

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-681-DB of 2003
Date of decision : 8.3.2017

...

Hari Singh and others

.....Appellants

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate for the appellants

Mr. Praveen Bhadu, Assistant Advocate General,
Haryana

...

H. S. Madaan, J.

This appeal is against judgment and order dated 21.7.2003 passed by the Court of Additional Sessions Judge, Kurukshetra, vide which he had convicted accused Hari Ram, his son Mangal Singh and wife Ram Murti @ Murti for offence under Section 302 IPC read with Section 34 IPC, sentencing them to undergo rigorous imprisonment for life and to pay a fine of Rs.2,500/- each and in default of payment of fine to undergo further rigorous imprisonment for one month.

The accused – convicts, who are appellants before this Court, pray that the appeal be accepted, the impugned judgment of

conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story, as it came out during the trial is that on 19.3.2001 on receipt of intimation from Civil Hospital, Shahabad, at Police Station, Shahabad, regarding arrival of injured Karamjit Kaur and her minor daughter Jyoti in that hospital as cases of burn injuries, a police party led by ASI Roshan Lal went there. ASI Roshan Lal moved an application at the said hospital seeking opinion of the attending doctor regarding fitness of the injured to make statement. However, the doctor informed him that both the injured had been referred to PGI, Chandigarh. On 19.3.2001 information was received from PGI, Chandigarh regarding admission of Karamjit Kaur - injured there. On receipt of said information, ASI Roshan Lal alongwith other police officials went there. He collected medical *ruqa* from Police Post, PGI, Chandigarh. He moved a written application before Duty Magistrate, Chandigarh, for the purpose of recording statement of injured – Karamjit Kaur. Learned Duty Magistrate, accordingly went to PGI, Chandigarh. He recorded the statement of Karamjit Kaur after obtaining opinion from the attending doctor in affirmative regarding fitness of such injured to make statement. Inter alia in the said statement she stated that her father-in-law Hari Singh, mother-in-law Murti, brother-in-law (Devar) Mangal Singh and sister-in-law Champa used to reside at village Bhana and they used to quarrel with her; that she was not on talking terms with them for the last one month; that her father-in-law under the influence of liquor used to abuse her at the instance of his

wife and daughter; that she was employed in Anganwari; that on 3.4.2001 at about 2.00 p.m. she came to her house and all the four i.e. her father-in-law Hari Singh, mother-in-law Murti, sister-in-law Champa Devi and brother-in-law Mangal Singh also came there and started quarreling with her; that her father-in-law started abusing her and asked why she did not die, at which Mangal Singh got enraged and poured a can of kerosene upon her and her daughter who was also in the same room and then set them ablaze with a match stick. At that time father-in-law Hari Singh, mother-in-law Murti and sister-in-law Champa Devi were present and were abusing her, besides saying bad words; that she ran towards outside from the house while crying and fell into drain (nali) of the street; that at that time her daughter was in the room and she did not know as to what happened next. In the said statement, Karamjit Kaur stated that her brother-in-law Mangal Singh is responsible for the whole occurrence in which she and her daughter Jyoti were set on fire and besides that her father-in-law, mother-in-law and sister-in-law were also involved and action against them be taken; that her husband Man Singh and two younger brothers-in-law namely, Satpal and Sanjeev had no concern with this incident and she did not want to take any action against them.

Then the Police Party went to village Abhana, where the Investigating Officer came across Bhagat Ram, father of Karamjit Kaur – injured. Bhagat Ram got his statement recorded with ASI Roshan Lal. Inter alia in that statement Bhagat Ram stated that his daughter Karamjit Kaur was married with accused Man Singh about

two years earlier and from that wedlock the couple was blessed with a female child, who was named Jyoti, then aged about 1 year. The in-laws of Karamjit Kaur used to abuse her and quarrel with her and she would inform him in that regard. However, he used to pacify her. On 19.3.2001 a message was received by them that Karamjit Kaur and her daughter Jyoti had been set ablaze by Mangal Singh, brother-in-law of Karamjit Kaur in presence of her father-in-law Hari Singh, mother-in-law Murti and sister-in-law Champa, while they were abusing her. On receipt of that information, he alongwith his son Sukhdev Singh and Sher Singh, son of Phulla Ram reached CHC Shahabad, where his daughter Karamjit Kaur told them regarding the incident. On the basis of such statement formal FIR was registered. The Investigating Officer carried out inquest proceedings with regard to unnatural death of Jyoti. Preparing a report in that regard, he also prepared a rough site plan of the place of incident. The earth was scraped and taken into possession from the scene of crime, by converting it into a sealed parcel. The Investigating Officer recorded the statements of witnesses. The accused were arrested in this case. On 3.4.2001 intimation was received from PGI, Chandigarh that Karamjit Kaur had died of burn injuries, as such the Police Party led by ASI Roshan Lal went to PGI, Chandigarh. He carried out inquest proceedings with regard to unnatural death of Karamjit Kaur, preparing a report in that regard. He got the post mortem examination conducted on the dead body and recorded statements of witnesses. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Chief Judicial

