

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

CRA-D-87-DB-2003

Date of decision: 9.12.2019

Bahadur Singh

...Appellant

Versus

State of UT, Chandigarh

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vinod Ghai, Sr. Advocate with
Ms.Kanica Ahuja, Advocate for the appellant

Mr.Yashwant Singh Rathore, Addl.PP for UT, Chandigarh
with Ms.Sudha Singh, Advocate

JITENDRA CHAUHAN, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 13.11.2002/15.11.2002, vide which the appellant has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- for the offence punishable under Section 302 of the Indian Penal Code (for short 'IPC') and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

The facts necessary for adjudication of the matter as narrated in paras 2 & 3 of the impugned judgment are as under:-

“According to the allegations of the prosecution accused Bahadur Singh who was a student of Bachelor of Arts developed love affairs and sexual relations with Ms. Bharti. Ms. Bharti became pregnant due to her sexual

relations with accused Bahadur Singh. On 22.1.1998 Ms. Bharti was got admitted by his father Ajay Kumar in G.M. Nursing Home, Sector 34, Chandigarh due to labour pains. On the same date, she gave birth to a female child. Accused Bahadur Singh was got recorded as father of the female child in the hospital record and in the record maintained regarding the birth entries in the concerned department. As the female child was given birth by an unmarried girl, the custody of the female child was handed over to the Missionary Charity of Mother Teresa Home Sector 23, Chandigarh. As per the allegations of the prosecution, the parents of the accused Bahadur Singh did not agree to get married Bahadur Singh and Ms. Bharti with each other.

3. It is alleged that although Bahadur Singh and his parents were not willing for marriage of Bahadur Singh with Ms. Bharti but Bahadur Singh was willing to keep sexual relations with Ms. Bharti. In such type of tense atmosphere on 11.5.1998 Bahadur Singh came to the colony where Ms. Bharti used to live with her parents. He while standing near the house of sister Surjit a close relative of Bahadur Singh, started pointing mischievously towards Ms. Bharti. Ajay Kumar father of Ms. Bharti came down from his third floor house and requested Bahadur Singh to allow them to live peacefully. Bahadur Singh started beating Ajay Kumar and gave a kick blow on his chest. In the meantime Ms. Bharti and her mother Smt. Mamta also appeared at the spot. Ms. Bharti and Smt. Mamta were also beaten by Bahadur Singh in this scuffle. In the meantime Bachan Singh and Smt. Surinder Kaur parents of accused Bahadur Singh also appeared there and they also started

beating Ajay Kumar. Ajay Kumar and his wife were beaten by Surinder Kaur and Bachan Singh. Smt. Surinder Kaur snatched the hair of Smt. Mamta. Bachan Singh gave a teeth bite on the body of Ms. Bharti also. Thereafter, Ms. Bharti went to her house and accused Bahadur Singh also followed her. Accused Bahadur Singh poured kerosene oil on the body of Ms. Bharti and put her body on the fire with a lighter. Ms. Bharti sustained burn injuries. After this incident Smt. Surinder Kaur commented that it is better that she was burnt. Ms. Bharti was taken to General Hospital, Sector 16, Chandigarh for treatment. Statement of Ms. Bharti was recorded by Dr. Manuj Chhabra and thereafter at about 3.05 p.m. statement of Ms. Bharti was recorded by Sh. Jagdish Singh, the then learned Judicial Magistrate Ist Class, Chandigarh. Thereafter Ms. Bharti was shifted to PGI, Chandigarh where she remained admitted upto 22.5.1998 the date of her death. In the beginning on the basis of statement of Ms. Bharti recorded by SI Hari Singh the case was registered under Sections 452, 323, 307 IPC at Police Station West, Chandigarh. Ms. Bharti died due to burn injuries. Her postmortem examination was conducted on the same date. Clothes which Ms. Bharti was wearing at the time of burn injuries were handed over to the Investigating Officer. Salwar, Chunni, Saree, bed sheet and plastic cane containing kerosene oil were taken in police possession. Later on case was converted under Sections 302, 323, 452, 109 IPC.”

