain ill throughout. The treatment taken by the deceased at different times was for specific ailment and not for any chronic disease. Rather, it becomes an admitted fact that after September, 1997 the deceased suffered from no ailment and had never been got treated by the appellant or by her parental family.

13. PW9 Inder Singh was the brother of the deceased. He testified that the appellant and his brothers Baisakhi and Singara often used to harass and beat his sister after taking liquor. She had lived with them for two years and was sent to the matrimonial home just 15 days

before her death on the asking of brother-in-law of the appellant. DW4 Rattan Pal, brother-in-law of the appellant also stated that it was on his request to the parental family of the deceased that she was sent to her matrimonial home. In his cross-examination, he stated that when they met Krishna Devi in the hospital she told them that she had committed suicide because her husband and his brothers even now had often been beating and abusing her after taking liquor.

14. In addition to the statement of PW9 is the statement of the deceased herself in the shape of dying declaration Ex.PD. She stated that she had set herself afire after pouring kerosene because 6-7 days back her husband had beaten her severely and had tied and thrown her and even thereafter had been saying to her that she should go away with her brother when he would come on the festival of *Bhaiya Dooj*. The dying declaration Ex.PD proves beyond doubt that the deceased was being ill treated by her husband and because of his cruel conduct she committed suicide.

15. It has come in the statement of PW2 Shri R.S. Dhanda, Judicial Magistrate that 04.11.2002 was holiday on account of Diwali festival and he was the Duty Magistrate. No doubt, there is no written application on record given by the police to Shri R.S. Dhanda for recording the dying declaration, but even if the dying declaration was recorded on oral request, the same could not be ignored and in doing so there had been no violation of any provision of law. PW5 Dr. C.R. Khatri proved the application Ex.PC given by the police to know whether

Krishna Devi was fit to make statement. On the application he gave his opinion Ex.PC/1 at 3 p.m. stating that the patient was fit for making statement and thereafter the dying declaration Ex.PD was recorded and concluded at 3:40 p.m. PW2 Shri R.S. Dhanda justified that the application Ex.PC was given to the doctor in his presence and he had also orally asked the doctor who thereupon gave his opinion Ex.PC/1.

The minor discrepancy pointed out by learned counsel for the appellant in the statement of PW10 Assistant Sub Inspector Jai Parkash, who stated that after obtaining the opinion from the doctor he had called the Judicial Magistrate for recording dying declaration, whereas PW2 Shri R.S. Dhanda stated that the application was given for opinion of the doctor in his presence, is of no consequence when the learned Magistrate unequivocally stated that the opinion that the patient was fit for making statement was given by the doctor in his presence. The application Ex.PC consisting of the opinion Ex.PC/1 was kept in sealed envelope with the statement (dying declaration) Ex.PD recorded by the Magistrate and the same were taken out of the sealed envelope during recording of the statement of PW2 Shri R.S. Dhanda in the court, which also proves that the doctor's opinion Ex.PC/1 was given in the presence of Shri R.S. Dhanda.

16. Another argument raised by learned counsel for the appellant in respect of dying declaration Ex.PD was that PW2 Shri R.S. Dhanda, Judicial Magistrate had not certified that the patient was fit to make statement. There may not be any such specific certificate, but there is

certificate of learned Magistrate that the statement contains true deposition of the declarant. Coupled with the certificate of the medical officer Ex.PC/1 that the declarant was fit to make statement, it stands established that the declarant was fully conscious and was fit for making a statement. Here, it is important to note that PW1 Dr. G.D. Mittal, who medico legally examined Smt. Krishna Devi on arrival in the hospital had mentioned in the Rukka Ex.PB sent by him, for making necessary arrangement for recording the dying declaration of the patient. The said factum also proves that Smt. Krishna Devi was conscious and fit for making statement.

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 state 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 by Apex Court that normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration looks 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.

In the case in hand, the statements of PW1 Dr. G.D. Mittal and PW2 Shri R.S. Dhanda are sufficient to satisfy the conscious of the court that the dying declaration was true and voluntary and was given by the deceased in a conscious and fit state of mind.

17. As far as the statement of DW5 Fakir Chand Sarpanch that when they had broken open the door of the house of the appellant and taken out his wife Krishna Devi, who was burning, he had put a query to her why she had burnt herself and she had replied that she committed suicide because she was upset for not bearing a child and had also caught one or two diseases, is concerned, firstly that does not inspire truth because it was not corroborated by other independent person of the village. DW4 Rattan Pal, brother-in-law of the appellant, who stated that he too was present with the Sarpanch when the deceased was taken out, testified that on their asking Krishna Devi stated that due to mental disturbance and depression she had set herself afire. The apparent variation in the statements of DW4 and DW5 renders their testimony unreliable.

Moreso, DW5 being a Sarpanch was a responsible person of the village but his cross-examination proves that he had entered the witness box only to favour the appellant. He stated that the reason for committing suicide was told to him by Krishna Devi in the presence of police, but there was no document to the said effect. He also stated that he does not remember if he had made any statement to the police or not in

that matter. He further stated that he accompanied Krishna Devi to the hospital but he stated that the Magistrate had not come to the hospital for recording the statement of Krishna Devi in his presence. Lastly, he added that he had learnt about the case of the appellant only on receiving summons as defence witness and knew nothing about it earlier. Such fluctuating conduct and deposition of DW5 leaves no scope to rely upon him.

In any case, an oral dying declaration made by the deceased in the hospital was proved by her brother PW9 Inder Singh and that corroborated the statement given by the deceased before the Magistrate i.e. dying declaration Ex.PD proved by PW2 Shri R.S. Dhanda magistrate.

18. The above scrutiny of the evidence of the prosecution proved beyond doubt that the deceased committed suicide because of the continuous beating, harassment and cruelty she was facing at the hands of the appellant. She made a very firm and specific statement explaining the reason why she had set herself ablaze. The very fact that the deceased set herself afire on the day of festival of Diwali shows the gravity of the situation created by the appellant by his act and conduct immediately prior to the incident that amounted to abetment of the commission of suicide by his wife, the deceased.

Thus, finding no ground for intervention in the judgment dated 20.12.2003 recorded by learned trial court convicting the appellant for commission of offence under Section 306 I.P.C., the appeal as against the judgment of conviction being devoid of merit and is dismissed.

Coming to the order of learned trial court passed on 23.12.2003 on the quantum of sentence and considering all aspects of the case, the substantive sentence of seven years awarded to the appellant is reduced to five years. However, the imposition of fine of Rs.2000/- and in default of payment of the same the direction to further undergo Rigorous Imprisonment for four months is upheld. The appellant is on bail, his bail bond, shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Kurukshetra shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

July 08, 2015.
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Note: Whether to be referred to the Reporter or not? Yes.