

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &  
HARYANA, AT CHANDIGARH**

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Criminal Appeal-D-925-DB of 2003

Date of Decision: May 11, 2015

Rakesh Kumar

--- Appellant

Versus

State (Union Territory, Chandigarh)

---Respondent

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CORAM: **HON'BLE MR. JUSTICE T.P.S. MANN.**  
**HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

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Present: Shri Ashwani Kumar Chopra, Senior Advocate with Shri  
Harinder Singh, Advocate for the appellant.

Dr. Sukant Gupta, Additional Public Prosecutor, U.T.,  
Chandigarh for the respondent-State.

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1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

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**MAHAVIRS. CHAUHAN, J.**

Having been convicted and sentenced to imprisonment for life with fine amounting to Rs. 5000/- and in default of payment of fine to further rigorous imprisonment for two months under Section 302 of the Indian Penal Code, 1860 ('IPC', for short) by learned Sessions Judge, Chandigarh vide judgment dated October 09, 2003 and order dated October 10, 2003, convict Rakesh Kumar has invoked appellate jurisdiction of this Court to seek his acquittal by upsetting judgment of his conviction and order on sentence.

**Fact situation:**

02

Asha Devi, aged about 28 years (the deceased) was married to

Balram Singh (PW11) in the year 1992. A female child born of the wedlock breathed her last just twenty five days after her birth and the couple adopted daughter of brother of the deceased, named Anu. Balram Singh was employed in Border Security Force and would stay away from his home. The deceased and her adopted daughter were putting up at Daddu Majra. As the appellant (also known as Gauri Pardhan) a resident of Kumhar Colony, Sector 25, Chandigarh, used to frequent house of the deceased, the two (appellant and the deceased) developed proximity with each other. Appellant married another girl on April 26, 2001. At or around 09.30/10.00 a.m. on May 07, 2001 appellant came to deceased's house. The deceased asked the appellant how he could marry (another girl). Appellant replied saying that he would be spending his nights with his wife and the days with her. Deceased asked the appellant to shell out some money for Anu's birthday which fell on May 08, 2001. Upon this appellant picked up a quarrel with the deceased, poured kerosene over her body and set her ablaze. When the deceased cried for help, the appellant put a blanket over her body, took her to Post Graduate Institute of Medical Education and Research, Chandigarh (popularly known as 'PGI'), got her admitted there and disappeared. Doctor attending on her sent an intimation to the police whereupon Sub Inspector Gajjan Singh (the investigating officer) (PW16) reached PGI and after the deceased was declared fit to make a statement by the doctor vide certificate, *Exhibit PQ/1*, recorded her statement, *Exhibit PD*, based whereupon a formal First Information Report ('FIR', for short), *Exhibit PE*, was recorded by Sub Inspector Hazura Singh (PW2) at Police Station, Sector 39, Chandigarh.

**Investigation:**

03. On being so requested, Shri Ajay Singhal, Judicial Magistrate Class-I, Chandigarh (PW10) reached PGI and after the deceased was declared fit to make a statement by the doctor vide certificate, *Exhibit PM/2*, recorded her statement, *Exhibit PN*.

04. Investigating Officer inspected the spot of occurrence; prepared visual site plan, *Exhibit PS*; got the spot photographed; recovered a stove (*Exhibit P13*), burnt pieces of cloth (*Exhibit P14*), a bed sheet (*Exhibit P15*), a head wear (commonly called 'Chunni') (*Exhibit P16*), one burnt match stick and a match box containing ten match sticks (*Exhibit P17*), and a pair of shoes (*Exhibit P18/1-2*), from the spot and recorded statements of witnesses. Investigation was then taken over by Inspector Jai Singh (PW17) who, on May 07, 2001, arrested the appellant; got him medically examined vide medical report, *Exhibit PR/1*; on being informed of death of the deceased on May 12, 2001, reached PGI; prepared inquest report, *Exhibit PB*, got her dead body subjected to autopsy vide post mortem report ('PMR' for short), *Exhibit PA*, and recorded statements of witnesses, including that of PW11- Balram Singh, *Exhibit PP*.