After investigation, challan was presented against the present appellant and co-accused Bachan Singh and Surinder Kaur. Accused Bahadur Singh was chargesheeted under Section 302 IPC, whereas accused

Bachan Singh and Surinder Kaur were charge sheeted under Section 302 read with Section 109 IPC, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as twenty witnesses, namely, Dr.Aditya Kumar Sharma as PW1, Dr.Pawan Gupta as PW2, Sister Kochuthresia as PW3, Dr.Bidhi Chand as PW4, Vijay Kumar as PW5, Ajay Kumar as PW6, Dr.Manuj Chhabra as PW7, Gulzar Massi as PW8, Mamta as PW9, Constable Rajpal as PW10, Constable Yash Pal as PW11, HC Ranbir Singh as PW12, Constable Kuldeep Singh as PW13, Nichhater Singh as PW14, Constable Pawan Kumar as PW15, SI Mewa Singh as PW16, K.M.Varshney as PW17, Mr.Jagnahar Singh, SDJM, Malout as PW18, Inspector Vijay Kumar as PW19 and SI Jai Parkash as PW20.

Thereafter, all the three accused were examined under Section 313 Cr.PC. and all the incriminating circumstances appearing in the prosecution evidence were put to them, to which they denied and claimed innocence. In defence, they examined Sanjeev Kumar as DW1, Anita Gulati as DW2, Ravinder Kumar as DW3, Harjit Singh as DW4, Harsh Vardhan as DW5, Dr.Deepak Midha as DW6, SP Sharma as DW7, Pal Singh as DW8, Satpal Singh as DW9, Dr.RS Sachdeva as DW10, Dr.Hirendra Birua as DW11, Ms Jassy Ahluwalia document expert as DW12, Dr. BR Sharma, Director CFSL Chandigarh as DW13, Sunil Kumar Data Record Keeper as DW14, Dr.Sunanda Mitra as DW15 and SI Ashwani Kumar as DW16.

After hearing learned counsel for both the parties and on perusal of evidence, learned trial Court convicted and sentenced accused-appellant Bahadur Singh for the offence and term as indicated at the outset in para 1 hereinabove whereas, Bachan Singh and Surinder Kaur were acquitted of the charge levelled against them as the prosecution had failed to prove its case beyond reasonable shadow of doubt against them.

Learned counsel for the appellant states that the objective circumstances clearly point to the factum that the deceased having set herself ablaze in her own home during day time, finding herself unable to bear her tragic circumstances and immoral life. The appellant or his family members had no access to the house of the deceased. The deceased had made four dying declarations and the same were tutored by the relatives of the deceased, namely, Vijay Kumar PW5 (Uncle), Ajay Kumar PW6 (father) and Mamta PW9 (Mother) since they had a very strong hostility and deep grudge against the appellant and his family. He further submits that the deceased committed suicide due to love affair with Bahadur Singh and when her parents started beating her she had taken the step to commit suicide. Learned counsel further submits that the story put forth by the prosecution is the result of due deliberations, consultations and embellishments. It is a case of multiple dying declarations and law on multiple dying declarations is well settled. All the dying declarations failed to inspire confidence of the Court and are suffering from effects of tutoring, conscious improvements, fabrication and inherent contradictions.

On the other hand, learned Additional Public Prosecutor for

UT, Chandigarh states that the trial Court has rightly observed the truthfulness of the three dying declarations that they are having the same crux and that there is no material contradiction in them as the name of convict Bahadur Singh has featured in all of them as the perpetrator of the crime. Learned counsel further contends that the stand taken by the learned counsel for the appellant that the deceased had committed suicide due to her love affair with appellant Bahadur Singh, when her parents started beating her, does not hold the ground because if she ever wanted to commit suicide, she would not have waited for four months after delivery. The deceased was a brave girl, who preferred to be an unwed mother. The evidence led by the prosecution is above board and has been rightly made the basis for the conviction of the appellant.

