

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

Criminal Appeal-D -203-DB of 2003

Date of Decision: July 03, 2015

Hargyan son of Surajmal

--- Appellant

Versus

State of Haryana

---Respondent

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

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri Vinod Ghai, Senior Advocate with Shri Simrandeep S. Sandhu, Advocate for the appellant.

Shri Munish Sharma, Assistant Advocate General, Haryana, for the respondent-State.

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*

MAHAVIR S. CHAUHAN, J.

Convict Hargyan is before this Court to challenge judgment of conviction dated January 20, 2003 and order of sentence dated January 22, 2003 whereby learned Additional Sessions Judge, Sonapat (for short, 'the trial court') has convicted and sentenced him to imprisonment for life and fine amounting to Rs. 5000/- under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') for having murdered his wife Anita aged about 25 years (here-in-after referred to as, 'the deceased').

02. Syntax of events, put as concisely as one may, indicates that the deceased, who was married to the appellant about nine years before the

occurrence, was teaching in a private school at village Khubru and had a son and a daughter. Appellant, a slacker and vagrant would remain away from his house for days together and whenever at home would beat the deceased. At or around 07.00 p.m. on September 02, 2001 appellant picked up a quarrel with her. She asked her daughter to call appellant's father. Appellant told that he himself would call his father; picked a can (container) of kerosene lying in the house; poured kerosene on her; and with an intention to kill her, set her afire with the help of a match stick. She raised an alarm. Pardeep (PW3), son of appellant's elder brother, came there and doused the fire. Surajmal (PW1) took her to Sita Hospital, Ganaur.

03. Dr. Jagminder Jain sent intimation, Exhibit PF, to Station House Officer, Ganaur whereupon Assistant Sub Inspector Dhanpat Rai (Investigating Officer) reached the hospital and after she was declared fit to make a statement vide certificate, Exhibit PC/1, recorded statement of Anita, Exhibit PH, based whereupon a formal First Information Report (for short, 'FIR'), Exhibit PQ/1, under Section 307, IPC, was recorded by ASI Azad Singh (PW14). Investigating Officer inspected the spot of occurrence, prepared a visual site plan, Exhibit PJ, recovered pieces of burnt clothes (Exhibit P2) and a can, having a little kerosene (Exhibit P1). Appellant was arrested on September 04, 2001.

04. Dr. Sanjay Jain (PW6) examined Anita and found that she was conscious and oriented to time and place. He also found superficial to deep burns on her face, breast, abdomen, back, and both legs, and he referred her to Civil Hospital, Sonapat from where she was referred to Post Graduate Institute of Medical Sciences, Rohtak (PGIMS, for short) where she died on September 07, 2001 and, accordingly, offence was converted to Section

302, IPC. Investigating Officer conducted inquest proceedings vide inquest report, Exhibit PR. Dr. Raman Shukla (PW13) conducted post mortem on the dead body of the deceased at 04.00 p.m. on September 07, 2001 vide post mortem report, Exhibit PP, and found that there were superficial to deep burns (75 to 80 percent) all over the body except scalp, external genitalia, anterior side of lower legs with pus-pockets and scab formation at places. According to him cause of death of the deceased was *ante mortem* burns and their complications which were sufficient to cause death in natural course of nature.

05. As recorded in report, Exhibit PO, kerosene mixed with some blue dye was detected in contents of can, Exhibit P1, but no kerosene or its residue could be detected in recovered pieces of burnt clothes, Exhibit P2.

06. When investigation in the matter was complete, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the Code') was prepared and was presented before the learned jurisdictional Magistrate. After the case was committed to the Court of Session, learned trial court afforded an opportunity of hearing to the prosecutor and the defence, perused the report and its enclosures and found a case punishable under Section 302, IPC, to be *prima facie* made out against the appellant who, on being charged, pleaded not guilty and claimed to be tried.

