

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

**CRA-S-1888-SB of 2004.
Date of Decision: 27.07.2016.**

CHARAN SINGH

....APPELLANT.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mrs. G.K. Mann, Advocate for the appellant.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Charan Singh, assailing the judgment of conviction and order of sentence dated 17.09.2004 recorded by learned Additional Sessions Judge, Amritsar, in Session Case No.4 of 17.02.2003 based on First Information Report No.245 dated 21.11.2002 registered at Police Station C-Division, Amritsar by virtue of which he (appellant) was sentenced as under:-

Sr. No.	Under Section	Sentence
1.	304 Part-II, IPC	R.I. for a period of five years and to pay a fine of Rs.2,000/- or in default to undergo further R.I. for a period of two months.
2.	9-B Explosives Act	R.I. for one year and to pay a fine of Rs.1000/- or in default to undergo further R.I. for a period of one month.
3.	188 IPC	R.I. for a period of 3 months and to pay a fine of Rs.500/- or in default to undergo further R.I. for 15 days.

It was ordered that all the sentences of imprisonment shall run concurrently.

The case of the prosecution was as under:-

On 21.11.2002, ASI Satnam Singh, on receipt of information regarding admission of Amrik Singh son of Dial Singh in Guru Nanak Dev Hospital, Amritsar, reached the hospital and after obtaining opinion of the doctor, who declared injured Amrik Singh fit for making statement, recorded his statement.

Injured Amrik Singh stated that he was a labourer by profession. On that day, he alongwith his son Manga and others was manufacturing crackers in the house of Constable Charan Singh, resident of Patti Jeewan Singh, Anngarh. At about 1:00 p.m., one ignited rocket fell on the cache of prepared crackers lying in the house. The crackers caught fire and as a result thereof he and other persons suffered injuries.

Subsequently, statement of injured Amrik Singh was also recorded by Shri Sanjiv Joshi, learned Judicial Magistrate Ist Class, Amritsar wherein also he reiterated the aforesaid facts. Three other persons namely Bikram Singh, Manga and Roshan Lal had sustained injuries during the incident. Roshan Lal, one of the injured, was taken to the hospital where he succumbed to the injuries.

On the basis of statement of injured Amrik Singh, a formal First Information Report was registered. Investigation commenced. Appellant-accused was arrested and after completion of investigation and other formalities, the appellant was challaned and sent to the Court for trial.

The appellant was charge-sheeted and subjected to face trial for

Explosives Act and Sections 304, 308, 286 and 188 of the Indian Penal Code (for short, "I.P.C.").

To substantiate the charge, the prosecution examined as many as 12 witnesses namely PW1 Mangal Singh, PW2 Bikram Singh, PW3 Dr. Sukhwinder Singh, PW4 Dr. Manpreet Kaul, PW5 Dr. Vikas, PW6 ASI Satnam Singh, PW7 Head Constable Mangal Singh, PW8 Sandeep Kumar @ Sonu, PW9 Head Constable Jagtar Singh, PW10 Ram Singh, Clerk, PW11 Shri Sanjiv Joshi and PW12 Dr. Ritu Lakesar.

After closure of evidence of the prosecution, in his statement recorded under Section 313 Cr.P.C., the appellant denied the case of the prosecution and pleaded that he was serving in police and was not doing any business. He is neither owner nor has ever remained in possession of the house in which the occurrence had taken place and that had not employed any person including Amrik Singh, deceased. He added that he is not the only person named 'Charan Singh' in the village and he alongwith his family is residing in his own house built on different land.

No evidence was led by the appellant in his defence.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant-accused, learned trial Court convicted and sentenced the appellant as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 17.09.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mrs. G.K. Mann, learned counsel for

General for the State of Punjab have been heard and record perused.

To begin with, learned counsel for the appellant argued that the genesis of the allegation of the prosecution was that the appellant had engaged deceased Amrik Singh and some other persons for the job of manufacturing crackers in his house and on the fateful day an ignited rocket fell on the crackers and other explosive material lying in the house which caught fire resulting in burn injuries to the persons manufacturing the crackers. Admittedly, the appellant was not present in the house when the occurrence took place. PW6 ASI Satnam Singh admitted that he collected no evidence to ascertain title or possession of the appellant qua the house in which the occurrence took place. He even did not take in possession the Ration Card of the appellant or some other document which could prove that the appellant was in possession of the house in question and had engaged the persons as labourers for manufacturing crackers in that house. When even remotely the appellant could not be connected with the house where the fire incident took place, he could not be held liable for the said incident.