Heard.

In **Lakhan vs. State of M.P. (2010) 8 SCC 514**, Hon'ble the Supreme Court has held as under:-

"8. The doctrine of dying declaration is enshrined in the legal maxim "Nemomoriturus praesumitur mentire," which means "a man will not meet his maker with a lie in his mouth". The doctrine of Dying Declaration is enshrined in Section 32 of the Indian Evidence Act, 1872 (hereinafter called as, Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such

statements themselves are relevant facts in certain cases.

9. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinize 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. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity.”

The dying declarations Ex.PG, Ex.PO/3 & Ex.DF, of Bharti, since deceased, read as under:-

Ex.PG:-

Statement of Miss Bharti D/o Sh. Ajay Kumar age about 20 years, r/o H.No.1324-B, Sector 15-B, Chandigarh

Stated that I lived with my parents on the above noted address and I appear in the examination of B.A.1st as private candidate. Prior to this we resided in H.No.13, General Hospital, Sector 16, Chandigarh. In

front of our house Sh Bahadur Singh s/o Sh Bachan Singh living in H.No.14 G.H. Sector 16 with his parents and family and I fell in love with him. By taking wrong advantage of my love he had made illicit relation with me and made me a mother of child. After this my parents tried their best efforts for my marriage with Bahadur Singh, but his father was not agreed and then I stopped meeting with Bahadur Singh but he continued to chase me. About two months earlier my father fed up by these acts, he vacated that house and got allotted house in Sector 15 Hospital houses. We started living there in Sector 15 house and today about 1 PM Bahadur Singh came in the sister S.P house who lived in our locality and standing with the son of S.P. and starting pointing out at our house and started mischievous. My father who was at home at that time came out of the house and asked to stop these activities and ask him to go away from there. Consequently Bahadur Singh started quarreling with my father, on hearing this I reached there in running condition and separated my father from Bahadur Singh. Then parents of Bahadur Singh reached there and started quarreling with my parents. Bahadur Singh and his parents beat my parents and father of Bahadur Singh also bite me with his teeth. Then I went to my house and bahadur Singh also barged into my house and he picked kerosene oil which is kept there and he poured kerosene oil on me and set me ablaze. At this time Bahadur Singh parents were quarreling with my parents at lower floor, and when I was burning with fire and starting crying, Bahadur singh ran away from there. My parents sprinkled water on me and put of fire, at this Bahadur's mother remarked that it had happened good

that she is burnt. My parents rolled me with cloths and taken to the hospital. Bahadur Singh ruined my life as I didn't act according to his wishes and due to this Bahadur Singh tried to kill me by setting me ablaze. Sd/ Bharti.

Ex.PO/3:-

Statement of Miss Bharti D/o Sh.Ajay Kumar aged 20 years household R/o House No.1324 Sector 15, Chandigarh.

Q. How this occurrence happened?

Ans. I had love affairs with Bahadur Singh s/o Bachan Singh, who is residing in House NO.14, Sector 14. Due to love he spoiled my life. I become mother of a child.

My father asked to the father of Bahadur Singh to get myself be married with Bahadur Singh. Then his father refused. Bahadur Singh insist me. Bahadur Singh shifted his work from Sector 16 to Sector 15. Today he came to the house of his friend with the pretext. My father identified his motorcyclce. The house of Bahadur Singh's friend Amit is in front of our house whose father's name and house No. I do not know, when he came out my father stopped Bahadur singh that his parent will come. Bahadur started grappling with my father. I separated my father from Bahadur Singh. Then parents of Bahadur Singh came. They also started beating to my parents. I separated my father from them (from their clutches). Father of Bahadur gave teeth bite to me I went inside the house. Then Bahadur came, he took the kerosene oil from my house and poured (sprinkled) on me, blow lighter through paper, lit up fire on me.

