

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No.610-DB of 2012
Date of Decision:- September 13 , 2017

Dilbagh Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present : Ms. Mayuri Lakhanpal Kalia, Advocate,
for the appellant.

Ms. Anju Arora, Additional Advocate General, Punjab.

Gurminder Singh Gill, J.

1. Dilbagh Singh has filed the present appeal challenging judgment dated 25.4.2012 passed by learned Sessions Judge, Rupnagar vide which he has been convicted for offence punishable under section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and also to pay a fine of ₹ 20,000/-.
2. The facts, in brief are that upon admission of Manjit Kaur (deceased) with burn injuries in PGI, Chandigarh, on 13.5.2011, an intimation was sent by hospital authorities to police at Rupnagar. Upon receipt of said information, ASI Jodh Singh reached PGI and sought opinion of doctor regarding fitness of Manjit Kaur to make a statement. Manjit Kaur was declared fit to make statement.

ASI Jodh Singh, then, moved application before Duty Magistrate Chandigarh (Ex.PM) requesting him to record statement of Manjit Kaur. Shri Pritpal Singh, JMIC, Chandigarh (PW-9) accordingly went to PGI and after obtaining opinion of the doctor regarding fitness of Manjit Kaur, recorded her statement. The gist of statement (Ex.PO) of Manjit Kaur, when translated to English reads as follows :

"Today in the night, I twice asked my husband Dilbagh Singh to have dinner but he refused to have dinner. At about 11:30 P.M., he went to terrace to sleep. My mother-in-law Malkiat Kaur and my brother-in-law Raju were also on the terrace. My husband, while going to terrace, switched off the main power switch cutting off electricity of the house. Shortly thereafter, I also went to the terrace. My husband told his mother that I had not offered dinner to him. At about 12 in the night, I went to the kitchen to serve dinner to him. While I was warming the '*chapati*', he came and stood behind me and bolted the door of the kitchen from inside. He started pouring kerosene oil from the stove on me. At that time he was in an inebriated condition. He then set me on fire. He went out of the kitchen through small window. He then brought a bucket of water and started dousing the fire by pouring water on me. I raised alarm. My mother-in-law came downstairs and ran away upon seeing me. My husband extinguished the fire. The village folk gathered there. After two hours, the Sarpanch of the village, my mother-in-law and some other persons brought me to the Civil Hospital at Chamkaur Sahib. From there, I was referred

to this hospital. My husband did not accompany me. He enacted a drama of setting himself on fire by pouring kerosene oil on himself. My husband is responsible for setting me on fire.

3. Pursuant of recording of aforesaid statement (Ex.PO), the police initially lodged FIR No. 69 at Police Station, Morinda, District Rupnagar, on 13.5.2011 under Section 307 IPC. During investigation, the police visited the place of occurrence and recorded statements of witnesses under Section 161 Cr.P.C. A site plan was got prepared. The accused was arrested on 15.5.2011. During interrogation, he suffered a disclosure statement(Ex.PJ) to the effect that he had kept concealed the stove in chaff and could get the same recovered. In pursuance to said disclosure statement, the accused got the stove recovered which was taken into possession vide recovery memo Ex. PK. Manjit Kaur, however, succumbed to her injuries and expired on 9.7.2011. Inquest proceedings were conducted by the police. Post-mortem examination was conducted on the dead body of Manjit Kaur.
4. After conclusion of investigation, challan was presented in the Court of ACJM, Rupnagar who committed the case to the Court of Sessions vide order dated 25.7.2011. The learned Sessions Judge framed charges for offence punishable under Section 302 IPC on 8.8.2011 to which the accused pleaded not guilty and claimed trial.
5. The prosecution examined 10 witnesses to establish its case. PW-1 Dr. H.K.Singh deposed that he had medico-legally examined Manjit Kaur on 13.5.2011 at 2:30 A.M. and proved the MLR as Ex.PB. PW-1 further stated that the patient was referred to PGI, Chandigarh. PW-2 Gurmeet Singh