Magistrate, Kurukshetra.

On filing of challan in the Court of Chief Judicial Magistrate, Kurukshetra, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding that offence for which the accused were booked was exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Court of Sessions, vide order dated 31.5.2001. On receipt of this case, the same was entrusted to the Court of Additional Sessions Judge, Kurukshetra, who after finding that offence under Section 302 IPC read with Section 34 IPC was disclosed against the accused, charge sheeted all the four accused accordingly, to which they pleaded not guilty and claimed trial. Subsequently on an application having been filed by accused Champa Devi, she was found to be a juvenile and ordered to be produced before the Juvenile Justice Board. Supplementary challan was ordered to be filed against her before the said Court, whereas case against the appellants was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined in as many as, 16 witnesses as per details below.

PW-1 happened to be Dr. Rakesh Kumar, who on 19.3.2001 at about 6.40 P.M. while posted as Medical Officer in CHC Shahabad, had medico legally examined Karamjit Kaur wife of Man Singh aged 22 years, female, Harijan, resident of Bhana, Police Station Shahabad, with the observations that the patient was conscious. Pulse and blood pressure were un-recordable. Respiration

was laboured. Pupils normal bilateral. Smell of kerosene was coming from the body of the patient. All the clothes worn by the patient were burnt and only small pieces of clothes were left over the body. A piece of burnt cloth was collected and sealed in an envelope for chemical analysis. No water drops were seen on the body of the patient. Whole body except face and head were covered with thermal burn injuries in the form of blisters and charring of skin. Degloving of hands and soles was present. No pus points were present. The injuries were caused within a duration of six hours and grievous in nature. The percentage of burns was approximately 91. He proved carbon copy of medico legal report as Exhibit PA.

He further stated that on the same day after examination of Karamjit Kaur, he had also medico legally examined Jyoti daughter of Man Singh, aged one year, female, Harijan, resident of village Bhana, Police Station Shahabad and he had observed that the consciousness of the patient was impaired. Pulse was unrecordable. Respiration was laboured. Pupils mid dilated. Smell of kerosene was coming from the body of the patient. All the clothes worn by the patient were burnt. No water drops were seen on the body of the patient. Whole body of the patient was covered with thermal burn injuries in the form of blisters and charring of skin. Degloving of hands and soles was there. No pus point was present. Oedema of external nares and lips was seen. The injuries were caused within six hours and were grievous in nature. The percentage of burns was roughly 100. He proved carbon copy of the medico legal report as Exhibit PB.

He also stated that he had sent *ruqa* Exhibit PC to Incharge, Police Station Shahabad intimating admission of Karamjit Kaur and Jyoti in CHC Shahabad and that the parcel containing burnt clothes pieces of Karamjit Kaur alongwith sample of seal were handed over by him to ASI Roshan Lal, in a sealed envelope. Going further, the witness stated that on 19.3.2001, application Exhibit PD was presented before him seeking his opinion as to whether both the injured were fit to make statement and he vide his endorsement Exhibit PD/1, had informed that both the patient had been referred to PGI, Chandigarh for further management.

PW-2 Dr. P.S. Bhatti, Medical Officer, Department of Forensic Medicine, PGI, Chandigarh, stated that on presentation of application Exhibit PE by ASI Roshan Lal on 3.4.2001, for conducting post mortem examination on the dead body of Karamjit Kaur, Dr. Dalbir Singh, Head of the Department of Forensic Medicine vide his endorsement Exhibit PE/1 had constituted a board comprising of himself, this witness and Dr. S.P. Mandal, for doing the needful. Accordingly, at 10.50 a.m., on 4.4.2001, the Board consisting of this witness, Dr. Dalbir Singh and Dr. S.P. Mandal, conducted post mortem on the dead body of Karamjit Kaur daughter of Bhagat Ram, wife of Man Singh, Anganwadi Worker, Harijan, aged about 22 years, resident of village Bhana, Police Station Shahabad, District Kurukshetra. The dead body was brought by ASI Roshan Lal of P.S. Shahabad and identified by Mehar Singh, brother and Nathi Ram, a cousin brother of the deceased.

