

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-403-DB-2003 (O&M)

Date of decision: 20.11.2019

Joginder Kumar and others

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Jasraj Singh, Advocate,
for the appellant.

Mr. Bhupender Beniwal, A.A.G., Punjab.

Jitendra Chauhan, J.

The instant appeal has been filed assailing the judgment of conviction and order of sentence dated 18.02.2003 (hereinafter referred to as the impugned judgment'), passed by learned Additional Sessions Judge, Ludhiana (for short, 'the trial Court'), thereby, convicting the appellants under Section 302 of the Indian Penal Code (for short, 'the IPC') and sentencing them to life imprisonment and to pay fine of Rupees one thousand each with default stipulation.

Brief facts of the case, as noticed by learned trial Court, in the opening paragraph of the impugned judgment, read thus:-

“2. Briefly stated, the prosecution story is that on 10-5-99 on receipt of telephone message ASI Mohinder Singh went to the Civil Hospital, Ludhiana

where Ujala @ Sunita Kumari was admitted in burnt condition. He moved police request Ex.PW-8/A to S.M.O. Civil Hospital, Ludhiana for obtaining opinion if Smt. Ujala was fit to make statement and on this application vide endorsement Ex.PW-8/B, Doctor Incharge declared her fit for statement. After obtaining the opinion of the Doctor Incharge that patient was fit to make statement, ASI Mohinder Singh moved an application before the Duty Magistrate Ludhiana namely Shri R.K. Garg, Judicial Magistrate Ist Class, Ludhiana for recording the statement of Smt. Ujala. On this application the Duty Magistrate went to Civil Hospital, Ludhiana and after obtaining the opinion of the Doctor Incharge that patient was fit to make statement, recorded statement Ex PW-13/A of Smt. Ujala. Thereafter ASI Mohinder Singh, Investigating Officer also recorded statement Ex.PW-9/2 of Smt. Ujala. He made his endorsement Ex PW-9/3 below it and sent the same to police station through PHG Maghar Singh for the registration of the case on the basis of which a formal FIR Ex PW-9/4 U/s 307/34 IPC was recorded by SI Balwinder Singh. ASI Mohinder Singh then went to the place of occurrence and prepared the rough site plan Ex PW-9/5 with correct marginal notes. He also got the place of occurrence photographed. The Investigating Officer also took into possession a plastic-cane, a match-box, burnt pieces of clothes and papers, burnt bed-sheet and three seats of Sofa-set after converting into a parcel and sealing the same with his seal bearing impression 'MS' and burnt Soft-set and wooden table vide recovery memo Ex.PW-9/6 attested by PWs. He also recorded statements of the witnesses. Accused were arrested. Smt. Ujala subsequently expired in the hospital. On receipt of this information ASI Mohinder

Singh, Investigating Officer went there and prepared the Inquest report Ex.PW-2/9. The post-mortem on the deadbody was got performed. After the completion of formal investigation challan against the accused was presented in Court.”

Charges under Section 302 IPC (Section 304-B IPC in the alternative) were framed against all the accused to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Sham Lal as PW-1, Dr. Jasbir Singh as PW-2; Ramesh Kumar as PW-3; Raj Kumar as PW-4; Sunder Lal as PW-5; and Jagdish Lal as PW-6; Dr. Anil Verma as PW-8; ASI Mohinder Singh as PW-9; Anil Kumar Photographer as PW-10; Dr. Anil Verma as PW-11; HC Surinder Singh as PW-12; and Shri Raj Kumar Garg, Judicial Magistrate I Class, Abohar as PW-13.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. However, the accused did not lead any evidence in defence.

After hearing learned counsel for the parties and appreciating the material produced on record, learned trial Court convicted and sentenced the accused-appellants as noticed at the outset of this judgment.

Hence, the instant appeal.

At the very outset, learned State counsel has filed affidavit dated 26.04.2018, in the court, which is taken on record. Along with the affidavit, death certificate of appellant No.2-Chet Ram, has also been appended as Annexure R-1. The same is taken on record as Mark 'A'.

In this view of the matter, the instant appeal abates qua appellant No.2-Chet Ram.