05. A report, *Exhibit PV*, received from Central Forensic Science Laboratory, Chandigarh revealed that in stove, *Exhibit P13*, kerosene was detected but no kerosene or diesel could be detected on burnt pieces of cloth (*Exhibit P14*), bed sheet (*Exhibit P15*), head wear (*Exhibit P16*), match box containing eleven match sticks, including one burnt match stick, (*Exhibit P17*), and pair of shoes (*Exhibit P18/1-2*).

**Proceedings before the committing & trial court.**

06. On completion of investigation, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the Code') was presented before the learned Area Magistrate.

07. Learned Sessions Judge, after the case was committed to his court, perused the report, afforded a hearing to the prosecutor and the defence, found that there was ground for presuming that the appellant had committed an offence punishable under Section 302, IPC, and triable by him, and charged the appellant accordingly.

08. Appellant pleaded not guilty to the charge and claimed to be tried.

09. During trial, Constable Hari Om (PW4) told the learned Sessions Judge that on May 07, 2001 appellant had brought the deceased to the PGI in burnt condition but had disappeared after getting her admitted therein and he informed the concerned Police Station about it. Dr. Mohd. Farid Hussain (PW15) revealed that he attended on the deceased at the first instance and admitted her in the PGI vide admission card, *Exhibit PS*. Dr. Shifali Khanna (PW13) testified to say that on police request, *Exhibit PQ*, she declared the deceased fit to make a statement vide her certificate, *Exhibit PQ/1*. Dr. Rajwinderjit Singh (PW14) deposed to say that on May 07, 2001, on police application, *Exhibit PR*, he medico legally examined the appellant vide his report, *Exhibit PR/1*, and found that there were superficial burns over posterior aspect of right forearm, right hand, right ring finger, right little finger, and anterior aspect of right hand of the appellant and all fingers' terminal parts were reddish brown in colour, with blisters formed at multiple

sites. Dr. Pawan Kansal (PW1) stated on oath that on May 12, 2001, vide PMR, *Exhibit PA*, he conducted autopsy on the dead body of the deceased and found that there were extensive superficial to deep infected burns present all over her body spread over 98% area. The burns were ante mortem in nature and were sufficient to cause death in ordinary course of nature. According to him cause of death was septicemia due to extensive burns. Gian Singh (PW3) told the learned Sessions Judge that the deceased was a tenant in his house. Raj Kumar (PW8)-brother of the deceased, revealed that he had identified dead body of the deceased while Balram Singh (PW11)-husband of the deceased, testified to say that the deceased, who was residing at Daddu Majra, was burnt by the appellant. SI Gaijan Singh (PW16), Inspector Jai Singh (PW17), SI Hazura Singh (PW2), Constable Manjit Singh (PW5), Constable Yashpal (PW6), Head Constable Ram Karan (PW12), Constable Jaswant Singh (PW7) and Head Constable Manjit Singh (PW9) brought on record various phases and facets of investigation.

10. After witnesses for the prosecution had been examined and before he was called on for his defence, learned Sessions Judge confronted the appellant with the incriminating materials brought on record by the prosecution, as required by Section 313 of the Code. Appellant junked all these circumstances and reiterated plea of his innocence and false implication but did not lead any evidence in defence.

11. On hearing the prosecutor and the defence and appraisal of the evidence, learned Sessions Judge concluded that the prosecution was able to fix appellant's guilt beyond reasonable doubt and, accordingly, convicted

and sentenced him as here-in-before stated.

