

Item No. 458

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

**CRA-D-934-DB-2002 (O&M)
Date of decision : 24.07.2019**

Jarnail Singh @ Jaharila

..... Appellant

versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present : Mr. R.N. Kush, Advocate
for the appellant.

Ms. Tanisha Peshawaria, D.A.G., Haryana.

AJAY TEWARI, J. (Oral)

1. This appeal is directed against the judgment and order dated 25.10.2002 passed by learned Sessions Judge, Hisar in Sessions Case No.23/2000 by which the accused-appellant had been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for three months more.

2. The case of the prosecution in short is that on 16.02.2000 the deceased Smt. Santra was brought to the Civil Hospital, Hisar at about 4.25 P.M. having suffered 70% burn injuries. Ruqa having sent to the police, ASI Bhim Singh (PW10) reached the General Hospital, Hisar and collected MLR (Ex.P6) and Ruqa (Ex.P7). Thereafter, Dr. Bhupinder

Singh (PW2) was asked to give his opinion whether the victim was fit to give her statement and he certified the same. Later on, the statement/dying declaration of the deceased Smt. Santra (Ex.P3) was recorded in the presence of Sh. Virender Malik, JMIC, Hisar, the then Duty Magistrate (PW1). As per the dying declaration, the appellant became angry and took out a lamp containing kerosene oil and poured on the victim and set her on fire with a match stick. Ultimately, the victim died after 7 days i.e. on 23.02.2000. It was thereafter that the trial was commenced against the appellant. Having been convicted, as mentioned above the present appeal has been filed.

3. Counsel for the appellant has argued that as per the dying declaration (Ex.P3) there were two witnesses who arrived at the scene shortly after the burning, one was Shanti, her neighbour (PW9) and one was her nephew Dalbir. As per the counsel, Shanti, Dalbir and even the husband of the deceased Subhash Chand (PW7) turned hostile and did not support the prosecution case and in these circumstances, conviction on the sole basis of dying declaration is illegal.

4. Learned Deputy Advocate General has taken us through the contents of the dying declaration. The same is clear, unequivocal and direct. The deceased had explained how the appellant came to her house to demand his money and told her to sell her rehri as he was to clear his debt and instalments from the income. On her refusal, he became enraged, picked up a diya containing kerosene oil lying under a trunk and sprinkled it on her and set her on fire with match stick. As soon as her neighbour Shanti (PW9) came the appellant threw a pitcher of water on her and escaped. As per the learned Deputy Advocate General, it is trite

to say that a conviction can be based on the sole basis of a dying declaration, provided it appears to be truthful and credible.

5. We have going through the dying declaration, the statement of the learned Judicial Magistrate (PW1) who recorded her statement and the statement of the doctor (PW2) who certified her fitness and signed at the foot of the dying declaration and was also present through the time when the dying declaration was recorded. On a cumulative consideration of all three, we have no hesitation to say that the dying declaration meets all standards and the same is true, voluntary and direct and a conviction can be based on it, as argued by the learned Deputy Advocate General. One can not also lose sight of the fact that the person who is so badly burnt would not have any interest to falsely implicate the appellant and in fact this is the ideological basis for accepting dying declarations.

6. Faced with this, the counsel for the appellant has argued that even if the dying declaration is taken to be correct, it shows that the appellant had gone to demand his money from the deceased. In a moment of madness, he sprinkled kerosene oil on her and set her on fire but since he immediately thereafter threw a pitcher of water on her and extinguished the fire, it is clear that he had no intention of killing her.

7. Learned Deputy Advocate General has countered this argument by saying that the act of throwing water on the deceased was not an act of contrition or an act born out of the motive for saving the life of the deceased, but the appellant became afraid when he saw Shanti (PW9), the neighbour, coming in and threw water on the appellant to rather save himself from the consequences of his act.

8. In our considered opinion, the arguments of the learned

Deputy Advocate General carry more weight. Once the dying declaration is accepted as being a correct narration of facts, the act of the appellant in throwing water on the deceased seems to be more an act of self-preserving than an act to save the deceased.

9. The totality of the evidence proved by the prosecution in the present case, in our considered view, squarely establishes the involvement of the accused-appellant in the commission of the crime. The net result of the above discussion would lead us to the conclusion that the conviction of the accused under Section 302 of the Indian Penal Code has been rightly made by the learned trial Court. We, therefore, affirm the aforesaid conviction as well as the sentence imposed and dismiss the appeal.

10. The accused-appellant is on bail. He shall be taken into custody forthwith to serve out the remaining part of the sentence imposed on him.

11. Since the main case has been dismissed, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 24, 2019
ashish

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No