07. During trial Dr. Sanjay Jain (PW6) revealed that he examined the deceased and found that she was conscious and oriented to time and place; there were superficial to deep burns on her face, breast, abdomen, back, and both legs, and he referred her to Civil Hospital, Sonapat. He also identified signature of Dr. Jagminder Jain at point, Exhibit PH/1, on

statement, Exhibit PH, of the deceased. Dr. Raman Shukla (PW13) deposed to say that he conducted post mortem on the dead body of the deceased at 04.00 p.m. on September 07, 2001 vide post mortem report, Exhibit PP, and found that there were superficial to deep burns (75 to 80 percent) all over her body except scalp, external genitalia, anterior side of lower legs with pus-pockets and scab formation at places and that cause of death of the deceased was *ante mortem* burns and their complications which were sufficient to cause death in natural course of nature. Kapoor Singh (PW7) told the learned trial court that the appellant had been treating the deceased with cruelty for having brought insufficient dowry and would raise unlawful demand for bringing a buffalo and cash etc. ASI Dhanpat Rai (PW8) proved statement, Exhibit PH, of the deceased as also its attestation by Dr. Jagminder Jain at point Exhibit PH/1, and certificate, Exhibit PC/1, whereby the deceased was declared fit to make a statement besides bringing on record various facets and phases of investigation. SI Ram Avtar (PW15) picked up the strings from where these were left by ASI Dhanpat Rai (PW8) and threw light on remaining aspects and stages of investigation while HC Ranbir Singh (PW5), HC Balbir Singh (PW9), Constable Virender Singh (PW10), Draftsman Jagbir Singh (PW11), HC Rajpal Singh (PW12) and SI Azad Singh (PW14) provided the necessary links to complete the prosecution's narrative. Vijender Singh (PW17) proved photographs, Exhibits P8 to P12, of the place of occurrence, and their negatives, Exhibits P3 to P7. Surajmal (PW1), Ms. Pooja (PW2), Pardeep (PW3) and Krishan (PW4), however, refused to support the prosecution version.

08. After prosecution evidence was complete, learned trial court confronted the appellant with the inculcating circumstances appearing

against him in the prosecution evidence so as to have his explanation qua the same as required by Section 313 of the Code. Appellant denied all these circumstances and while reiterating plea of his innocence and false implication came out with a plea that the deceased committed suicide by setting herself afire owing to poverty; he extinguished the fire and did everything to save her; and in the process his both hands were burnt for which he received treatment from Sita Hospital.

09. Appellant, however, did not lead any evidence in defence.

10. Learned trial court, after hearing the prosecutor and the defence and on appraisal of the evidence available on record, found that the prosecution was able to prove guilt of the appellant beyond reasonable doubt and, accordingly, convicted and sentenced him as here-in-before stated.

11. We have heard learned counsel for the parties and have also examined the record.

12. Learned senior counsel appearing for the appellant has argued with force that it has come on record that both hands of the appellant were burnt while attempting to save the deceased; he took the deceased to the hospital; scalp of the deceased was not burnt; only front side of body of the deceased received burn injuries; and in the can, Exhibit P1, about $\frac{3}{4}$ litre kerosene was still there when it was recovered by the investigating agency. These circumstances should suffice to reach a conclusion that the appellant did not set the deceased ablaze and it is a clear case of suicide. To elaborate his argument, learned senior counsel has pointed out that SI Ram Avtar (PW15) has revealed that when he arrested the appellant on September 04, 2001 his both hands were burnt and Dr. Sanjay Jain (PW6) has admitted that