**In criticism and defence of the impugned judgment/order:**

12. We have heard learned counsel for the parties besides examining the record of the case.

13. On behalf of the appellant it has been argued that conviction of the appellant has been ordered only on the basis of dying declaration, *Exhibit PN*, even though it has not been corroborated by independent evidence and is at variance with what is stated in *Exhibit PD*, in so far as in it there is no mention that the deceased asked the appellant how could he marry another girl and that the deceased cried for help and then a blanket was put by the appellant over her body while such assertions are there in her statement, *Exhibit PD*, made before the investigating officer; evidence available on record does not suggest that the appellant intended to kill the deceased, rather, to the contrary, it has come on record that he attempted to save her by putting a blanket over her body even at the cost of he himself receiving burn injuries on his hand and even got her admitted in the premier medical institute of the region, i.e. PGI; and even if prosecution story as a whole is believed to be true, the occurrence was consequence of sudden provocation by the deceased as against a planned attack intended at her killing and, therefore, conviction of the appellant under Section 302, IPC, cannot be sustained because such a situation would bring the case within the purview of Section 304, IPC.

14. The contention, however, is countered on behalf of the respondent-State and it is argued that the evidence available on record is very clear and convincing and only conclusion that can be drawn therefrom

is that the appellant committed the offence of murder by bringing to a premature and tragic end life span of the deceased by setting her ablaze after sprinkling kerosene over her body.

15. No other or further point has been urged on either side.

**Presence of the appellant (and none else) with the deceased:**

16. It is not in dispute that the deceased was residing at Daddu Majra and the appellant is a resident of Kumhar Colony, Sector 25, Chandigarh. It is also not in dispute that when the deceased received burn injuries, appellant was present at her residence in Daddu Majra. It has come in dying declaration, *Exhibit PN*, that at the time of the occurrence adopted daughter of the deceased was away to the house of mother of the deceased for playing as her school was closed on that day and husband of the deceased, namely Balram Singh (PW11) has revealed that on the day of occurrence he was on duty in North Bengal. It is the case put forward even on behalf of the appellant that he was present by the side of the deceased when she received the burn injuries and had even attempted to put the fire off by putting a blanket over her. Presence of the appellant with the deceased in her house at the relevant time is also established by the fact that, as stated by Constable Hari Om (PW4), he (the appellant) brought the deceased to the PGI but slipped away after admitting her therein as also by the fact that, as disclosed by Rajwinderjit Singh (PW14) and in the report, *Exhibit PR/1*, immediately after his arrest on May 07, 2001, when brought to the hospital the appellant was found to have superficial burns over posterior aspect of his right forearm, right hand, right ring finger, right little finger, and anterior aspect of right hand and all fingers' terminal parts were reddish brown in colour,

with blisters formed at multiple sites.

**The occurrence:**

17. To describe the occurrence, there are two statements, *Exhibit PD* and *Exhibit PN*, of the deceased, one made before SI Gajjan Singh (PW16) at 03.10 p.m. on May 07, 2001 and the other suffered before Shri Ajay Singhal, Judicial Magistrate (PW10) at 03.55 p.m. on that very day. It is apposite to reproduce here both the statements.

*Exhibit PD*, a statement suffered by the deceased before SI Gajjan Singh (PW16), on the basis of which FIR, *Exhibit PE*, was recorded, reads as under:

*“Statement of Smt. Asha w/o Balram Singh r/o Daddu Majra, aged 28 years, stated that I am residing at the afore-mentioned address alongwith my family. My husband is working in BSF. I have one daughter. We were married 12 years ago. For about two years back one Gauri Pardhan s/o Ram Chander r/o Kumhar Colony used to visit our house. I love him. He was married on 26<sup>th</sup> April. Today at about 9.30/10.00 Gauri Pardhan came to my house. I told him that he had got married now. Whereupon he told me that he will stay with his wife at night and during day time he will stay with me. My daughter’s birthday was fixed on 8.5.2001. For this purpose I demanded money from Gauri which led to a quarrel between us. Gauri poured kerosene, which was lying in the house, upon me and lit the fire with the help of a match box. I cried for help. He then put a blanket on me and after some time took me to PGI in a three wheeler and ran away leaving me there. He be proceeded against as per law.”*

Before statement, *Exhibit PD*, was recorded by SI Gajjan Singh (PW16), Dr. Shifali Khanna (PW13), vide certificate, *Exhibit PQ/I*, had declared the deceased fit to make a statement. In cross-examination the doctor clarified that no pain killer, which could cloud mental faculty, was given to the deceased and, even otherwise, a pain killer does not have any

after-effect.