The second argument raised with vehemence by learned counsel for the appellant was that the witnesses examined by the prosecution, who were alleged to be eyewitnesses of the occurrence, had not supported its case. PW1 Mangal Singh (son of deceased Amrik Singh) and PW2 Bikram Singh testified that the appellant was not residing in the house in which the crackers were being manufactured. Similarly, PW8 Sandeep Kumar, who was son of the other deceased Roshan Lal, also stated that his father was not working in the house of the appellant nor he was engaged in the job of manufacturing crackers etc. Since the witnesses, on whom the

prosecution could actually rely upon, did not support the case built up by it, there remained nothing to substantiate the charge levelled against the appellant.

Last, but not the least, learned counsel pointed out that it had come in the statement of PW5 Dr. Vikas, who was attending upon deceased Amrik Singh after he was admitted in the hospital, that as per Bed Head Ticket of Amrik Singh, he was having difficulty in breathing. He was given inhalation of oxygen which continued till 4:00 p.m., rather till his death. The doctor stated that suspension of stoppage of inhalation of oxygen by Amrik Singh would have caused his death at that very moment. Learned counsel asserted that PW6 ASI Satnam Singh, who at the first instance recorded the statement of Amrik Singh, did not admit that Amrik Singh was wearing an oxygen inhalation mask. He also did not state that Amrik Singh was having problem in breathing. Apparently, he had tried to conceal the true and material facts which render his conduct doubtful. Also, when the deceased was having difficulty in breathing and was wearing an oxygen inhalation mask, it appears improbable that he had made statement Ex.PD recorded by ASI Satnam Singh or the statement Ex.PR being used as dying declaration allegedly recorded by Judicial Magistrate, Amritsar. Since the recording of dying declaration appears suspicious, it cannot form the basis of conviction.

The record indicates that the first version with regard to the occurrence had emerged from the statement Ex.PD given by deceased Amrik Singh to PW6 ASI Satnam Singh, the Investigation Officer. PW6 stated and it was corroborated by PW5 Dr. Vikas that the statement of

fitness of the injured to make statement. As per note Ex.PC/1 of the doctor on the written request Ex.PC of the Investigation Officer, the injured was fit to make statement. In his statement Ex.PD, Amrik Singh narrated the occurrence during which he had sustained burn injuries. After getting recorded the First Information Report Ex.PE on the basis of statement of Amrik Singh, PW6 ASI Satnam Singh moved an application Ex.PO before the Chief Judicial Magistrate, Amritsar for getting the statement of Amrik Singh recorded by a Judicial Magistrate. PW11 Shri Sanjiv Joshi, learned Judicial Magistrate (Duty), Amritsar, on being asked to do the needful, reached the hospital and after the doctor declared Amrik Singh fit to make statement vide memo Ex.PQ/1, the learned Magistrate recorded the statement of Amrik Singh that ultimately became the dying declaration Ex.PR. There is an endorsement Ex.PR/2 of the Magistrate that the statement of Amrik Singh is faithful and correct record of the answers given by Amrik Singh to the questions put by him. The statement Ex.PR was recorded at 5:12 p.m. and Amrik Singh died at 7:00 p.m. on 21.11.2002.

In his statement Ex.PD, which formed the basis of First Information Report as well as in the dying declaration Ex.PR, deceased Amrik Singh constantly stated that he and his son Manga and others were manufacturing crackers in the house of Charan Singh, resident of Amritsar. He also stated that when he was working, the ignited rocket came and fell on the crackers lying in the house which caught fire and as a result thereof he and other persons got burnt. PW1 Mangal Singh and PW2 Bikram Singh may have resiled from their initial statement made during investigation and may have expressed ignorance about the ownership of the house where they

that they both unequivocally stated that they were working as labourers for manufacturing crackers and other fire works when a lit rocket fell on the crackers which exploded and they alongwith Amrik Singh suffered burn injuries. When they corroborated the version of deceased Amrik Singh that they were manufacturing crackers when the incident of fire took place, there is no reason to disbelieve the statement Ex.PD as well as the dying declaration Ex.PR made by deceased Amrik Singh that they had been engaged as labourers by appellant Charan Singh and that they were manufacturing crackers and other fire works in the house of the appellant. It is apparent from the deposition of PW1 and PW2 that because they had been won over by the appellant, they tried to favour him by expressing ignorance as to under whom and whose house they were manufacturing crackers. The fact that the witnesses had been won over is also indicated by the solitary question put by the appellant to them during their cross-examination, to which they both in the same language and expression answered that the appellant was not residing in the house in question and that he was residing somewhere else in the same village. In that manner, even though PW1 Mangal Singh and PW2 Bikram Singh did not wholeheartedly support the prosecution version because of which on request of learned Public Prosecutor that they were suppressing the truth, they were allowed to be cross examined, had in fact deposed all facts necessary for corroborating the dying declaration Ex.PR made by deceased Amrik Singh.

