

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-13-DBA-2003 (O&M)

Date of decision: 26.09.2019

State of Haryana

...Appellant

Versus

Saroj and others

...Respondents

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

Present: Mr. Vikrant Pamboo, DAG, Haryana
for the appellant.

Mr. Rajesh Khandelwal, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case, as per prosecution version, are that on 09.02.1999 on receipt of a V.T. message from General Hospital, Hisar regarding admission of Pummi wife of Pawan Kumar with burn injuries, a police party headed by SI Rohtash Singh went there. He obtained opinion of the attending doctor with regard to fitness of victim Pummi to make statement. After getting the opinion in affirmative, he requested Sh. Amarjit Singh, JMIC, Hisar who was Duty Magistrate on that day to record statement of Pummi. Sh. Amarjit Singh accordingly went to General Hospital, Hisar and recorded statement of Pummi, translated in English by learned trial Court of Addl. Session Judge (Adhoc) Hisar is as follows:-

“Dying declaration of Pummi w/o Pawan Kumar R/o Club

Jindal Colony, Hisar.

Q. What is your name?

Ans: My name is Pummi.

Q. What is your husband's name?

Ans. Pawan.

Q. What is your age?

Ans. I am 19 years of age.

Q. What is your address?

Ans. I live in Jindal Colony.

Q. How did you catch fire?

Ans. At first my Nanand and my mother in-law pulled my hair and my head was struck against the wall, thereafter my Nanand poured kerosene on me and my mother in-law set me ablaze. At that time, nobody of my both devars and my husband was there. My husband had gone to Narender in the neighbourhood.

Q. Who was harassing you for dowry?

Ans. My mother in-law was demanding dowry. My father in-law did not demand dowry. My devars and husband did not harass me. I do not know, who, has got me admitted in the hospital after I was burnt.

Q. When you were set on fire who was present at that time and who gave you beating?

Ans. My husband had beaten me one day prior to the occurrence and he had given me a fist blow. At the time of setting me ablaze, my both devars were not present. They came afterwards and they got me admitted in the hospital. I have been burnt by Saroj my Nanand and my mother in-law Krishna by pouring kerosene.

Q. Do you want to say anything else?

Ans. I do not want to say anything else.

RTI (Pummi)

*Sd/
JMIC"*

Copy of that statement was given to the police. SI Rohtash

Singh had appended his endorsement on copy of that statement and sent

ruqa to police station, on the basis of which, formal FIR was registered. Pummi had succumbed to the burn injuries on 11.02.1999 and on coming to know about it, on that very day at about 2.30 PM, the police party went there. The police officer concerned prepared the inquest report with regard to unnatural death of Pummi. He got the post mortem examination conducted on the dead body of Pummi by moving appropriate application. After post mortem examination, dead body of Pummi was handed over to her family members. The police party went to the spot and prepared rough site plan of the place of occurrence. The investigating officer recorded statements of witnesses. The accused Smt. Saroj, Krishna, Pawan and Raj Pal were formally arrested in this case.

After completion of investigation and other formalities, challan against the accused for offences under Sections 307, 304-B, 498-A read with Section 34 IPC was filed against such four accused in the Court of ACJM, Hisar. Such Magistrate supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C and then finding that offences under Sections 307 and 304-B IPC are exclusively triable by the Court of Sessions, vide detailed commitment order, committed the case to the Court of Sessions Judge, Hisar.

On receipt of the case, finding a prima facie case, charge for offences under Sections 304-B and 498-A IPC was framed against the accused, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution

examined the following witnesses:-

PW-1 Dr. B.L. Bagri had medico-legally examined Pummi having burn injuries, on 09.02.1999.

PW-2 Dr. Gopal Bhardwaj along with Dr. Himani Gupta had carried out post mortem examination on the dead body of Pummi on 11.02.1999.

PW-3 Sh. Amarjit Singh, JMIC, Hisar had recorded statement of Pummi in the hospital, where she was admitted and getting treatment for burn injuries.

PW-4 Bala Ram-father of the deceased had got his statement recorded

PW-5 S.I. Lal Singh had recorded formal FIR.