The length of the body was 158 cm, weight 54 kgs., pupils

were dilated, cornea was hazy. Nutritional status was moderately nourished. Cynosis could not be assessed. Extent of post mortem lividity could not be assessed. Extent of rigor mortis was present all over the body. There was no blood/froth in orifices. There was no odour from the mouth. There was no decomposition signs.

On examination, they had observed that there was septic foul smelling superficial to deep burns with greenish yellowish pus points present all over the body except scalp, upper part of face, lower portion of front of abdomen, perineum and both soles. The burnt area was about 90%. The scalp hair were partially burnt and singed at places. Meninges and brain was congested. Scalp, skull and vertebrae were normal. Larynx and trachea were congested. Other organs were normal. Mouth, pharynx and oesophagus were congested. Stomach contained 156 cc of yellowish coloured fluid. Mucous membrane of the stomach was congested. Small intestine contained small amount of liquid and gases. Large intestine contained small amount of faecal matter and gases. Mucous membrane of small and large intestine were congested. Liver was congested. Spleen and kidneys were congested. Pancreas were normal. Bladder was empty and normal.

In their opinion, the death was due to septicemia as a result of 90% septic thermal burns. The injuries were ante mortem in nature. The probable time that elapsed between injuries and death was 14-15 days, as per police papers and between death and post mortem 24 hours and 40 minutes. Three photographs of the deceased were also taken. He proved carbon copy of the post mortem report as Exhibit PE/3. This witness stated that after post mortem, they handed

over the body of the deceased, photographs Exhibit PE/4-6, inquest papers, 19 in number, duly initialled by them, alongwith a copy of post mortem report.

PW-3 HC Bhushan Dass, PW-4 Constable Satywan, and PW-5 Constable Ram Parkash, formal witnesses submitted their affidavit Exhibit PF, Exhibit PG and Exhibit PH, respectively.

PW-6 Bhagat Ram, father of Karamjit Kaur – deceased, complainant in this case, did not toe the line of prosecution story and was declared a hostile witness at instance of learned Public Prosecutor who was allowed to put questions to him in the form of cross examination.

PW-7 Sukhdev Singh, a brother of Karamjit Kaur – deceased did not fare any better and he failed to support the prosecution case, as such as per request of Public Prosecutor he was also declared a hostile witness and Public Prosecutor was allowed to cross examine him.

PW-8 HC Chanan Ram, who on 20.3.2001 was associated with investigation of the case, deposed in that regard adding that on 21.3.2001 Chetan Singh, Sarpanch had produced accused Hari Ram and Mangal Singh before SI Paras Kumar and SI Paras Kumar had interrogated accused Mangal Singh in his presence, during the course of which Mangal Singh had suffered a disclosure statement that he had kept concealed kerosene can in his house and none except him was in the knowledge of the same; that Mangal Singh had offered to get can recovered; disclosure statement of Mangal Singh Exhibit PM was recorded, which was signed by

Mangal Singh accused and attested by this witness and Chetan Singh. Thereafter accused Mangal Singh, while in police custody, led the Police Party to the disclosed place and got the plastic can recovered, which was converted into a parcel sealed with seal having impression 'PK' of SI Paras Kumar and said parcel was taken into possession vide recovery memo Exhibit PM/1, attested by this witness and Chetan Singh Sarpanch.

PW-9 ASI Roshan Lal, who had carried out investigation in this case initially, starting from 19.3.2001 deposed in that regard proving various documents.

PW-10 Constable Sudeep Kumar, Draughtsman, office of Superintendent of Police, Kurukshetra, who on 8.5.2001 had visited village Bhana and prepared scaled site plan Exhibit PQ on the demarcation of Bhagat Ram, son of Rikha Ram, deposed in that regard stating that the marginal notes in the site plan are in his hand and are correct and after preparing site plan he had handed over the same to SI Paras Kumar.