Learned counsel for the appellants contends that the case is based on circumstantial evidence, however, the chain of circumstances is not complete so as to record conviction of the accused. In such cases, motive is pivotal to the success of the prosecution story, which is missing in the instant case. Merely a quarrel between the family members or husband and wife *per se*, cannot be described as motive behind such a heinous crime. Further contends that the dying declarations recorded by the police and the Magistrate, Exs.PW9/2 and PW13/A, respectively, do not contain any strong motive leading to the murder of the deceased. The material witnesses, namely, Ramesh Kumar, PW-3 and Raj Kumar, PW-4, real brothers of the deceased, as well as Sham Lal, PW-1, who was go-between in the marriage in question, did not support the case of the prosecution and were declared hostile. There is no mention of the kerosene oil in the post-mortem report prepared by Dr. Jasbir Singh, PW-2. Thus, the conviction has been wrongly based on the alleged dying declarations. Moreover, keeping in view the nature and seat of injuries suffered by the deceased, it is highly improbable that the deceased was fit to make a statement. Lastly, it is contended that ASI Mohinder Singh, PW-9 and Shri R.K. Garg, JMIC, PW-13, are discrepant about the fact whether the dying declarations bore the thumb impression or the foot impression of the deceased.

On the other hand, learned State counsel submits that the dying declarations are sufficient to indict the accused even if certain prosecution witnesses did not support its case.

Heard.

It is not in dispute that the instant case is based on circumstantial evidence. The most vital pieces of evidence brought on record by the prosecution are the two dying declarations of the deceased. The first dying declaration, Ex.PW-13/A was recorded by the Duty Magistrate, contents whereof, have been extracted hereinbelow:-

“Upon me, my mother in law, father-in-law and husband after connivance had pused kerosene oil and lit the fire, I was sitting. None else was in the house, we had a quarrel in the house on account of work. I had raised noise. There Mohallawalas had gathered. I became unconscious. The name of my mother-in-law is Bimla Devi.”

Thereafter, ASI Mohinder Singh, Investigating Officer also recorded statement, Ex.PW-9/2 of the deceased to the following effect:-

“Deposed that I am resident of above address and am doing domestic work. My marriage took place about 15 months ago and have one 4 months' old daughter Sunena. Today at about 5.30 PM due to domestic dispute in the room, my husband gave me beating by catching hold from hair and in the mean while my mother-in-law Bimla after bringing me with put other sprinkled kerosene oil upon me and my father-in-law Chet Ram put me on fire by litting match box stick owing to which my clothes and myself badly caught fire. Raising noise of “save” “save” I became unconscious. From there I do not know who brought and got me admitted in the hospital. I was lit on fire by my husband Joginder Kumar, mother-in-law Bimla and father-in-law Chet Ram with the intent to kill me. Today you have

recorded by statement which has been heard and is correct.”

Hon'ble the Supreme Court has time and again, laid down guiding principles to be borne in mind while appreciating a dying declaration. Reliance in this regard can be placed on a judgment passed by the apex Court in ***Kushal Rao vs The State Of Bombay, 1958 AIR 22, 1958 SCR 552***, wherein, it has been held as under:-

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid;

(1) 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;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much

higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the lying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.”

The deceased, in her statements, has clearly indicted the accused as the culprits of the crime. The statements were recorded by the competent

magistrate in the form of questions and answers after the deceased was

declared fit to make statement. Neither the treating doctor who recorded the fitness of the deceased to make statement, nor the Duty Magistrate can be said to have any axe to grind against the accused. Thus, the above dying declarations on record suffered by the deceased are truthful and cannot be said to be surrounded by any suspicious circumstances. That being so, the fact that three material witnesses, i.e. Ramesh Kumar, PW-3, Raj Kumar, PW-4 (real brothers of the deceased) and Sham Lal, PW-1 (go-between in the marriage in question), did not support the case of the prosecution and were declared hostile, pales into insignificance. Reference in this regard can be placed on the law laid down by Hon'ble the Supreme Court in ***Lakhan Vs. State of M.P., (2010) 8 SCC 514***, by holding thus:-

“3. 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 the deathbed 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 courts 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 always to 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. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the

declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

From the above discussion, this Court finds that learned trial Court has rightly recorded the judgment of conviction against the accused-appellants (appellant No.2 already died), which is hereby affirmed. Consequently, the instant appeal qua appellant Nos.1 and 3 is dismissed. They are stated to be on bail. Their bail bonds shall stand forfeited. They be taken into custody forthwith to suffer the remainder of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

20.11.2019

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No