PW-6 S.I. Rohtash Singh had carried out the investigation in this case.

PW-7 Raju Draughtsman had prepared the scaled site plan of the place of occurrence.

The prosecution gave up PW Telu Ram, Mahabir and Ram Chander as having been won over by the accused.

After closure of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the allegations, contending that they were innocent and has been falsely involved in this case. Accused did not led any evidence in defence evidence.

The trial Court in order to come to just decision of the case had formulated following points for determination:-

1. When was Pummi married to Pawan and whether she died in an unnatural way within seven years of her marriage?
2. What is the value of the dying declaration of Pummi recorded by the Judicial Magistrate, the doctor, certifying her fitness, having not been examined as witness?
3. Was Pummi subjected to cruelty in connection with the demands of dowry soon before her death, if so, by whom?
4. Is the investigation defective or partisan, if so, in whose favour and to what effect?

After hearing arguments, learned trial Court Addl. Sessions Judge (adhoc) Hisar, vide judgment dated 04.07.2002, acquitted all the accused of the charge framed against them.

Said judgment left the prosecution aggrieved and it has approached this Court, by way of filing an application under Section 378 (3) Cr.P.C. seeking leave to appeal. Such leave to appeal qua Saroj, Krishna and Pawan was granted, whereas, with regard to Raj Pal, it was declined. Saroj, Krishna and Pawan were ordered to be smumoned throughailable warrants of arrest. They have appeared through counsel.

We have heard learned counsel for the parties besides going through the record.

In this case, marriage between Pummi and accused Pawan was performed in the year 1987, whereas the death of Pummi had taken place on 11.02.1999, otherwise than in normal circumstances i.e. within 7

years of her marriage, she had suffered burn injuries in her matrimonial home. Accused Pawan, her husband is son of Raj Pal and Krishna and brother of Saroj, all of them being his co-accused. The crucial thing to be seen is as to who is responsible for death of Pummi. PW-4 Bala Ram-father of the deceased did not support the prosecution story and rather, stated that Pummi got burn injuries on 09.02.1999 while preparing the meals as the stove had burst and she got fire. In that way, he tried to give clean chit to the accused but things are not as simple as Bala Ram-PW4 tried to project.

The crucial piece of evidence in this case is dying declaration of Pummi recorded by JMIC, Hisar. To a specific query, as to how she did catch fire, she stated that at first her Nanad (Saroj) and mother in-law (Krishna) pulled her hair and her head was struck against the wall. Thereafter, her nanad poured kerosene oil on her whereas mother in-law set her ablaze and at that time, both her devars (younger brothers of husband) and her husband were not there. She further stated that her husband had gone to the house of Narender in the neighbourhood. In response to the next question as to who was harassing her for dowry, Pummi stated that her mother in-law was demanding dowry, whereas, father in-law did not demand dowry and her devars and husband did not harass her. In that way, she has been very fair and truthful with regard to the factual position. Otherwise, if she wanted, she could very easily involve her husband, father in-law and younger brothers of her husband in this case. The dying declaration is a natural statement

and inspires confidence. It was wrongly rejected by the trial Court, giving unconvincing reasons. It is well recognized that a person who is on the verge of leaving this mortal world would not tell a lie and for that reason, it is said that truth sits upon lips of dying man. A person on death bed would not normally indulge in any manipulation or perpetrate falsehood. Such dying declaration of Pummi should have been acted upon instead of being rejected by the trial Court.

Learned Public Prosecutor has referred to judgment **State of Rajasthan Vs. Bhup Ram, 1997(1) RCR (Criminal) 760** by the Apex Court, wherein dealing with a murder case where the dying declaration had been recorded by Magistrate and according to the doctor and Magistrate, the deceased was conscious when she made the statement. It was observed that the Court was not justified to assume that deceased was not conscious.