deposed that his house is situated adjacent to house of Dilbagh Singh and on the night intervening 12/13.5.2011 at about 12.30 during night, he heard alarm raised by Malkiat Kaur regarding fire in their house and he rushed to the house of Dilbagh Singh and saw Manjit Kaur lying in the '*verandah*' with burn injuries. He further deposed that Dilbagh Singh was also present in the house at that time and that Swaran Singh, Sarpanch, Bhupinder Kaur and other persons were also present there. He deposed that a three-wheeler was arranged and Manjit Kaur was taken to Civil Hospital, Chamkaur Sahib from where she was referred to PGI, Chandigarh. He deposed that later on he came to know that Dilbagh Singh had set Manjit Kaur on fire by pouring kerosene oil. PW-3 Jasmit Singh who had prepared the scaled map, proved the same as Ex.PD.

6. PW-4 Dr. Chandan Jadhav, Senior Resident, Department of Plastic Surgery, PGI, Chandigarh stated that cause of death of Manjit Kaur was septicaemia and shock due to 60% burns. He proved the death summary as Ex.PF. PW-5 Bhupinder Kaur deposed that her house is adjacent to the house of Dilbagh Singh accused and on the night intervening 12/13.5.2011 at about 12:30 during night, Malkiat Kaur raised alarm, upon which she went to the house of Dilbagh Singh and saw Manjit Kaur lying in the court-yard in naked condition with burn injuries and was crying. PW-6 Swaran Singh stated that he is Sarpanch of Village Salempur and that on the night intervening 12/13.5.2011 at about 12:30 AM, mother of accused came to him and told him that there was fire in her house and he went to the house of Dilbagh Singh and saw Dilbagh Singh standing in the street alongwith Manjit Kaur who was covered with a '*chadder*' (bed-sheet). He deposed that Manjit Kaur told him that her husband Dilbagh Singh had set her on fire by pouring kerosene oil on her. He further deposed

that Manjit Kaur was taken to Civil Hospital, Chamkaur Sahib by them.

7. PW-7 ASI Jodh Singh who is the Investigating Officer in the present case stated in detail in respect of the entire proceedings conducted in the case right from the recording of statement (Ex.PO) of deceased Manjit Kaur upto the filing of challan. PW-8 Malkiat Singh father of deceased deposed that on 10.7.2011 he identified the dead body of Manjit Kaur and signed the inquest report Ex.PW and that his statement was recorded under Section 175 Cr.P.C. PW-9 Pritpal Singh, Judicial Magistrate First Class, Chandigarh who had recorded the statement (Ex.PO) of Manjit Kaur in PGI on 13.5.2011 has stated in detail about the proceedings conducted by him before and after recording the statement of deceased Manjit Kaur. PW-10 Dr. Vipin Chander Pal who had conducted post-mortem examination on the dead body of Manjit Kaur proved the post-mortem report as Ex.PFF.
8. After conclusion of prosecution evidence, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence appearing against him was put to him to enable him to explain the same, but he denied the prosecution case in toto and pleaded false implication. He further stated that he does not know as to how deceased had caught fire and that he had tried to extinguish the fire and in the process he had himself sustained burn injuries.
9. The accused was afforded opportunity to lead evidence in his defence but no evidence was led by him. The learned Trial Court upon perusal of evidence on record held that the prosecution had led sufficient evidence to establish the charges framed against the accused and convicted the accused for having

committed offence punishable under Section 302 IPC vide judgment dated 25.4.2012. Aggrieved with the same, the appellant has preferred the present appeal.

10. The learned counsel for the appellant while assailing the impugned judgment has submitted that the present case is apparently a case of accidental fire which the deceased had caught from stove while working in the kitchen and that infact the accused had tried to extinguish the fire, as has also been stated in the FIR and in the process, he himself also sustained some injuries. The learned counsel for the appellant has further submitted that the case of prosecution is based solely on the alleged dying declaration and there is no independent trustworthy corroboration of the same. The learned counsel has further submitted that neither there is any allegation that the relations between the accused and the deceased were strained nor is there any motive for causing death of Manjit Kaur and that in these circumstances it is not safe to convict the accused solely on the basis of dying declaration. The learned counsel has, thus, prayed for acceptance of appeal and for acquittal of the appellant by setting aside the impugned judgment.
11. On the other hand, learned counsel representing the State has submitted that in the present case, the dying declaration made by Manjit Kaur is the most reliable and clinching piece of evidence and that the same had been recorded by the Judicial Magistrate after adhering to all the safeguards and that no fault can be found in the same so as to doubt the sanctity of dying declaration. The learned State counsel has further submitted that infact the conduct of the accused in not taking his wife to the hospital though, admittedly, he was