on September 03, 2001 the appellant was examined in the OPD section of Sita Hospital. Learned senior counsel has also tried to demonstrate that were it a case of killing by burning the appellant would have emptied the kerosene can over the body of the deceased, including her head but from medical evidence it comes to the fore that no burns were received by the deceased on her head and when recovered, the can, Exhibit P1, still contained $\frac{3}{4}$ litre kerosene. According to learned senior counsel these circumstances require to be considered in conjunction with the revelation made by Surajmal (PW1) that earlier also the deceased had attempted to commit suicide more than once. Learned senior counsel has also attempted to use the recovery of burnt pieces of clothes (Exhibit P2) to the benefit of the appellant by saying that this circumstance coupled with the fact that hands of the appellant also received injuries indicates that efforts were made by the appellant to save the deceased by tearing off her clothes. It has also been argued on behalf of the appellant that it is not safe to convict the appellant of the offence of murder only on the basis of uncorroborated statement, Exhibit PH, of the deceased more so when Surajmal (PW1), who, as revealed by Dr. Sanjay Jain (PW6), accompanied the deceased to the hospital; Ms. Pooja (PW2), daughter of the deceased who, as per statement, Exhibit PH, was present on the spot at the time of the occurrence; Pardeep (PW3), who, as per statement, Exhibit PH, had come to the spot and had extinguished the fire; and Krishan (PW4), brother-in-law of the deceased have refused to tread the dotted line. Further, according to the learned senior counsel, statement, Exhibit PH, though is shown to have been attested and vide certificate, Exhibit PC/1, the deceased is shown to have been declared fit to make a statement by Dr. Jagminder Jain but he has not been examined

as a witness and certificate, Exhibit PC/1, even otherwise, cannot be read to mean that the deceased remained conscious throughout the recording of her statement, Exhibit PH. It has also been argued that the deceased remained alive till September 07, 2001 but no effort has been made by the investigating agency to get her dying declaration recorded by a Magistrate.

13. On the contrary, learned State counsel has argued with equal vehemence that the circumstances appearing on record unambiguously prove that the appellant killed the deceased by putting her on fire and statement, Exhibit PH, in itself is sufficient to sustain the finding of conviction recorded by the learned trial court because it has come in certificate, Exhibit PC/1, that the deceased was conscious when this statement was recorded and not only has this statement been attested by Dr. Jagminder Jain but it has also come on record in the evidence of Dr. Sanjay Jain (PW6) that when brought to his hospital the deceased was conscious and according to ASI Dhanpat Rai (PW8) the deceased had herself gone through the statement before appending her signature thereon.

14. No other or further point has been raised on either side.

15. Before proceeding further, it needs to be stated that Kapoor Singh (PW7), father of the deceased, has tried to attribute a motive to the appellant saying that he had been treating the deceased with cruelty for and in connection with demand of dowry but it runs contrary to the statement, Exhibit PH, which is conspicuous by its silence as regards such a demand and, instead, attributes the happening to the unprovoked quarrel which the appellant took up with her presumably on account of expression of her dismay about his idleness and vagrancy.

16. It is true that the statement, Exhibit PH, is in the nature of a

dying declaration and it has been recorded by a police officer and that the deceased though survived till September 07, 2001 but a Magistrate was not called to record her dying declaration. A Magistrate could and should have been called to record a further dying declaration. However, the dying declaration itself has been treated as the FIR and the case has been registered on the basis thereof. It is also true that statement, Exhibit PH, is the only piece of evidence in support of case of the prosecution that the appellant killed the deceased. However, death of the deceased by burns and presence of the appellant by her side at the time of the occurrence are not in dispute. It will have to be seen whether a dying declaration recorded by a police officer and endorsed by doctor can be accepted in the absence of any other dying declaration recorded by a Magistrate and whether such a dying declaration can be the sole basis to uphold a conviction made thereupon by the trial Court.

17. In the case of *Laxman v. State of Maharashtra, A.I.R. 2002 S.C. 2973*, it has been held that recording of the dying declaration by the Magistrate is a rule of caution. Though it is the usual practice but there is no requirement of law in that behalf. There is also no specified statutory form required for recording it. The evidentiary value and the weight to be attached to it depend upon the facts and circumstances of each case. The court is required to be satisfied about the state of mind of the person making the statement. Hence even if it is not recorded by the Magistrate or even if it does not contain the endorsement showing the by the Doctor, it can be accepted by the court if it is satisfied that the person who recorded the dying declaration was satisfied that the deceased was in a fit state of mind and it is found to be truthful. In this case the view that in the absence of certificate of

the doctor about fitness of the declarant to make a statement dying declaration cannot be relied upon, as held in *Paparambaka Rosamma V. State of A.P., AIR 1999 SC 3455*, was overruled and the law laid down in *Koli Chunilal Savji V. State of Gujarat, AIR 1999 SC 3695*, that the requirement of certification by the doctor is merely a rule of prudence, was affirmed.