PW-11 Dr. K.K. Chawla, Medical Officer, Lok Narain Jai Parkash Hospital, Kurukshetra, stated that on 21.3.2001 an application Exhibit PR accompanied by inquest report Exhibit PR/1 was received for post mortem of Jyoti daughter of Man Singh, Harijan, resident of Village and P.O. Bhana. The dead body was brought by Head Constable Narender Singh No. 494 and Ram Parkash Constable No. 974 and was identified by Om Parkash and Jagiru. He stated that the length of the body was 2' 6". There was no ligature mark on the neck. There was superficial to deep burns present

all over the body. Singeing of scalp hairs, eye brows and eye lashes was present. Skin was peeled off at most of the places and could be easily peeled off at the remaining places. There was degloving of skin of hands and feet. Superficial veins were visible over the denuded areas. Red line of demarcation was present. Eyes and mouth were semi open. Cornea was clouded. Lips were congested and everted. Rigor mortis was partially present in the lower limbs. Smell of kerosene was coming from body. Mucosa of larynx and trachea was congested and black soot particles were present. Heart was healthy. Right side was full of blood. Left side was empty. Pleura, brain, lungs, peritoneum were congested. So were liver, spleen and kidneys. Stomach contained small amount of watery material. Small intestines contained chyme and gases and large intestines contained faecal matter and gases. Bladder was healthy, it contained blood stained urine. Perineum was burnt. In the opinion of this witness, the cause of death was shock as a result of 100% burns, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable time between burns and death was variable less than 24 hours and between death and post mortem was 24 to 48 hours. The witness stated that after the post mortem he handed over duly stitched dead body, copy of PMR and police papers numbering 1 to 28 initialled by him. He also proved carbon copy of the post mortem report Exhibit PR/2.

PW-12 HC Narender Singh, MHC, Police Station Shahabad, stated that on 20.3.2001 he was posted as Head Constable at Police Station Shahabad. On that day, papers regarding deceased

Jyoti, daughter of Man Singh were handed over to him for getting post mortem done on the dead body and he got the needful done and thereafter gave post mortem report and relevant papers to Investigating Officer, SI Paras Kumar.

PW-13 Sher Singh son of Phulla, stated that Karamjit Kaur daughter of Bhagat Ram was related to him; that she was married with Man Singh. He further stated that she was living happily in her in-law's house and accused never harassed her for and on account of dowry and she never made any statement before him on 19.3.2001 with regard to the burns received by her. Since he had not supported the prosecution story, as such the Public Prosecutor came up with a request to declare him as a hostile witness. It was accordingly done and Public Prosecutor was permitted to put questions to him in the form of cross examination.

PW-14 Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh, who had recorded statement of Karamjit Kaur – injured on 20.3.2001, stated that on the said date he was posted as Judicial Magistrate Ist Class, Chandigarh. On that day he was functioning as Duty Magistrate, Chandigarh when an application Exhibit PN/4 was presented before him by ASI Roshan Lal of Police Station Shahabad containing request to record statement of Karamjit Kaur, who was admitted in PGI, Chandigarh. On receipt of that application, he recorded its receipt vide endorsement Exhibit PN/5. Thereafter, he proceeded to PGI, Chandigarh alongwith ASI Roshan Lal and he passed order Exhibit PN/6 in that regard. After reaching PGI, he moved application Exhibit PN/7 before doctor on duty in the

Emergency Ward of PGI and the doctor after examining the patient vide his endorsement Exhibit PN/8 opined that she was fit and conscious to make the statement. This witness stated that he had passed order Exhibit PN/9 in that behalf, directing ASI Roshan Lal to go outside the ward so that he could record statement of Karamjit Kaur. Karamjit Kaur was identified to him by ASI Roshan Lal and the doctor on duty. The witness stated that thereafter he introduced himself to Karamjit Kaur and desired to record her statement. Then he did so and read over such statement to Karamjit Kaur and she had put her right thumb impression on statement Exhibit PN/10. The thumb impression of Karamjit Kaur was taken at point 'X-1' on the first sheet of her statement; that throughout the time he recorded the statement of Karamjit Kaur, Dr. Akshay Kumar, who had declared her as fit and conscious remained there. The witness stated that he had passed order Exhibit PN/11 in that regard and after recording her statement he had again obtained opinion of the doctor and the doctor vide endorsement Exhibit PN/12 below the statement of Karamjit Kaur, declared that the patient remained fit and conscious, throughout the time her statement was recorded. The witness added that a request was made by ASI Roshan Lal for allowing copy of the statement of Karamjit Kaur and vide order Exhibit PN/13, he accordingly allowed ASI Roshan Lal to copy the statement. Thereafter, he proceeded to his home; that on reaching the office, vide order Exhibit PN/14, he directed the Ahlmad of his Court to seal the statement alongwith other relevant papers and forward the same to Chief Judicial Magistrate, Chandigarh for its onward transmission to Illaqa

Magistrate. He put the statement in an envelope Exhibit PN/15 and then sealed it. He further stated that he had put initials on the said envelope.

