

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No.173-DB of 2013

Date of Decision:- September 11, 2017

Vishesh Kumar

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurbinder Singh Gill

Present : Mr. D.S.Bali, Senior Advocate with
Mr. Rahul Sharma, Advocate, for the appellant.

Ms. Anju Arora, Additional Advocate General, Punjab.

Gurbinder Singh Gill, J.

1. Vishesh Kumar has filed the present appeal challenging judgment dated 24.1.2013 passed by the Court of learned Additional Sessions Judge, Gurdaspur whereby he has been convicted for offence punishable under section 304-B IPC and has been sentenced to undergo rigorous imprisonment for life.
2. The case of prosecution is that Smt. Neeru wife of Vishesh Kumar was admitted in Civil Hospital, Gurdaspur on 10.5.2010 with burn injuries. Upon her admission, Dr. Rajdeep Kaur, Medical Officer(PW-2) sent an intimation(Ex.PB) to the police and in pursuance thereof, ASI Banarsi Dass

(PW-6) reached the hospital and moved an application(Ex.PC) to the doctor seeking opinion as regards fitness of Neeru to make a statement. Dr. Rajdeep Kaur declared Neeru fit to make a statement. ASI Banarsi Dass thereafter moved an application (Ex.PE) to Additional Chief Judicial Magistrate, Gurdaspur requesting him to record statement of the victim. Shri Rakesh Kumar, the then Additional Chief Judicial Magistrate, Gurdaspur (PW-5) accordingly proceeded to Civil Hospital, Gurdaspur and reached there at about 6:30 p.m. and after ascertaining fitness of the victim, recorded her statement (Ex.PE/3). The translated gist of the said statement reads as follows :

Q. What is your name?

Neeru.

Q. I am Rakesh Kumar, Magistrate, Gurdaspur and have come from Courts. Do you wish to make a statement?

Yes Sir.

1. I am aged 24 years. I was married six years back to Vishesh in my parental village Mannkaur as per Hindu rites. A son was born out of the wedlock who is aged about 5-½ years. He was born to me on 21st October, 2004 at Dr. Reeta Mahajan Hospital.
2. The date of my marriage is 14.12.2003. My parents had not given any dowry at the time of marriage. My husband used to quarrel with me. He did not give me any maintenance expenses. He used to give me beatings. He used to demand a motor cycle in dowry.
3. Today, in the morning we had quarreled. He levelled dirty allegations against me to the effect that I live in adultery with someone and that he does not wish to keep me. At the time of quarrel we both were present. My mother-in-law resides separately on the first floor with my 'nanaan' (husband's sister).
4. My husband, in a fit of rage, poured kerosene oil on me and set me on

fire but none extinguished the fire. I raised alarm. My husband and my neighbour have brought me to hospital. *Bhua* (aunt) Bimla Devi tells my husband to turn me out of the house.

5. I do not wish to say anything else but wish to say that my child-son studies in Little Rose School. He is in my house.
3. On the basis of aforesaid statement(Ex.PE/3), the police registered FIR No. 113 dated 10.5.2010 under section 498-A, 307/34 IPC at Police Station, City Gurdaspur. The matter was investigated by the police. The police visited matrimonial home of Neeru and prepared a rough site plan(Ex.PH). A plastic can and some burnt clothes were recovered from the place of occurrence which were taken into possession vide recovery memo Ex.PG. Statements of witnesses were recorded in terms of section 161 Cr.PC. Neeru, however, succumbed to her injuries on 11.5.2010 and in pursuance thereof, offence under Section 304-B IPC was added. The accused was arrested on 20.5.2010.
4. After conclusion of investigation, challan was presented against the accused in the Court of Chief Judicial Magistrate, Gurdaspur on 23.7.2010, who committed the case to Court of Sessions vide order dated 18.8.2010. The case was assigned to the Court of Additional Sessions Judge, who upon finding sufficient grounds, framed charges against the accused for offence punishable under Section 302 IPC on 1.9.2010 to which the accused pleaded not guilty and claimed trial. An alternate charge for an offence punishable under Section 304-B IPC was also framed against the accused.
5. The prosecution in order to establish charges framed against the accused examined as many as 6 witnesses. PW-1 Dr Ajay Mahajan, Medical Officer, Civil Hospital, Gurdaspur, who had conducted post-mortem examination on