present at the spot also points towards his role in the entire occurrence. The learned State counsel has also referred to testimony of PW-6 Swaran Singh, Sarpanch who stated that he had taken the deceased to the hospital and that Manjit Kaur told him that her husband Dilbagh Singh had set her on fire by pouring kerosene oil on her. The learned State Counsel, thus, submitted that there is no infirmity in the impugned judgement and prayed for dismissal of the appeal.

12. We have considered the rival submissions addressed before this Court and with the able assistance of learned counsel for have also perused the record of the case.
13. The present case is a case of death due to burn injuries. Immediately after the incident, Manjit Kaur was taken to the Hospital at Chamkaur Sahib where she was attended to by PW-1 Dr. H.K.Singh who deposed that on 13.5.2011 while he was posted at CHC Chamkaur Sahib, Ropar, he medico-legally examined Manjit Kaur at 2:30 A.M., who had been brought by Swaran Singh, Sarpanch. He proved the MLR as Ex.PB and stated that the patient was referred to PGI, Chandigarh. The prosecution has also examined PW-4, Dr. Chandan Jadhav, Senior Resident, Department of Plastic Surgery, PGI, Chandigarh who stated that Manjit Kaur had been brought to PGI on 13.5.2011 and was found to be having burn injuries. He stated that she died on 9.7.2011 that cause of death was septicaemia and shock due to 60% burns. He proved the death summary as Ex.PF. PW-10 Dr. Vipin Chander Pal Bhatia who had conducted post-mortem examination on the dead body of Manjit Kaur proved the post-mortem report as Ex.PFF. The relevant extract from the statement of PW-10 reads as

under:-

"Deceased was taken to Chamkaur Sahib's hospital from where she was referred to PGI, Chandigarh. Length of body was approximately 156 cm. Dead body of moderately built adult female wrapped in brown printed bed sheet, white bandage around chest, abdomen, both thighs, both arms, bed sores present over buttock region and occipital region. Surgically stitched wound with two stitches present over inner aspect of left medial malleolus with pus oozing. Rigor mortis in passing off stage. Post mortem staining present over back and fixed.

Infected epidermo to dermo epidermal burn injuries present over front of chest, abdomen, thighs, inner aspect of left arm, outer aspect of left arm upto wrist joint, inner aspect of right arm, outer aspect of right arm upto elbow joint, neck, back involving inter scapular area. Yellowish foul smelling slough seen at places on burn area. Red line of demarcation present between burn and unburnt area. Reddish granulation tissue seen at places on abdomen and chest. Auxiliary hairs burnt and singed.

Approximate area of burn is 55% of total body surface area. Meninges and brain were oedematous and congested. Plural cavity contained about 1 litre of clear fluid. Lungs congested, pus cavities seen bilaterally. Peritoneum contained about 500 ml of clear fluid. Ulcers were present over walls of the stomach. Multiple pus cavities were seen in liver, spleen and both kidneys.

In my opinion, cause of death in this case was septicaemia consequent upon infected burns injuries. All burn injuries were ante mortem in nature. Time between injury and death as per record is about one month and 26 days and between death and post mortem is as per record about 28 hours 15 minutes."