PW-15 Dr. Akshay Kumar Rawat, Senior Resident, Department of Plastic Surgery, PGI, Chandigarh, stated that on 20.3.2001 an application Exhibit PN/2 was presented before him by the police enquiring about fitness of Karamjit Kaur to make statement and he vide endorsement Exhibit PN/3 had declared her fit to make the statement. Going further, this witness stated that on the same day at about 4.45 P.M. Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh had moved an application Exhibit PN/7 seeking his opinion as to whether Karamjit Kaur, who was admitted in PGI was fit to make a statement or not and that after examining the patient vide opinion Exhibit PN/8, he had opined that she was fit and conscious to make a statement. Thereafter, the Magistrate had recorded statement of Karamjit Kaur and vide endorsement Exhibit PN/12, he had certified that patient remained fit and conscious throughout the making of statement before the Magistrate.

PW-16 SI Paras Kumar, who while posted as SI/SHO Police Station, Shahabad, on 20.3.2001 had carried out investigation in this case, deposed in that regard proving various documents.

Learned Public Prosecutor tendered in evidence report of FSL Exhibit PU and thereafter closed evidence of prosecution.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to them, but they denied the allegations

contending that they are innocent and have been falsely involved in this case.

During the defence evidence, accused examined as many as three witnesses as detailed below.

DW-1 Man Singh, son of Hari Singh, husband of deceased Karamjit Kaur, stated that he got married with Karamjit Kaur on 28.3.1999 and they were blessed with a daughter namely, Jyoti, as such they were living very happily, separately from his parents and there was never any dispute of his wife with his father, brother, sister or his mother. He further stated that about 1¼ years back, he was on duty at Shahabad when he received information at about 4.30 P.M. that his wife had received burn injuries. Thereafter he returned home and noticed that his wife and his daughter were having burn injuries on them; that he enquired from his wife as to how she received burn injuries and on that she disclosed to him that she was having the daughter in her lap and was preparing tea with the help of stove; that all of sudden she received burns from the stove, resulting in causing burn injuries to her and Jyoti. The witness submitted that his wife did not blame his mother, his father, his sister and his brother as the persons responsible for burn injuries. The witness submitted that he and his father had shifted his wife and daughter to Civil Hospital, Shahabad; that no member from his in-laws family was present there. The doctor recommended that she should be shifted to PGI, Chandigarh for better treatment. On advise of the doctor, he, his father and other family members shifted her for better treatment to PGI, Chandigarh. At Chandigarh the family

members of his in-laws arrived in the hospital. They consulted with his wife and pressurised her to make a statement against his parents. The officials of Shahabad police had also reached there who pressurised his wife to make a statement against his parents. Going further, the witness submitted that when statement of his wife was recorded by the Magistrate, he was sent out, whereas family members of his in-laws remained inside with her. The police also remained inside. The thumb of his wife was completely burnt and she was not in a position to put her thumb impression. The witness submitted that his wife expired after 15/16 days at Chandigarh and later on she disclosed to him that her statement was forcibly recorded at the instance of her parents and police. The witness further added that the present case against accused is false one.

DW-2 Chetan Singh son of Sharda Ram, resident of village Abhana, stated that Man Singh and his wife had been residing separately from his parents; Karamjit Kaur wife of Man Singh was employed in *Anganwari* of his village and he being Sarpanch had opportunities to meet Karamjit Kaur. Relations between Karamjit Kaur and the accused were normal and there was no complaint from the side of Karamjit Kaur. Going further, the witness added that about 1 ¼ years back, he was at his house, when he came to know that Karamjit Kaur had received burn injuries and he reached the spot and noticed that she had received extensive burns and he noticed that she had received burn injuries from the stove; that Hari Ram accused took her to the hospital in a car which was arranged by him.