Learned Public Prosecutor has further referred to judgment **Rati Ram Vs. State of Haryana, 2005(1) RCR (Criminal) 172** by a Division Bench of this Court, wherein dealing with a case where the dying declaration had been recorded by a Judicial Magistrate after obtaining certificate of doctor that the deceased was fit to make the statement, the fact that Magistrate did not give his own independent certificate about the state of mind of deceased was held to be a no ground to discard the statement, observing that if dying declaration has been recorded without certificate of mental fitness, it can be acted upon where other circumstances showed that deceased was in fit state of mind. In this

case, there is nothing to show that the deceased had been tutored by somebody when she made statement before the Magistrate or that she was not in a fit mental condition at that time. In this very judgment, it was observed that a Magistrate being a disinterested witness and a responsible officer having no animus against the accused or in any way interested for fabricating the dying declaration, question of doubting on the dying declaration recorded by the Magistrate should not arise.

Although, learned counsel for the accused trying to find faults with the dying declaration, contending that the certificate of doctor regarding fitness of patient Pummi is not there but as has been observed supra, absence of such certificate does not make much difference, keeping in view the fact that the Magistrate had recorded the statement of Pummi after obtaining opinion from the concerned doctor regarding her fitness to make statement. Another objection raised was that the Magistrate had asked Pummi a leading question as to who was harassing her for dowry to which she had replied. Again, these contentions are without any merit. The statement was recorded in question answer form and a Magistrate did not do anything wrong in asking that question, which was quite relevant and therefore, the statement cannot be doubted or treated with suspicion for that reason.

With regard to judgments referred to by learned counsel for the accused i.e. **Uka Ram Vs. State of Rajasthan, 2001(2) RCR (Criminal) 416** by the Apex Court, wherein it was observed that the principle on which the dying declarations are admitted in evidence, is

based upon the legal maxim '*Nemo moriturus praesumitur mentire*' i.e. a man will not meet his maker with a lie in his mouth but before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to make the statement and once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence. There cannot be any dispute with such proposition of law but here, it comes out that the deceased was in a fit state of mind to make the statement and she had made it voluntarily without any pressure from any quarter.

As regards the other judgment referred to by learned counsel for the accused i.e. **Kamal Kumar Vs. State, 1995 CriLJ 2204** by a Division Bench of Delhi High Court, the dying declaration in that case was not accepted for the reason that it was recorded by SDM, an Executive Magistrate, that too, not in the question answer form. In this case, it has been recorded by JMIC, a Judicial Magistrate and in a question answer form and before doing that, he had obtained opinion from the doctor that the patient was fit to make statement. Therefore, this authority is not of much help to the accused.

Another judgment, referred to by learned counsel for the accused i.e. **Arvind Singh Vs. State of Bihar, 2001(2) RCR (Criminal) 631** by the Apex Court also does not come to rescue of the accused, since, in that judgment, it was observed that dying declaration ought to be

treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. There cannot be any dispute with such proposition of law. The dying declaration recorded was not accepted for various reasons; firstly, it was made to mother few minutes before death and doctor's evidence posed a considerable doubt as to whether such a statement could be made half an hour before the death, whereas, nothing of that sort is there in the present case.

We find it proper and appropriate to comment regarding the way the case was handled by trial Court of Addl. Sessions Judge (Adhoc) Hisar. The trial judge without any basis came to the conclusion that the dying declaration of Pummi is not only vague in respect of demand of dowry but it is full of totally false allegations and improbabilities and in this case, demand of dowry was introduced by Pummi in reply to question of the Judicial Magistrate. The whole approach of this officer in deciding the case has been wrong and erratic. How did he jump to the conclusion that the dying declaration is full of false allegations and improbabilities is a matter of mystery. As already observed, the Judicial Magistrate had recorded the statement in question answer form and asking of this question could not be held to be unjustified.

