

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2331-SB of 2008

Date of decision : 01.03.2016

Dilawar Singh and others

..... Appellants

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1.Whether Reporters of local papers may be allowed to see the judgment?

2.To be referred to the Reporters or not? Yes

3.Whether the judgment should be reported in the digest?

**Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the appellants**

Mr. K.S. Aulakh, AAG Punjab

ANITA CHAUDHRY, J.

The appellants were convicted and sentenced to undergo rigorous imprisonment for 10 years under Sections 304-B IPC by the Sessions Judge, Jalandhar on 01.10.2008.

Recapitulating the brief facts, Nisha was married to Dawinder Singh on 31.01.2001. An unfortunate incident took place on 13.11.2005. Nisha succumbed to the injuries on 16.11.2005. A dying declaration was made by the deceased giving clean chit to the family, therefore, no FIR was registered. A complaint was filed subsequently and the accused were summoned. The case was committed and the prosecution examined 10 witnesses.

In the statement recorded under Section 313 Cr.P.C. all the accused denied the circumstances and pleaded innocent. Dawinder

had stated that they were living happily and his father and mother had gone to attend a Satsang and he was feeding the pigeons on the roof. The deceased was preparing food on the Chulla using the waste of fire crackers and the fire took place and she was caught in the same and on hearing the cries he came down, tried to save his wife and during that process both his hands were burnt and with the help of the neighbours he took his wife to Puran Hospital Adampur. Six witnesses were examined in defence.

The case set up by the prosecution was that there was a demand of Rs. 5 lacs for construction of the house which was not met and there was an extra judicial confession by the accused that they had caused death and the dying declaration was never made by the deceased nor it was voluntary and the police was helping the accused as the husband was a Constable working in the SPs office, therefore, all help was rendered and it was a case of murder.

The trial Court held the accused guilty under Section 304-B IPC. They were sentenced to the imprisonment mentioned herein before.

The submission on behalf of the appellant was that a dying declaration was made and the police did not register the FIR and subsequently a complaint was filed and the complainant came up with the story of oral dying declaration which was not accepted. It was urged that trial Court had given a finding that the deceased had caught fire accidentally while cooking meals and in that case they could not have been convicted for her death. It was urged that there is a contradiction as to who had poured the kerosene oil and the Court had wrongly

invoked the presumption and when a categorical finding had been given that the deceased had not made any dying declaration before the complainant or Surinder Singh, therefore, the conclusion that since the death was within seven years, therefore, the presumption under Section 113-B IPC was contradictory and there was no evidence that there was any demand or cruelty soon before the incident. It was urged that the husband had sustained burn injuries on both the arms and they had led evidence in defence to prove the injuries and had it been a case otherwise, the husband would not have made any efforts to save her. It was also submitted that the parents were not at home. It was also submitted that the Medical officer was present through out and a certificate was appended that the deceased remained fit and conscious through out the statement. It was urged that even the neighbours had come to support the accused and the relations between the couple were normal and the deceased was shifted to the hospital by the husband in the conveyance of a neighbour and Tarsem DW was in the same vehicle and the injured had disclosed what had happened. It was urged that there were old expired crackers which were in the grass which exploded and incident was an accident.

The submissions on the other hand were that the husband was a Constable working in the same District and oral dying declaration was made and the statement of the complainant was rightly accepted. It was urged that there was demand and cruelty soon before death and the witnesses have spoken about it and the accused had made a confession before Husan Lal PW-4.

Nisha was married to Dawinder Singh in January 2001. The

unfortunate incident took place on 13.11.2005 at about 8.30 a.m. The complainant had alleged that on 07.11.2005 he had received message from his daughter Nisha that she was apprehending death at the hands of all the accused and she be brought back. On 08.11.2015 he alongwith his wife, Gurmukh Singh and Paramjit Singh went to the house of the accused where they had repeated the demand of Rs. 5 lacs. On 13.11.2005, the complainant received information that his daughter had been burnt. On receipt of this information the complainant alongwith Surinder Singh went to village from where he came to know that his daughter has been shifted to Puran Hospital, Adampur from where he came to know that his daughter has been shifted to Johal Hospital, Rama Mandi, Jalandhar. They reached the hospital and spoke to the daughter who in the presence of his wife and Surinder Singh told them that she was beaten up in the morning by all the accused and Mohinder Kaur had poured kerosene oil upon her and when she tried to run away her husband Dawinder Singh and father-in-law Dilawar Singh prevented her from running and her husband put her on fire with a match stick. The complainant had alleged that Dawinder Singh pushed her with his hands and threw her on the ground and warned her that she should not make the statement against them otherwise she would be killed alongwith her parents. The complainant had also stated that his daughter had told him that she had made a wrong statement to save the accused and it was under fear and pressure. The complainant had deposed that the police had refused to take any action against Dawinder Singh as he was posted in the office of Senior Superintendent of Police, Jalandhar. The complainant had