18. In the case of *State v. Singari and anr., 2002(6) K.L.J. 52*, the dying declaration came to be challenged before a Division Bench of the Karnataka High Court as it was not containing the doctor's certificate in the prescribed form regarding the fitness of the victim to make the statement. It was held that where the record can inspire confidence in the court's mind with regard to the veracity and credibility and also the acceptability of the dying declaration, a mere technical lapse would not water down its evidentiary value. In that case the dying declaration was accepted even in the absence of the doctor's certificate in prescribed form. Conviction on that basis was held to be correctly made. In that case the incident took place on 25/04/1994. The deceased died of gunshot injuries on 27/04/1994. He had stated about the three accused in his statement which came to be recorded after the duty doctor's permission was taken by the police officer. The Doctor had examined the patient and opined that he was in a sufficiently fit condition to make a statement. The dying declaration did not contain the requisite certificate in the prescribed form. The contention that the doctor's certificate should have been superscribed on the dying declaration by the Doctor's endorsement was rejected. It was observed that there was a refinement of the law. The Supreme Court had held that where the record would inspire confidence in the mind of the court about the veracity,

credibility and acceptability of the dying declaration, a mere absence of the certificate was not a good enough technical lapse to reject the dying declaration.

19. In the case of *Vidhya Devi and another v. State of Haryana*, **A.I.R. 2004 SC 1757**, the dying declaration recorded by a police officer and endorsed by a Doctor came to be accepted even though no further dying declaration was recorded by the Magistrate during the four days when the deceased lived after her dying declaration was recorded. In that case the deceased had stated that her husband, father-in-law, mother-in-law, sister-in-law and brother-in-law had tortured her in respect of dowry. She had earlier lodged a written complaint with the police. On November 16, 1993 at about 10:30 AM when her husband and father-in-law were away, her mother-in-law, brother-in-law and sister-in-law set her ablaze. Her mother shifted her to the hospital. The medical officer sent information to the police station. The police arrived in the hospital. The medical officer initially opined that the victim was not in a fit position to make the statement. Later, in the evening the police once again contacted the Medical officer with a written request. That time the Doctor opined that she was fit to make the statement. Before the police officer recorded the statement of the victim, the Magistrate was contacted. He refused to record any statement before the case could be registered. Hence the police officer himself recorded her statement. In the statement she made a complaint of dowry demands against the whole family. She complained about only 3 of her family members with regard to setting her on fire that day. She ultimately expired on November 20, 1993. The prosecution relied upon the FIR which was registered as a dying declaration. It was contended that the dying declaration recorded by

the police officer on November 17, 1993 could not be accepted as she was not in a fit and proper condition to give a statement and the dying declaration was recorded by the police officer. Since it was seen to have been recorded on obtaining the opinion of the doctor, it was signed by the deceased and hence was held not to have suffered from any infirmities.

20. In *P.V. Radhakrishna V. State of Karnatka, 2003(6) SCC 433*, it has been held, “The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

21. Reverting to the case on hand it is seen that when brought to Sita Hospital, Ganaur, deceased though had 75 to 80 percent burns on her body, as per Dr. Sanjay Jain (PW6), she was conscious and oriented to time and place. ASI Dhanpat Rai (PW8) rushed to the hospital on receipt of information, Exhibit PF. Dr. Jagminder Jain (since deceased), who attended on the deceased, not only certified, vide certificate, Exhibit PC/1, that the deceased was fit to make a statement but also remained present by the side of the deceased throughout the recording of her statement, Exhibit PH, and attested it (at point Exhibit PH/1) after it was signed by the deceased after going through its contents. Before he could be brought before the learned trial court, Dr. Jagminder Jain, unfortunately, died. However, ASI Dhanpat Rai (PW8) and Dr. Sanjay Jain (PW6) identified his signatures. Replying to the grueling questions of the defence, ASI Dhanpat Rai (PW8) firmly stated