After that my mother came and she poured water on me.

When Bahadur poured kerosene oil and lit up me (burnt me) at that time my parents were quarreling with the parents of Bahadur.

Q. Have you any doubt on any person besides Bahadur Singh and his parents?

Ans. Besides them, none else has any hand to burnt me.

Q. Have you say anything else?

Ans. I have been burnt by Bahadur Singh.

The vernacular of Ex.DF:-

Police informed to contact the Magistrate to record the dying declaration. Keeping in view the condition of the pt. DD taken by the EMO on duty.

I loved him (his name Bahadur Singh s/o Bachan Singh, H.No.14, Staff quarter GH 16). He spoiled my life. He has made me mother of a child. When he was told to marry with her, he refused. Today his motor cycle was standing in my neighborhood. I made a phone call to his father to come here and see that he has come here and thereafter, he came at my house and quarrelled with my parents. Thereafter, he poured kerosene and set me ablaze. Sd/- Bharti

(certified that the patient was conscious throughout the statement. Sd/- Dr.Manuj, EMO 2.00 pm dt. 11/5/98)

The theme and common thread of all the dying declarations is that it is the accused and the accused alone is responsible for the death in question. Minor improvements cannot be made the basis to disbelieve the truthful and vivid account of the manner in which the gory incident took place.

Learned trial Court has rightly placed implicit reliance on the

dying declarations i.e. Ex.DF, Ex.PO/3, Ex.PG , wherein the deceased had categorically stated that the appellant had caused her to become unmarried mother and later on, refused to marry her but made efforts to maintain sexual relation with her, due to which, she and her family were compelled to shift from their previous residence.

The deceased had suffered 98% burns and learned trial Court has rightly observed that a person having 100% burn injuries can be capable of recording statement and in fact it depends on the mental attitude and tolerant capacity of a particular person. PW4 Dr.Bidhi Chand stated that the statement of Bharti, since deceased Ex.PG was recorded in his presence after obtaining his opinion Ex.PG/1 to this effect that she was fit to make her statement. He stated that she remained conscious throughout her statement recorded by SI Hari Kumar. He further stated that he had given his opinion regarding the fitness of the patient to record her statement before the statement was recorded by the Magistrate Ex.PO/3 at about 3.05 p.m. There is sufficient evidence on the file that the deceased was conscious and fit to record her statement and the certificate of fitness (Ex.PG/1) given by the doctor (PW4 Dr.Bidhi Chand) vouchsafe this fact.

In her statement Ex.PG and Ex.PO/3, the deceased had stated that Bahadur Singh, the accused made her unwedded mother and later on refused to marry her despite the efforts by her parents. Thereafter, she stopped meeting Bahadur Singh but he did not stop making efforts to meet her. She stated that on 11.5.1998 at about 1.00 pm Bahadur Singh came to the house of his sister Surjit and started pointing mischievously towards

Ms.Bharti. Her father Ajay Kumar requested Bahadur Singh not to do such type of acts. On this Bahadur Singh started beating her father. Soon after she also reached there and rescued her father from Bahadur Singh. The parents of Bahadur Singh also reached there and they started quarelling with her parents. Father of Bahadur Singh gave a teeth bite on her body. Thereafter, she went to her house. Bahadur Singh also followed her. He poured kerosene oil on her body and put her body on fire with a lighter. Thereafter, Bahadur Singh and his parents escaped from there. Her mother extinguished the fire by pouring water on her body. She was taken to hospital.

Learned trial Court found that the main difference in these statements Ex.DF, Ex.PO/3 and Ex.PG of the deceased is that in the statement before the medical officer, the deceased had not stated that Bachan Singh struck a tooth bite on her body or that Surinder Kaur stated that it is better that Bharti is burnt and in the statement Ex.PO/3 recorded before JMIC, she had stated that there was a tooth bite on her body by Bachan Singh but did not say that Surinder Kaur stated that it is better that Bharti is burnt and these two facts were added by the deceased in her statement Ex.PG recorded by SI Hari Kumar. These statements were recorded while she was struggling for life and as such constitute the circumstances preceding the occurrence, however, she has given the details of the circumstances culminating into her death.