also alleged that all the three accused approached Husan Lal on 20.11.2005 and made a confession before him one by one that they had committed a mistake and they should be pardoned. A complaint was filed thereafter. The complainant led preliminary evidence and the accused were summoned.

At the trial the prosecution examined Dr. Sanjeet Babuta as the first witness. He had stated that he was posted as Senior Medical Officer, Civil Hospital, Jalandhar. He had conducted the postmortem examination and had given the cause of death.

Paramjit PW-2 had deposed that Nisha was married to Dawinder Singh about 8/9 years ago and she had son and daughter. He had stated that Dilawar Singh had come to him and had told him on 08.11.2005 that his daughter had been maltreated and he should accompany him to the village so that they should speak to the parents and he alongwith Kamla Devi and Gurmukh Singh accompanied Dilawar Singh and they had given a piece of advise to Dawinder Singh and had requested him not to maltreat Nisha. He stated that it was being repeatedly told by their daughter that the accused were demanding Rs. 5 lacs and had threatened to kill her. He came to know about death of Nisha on 13.11.2005. He stated that he had not suggested to the complainant to make any application against the accused before the police or the panchayat. He stated that they did not call any respectable, Sarpanch or Panch of that village.

Gurmukh Singh PW-3 made a similar statement as made by Paramjit Singh. He stated that he had accompanied the complainant, Paramjit Singh and Kamla Devi to the house of the accused and they

returned after giving them a piece of advise.

Husan Lal PW-4 stated that he was member Panchayat of village Panshta and Dilawar Singh was a resident of his village. He stated that on 20.11.2005 Dilawar Singh, Mohinder Kaur and Dawinder Singh came to him and confessed to the crime and had asked him to intervene and get a compromise effected. He stated that he had not give any written application to the police nor he had met the Panchayat of village Daroli and he had made statement before the Court for the first time. He stated that he did not know how the deceased had caught fire.

Dilawar Singh PW-5 gave details of the articles given in the marriage He stated that the marriage took place in January 2001. He stated that whenever his daughter came to meet him she had been telling him that Dawinder Singh used to return home under the influence of alcohol and acted like butcher and gave her beatings and there was demand of dowry and she had been turned out of the house but he had advised her to stay in the matrimonial home as she had married him. He stated that in 2004 his daughter told him that Dawinder had been threatening to give divorce to her. He stated that he paid Rs. 1,25,000/- to the accused for purchase of plot and Rs. 60,000/- was withdrawn by him and the remaining amount was taken from his brother-in-law. He deposed that the accused had been demanding Rs. 5 lacs for construction of the house. He deposed that a message had been received from his daughter on 07.11.2005 that they would kill her and that he should come and on the next day he alongwith his wife Kamla Devi, Gurmukh Singh and Paramjit went to the house of the

accused and they met their daughter and the accused were demanding Rs. 5 lacs and all of them requested the accused and his family and after giving them a piece of advise they returned and their daughter was set on fire on 13.11.2005. He stated that they reached the hospital and their daughter had told them that she was beaten by the accused in the morning and that when she tried to run away, Mohinder Kaur poured kerosene oil on her and she was prevented from leaving the house by Dawinder and Dilawar Singh who were standing near the door and Dawinder Singh set her on fire. He had stated that his daughter had told them that she had made a false statement to the police under fear and pressure. He stated that at that time Dawinder Singh was working as Operator with the SSP. He stated that his daughter died on 16.11.2005 and they went to the village of accused and asked them to get the postmortem performed which they refused and they again approached the police but they were not heard and SSP gave an assurance to conduct an inquiry but no inquiry was conducted. He stated that Husan Lal told him on 20.11.2005 that the accused had come to him and had told him that they had burned the girl and they should try for compromise. He stated that they approached the police a number of time and also gave applications and telegrams to the higher police officers, then he filed a complaint against the accused. The complainant admitted that he had not made any complaint to the police or to the SSP about any demand nor he had given any application against Dawinder Singh that he used to remain under the influence of liquor. He denied that his daughter had made statement before the Magistrate.

Dev Raj PW-6 brought the summoned record pertaining to the Fixed Deposit Receipts in the name of Kamla Devi which was for a sum of Rs. 1,25,000/- which was encashed on 05.02.2003.

Shaminder Singh PW-7 from the DC office brought copy of the sale deed in favour of Dawinder Singh.

Surinder Singh PW-8 had accompanied the complainant to the hospital. He stated that Nisha had told him that she was beaten up by her husband and in-laws and she was caught by her husband and he poured kerosene oil on her and when she tried to run away she was pushed by her husband. He stated that he did not make any statement to the police but he had gone to the SSP but was not heard.

Vijay Kumar PW-9 co-brother of Dilawar Singh had stated that whenever he had met Nisha, he was told that her in-laws were not happy with the dowry and were taunting her for insufficient dowry and had given a sum of Rs. 60,000/- to Dilawar Singh to meet the demand. He stated that he had not gone to the house of the accused nor had accompanied any Panchayat and he had withdrawn the amount from his account in November 2002.

Balbir Singh PW-10 from the Telegram Department stated that the record had been destroyed and receipt Ex. PE shown to him was issued by them.

In defence, the accused had examined Dr. Baljit Singh Johal who deposed that Nisha had died on 16.11.2005 and her husband was discharged on the same date in view of request made by him and he was having burn injuries on the right forearm and left hand, he stated that injuries most likely could not be self suffered.

MHC Hardev Singh brought the summoned DDR dated 13.11.2005.

Sh. Deepak Kumar Chaudhary, Judicial Magistrate Ist Class, Tarn Tarn, District Amritsar DW-3 had recorded the dying declaration. His statement reads as under:-

“On 13.11.2005, I was posted as JMJC, Jalandhar. On that day, Balwinder Singh ASI presented before me written application for recording the statement of Nisha wife of Davidner Singh r/o village, Daroli Khurd, who was admitted in Puran Hospital, Adampur. Then I went to that hospital. I obtained the opinion of the doctor about fitness of Nisha to make her statement. Doctor declared her fit to make the statement vide his endorsement Ex. DC. Mother, mother-in-law and father-in-law of Nisha were present by her side and they were asked by me to move out. Thereafter, I recorded her statement. I had read out the contents thereof to her and regarding the correctness thereof I obtained her thumb impression. Her thumb was under dressing and for obtaining the impression thereof dressing was got removed. That statement is Ex. DB and the same also bears my signatures. The doctor remained present during recording of her statement and he appended his certificate to the effect that during recording of her statement, she remained fit and conscious to make her statement. That certificate of the doctor is Ex. DD. Thereafter, I gave my own certificate which is Ex. DE which is in my hand and bears my signature.

I had correctly recorded the statement of Nisha as per her version without any addition or omission from my State.

I had not make an endorsement in the beginning of said statement that there was no threat, promise or inducement to Nisha. Volunteered I had satisfied myself by making inquiries from her. It is incorrect that accused tutored Nisha to make her statement and that it was under the influence of accused, the said statement was made by her.”

ASI Balwinder Singh DW-4 had received information from the hospital regarding Nisha's admission and had gone to the hospital and had taken the opinion and had contacted the Duty Magistrate. He had also recorded the statement of Rattan Lal, Gurmukh Singh and Surinder Singh.

Tarsem Singh DW-5 a neighbour of the accused came in support of the accused. He stated that Dawinder Singh was on the roof feeding the pigeons and he also heard shrieks of ladies and Dawinder went down running and he (DW) also went to the house of Dawinder and Dawinder was putting off the fire and his clothes also caught fire and he also helped in putting the fire out and they shifted Nisha in the vehicle of shopkeeper and on the way he had asked Nisha as to what had happened. He stated that he found one chapati on the Tawa and there was one piece of kneaded flour and dry grass and a bottle and there was a cracker wrapper in the dry grass.

Dr. Karnail Singh DW-6 had declared Nisha fit to make a statement. He stated that Magistrate had recorded the statement in his

presence and through out the statement Nisha was fit and he had given a certificate at the end of her statement. He had also disclosed that patient was suffering from 70% burns. He stated that the Magistrate had arrived in the hospital after about one or two hours of the admission.

Reading of the judgment of the trial Court brings out contradictory findings. It would be relevant to refer to the findings. The following points were set out for determination and are contained in para 11 of the judgment which reads as under:-

- 1. Whether there is delay in filing the complaint? If so, to what effect?*
- 2. Whether the accused had the motive to cause the death of the deceased?*
- 3. Whether the deceased voluntarily made dying declaration before Sh. Deepak Kumar Chaudhary, JMIC, DW3? If so, to what effect?*
- 4. Whether the deceased made dying declaration before Dilawar Singh complainant and Surinder Singh PW8? If so, to what effect?*
- 5. Whether all the accused made extra judicial confession before Hussan Lal PW4? If so, to what effect?*
- 6. Whether all the accused intentionally caused the death of the deceased?*
- 7. Whether the deceased died, otherwise than under normal circumstances?*
- 8. Whether the deceased was being harassed, treated*

*with cruelty by all the accused soon before her death
on the ground of demand of dowry?*

On point No. 1 the trial Court had observed that there was a delay but it was not fatal and had merely put the Court on guard.

On point No. 2 it held that the accused had a motive to cause the death.

On point No. 3 it held that the deceased had died accidentally and she was not set on fire by any of the accused.

On point No. 4 the Court rejected the testimony of the prosecution witnesses that any oral dying declaration was made before Dilawar Singh and Surinder Singh. It concluded that the deceased was not set on fire by the accused and she received injuries otherwise.

On point No. 5 the Court had held that no extra judicial confession was made before Hussan Lal and his statement was not admissible in evidence.

On point No. 6 the Court observed that it can not be held that “all the accused intentionally caused the death”.

On point No. 7 it was observed that since the death was on account of burn injuries, therefore, she had died otherwise than under normal circumstances.

On point No. 8 relying upon the statement of all the witnesses held that girl was being harassed and she was subjected to cruelty by all the accused for dowry.

The above would show that the Court had believed the dying declaration. It rejected the extra judicial confession said to have been

made by the accused. It had held that the death was accidental but at the same time it held that since the death was unnatural and the family had deposed above acts of cruelty, there was a dowry demand, therefore, it recorded their conviction. The findings are contradictory. It would be necessary to refer to the findings recorded on point No. 6 contained in para 35 of the judgment which read as under:-

“35. It has already been held, while deciding point No. 3, that the deceased voluntarily made dying declaration before the Magistrate that she caught fire accidentally. It has also been decided while deciding point No. 4 that the deceased had not made any dying declaration before the complainant or Surinder Singh PW8 that she was set on fire by the accused. It has also been held above that at the time when she received burn injuries none of the accused was present inside the house. Therefore, it cannot be held that all the accused intentionally caused her death. In the result, this point is decided against the persecution and in favour of the accused.”

In the light of the above, it is necessary to first see whether the dying declaration made by the deceased could be considered as the last statement and whether it was admissible in evidence. There is no eye witness to the manner in which the occurrence took place. The entire case hinges upon the dying declaration and it has to be seen whether the incident was accidental or homicidal. The incident took place in the morning on 13.11.2005. Nisha was shifted to the hospital

at about 9.45 a.m. This appears in the statement made by Dr. Karnail Singh DW-6. According to him the patient was suffering from 70% burns. Ruqa was sent to the police who called the Magistrate. The Magistrate had received information at 1.00 p.m. He had recorded the time when he started for the hospital. Another note was made by him at 1.35 when he reached the hospital. He met the doctor and took the opinion regarding her fitness and they proceeded to record the statement. A note was also given that the mother, mother-in-law and father-in-law of the patient were present near the girl and they had been asked to leave the room.

The statement given by Nisha reads as under:-

“I was going to prepare meal. I was ill for 2/3 days and feeling giddy for 2/3 days. I did not know as to how my clothes caught fire. I was preparing the meal alone. My husband was feeding the pigeons on the roof. There was no other person at home. My mother-in-law, father-in-law and my daughter were away for satsang and my youngest child was at home. I was lighting the fire in the chulha and, therefore, I used kerosene oil. I was also using straw and waste material of the crackers of Diwali. Suddenly the fire broke out. I started crying. My husband got down and started putting out the fire. His hands got burnt. The people of our vicinity and my husband brought me to hospital in the vehicle.

The philosophy in law underlying admittance in evidence of dying declaration is that dying declaration made by person on the verge of his/her death has a special sanctity as at that solemn moment, a person is most

unlikely to make any untrue statement therefore a dying declaration enjoys a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration and that is the statement of law summed up by this Court in ***Kundula Bala Subrahmanyam Vs. State of A.P., (1993) 2 SCC 684.***

The law is settled that a dying declaration is admissible in evidence, therefore, it has now to be seen whether the dying declaration made by the accused could be accepted. The statement is not a statement on oath and the maker thereof can not be subjected to cross examination, therefore, if the dying declaration suffers from any infirmity during the course of the trial from other evidence then the same can be refused to be accepted. In the present case there is only one dying declaration.

Nisha had been married for almost 5 years. The incident took place in the morning. She succumbed to the burn injuries three days later. Nisha was shifted to the hospital by her husband and some neighbours. A ruqa was sent and the police arrived in the hospital and message was sent to the Magistrate who arrived in the hospital at 1.35 p.m. He contacted the doctor for his opinion. The patient was declared fit to make the statement and the Magistrate found that the mother, mother-in-law and father-in-law were present in the room who were asked to leave the room. Thereafter the statement was recorded. Nisha in her detailed statement mentioned about the incident. She had stated that her child had gone with her in-laws to the Satsang and her husband was on the roof feeding the pigeons and she was

lighting the hearth for which she had used kerosene oil and some waste of the crackers and she did not know how she had got fire. She had also stated that on hearing her cries her husband came to save her and in the process his hands were also burnt. Nisha succumbed to the injuries on 16.11.2005. The postmortem was conducted and she was cremated. The police on the basis of dying declaration and other statements which came before it did not register the FIR. The father was not satisfied and he filed a complaint on 24.12.2005 . The prosecution had examined 10 witnesses. The trial Court rejected the statement of Husan Lal before whom the extra judicial confession was said to have been made. It also rejected the prosecution story that an oral dying declaration was made before Dilawar Singh and Surinder Singh and believing the dying declaration, a finding was given that the dying declaration could be accepted but in the end on mis-reading of evidence made unwarranted finding that it was a case of dowry death. On point No. 6 it had observed that the accused had not intentionally caused the death. On point No. 7 the finding was that since the cause of death was due to burn injuries leading to Septicemia and it was the direct cause of death, therefore, Nisha had died otherwise than under normal circumstances. On point No. 8 the finding was that since there was demand of Rs. 5 lacs for construction of the house and the deceased was telling her family, therefore, the girl was being subjected to cruelty by all the accused and invoking the presumption under Section 113-B of the Evidence Act the accused were held guilty.

On one hand a finding was recorded that the death was accidental. The trial Court had also held that the accused had not set her on fire, it had believed the dying declaration and had rejected the extra judicial confession, therefore, there was no reason how the presumption under

Section 113-B of the Evidence Act could be invoked.

A reading of the dying declaration coupled with the statement of the Magistrate who had recorded the statement and the statement of the doctor makes it clear that the dying declaration had been made by the injured. There was no occasion for tutoring as the parents of the deceased were also in the hospital. There is no evidence that parents had made any complaint or had lodged the FIR earlier. They accepted the statement of their daughter and immediately did not make a report. Both the family had participated in the cremation. Had there been a demand of dowry or evidence the parents would not have allowed the in-laws to participate in the last rites. One of the neighbour had accompanied the injured and the husband to the hospital. The doctor had given an endorsement that the patient was fit to make a statement and that endorsement had been proved before the Court though in defence. The prosecution did not choose to examine the Magistrate or the treating doctor. The Medical Officer had noted that the hands of the husband were burnt.

Having evaluated the evidence independently the finding of the trial Court so far as the dying declaration is concerned is accepted as the same passes the test of credibility. Nisha had narrated sequence of events. The trial Court did not entertain any doubts about the statement. The medical officer had made an endorsement about the mental state, therefore, the dying declaration could not be excluded from consideration. It is found that it would be safe to act on the dying declaration. There is no inconsistency. The deceased had not blamed any one for the incident. She herself was not aware of the reason as to how her clothes caught fire. It appears that the parents out of utter frustration chose to file a complaint subsequently. Even otherwise the demand of money for construction of a house would not fall within the definition of dowry demand. There was no complaint prior to the incident to the Panchayat. There was no complaint to

the Senior Officers under whom the accused was serving. People have become more aware. In cases where Government servant are involved, people do not hesitate and send written complaints to the senior officers. The incident was an accident. The dying declaration was natural. The maker of the same was in a fit mental condition, therefore, accepting the dying declaration the findings recorded on point No. 2 and 8 are set aside.

The Appeal is accepted. All the accused are acquitted. Their bail bonds are discharged.

March 01, 2016

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**(ANITA CHAUDHRY)
JUDGE**