the dead body of Neeru, proved the post-mortem report as Ex. PA. He opined that the cause of death was endotoxic and neurogenic shock due to extensive burns, which was sufficient to cause death in ordinary course of nature. PW-2 Dr. Rajdeep Kaur, Medical Officer, Civil Hospital, Gurdaspur deposed that on 10.5.2010, Neeru was admitted in the hospital and she sent intimation Ex.PB to the police and thereafter upon an application Ex.PC made by the police seeking her opinion regarding fitness of Neeru, she declared Neeru fit to make statement. PW-3 Jeeto Devi, mother of deceased deposed that her daughter Neeru was married to accused Vishesh Kumar in the year 2005 and though she had given dowry as per her capacity, the accused started beating her daughter after some time of marriage on account of dowry and pressed upon her to bring a motor cycle. She further stated that about nine months back, she was informed at about 5:30 p.m., that Neeru had sustained burn injuries and she was in the hospital. She stated that her daughter died in the hospital.

6. PW-4 Head Constable Rakesh Kumar, stated that on 10.5.2010, he went to the spot and took photographs Ex. P-1 to Ex. P-14 which he handed over to the Investigating Officer. PW-5 Rakesh Kumar Gupta, Additional District & Sessions Judge, Amritsar deposed that on 10.5.2010 he was posted as Additional Chief Judicial Magistrate, Gurdaspur and that in pursuance of an application Ex.PE moved before him by police, he went to hospital for recording statement of Neeru. He deposed that the doctor present in hospital declared the patient fit to make statement vide endorsement Ex.PE/2 and thereafter he recorded the statement Ex.PE/3 of the patient. He further stated that after the statement of patient had been recorded, the doctor again gave his opinion Ex.PE/4 and he passed a detailed order Ex.PE/5 regarding the

proceedings conducted by him. PW-6 ASI Banarsi Dass, who is the Investigating Officer in the present case stated in detail in respect of the entire investigation conducted in the matter right from the recording of statement(Ex.PF) of Neeru, on the basis of which FIR was lodged, upto filing of challan against the accused.

7. Upon conclusion of evidence of prosecution, entire incriminating evidence appearing against the accused was put to him to enable him to explain the same. The accused, however, denied the prosecution case in toto and pleaded that he had never demanded any dowry and that in fact on 10.5.2010, his wife had caught fire from the stove while working on it and he had tried to extinguish the fire by putting blankets and other clothes on her and during the process his hands also got burnt and thereafter he took his wife to Civil Hospital.
8. The accused in his defence examined DW-1 Dr. Ajay Mahajan who deposed that on 12.5.2010 Vishesh Kumar had been produced before him from Central Jail, Gurdaspur and he was found to be having burn injuries on his right hand, forearm, patches on left forearm and left hand and the area involved was 9%. The accused also examined DW-2 Baldev Raj who stated that he knows Vishesh Kumar who lives adjacent to his house and about 2 ½ – 3 years back at about 3-3:30 p.m. when he had come to his house for lunch, he heard some noise coming from the house of Vishesh Kumar. He rushed to his house and found that his wife had caught fire due to bursting of stove and Vishesh Kumar had put blanket on her and tried to save her. He further deposed that in the said process, the hands and legs of the accused got burnt. He further stated

that thereafter he and some others took Neeru to Civil Hospital, Gurdaspur along with Vishesh Kumar. He also deposed that the accused and the deceased had good relations.

9. The learned Trial Court, on appreciation of evidence on record, held that the accused had killed his wife Neeru by setting her on fire and thus convicted the accused for having committed offence punishable under Section 304-B of IPC vide impugned judgment dated 24.1.2013. Aggrieved by the same, the accused has filed the present appeal challenging his conviction.
10. The learned counsel for appellant, while assailing the impugned judgment, submitted that he has been falsely implicated in the present case and in fact the evidence on record clearly suggests that the present case is a case of accidental fire where the accused earnestly tried to save his wife and during the said process, he himself sustained burn injuries. The learned counsel has further submitted that there is no cogent evidence to establish that the accused had ever raised any demand of dowry so as to connect him with the alleged crime. The learned counsel for appellant has referred to the deposition of DW-1 Dr. Ajay Mahajan to contend that the factum of burn injuries on his person stands duly established and which substantiates his stand that he had in fact done his best to save his wife by attempting to extinguish the fire which she had caught accidentally.
11. Learned counsel has further submitted that the dying declaration Ex.PE/3 cannot be relied upon as the doctor who had certified that Neeru was fit for recording statement and had remained fit during the course of recording of her statement, has not been examined. The learned counsel has, thus, submitted

that in view of the aforesaid infirmities in the case of prosecution and lack of convincing evidence, the judgment of Trial Court can not sustain and has prayed for acquittal of accused by setting aside the impugned judgment.