SI Gajjan Singh (PW16), who has proved the statement, *Exhibit PD*, has not been cross-examined with regard to its correctness.

In her statement, *Exhibit PN*, which is in the nature of a “Dying Declaration”, deceased described the occurrence as under:

*“I have one daughter. My husband is posted in BSF in Gujarat. My daughter is 5 years old. Her name is Anu. I was married 12 years ago. One boy Gauri Pardhan s/o Ram Chander r/o Kumhar Colony, Sec. 25, Chd., who has been married on 26<sup>th</sup> April. Today in the morning he came to me and told me that he will stay with his wife at night and during day time he will stay with me. He loves me for the last two years. Today he came to me at 9.30/10.00 A.M. I asked him that my daughter’s birthday is fixed on 8.5.01 he started quarrelling with me as to why I demanded money from him and beaten me. Then he took kerosene oil stove, which was lying in the room and poured kerosene on me and set fire. When fire got ablazed then he put blanket on me and tried to extinguish fire. He took me to the hospital in a three wheeler. I was burnt at about 11.00 A.M. and reached PGI within half an hour. I am still conscious. Then he left from PGI. My husband do not know about my burning. At the time of incident my daughter was in my mother’s house. She went there for playing as there was holiday in school. My mother’s house is also in the same colony. Gauri Pardhan is fully responsible for my burning. I do not want to tell any more.”*

Dying declaration, *Exhibit PN*, was recorded by Shri Ajay Singhal, Judicial Magistrate (PW10) after the deceased was declared fit to make a statement by Dr. Shifali Khanna (PW13) vide certificate, *Exhibit PM/2*. Shri Ajay Singhal, Judicial Magistrate (PW10) also found the deceased to be mentally sound and fit to make a statement. Dr. Shifali Khanna (PW13) appended a certificate on the foot of statement, *Exhibit PN*, to the effect that this statement was recorded in her presence; when this statement was being recorded there was no one around; and throughout

recording of the statement deceased remained fit. Shri Ajay Singhal, Judicial Magistrate (PW10) also added a certificate on the bottom of *Exhibit PN* to the effect that the statement contains correct version of what was stated by the deceased and during recording of the statement, except the doctor on duty, no one was around. Neither of the above-stated two witnesses has been cross examined with regard to correctness and integrity of the statement nor have they been confronted with a suggestion that the deceased had made a statement different from what *Exhibit PN* contains.

18. Recovery of a kerosene stove, *Exhibit P13*, a burnt match stick and a match box containing ten match sticks, *Exhibit P17*, and burnt piece of cloth, *Exhibit 14*, from the spot of occurrence and report of Central Forensic Science Laboratory *Exhibit PV*, that in stove, *Exhibit P13*, kerosene was detected, lend sufficient support to what is stated in dying declaration, *Exhibit PN*.

18. A conjoint reading of the two statements, *Exhibit PD* and *Exhibit PN*, reveals that these do not differ from each other as regards the bedrock of the prosecution version. In this view of the situation variations in the two statements pointed out by learned counsel for the appellant are liable to be ignored being minimal and inconsequential. Besides, the dying declaration, *Exhibit PN*, inspires full confidence as regards its truthfulness and correctness. We are satisfied that it is true and free from any effort to induce the deceased to make a false statement besides being coherent and consistent, and, therefore, it has rightly been made the basis of conviction of the appellant without insisting upon independent corroboration. Admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that

in the conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and mind is induced by the most powerful consideration to speak the truth. A dying declaration made by a person on the verge of his death has a special sanction as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. It may be of benefit to refer here to ***Jai Karan v. State of Delhi (NCT)*, (1999)**

**8 SCC 161** wherein it has been held as under:

*"A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premises that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premises which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable."*

**Was it a murder or culpable homicide not amounting to murder?**

19. The next question that falls to be considered in this appeal is, whether the offence disclosed by the facts and circumstances established by the prosecution against the respondent, is 'murder' or 'culpable homicide not amounting to murder'.