DW-3 Ram Dhan Babbar, Hand Writing and Finger Prints

Expert, Karnal, stated that he had examined thumb print marked X and X-1 on the document Exhibit PN/10 and he was of the opinion that the apex ridges of that thumb print were sloping right down side, confirming that both the thumb prints were of right hand thumb print and both the thumb prints were clear and fit for comparison and more than 10 points of similar ridge characteristics could be marked to establish absolute identity.

With that the defence evidence got concluded.

After hearing arguments, trial Court convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeal praying that the same be accepted, the impugned judgment of conviction and sentence be set aside and they be acquitted of the charges framed against them.

We have heard learned counsel for the appellants, learned Assistant Advocate General for the State of Haryana, besides going through the file and we are of the considered view that there is no merit in the appeal.

The most important piece of evidence in this case is dying declaration of Karamjit Kaur, which she got recorded with Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh. In the said statement Karamjit Kaur had clearly stated that all the accused used to quarrel with her, she was not on taking terms with them for last about one month; her father-in-law used to abuse her at the instance of his wife (Murti) and daughter (Champa Devi); on the fateful day at about 2.00 P.M. when she returned home, all the accused were there at her place and they started quarreling with her; her father-in-law stating that

why should she not die, upon which Mangal Singh poured kerosene oil upon her and her minor daughter and set them ablaze; remaining accused were present there and they kept abusing her and saying bad words. She had categorically stated that all the four accused were involved in the incident, whereas she gave a clean chit to her husband Man Singh and two younger brothers-in-law namely, Satpal and Sanjeev. The statement was recorded by a Judicial Officer after getting opinion of the attending doctor in affirmative regarding fitness of the injured to make statement, he had introduced himself to injured Karamjit Kaur. The statement was recorded in question – answer form. The statement bears right thumb impression of Karamjit Kaur. The attending doctor had appended certificate to that effect that patient remained fit and conscious throughout the making of statement. PW-14 Sh. K.K. Goel, Judicial Magistrate Ist Class, has stated that he had read over the statement to Karamjit Kaur and she had put her right thumb impression on the statement after admitting the same as correct. The thumb impression of Karamjit Kaur was also obtained on the first sheet of the statement. In his cross examination, he could not be shattered on any material point. He stated that he had obtained thumb impression of Karamjit Kaur himself with help of the doctor. He denied the suggestion that there is no thumb impression of the patient on the dying declaration or that burns were so deep, it was not possible to take the thumb impression of the declarant. Then there is testimony of PW-15 Dr. Akshay Kumar Rawat, who had deposed that when Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh had come to PGI to record statement of Karamjit Kaur, he

had moved application Exhibit PN/7 seeking his opinion regarding the fitness of Karamjit Kaur to make statement; that he after examining the patient vide opinion Exhibit PN/8 he had declared that she was fit and conscious to make statement. Thereafter, Magistrate had recorded statement of Karamjit Kaur. He stated that he had certified vide Exhibit PN/12 that the patient remained fit and conscious throughout the making of the statement before the Magistrate.

Learned counsel for the appellants has tried to challenge the veracity of this statement by making reference to cross examination of PW-1 Dr. Rakesh Kumar, wherein he had submitted that thumb impression of Karamjit Kaur was not taken, because there was degloving of hands. Learned counsel stated that it being so, thumb impression of Karamjit Kaur could not possibly be taken and it has wrongly been stated by the Magistrate to be so. Therefore, a doubt is cast in the mind about veracity of statement. Whereas this contention was repelled by the State counsel stating that Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh, when he appeared as witness was not specifically asked this question that due to degloving no thumb impression of Karamjit Kaur could be taken and that witness has specifically stated that he had taken thumb impression of Karamjit Kaur on the statement with the help of the doctor.

After hearing rival contentions, we find little merit in the argument advanced by learned counsel for the appellants for various reasons, firstly, no such specific question was put to Sh. K.K. Goel, Judicial Magistrate Ist Class, Chandigarh, when he appeared as PW-