12. On the other hand, the learned counsel representing the State submitted that the prosecution had led sufficient evidence to establish the charges framed against the accused, the most important being the dying declaration of deceased (Ex.PE/3) recorded by the Judicial Magistrate. Learned State counsel submitted that the dying declaration was recorded by the Magistrate after obtaining opinion of the doctor regarding fitness of the patient and that there is nothing on record to suggest that there was any kind of pressure on the deceased at the time of recording of her statement and in these circumstances, the dying declaration fully deserves to be relied upon. The learned State Counsel has further submitted that the testimony of PW-3 Jeeto Devi, mother of the deceased, further lends corroboration to the dying declaration and leaves no manner of doubt that it is the accused who had killed his wife by setting her on fire. He has thus prayed for dismissal of appeal.
13. We have considered rival submissions addressed before this Court and with able assistance of learned counsel, also perused record of the case.
14. The factum of death of Smt. Neeru due to burn injuries is not seriously being disputed as it is the case of the accused himself that she had caught fire while working on stove, though he has stated the manner of incident differently by pleading that infact she caught fire due to bursting of stove. In any case, the prosecution has examined PW-1 Dr. Ajay Mahajan who had conducted the post-mortem examination on the dead body of Neeru who has proved the post-

mortem report as Ex.PA. The relevant extract from his statement reads as under :-

“Whole of the body showed burnt injuries. These burns were deep on the face, neck, legs and upper limbs. Approximately area involved was 100%. However, finger tips were spared.

In my opinion, the cause of death in this case was endotoxic and neurogenic shock due to extensive burns, which was sufficient to cause death in ordinary course of nature. These burn injuries were ante mortem in nature.”

15. There is hardly any cross-examination as regards the aforesaid factum of injuries and the opinion of the doctor. In these circumstances, the factum of homicidal death of Smt. Neeru due to burn injuries, is affirmed.
16. The present case is mainly based on the dying declaration of Neeru. A '*dying declaration*' is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Once such statement is found to have been made voluntarily and is not an attempt by the deceased to falsely implicate a person, then such dying declaration can safely be relied upon and it can form the basis of conviction.
17. However, the Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. A Five Judges Bench of the

Hon'ble Apex Court in a case reported as (2002) 6 SCC 710 Laxman vs. State of Maharashtra, while stating the broad principles regarding acceptability of dying declaration held as follows:

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant."

18. PW-5 Shri Rakesh Kumar Gupta, the then Additional Chief Judicial Magistrate, Gurdaspur who recorded the statement of Neeru had adhered to all the safeguards before recording the statement of Neeru and had assured himself regarding fitness of the victim before actually proceeding to record her statement. His statement is reproduced below in entirety :-

“On 10.05.2010 I was posted as Additional Chief Judicial Magistrate, Gurdaspur. On that day, an application Ex.PE was moved before me to record statement of Neeru. I reached in the hospital at 6.30 p.m. and made my endorsement Ex.PE/1 to know about the fitness of the patient. Doctor declared the patient fit to make the statement vide his endorsement Ex.PE/2. Thereafter, I disclosed my identity to the patient and thereafter, I recorded her statement Ex.PE/3, which is in my hand and bears my signature. I got the right foot thumb impression of the injured because injured had suffered 100% burns. After completing the statement, I again obtained the opinion of the doctor Ex.PE/4. Thereafter, I passed the detailed order Ex.PE/5 regarding the proceedings.

XXX cross-examination by Shri Trilochan Singh, Advocate, counsel for the accused: When I met the patient in the hospital, a Nurse was with her. There was no other person with her at that time. When I reached, none was present there.”