Learned trial judge adopted a strange procedure, perhaps, he had decided to acquit the accused and then, he started searching reasons for the same. He introduced his own observations with regard to height of accused Saroj and that of Krishna and went on analyzing that Saroj as shorter in height even than Krishna. He had got her measured through

Naib Court, finding her height to be 5 feet. A very strange procedure was adopted by the judge and then observing the length of dead body of Pummi as given by Dr. Gopal Bhardwaj as 5' 7", stating that he failed to understand as to how a young woman of 5' 7" of height could not poured kerosene oil by a small sized woman of only 5 feet. According to him, a natural instinct of survival would make Pummi run to save her life, even if kerosene had been sprinkled on her. We refrain from using strong words with regard to the course adopted by the trial judge in finding faults with the dying declaration. From where, he had found that nanad had poured kerosene on head of the deceased. Kerosene oil is highly inflammable and if it is sprinkled on any cloth of a person which is set on fire, the fire spreads very fast. The whole business of measuring heights and carrying out comparison thereof, is something, which is not expected from a Judicial Officer of such rank, rather, it was a ridiculous act on his part. In para No.37, the trial judge admitted that on face of it, the dying declaration appears to be reasonable one and having been made by a person of fit statement of mind but then, goes on to say that it appears to him as a clever move by Pummi and she had intentionally tried to show some persons as innocent, while at the same time, falsely implicating her mother in-law and father in-law. He could not find reason for the same and as such observed that reason may only be known to Pummi herself. A person having severe burn injuries and on verge of death could not be that cunning and scheming as the trial judge is making out. But law is well settled that conviction can be based upon dying declaration alone.

There was no necessity of looking for any corroboration. Bala Ram-father of the deceased seems to have been won over by the accused and he did not toe the line of prosecution. When the deceased herself had stated in her statement that she was being harassed by her mother in-law in connection with demand of dowry that clinches the matter finally and father of the deceased Bala Ram not saying anything of that sort does not make any difference.

The trial judge has tried to find faults with the prosecution story, stating that Pummi had stated that Saroj and her mother in-law had first of all pulled her hair and then struck her against the wall, which could not be possible, keeping in view their respective heights. Again, these observations are reflective on non judicious approach. Why should Pummi be disbelieved in that regard, for that, no cogent or convincing reason has been explained. With extensive burn injuries suffered by her, no injury on her head or pulling of hair would possibly be seen.

All the necessary ingredients of offence under Section 304-B IPC are fulfilled with regard to accused Krishna, whereas, it is not so with regard to accused Saroj, who comes out to have actively participated in setting Pummi ablaze. Even, under Section 113-B of the Evidence Act, the Court can draw presumption that the accused had caused the dowry death. Pummi has not levelled any allegation that she was subjected to cruelty by Saroj in connection with demand of dowry, which is an essential ingredient of offence under Section 304-B IPC. Unfortunately, the trial Court had not framed charge under Section 302 IPC against the

accused in alternative. Therefore, with an essential ingredient of offence under Section 304-B IPC missing as regards Saroj, she cannot possibly be convicted for the said offence and as regards offence under Section 302 IPC, which is a graver offence, then under Section 304-B IPC, she cannot possibly be convicted for the said offence also.

However, as against accused Krishna, the judgment of acquittal passed by the trial Court is not sustainable. The prosecution had successfully proved its charge against her beyond a shadow of reasonable doubt for offences under Sections 304-B and 498-A IPC. Therefore, the appeal qua her is accepted; judgment of acquittal against her is set aside and she is convicted for offences under Sections 304-B and 498-A IPC. With regard to offence under Sections 304-B IPC, which carries minimum punishment of 07 years, which may be extended to imprisonment for life. Considering the fact that when she faced trial in the year 1999, she was aged about 43 years and now 20 years have elapsed from that date and she would be an old woman of around 63 years and she has faced a prolong trial, ends of justice would be adequately met, if she is sentenced to minimum imprisonment prescribed i.e. 07 years rigorous imprisonment. As regards offence under Sections 498-A IPC, she is sentenced to imprisonment for 03 years and to pay a fine of Rs.10,000/-, in default of payment of fine, to undergo RI for 06 months.

As regards accused Pawan and Raj Pal, the judgment of acquittal passed against them does not call for any interference.

Therefore, appeal is partly allowed; judgment dated 04.07.2002 passed by Addl. Sessions Judge (Adhoc) Hisar is set aside qua accused Krishna. She is convicted and sentenced as mentioned above, whereas, judgment of acquittal qua Saroj is maintained.

(JITENDRA CHAUHAN)
JUDGE

26.09.2019
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No