14. Further more, he had stated that thumb impression was obtained on the statement with the help of the doctor. There is nothing to show that due to the degloving the prints of the thumb impression disappeared altogether. Even otherwise, as per law, oral dying declaration is permissible. In this case, the statement is in writing and as per the Magistrate, it was recorded by him and after recording the same, he had read it over to Karamjit Kaur, who admitted the same to be correct. The Magistrate had no reason to depose falsely against the accused and in favour of the prosecution. Even if thumb impression of Karamjit Kaur were not there, that would not have affected the weightage to be attached to the statement. Therefore, no doubt arises in the mind about the veracity of the statement. We find that the statement is relevant under Section 32 of the Evidence Act, since it relates to cause of death of Karamjit Kaur. There is an important authority on the subject reported as **Vikas and others vs. State of Maharashtra 2008 (1) R.C.R. (Criminal) 805**. That case relates to bride burning, where the accused was convicted solely on the basis of dying declaration, even though father of the deceased had turned hostile. The maxim that “man will not meet his Maker with a lie in his mouth” was relied. It was observed that a competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and father was not a reliable witness, since at the time of investigation, his case was that the accused was responsible for causing death of her daughter, but subsequently he took totally opposite stand and supported the defence. In that very authority the law regarding admissibility of dying declaration in evidence in terms

of Section 32 of the Evidence Act was summed up holding that :-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) This 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 had opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

- (ix) Normally the court in Order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.
- (xi) Where a dying declaration is recorded by a competent Magistrate, it would stand on a 'much higher footing'.
- (xii) A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim. 1992 (3) RCR (CrL.) 552 (SC) and 1958 SCR 552 relied.”

We find that this authority had almost the same facts as to the facts of the present case.

Further Bhagat Ram – father and Sukhdev – brother of Karamjit Kaur deceased have made a complete somersault while appearing as witnesses during the trial, completely denying that there has been any quarrel between Karamjit Kaur and the accused or accused used to maltreat her and harass her. Whereas in their statements to the police recorded during investigation, they had categorically made allegations in that regard. They were duly confronted with their statements recorded during the investigation of

the case. They could not offer any satisfactory explanation for resiling from the same. It seems that they have compromised the matter with the other party, most likely for consideration and for that reason have resiled from the statements originally made by them against the accused during the investigation of the case. Their statements made in the Court cannot cause a dent in the prosecution story and dying declaration of Karamjit Kaur is sufficient to bring all the accused to the book. Such dying declaration comes out to have been made by Karamjit Kaur voluntarily, without any pressure, while she was in fit state of mind. It does not come out to be result of tutoring, prompting or imagination. There is no suspicion attached to such declaration and it does not come out to be suffering from any infirmity. Necessary details of the incident, names of the culprits and role played by them in the incident are clearly mentioned therein. Karamjit Kaur had no motive to involve the accused in this case falsely when she had given a clean chit to her husband and two brothers-in-law. Therefore, due solemnity and sanctity is to be attached to her words. Since the dying declaration has been recorded by a competent Magistrate, it has to be given due weightage. Statements of PW-6 Bhagat Ram – father and PW-7 Sukhdev – brother of Karamjit Kaur, in which they obviously tried to help the accused during the trial, are not credit worthy and cannot be given much importance while deciding the present case. The medical evidence duly corroborates the prosecution version in terms of the dying declaration.

The investigation has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the

accused in this case wrongly and depose against them to secure their conviction.

Learned counsel for the appellants had tried to delink the case of Hari Singh and Ram Murti, with that of Mangal Singh, stating that they did not share a common intention with him to set Karamjit Kaur and her daughter on fire, since as per prosecution story, it was Mangal Singh, who had poured kerosene upon the victims and set them ablaze. However, we are not inclined to accept this argument. From statement of Karamjit Kaur, which she got recorded with the Magistrate, it comes out that accused had been harassing and maltreating her and she was not on speaking terms with them for quite some time. All the three accused having come to her place when she returned home, abusing her and quarreling with her, Hari Singh accused stating that why she did not die, Hari Singh, Ram Murti and Champa Devi not trying to save both the victims and then using bad words to Karamjit Kaur, go to show that they shared a common intention to commit murder of Karamjit Kaur and Jyoti.

One more fact which is to be taken into consideration is that accused had taken a defence that the victims had caught fire due to bursting of stove, which fact they could not prove by leading evidence. No stove etc. was recovered from the spot. The very fact that they have taken a false defence is also a strong incriminating circumstance against them. It needs to be made clear that as regards accused Mangal Singh, he while in police custody, during the course of his interrogation, had suffered a disclosure statement and got recovered a plastic can from his possession, which also corroborates

the prosecution story.

The judgment of conviction and sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. As such the appeal is without any merit and the same is dismissed accordingly.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

8.3.2017
chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No