20. As elaborated in State of A.P. v. Rayavarapu Punnayya, (1976) 4 **Supreme Court Cases** 382, in the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide' sans 'special characteristics of murder' is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, Indian Penal Code practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree.' This is the gravest form of culpable homicide, which is defined in Section 300, IPC, as 'murder'. The second may be termed as 'culpable homicide of the second degree.' This is punishable under the 1st part of Section 304, IPC. Then, there is 'culpable homicide of the third degree.' This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second Part of Section 304, IPC.

21. The question as regards the intention to cause death has to be exclusively determined on the basis of the circumstances of each case. The type or kind of the weapon used, the number and the nature of the injuries inflicted, the part of the body which was chosen for causing the injury, the context of facts in which the fatal assault took place are, to mention a few,

some of the circumstances that constitute the relevant material for such purpose. The reasons why a man acts in a particular manner are indeed in his mind and hence, in the absence of a positive and reliable expression on his part of such reasons, one has necessarily to gather and determine his intention from the circumstances attendant to his particular action. Motive to cause death, as is well said, is also embedded in the mind of the perpetrator of the crime and in cases based on direct evidence, as the case in hand is, absence or inadequacy of motive is hardly of any consequence because our experience reminds us that very grave and serious offences have been committed for very minimal and insignificant reasons. It is clearly and unequivocally spelt out in the dying declaration, *Exhibit PN*, that the appellant, who had been in love with the deceased for about two years, married another girl just a few days before the occurrence; went to the house of the deceased when she was alone in the house and satisfied her anxiety about future of their relationship saying that he would spend his nights with his wife and the days with her but when the deceased demanded some money for birthday celebrations of her adopted daughter, he picked up a quarrel with her-in which the deceased is not shown to have participated or reacted in any manner; doused her body with kerosene; and set her afire by lighting a match stick. Dr. Pawan Kansal (PW1) has stated on oath that on May 12, 2001, vide PMR, *Exhibit PA*, he conducted autopsy on the dead body of the deceased and found that there were extensive superficial to deep infected burns present all over her body spread over 98% area. The burns were ante mortem in nature and were sufficient to cause death in ordinary course of nature. According to him cause of death was septicemia due to extensive burns. While from the circumstances attending on the occurrence

it is abundantly evident that the appellant set the deceased ablaze with an intention to kill her or with the intention of causing such bodily injury as he knew to be likely to cause death of the deceased, learned counsel representing the appellant has failed to make out a case to show that the instant case falls in any of the exceptions appended to Section 300, IPC. Therefore, in our considered opinion the present case does not fall within the ambit of Section 304, IPC, but it squarely falls within the meaning of culpable homicide amounting to murder as defined under Section 299 read with Section 300, IPC.

**Conclusion:**

22. As a consequence of what has been said and discussed here-in-above, we do not find any ground to interfere with the impugned judgment/order. The appeal, therefore, fails and is dismissed.

23. Bail bonds of the appellant are cancelled. He shall forthwith surrender before the jail authorities or Chief Judicial Magistrate, Chandigarh failing which he shall be liable to be re-arrested and committed to jail so as to serve the unexpired portion of sentence awarded to him by the learned Sessions Judge as affirmed by this Court.

**[T.P.S.Mann]**  
**Judge**

**[Mahavir S. Chauhan]**  
**Judge**

May 11, 2015  
adhikari