that when her statement, Exhibit PH, was recorded, the deceased was alone in the Emergency Ward, remained conscious; spoke in a loud voice and appended her signature on the statement after going through its contents; and doctor remained present throughout the recording of the statement. A scrutiny of the statement, Exhibit PH, also brings out that it is quite unambiguous, coherent and reliable. In view of these circumstances coupled with the fact that when brought to Sita Hospital, Ganaur, Anita though was conscious but her condition, as deposed to by Dr. Sanjay Jain (PW6), was critical with 75 to 80 per cent burns and she had to be referred to General Hospital, Sonapat and thence to PGIMS, Rohtak where she, ultimately, succumbed to the injuries on September 07, 2001, statement, Exhibit PH, cannot be thrown away only because it has been recorded by a police officer and not by a Magistrate. The statement inspires confidence and is found to be reliable.

22. Contention of learned senior counsel for the appellant that the fact that both hands of the appellant were burnt and on earlier occasions also suicide was attempted by the deceased prove that she attempted to end her life by putting herself ablaze and the appellant tried to save her by extinguishing the fire, lacks substance. Statement of SI Ram Avtar (PW15) that when arrested by him on September 03, 2001, appellant's hands were found to be burnt and admission of Dr. Sanjay Jain (PW6) that the appellant was examined in the OPD section of his hospital on September 03, 2001 are found to be of no help to the appellant's plea firstly because these run contrary to each other in so far as SI Ram Avtar (PW15) has admitted that he did not get the appellant medically examined and secondly because Dr. Sanjay Jain (PW6) has stopped short of saying that his hands were found to

be burnt. No effort has been put in by the appellant to summon record of Sita Hospital, viz. Patients' Register etc. to prove that his hands were burnt. Even otherwise, the mere fact that the appellant tried to extinguish the fire would not prove his innocence. Every person, who happens to commit an act in a fit of rage, hopes, wishes and tries to minimize the effect of his wrongful act, as soon as it is committed. That is the normal human conduct.

23. Presence of kerosene in the can, Exhibit P1, at the time of its recovery and non-receipt of burn injuries by the deceased on her scalp need not hold attention of this Court for long because the deceased, a living being possessed of faculties to feel fear, anxiety and a longing to save life against imminent peril, must have attempted to save herself when the appellant was about to splatter kerosene over her body with an intention to set her afire and in the process must have attempted to distract herself away from the appellant, of course, to the extent possible in the given circumstances and could not be expected to surrender before her tormentor (the appellant) and allow him to shower kerosene over her body. Similarly, it was not a game of choice for the appellant that he could pour kerosene over parts of the body of the deceased so as to ensure that her entire body caught fire and the deceased would do nothing to avoid the act like a lifeless thing.

24. Refusal of Surajmal (PW1), Ms Pooja (PW2), Pardeep (PW3), and Krishan (PW4), to stand by the case of the prosecution should surprise none and is hardly sufficient to tell upon veracity and reliability of statement, Exhibit PH, of the deceased. Surajmal (PW1), Krishan (PW4) and Pardeep (PW3) are father, brother and nephew, respectively, of the appellant and going by the popular adage, "blood is thicker than water" their relationship and affection with the appellant seems to have impelled them to

sacrifice the truth to save their kin (the appellant) from the consequences of his ghastly act while Ms Pooja (PW2), a child of tender and impressionable age and in the care and custody of her grandparents (including Surajmal-PW1) must have been tutored to depose before the learned trial court to their liking. Be that as it may, statement, Exhibit PH, of the deceased having been found to be reliable and confidence inspiring, can be acted upon without insisting on corroboration and notwithstanding refusal of these witnesses to own what they had stated before the investigating agency during the course of investigation.

25. In view of what has been said and discussed in the foregoing paragraphs, we do not find any justification to interfere with the impugned judgment/order. The appeal, therefore, fails and is dismissed.

26. Bail bonds of the appellant are cancelled. He shall surrender before the concerned jail authorities forthwith or, on his failure to do so, shall be re-arrested and committed to concerned jail by learned Chief Judicial Magistrate, Sonapat.

[T.P.S.Mann]
Judge

[Mahavir S. Chauhan]
Judge

July 03, 2015
adhikari