The statement of the deceased stands corroborated by his father and mother. There is no substance in the arguments of the learned

counsel for the appellant that the deceased committed suicide due to her love affair with Bahadur Singh and because of that, her parents started beating her because the deceased was not such a girl, who could have committed suicide due to the stigma as she was an unwed mother. She dared to remain in the same house and in the neighbourhood of the appellant till the delivery of the child. She also got recorded the name of the father of the child as Bahadur Singh. She deposed against the appellant because he had committed a heinous crime and after that set her ablaze.

In Ramakant Mishra vs. State of UP, (2015) 3 SCC 503

Hon'ble the apex court observed as under:

"9. Definition of this legal concept found in Black's Law Dictionary (5th Edition) justifies reproduction:

"Dying Declarations - Statements made by a person who is lying at the point of death, and is conscious of his approaching death, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the

defendant. Shepard v. U.S., Kan., 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196.

Generally, the admissibility of such declarations is limited to use in prosecutions for homicide; but is admissible on behalf of accused as well as for prosecution. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death is not excluded by the hearsay rule. Fed. Evid.R. 804 (b) (2).

10. When a person makes a statement while being aware of the prospect that his death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he may have made earlier, when death was not lurking around, indicating the cause of his death. That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his door. That is why a Dying Declaration, to conform to this unique specie, should have been made when death was in the contemplation of the person making the statement/declaration."

In Balak Ram vs. State of U.P. AIR 1974 SC 2165, the

question arose as to whether a dying declaration recorded by a higher officer can be discarded in case of multiple dying declarations. The Court held as under:-

"The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil services have no platform to controvert allegations, howsoever grave and unfounded. It is therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

In Sher Singh and another vs. State of Punjab AIR 2008 SC

1426, Hon'ble the Supreme Court has observed as under:-

"14. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would 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 should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the

deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, 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 mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the 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 without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise.

15. In the present case, the first dying declaration was recorded on 18.7.1994 by ASI Hakim Singh (DW-1). The victim did not name any of the accused persons and said that it was a case of an accident. However, in the statement before the court, Hakim Singh (DW-1) specifically deposed that he noted that the declarant was under pressure and at the time of recording of the dying declaration, her mother- in-law was present with her. In the subsequent dying declaration recorded by the Executive Magistrate Rajiv Prashar (PW 7) on 20.7.1994, she stated that she was taken to the hospital

by the accused only on the condition that she would make a wrong statement. This was reiterated by her in her oral dying declaration and also in the written dying declaration recorded by SI Arvind Puri (PW 8) on 22.7.1994. The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was under threat and duress that she would be admitted in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural to us. Although it does not contain the certificate of the doctor that she was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue. The oral dying declaration made to the uncle is consistent with the second dying declaration implicating the accused persons stating about their involvement in the commission of crime. The third dying declaration recorded by the SI on the direction of his superior officer is consistent with the second dying declaration and the oral dying declaration made to her uncle though with some minor inconsistencies. The third dying declaration was recorded after the doctor certified that she was in a fit state of mind to give the statement.”

In the instant case too, the dying declarations of the deceased

prosecution is fully established and there is no perversity or illegality in the impugned judgment passed by the learned trial Court. Consequently, the present appeal sans merit and is hereby dismissed.

As accused appellant, namely, Bahadur Singh is on bail, his bail bonds and surety bonds stand cancelled and he be taken into custody to serve the remaining part of the sentence. A copy of the judgment be sent to the concerned Chief Judicial Magistrate for necessary compliance.

[JITENDRA CHAUHAN]
JUDGE

[ARCHANA PURI]
JUDGE

9.12.2019
gsv

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