14. The aforesaid witnesses were briefly cross-examined on behalf of the accused but nothing substantial could be elicited so as to doubt the veracity or opinion of the doctors. From their testimonies it is not only evident that the deceased had sustained burn injuries but it is also borne out that she died as a result of the said burn injuries. As such, we have not hesitation in affirming that Manjit Kaur died on 9.7.2011 on account of burn injuries sustained by her on the night intervening 12/13.5.2011.
15. The prosecution mainly relies upon the dying declaration(Ex.PO) of Manjit Kaur recorded on 13.5.2011. 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.
16. 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.
17. 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 jursitic 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 effect 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. Proceeding ahead to examine the circumstances under which the deceased made statement in the case in hand, so as to be satisfied as regards state of mind of the deceased at the time of making statement and also the voluntary nature of the statement we find that in the present case, the statement of Manjit Kaur was recorded by a Judicial Magistrate, who had sought opinion of the doctor regarding the physical and mental state of Manjit Kaur. The relevant extract from the statement of PW-9 reads as under:-

"I got opinion regarding fitness of Manjit Kaur to suffer statement and the doctor declared her fit to make the statement. I disclosed my identity as Magistrate to Manjit Kaur. Thereafter I recorded her statement. Manjit Kaur put her thumb impression under her statement. Contents of this statement Ex.P-CC were read over to her. Even before recording statement I assured about

fitness of Manjit Kaur to suffer statement. I satisfied myself that Manjit Kaur was not under any pressure and was making statement voluntarily. I apprised Manjit Kaur before recording her statement that same can be used against her also. So long as I went on recording this statement, Manjit Kaur continued to give her versions recorded in statement. Even after recording statement, I obtained certificate of fitness from Doctor qua Manjit Kaur. Thereafter, I appended my certificate Ex.P-DD under this statement."

19. A perusal of statement of PW-9 Pritpal Singh, JMIC, Chandigarh shows that he had adhered to all the safeguards before recording statement of Manjit Kaur and had taken opinion of the doctor regarding fitness of Manjit Kaur before her statement was recorded. Even after recording her statement, the doctor certified that Manjit Kaur remained fit during the course of recording of her statement.
20. There is nothing on record to suggest that Manjit Kaur was under any kind of pressure when her statement was recorded or to show that she had been tutored to make any such statement. Rather, the conduct of Manjit Kaur in not naming any other member of her in-laws' family points towards the truthfulness of the witness. So much so, even the father of Manjit Kaur who appeared as PW-8 and who had identified the dead body of Manjit Kaur did not make any attempt to state anything against the family of the accused which indicates that there has been no overt attempt on the part of family of deceased to involve more persons or to tell lies. A statement recorded by a Judicial Magistrate would normally stand on a higher pedestal than statement made to a police official or some other person unless some circumstances pointing towards its unreliability are found to be there.

21. Though the statement of deceased is sought to be assailed by learned counsel for the appellant on the ground that same can not be treated as a dying declaration for the reason that Manjit Kaur infact remained alive for about two months after making the statement(Ex.PO) but this Court is unable to accept the said contention. A dying declaration is a statement which a person makes under an impression that his death is eminent. A person who has been set on fire and who had actually sustained more than 50% burn injuries is likely to have have such an apprehension in his mind that he is not going to survive and in these circumstances any such statement made by the deceased, which is otherwise found to be free from any kind of pressure would certainly qualify to be termed as dying declaration notwithstanding the fact that there is substantial gap between such statement and death of such person. In a case reported as AIR 1998 Supreme Court, 682, Najjam Faraghi @ Najjam Faruqui Vs. State of West Bengal, where the victim died after more than 25 days of making his statement, the Hon'ble Apex Court considered the statement as a dying declaration and it was held therein that a statement does not lose its value if person lives for a longer time than expected.
22. In view of the aforesaid discussion, we do not find any ground to doubt the dying declaration made by Manjit Kaur. Further, the conduct of the accused Dilbagh Singh in not taking the deceased to the hospital also shows his guilty mind. The dying declaration also finds some kind of corroboration from the statement of PW-6 Swaran Singh who deposed that on the night intervening 12/13.5.2011 at about 12.30 night, mother of accused came to him and told him that there was fire in her house and he went to the house of Dilbagh Singh and saw Dilbagh Singh standing in the street along with Manjit Kaur who was

covered with a 'chadder' (bed-sheet). He deposed that Manjit Kaur told him that her husband Dilbagh Singh had set her on fire by puring kerosene oil on her. He further deposed that Manjit Kaur was taken to Civil Hospital, Chamkaur Sahib by them. The presence of PW-6 at the spot is corroborated from the statement of PW-2 Gurmeet Singh. Further, even PW-1 Dr H. K. Singh has stated that Swaran Singh had brought the deceased to Civil Hospital, Chamkaur Sahib. The statement of PW-6 would assume relevance in view of provisions of section 6 of Evidence Act 1872, which reads as follows:

6. Relevancy of facts forming part of same transaction. -

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

Illustrations :

- (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
- (b) x x x x
- (c) x x x x
- (d) x x x x

23. The Hon'ble Apex Court in a case reported as (2011) 6 SCC 308 Rajput Jabbarsingh Malaji v. State of Gujarat, in somewhat similar circumstances accepted evidence of a witness to whom the deceased, shortly after the incident had disclosed the manner of occurrence. The relevant extract reads as follows:

“14. The statement of Pepaben stands fully proved and corroborated from the evidence of PW-5 and PW-6, who were informed soon after the incident as to how, the injury was inflicted by the Appellant on her husband. Their statements also reveal that they were in the vicinity of the scene of crime and were among the many members of the victim's family who had rushed to the

spot as soon as they heard the PW-3's wails and shrieks. Thus under Section 6 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"), PW-5 and PW-6 were to be treated as Res Gestae witnesses. Their evidence lends full support to the case of prosecution and corroborates the evidence of P.W.3 Pepaben. ”

24. The case of the prosecution is also strengthened from the disclosure statement Ex.PJ made by Dilbagh Singh in pursuance of which he got the stove recovered, which was taken into possession vide recovery Memo Ex.PK.
25. During the course of arguments, the learned counsel for the appellant also made an alternate prayer that the facts of the case, even if taken to be correct, would, at best, constitute an offence under Section 304 Part-I IPC and not an offence under Section 302 IPC. The learned counsel in order to hammer forth his aforesaid contention cited AIR 2017(1) Bom.R(Cri) 837 Suryakant Kashinath Bhoir v. State of Maharashtra (Bombay) and also 2017 CriLJ2816 Sanjib Sardar Vs. State of West Bengal (Calcutta).
26. We have gone through the cited judgments. Suryakant Kashinath Bhoir's case (supra) was a case where there had been a quarrel between the husband and the wife immediately before the incident and in pursuance of that the accused had set his wife on fire and there was nothing to suggest any kind of pre-planned intention. The present case is not such where sudden quarrel had taken place. In Sanjib Sardar's case (supra), the facts were different inasmuch as there had been a quarrel upon the accused having been enraged by denial of wife to allow him pleasure of company that he craved.

27. As an upshot of the discussion made above, we find that the statement of deceased Manjeet Kaur was recorded by PW-9 Pritpal Singh, Judicial Magistrate, after taking all safeguards and after seeking opinion of the doctor regarding fitness of Manjeet Kaur. The doctor had certified that she remained fit during the course of recording of her statement. There is nothing to show that Manjeet Kaur was ever tutored or was under any kind of pressure at the time of making statement. In a case reported as (2013) 3 SCC 280 Krishan v. State of Haryana, Hon'ble Apex Court held as under :-

“.....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.”

28. Though, as per ratio of above cited judgement, the dying declaration itself would be sufficient to base conviction, but in the present case there is corroborative evidence also in the shape of statement of PW-6 Swaran Singh Sarpanch, who had taken Manjeet Kaur to hospital and to whom Manjeet Kaur disclosed that her husband Dilbagh Singh had set her on fire. Finding no circumstance to hold that the dying declaration was not voluntarily made or that she was not in a fit state of mind we have no hesitation in relying upon the dying declaration made by deceased Manjit Kaur, from which it is clearly evident that the accused had set Manjit Kaur on fire after pouring kerosene oil on her which resulted in her death. The accused, thus, rendered himself

liable for having committed an offence punishable under section 302 of IPC.

29.
- No other argument has been raised for urged before this court. We do not find any infirmity in impugned judgement and the same is upheld there is no merit in this appeal and the same is dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 13, 2017

kamal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No