19. A perusal of cross-examination of PW-5 shows that the proceedings conducted by the Judicial Magistrate at the time of recording statement of Neeru have not seriously been challenged during the course of cross-examination. A perusal of dying declaration Ex.PE/3 shows that the same has been recorded in Punjabi language wherein the Magistrate before recording the statement introduced himself to the victim and sought her consent for recording her statement. A perusal of the application Ex.PE shows that after PW-5 Rakesh Kumar Gupta reached the hospital at 6:30 p.m. on 10.5.2010, he again sought the opinion of the doctor regarding fitness of the patient. Dr. Rajdeep Kaur

declared the patient fit to make statement and an endorsement to this effect is recorded as Ex.PE/2. Similarly, after the statement had been completely recorded by 7 p.m., the doctor again certified in writing vide certificate Ex.PE/4 that the patient remained in a fit state of mind throughout her statement. Since the patient had sustained 100% burns, therefore, her right foot thumb impression was obtained at the bottom of her statement.

20. Though, Dr. Rajdeep Kaur had appeared in the witness box as PW-2 wherein she categorically stated that after she had sent intimation to the police regarding admission of Neeru, the police had come to the hospital and sought her opinion regarding fitness of Neeru and she gave her opinion regarding fitness (Ex.PC/1), but it appears that due to some oversight the said witness did not prove her endorsements Ex.PE/2 and Ex.PE/4 regarding fitness of the injured before and after recording her statement. PW-5 Shri Rakesh Kumar Gupta has, however, categorically stated in the witness box that he had obtained the opinion Ex.PE/2 and PE/4 from the doctor. There being no cross-examination of PW-5 as regards the said fact, this Court has no reason to doubt that the doctor had certified that Neeru was fit to make statement and that she remained fit during the course of recording of her statement. In any case, there is no mandate of law that the doctor must himself certify this fact. A Five Judges Bench of the Hon'ble Apex Court in Laxman's case (supra) affirmed the earlier view of a three Judges bench in the case of Koli Chunilal Savji & Another v. State of Gujarat, 1999(9) SCC 562 wherein it had been held that if the materials on record indicate that the deceased was fully conscious and was capable of making a statement, the dying declaration of the

deceased thus recorded cannot be ignored merely because the doctor had not made the endorsement that the deceased was in a fit state of mind to make the statement in question. It was held that even without examination by the doctor, the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. It was further held therein that certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

21. From the above referred evidence, there is nothing to show that the victim was under any kind of pressure or had been subjected to tutoring by anybody. Her statement was recorded on the day of occurrence itself in the hospital by Judicial Magistrate. There is no such circumstance so as to raise any kind of doubt that the dying declaration was not correctly recorded or was recorded under any kind of pressure.
22. The learned counsel for the appellants has vehemently argued that since the accused himself had sustained burns, therefore, it stands duly established that he had infact tried to extinguish the fire. A perusal of testimony of DW-1 Dr. Ajay Mahajan does show that the accused had also sustained burn injures on his right hand, forearm, patches on left forearm and left hand. The existence of such injuries would certainly put the Court to caution. While, on one hand, such injuries can be sustained by a person in an attempt to extinguish the fire, on the other hand the possibility of existence of such injuries would also be there in case there is a scuffle between the person being set on fire and the person who sets on fire. In the present case, the dying declaration has been found to be inspiring confidence and there is nothing to suggest that the victim

was under any kind of pressure or that her relatives had tutored her. As such existence of minor burn injuries on the hands/arm of the accused would not discredit the dying declaration, which is otherwise found to be trustworthy.

23. A perusal of dying declaration shows that Smt. Neeru has categorically stated that the accused used to quarrel with her and used to give beatings to her in order to press upon his demand of motor cycle in dowry. She has categorically stated that on the day of occurrence her husband had set her on fire by pouring kerosene oil on her. The death had taken place within seven years of her marriage. While the marriage had taken place in the year 2005, the deceased died in the year 2010. It is well settled that in case the dying declaration inspires confidence, the same can form basis of conviction without their being any requirement of its corroboration. In a case reported as (2013) 3 SCC 280 Krishan v. State of Haryana, the Hon'ble Apex Court held as under :-

“A bare reading of the above paragraphs shows that the Court opined that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. The Bench further clarified that where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. But where the dying declaration itself is attended by suspicious circumstances, has not been recorded in accordance with law and settled procedures and practices, then, it may be necessary for the court to look for corroboration of the same.

It clearly emerges that it is not an absolute principle of law that a dying

declaration cannot form the sole basis of conviction of an accused when such dying declaration is true, reliable and has been recorded in accordance with the established practice and principles.”

24. No other argument has been raised.
25. In view of our above discussions, we do not find any infirmity in the findings recorded by the learned Trial Court. The conviction of the accused under Section 304-B IPC is upheld. There is no merit in this appeal and the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 11, 2017
kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No