The stand of the appellant with regard to recording of the dying declaration Ex.PR had been fluctuating. During cross-examination of PW6 ASI Satnam Singh, the appellant had sought to built up a case that he had

Shri Sanjiv Joshi, Judicial Magistrate, Amritsar and had requested him to record the statement on the same lines. However, that was not the stand of the appellant during cross-examination of PW11 Sanjiv Joshi, Judicial Magistrate. Rather, to the Magistrate (PW11) the appellant suggested that the attendant of Amrik Singh had answered the questions and not the injured himself. The inconsistency in the defence set up by the appellant proved the same to be just imaginative.

PW11 Sanjiv Joshi, Magistrate had specifically recorded in his order Ex.PS that he had got the room vacated from the attendants where Amrik Singh was admitted and thereafter had recorded the statement of Amrik Singh in the presence of the doctor. The statement was recorded in question-answer form which further proves that Amrik Singh was mentally fit and conscious to understand the question put to him and to answer them correctly. The Magistrate had taken adequate precaution to ensure that no external pressure was working on the mind of Amrik Singh and his statement was truthful and voluntary.

Indeed, PW5 Dr. Vikas stated that as per the Bed Head Ticket, Amrik Singh was having difficulty in breathing and was given oxygen inhalation but he did not spell out a word to say and there is also nothing on the record to suggest that Amrik Singh was not fully conscious or was feeling handicapped in making the statement. Neither it was suggested to PW5 Dr. Vikas nor he stated that because of oxygen inhalation Amrik Singh was unable to speak or was being prevented from making the statement. Rather, PW5 Dr. Vikas proving his opinion Ex.PC/1 categorically stated that he had declared Amrik Singh fit for making statement. As already

that the statement of Amrik Singh was recorded in the presence of the doctor. Amrik Singh remained fit and conscious during the recording of his statement and the said factum was certified by the doctor in his opinion taken after recording of the statement. The opinion of the doctor Ex.PQ that Amrik Singh is fit for making statement was taken by the Magistrate at 5:00 p.m. and at the back of the same document there is an opinion of the doctor given at 5:15 p.m. that the patient remained fit during his statement.

It has already been observed above that in a way the statement of PW1 Mangal Singh and PW2 Bikram Singh corroborated the statement/ dying declaration of deceased Mangal Singh. Otherwise also, the contention of learned counsel for the appellant that a dying declaration cannot form the sole basis of conviction unless it is corroborated is not the rule of law. It has been held by Hon'ble Supreme Court in **State of Madhya Pradesh vs. Dal Singh and others, 2013(3) R.C.R. (Criminal) 1** as under:-

“The law on the issue can be summarised to the effect that law does not provide who can record a dying declaration, nor is there any prescribed form, format, or procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate provided by a Doctor in respect of such state of the deceased, is not essential in every case.

Undoubtedly, the subject of the evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. However, the court

may not look for corroboration of a dying declaration, unless the declaration suffers from any infirmity”.

Similarly, in **Parbin Ali and another vs. State of Assam, 2013 AIR (SC) 542**, the Hon'ble Apex Court held that the conviction can be founded solely on the basis of dying declaration if the same inspires full confidence.

The wording of the statement Ex.PD made by deceased Amrik Singh given before the Investigation Officer as well as the wording of the dying declaration Ex.PR made before the Judicial Magistrate, is in complete natural and honest flow. That by itself proves the genuineness of the dying declaration as well as the fact that the deceased was fit and conscious when he gave the statement. From that it follows that there is no infirmity whatsoever in the dying declaration Ex.PR of the deceased and it inspires full confidence. Learned Trial Court rightly held that the prosecution had successfully proved and established the allegation against the appellant beyond the reasonable shadow of doubt that death of Amrik Singh was caused by the appellant by doing an act with the knowledge that his such act is likely to cause his death and the offence so committed is punishable under Section 304 Part-II of I.P.C. The appellant had also been manufacturing the crackers without any permit or licence and he committed the offence under Section 9-B of the Explosives Act as well.

Resultantly, the judgment of conviction recorded by learned Trial Court is upheld and as regards sentence awarded to the appellant, it appears to be adequate. Thus, there being no merit in the appeal, it is hereby dismissed.

The appellant is on bail in this case, his bail/ surety bonds 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 Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

27.07.2016.
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes