

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

CRA-D No. 779-DB of 2013 (O&M)

Reserved on : 15.3.2019

Date of decision : 20.3.2019

Gurtej Singh and others Appellants

versus

State of Punjab ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Anil Kshetarpal**

Present Mr. P. S. Hundal, Senior Advocate with
Mr. Premjit Singh Hundal, Advocate, for the appellants.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal has been filed by appellants Gurtej Singh, Jeet Singh and Surjit Kaur, against the judgment and order dated 29.4.2013, passed by learned Additional Sessions Judge, SAS Nagar (Mohali) in Sessions Case No. 49 dated 3.9.2010. They were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC. They were convicted and sentenced under Section 302 IPC to undergo life imprisonment and to pay fine of ₹ 7,000/- each and in default of payment of fine, to undergo further simple imprisonment for a period of six months.

2. The case of the prosecution in a nutshell is that on 2.5.2010, complainant Gurdial Singh (PW3) made a statement before ASI Jagroop Singh (PW8) to the effect that his daughters Kuldeep Kaur and Kamaljit Kaur were married to Gurdhian Singh and Gurtej Singh (appellant no.1)

both sons of Jeet Singh (appellant no.2). They were residing together. His daughter Kamaljit Kaur was issueless. Due to this, her husband Gurtej Singh, mother-in-law Surjit Kaur and father-in-law Jeet Singh used to taunt her. On the intervening night of 26/27.4.2010, she was given beatings by her husband and parents-in-law. Accused Surjit Kaur caught hold of her from her arms and accused Jeet Singh slapped her, whereas her husband Gurtej Singh set her clothes on fire, due to which, she suffered severe burn injuries. She was admitted in hospital and during her treatment she was being threatened by her-in-laws that she will be killed if she reported the matter to the police against them. However, when the complainant met her alone, she narrated the entire story to him. On 3.5.2010, statement of Kamaljit Kaur was recorded by the Duty Magistrate at Government Medical College and Hospital, Sector-32, Chandigarh. She died on 4.5.2010. Thereafter, FIR was registered. The post-mortem examination was conducted. The investigation was completed and challan was put up after completion of all the cordal formalities.

3. The prosecution examined 8 witnesses in support of its case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, the deceased had accidentally caught fire from gas stove. They also examined witnesses in defence. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Amandeep Singh conducted the post-mortem examination on the dead-body of Kamaljit Kaur. He noticed the following injuries on the body of the deceased:-

1. Epidermal to dermo-epidermal infected burns present all over the body except head, upper half of the face, side and back of neck, part of front of chest, right (front of) shoulder and outer aspect of right upper arm, back of chest, part of back of abdomen, part of both palms and right sole of foot. Singeing of body hair present. Yellowish green foul smelling pus was present on burnt areas. Superficial slough separation was seen at places on burnt areas.
2. All the internal organs were congested. The stomach containing 10 cc of bluish liquid and walls NAD.”

The cause of death was septicaemic shock. Burnt area was about 75%. The probable time that elapsed between injuries and death was 1-2 weeks and between death and post-mortem examination was 12-24 hours. PW1 Dr. Amandeep Singh proved post-mortem report, Ex.PA.

7. PW2 Dr. Mukesh Goel deposed that Kamaljit Kaur was admitted in Government Medical College and Hospital, Sector-32, Chandigarh, due to burn injuries. He declared her dead at about 12.15 P.M. vide report, Ex.PW2/A.

8. PW3 Gurdial Singh is father of deceased Kamaljit Kaur. He deposed that his daughter Kamaljit Kaur was married to appellant Gurtej Singh about two years prior to her death. She was issueless. On the

intervening night of 26/27.4.2010, all the three accused had beaten her. Appellants Surjit Kaur and Jeet Singh had beaten her up and thereafter Jeet Singh had caught hold of her, whereas appellant Gurtej Singh had set her on fire. After that maternal uncle of deceased Ranjit Singh, who happened to be present in the house, extinguished the fire and removed Kamaljit Kaur to the hospital at Dera Bassi. She was referred to GMCH, Sector-32, Chandigarh. When he came to know about the incident, he also reached there, where appellant Surjit Kaur met him. She told that only hands and feet of Kamaljit Kaur had suffered burn injuries. Then he came back. On 2.5.2010, he came to know from PW4 Ranjit Singh that his daughter Kamaljit Kaur had suffered severe burn injuries. He again went to the hospital and met his daughter, who told him the true story of her burns. She told that the accused were taunting her and had also beaten her and set her on fire, as she was not bearing any child. She had told him that she had also made a statement to the police which she had given under threat exerted at her by her husband Gurtej Singh on the pretext that in case she made any statement to the police then she would be eliminated. She further told him that under threat of Gurtej Singh she made the statement to the police that her husband was truck driver and had asked her to prepare tea for him and in that process from a candle she caught fire in her clothes and suffered burn injuries. She had given the statement, Ex. PW8/A, under threat. His daughter died on 4.5.2010. He identified her dead body. In his cross examination, he admitted that he had not made any complaint to any authority with regard to the harassing of her daughter. He met his daughter firstly on 27.4.2010 at about 10/11 AM in the hospital.

9. PW4 Ranjit Singh testified that his nieces Kuldeep Kaur and Kamaljit Kaur were married to Gurdhian Singh and Gurtej Singh, respectively. On 26.4.2010, he received a phone call from Kamaljit Kaur that she was being beaten by her husband, mother-in-law and father-in-law. He went there and advised them to behave properly. He stayed there. He slept there on the roof of the house. At about 12 midnight, he heard the voice of Kamaljit Kaur, '*mainu bachao, mainu bachao*'. Then he came down stairs and found Kamaljit Kaur lying on the ground. Accused Surjit Kaur, Jeet Singh and Gurtej Singh were standing nearby her. She was unconscious at that time. Kamaljit Kaur had suffered severe burn injuries on her body. She told him that her mother-in-law Surjit Kaur had beaten her, her father-in-law had caught hold of her and her husband had burnt her. In his cross-examination he deposed that at that time accused Gurtej Singh was with him. The deceased was lying on the floor with burn injuries when he reached there. She was unconscious at that time. She regained consciousness after about 10-15 minutes.

10. PW7 Ranjeev Kumar, deposed that on 3.5.2010 he was posted as Judicial Magistrate 1st Class at Chandigarh. On that day he was the Duty Magistrate. He received directions from the learned CJM, Chandigarh to visit GMCH, Sector-32, Chandigarh, to record the statement of Kamaljit Kaur, aged about 22 years, who was admitted due to burn injuries. He consulted the Duty Doctor about the fitness of the injured. Vide endorsement, Ex. PW7/A, the duty doctor, Dr. Vaneet vide his endorsement, Ex. PW7/B, declared the patient conscious and fit to make statement. The said endorsement was done by the doctor in his presence. Thereafter, he recorded the statement of Kamaljit Kaur word by word as narrated to him by

her without any addition or alteration. The said statement is Ex. PW7/C. The statement was read over to the patient and the same was admitted to be correct by her. The patient put her thumb mark on it. The patient remained fit and conscious throughout the period her statement was recorded. A certificate to this effect was issued by Dr. Vaneet is Ex. PW7/D. He made his endorsement Ex. PW7/E. The statement was sealed in a parcel with his seal and thereafter it was sent to the learned CJM, Chandigarh. In his cross-examination he categorically deposed that only doctor was present at the time of recording of statement, besides injured and he himself.

11. PW8 ASI Jagroop Singh deposed that on 28.4.2010 he received one ruqa from GMCH, Sector-32, Chandigarh. He went to the hospital. He moved an application, Ex. PW6/A, to inquire about the fitness of the injured Kamaljit Kaur to make statement. The duty doctor declared her fit to make statement. Thereafter, he recorded the statement of Kamaljit Kaur vide Ex. PW8/A, which was read over to her. She had not leveled any allegation against anybody. On 2.5.2010, Gurdial Singh father of Kamaljit Kaur got recorded his statement, Ex. PW3/A. He went to the spot and prepared rough site plan, Ex. PW8/E. Kamaljit Kaur died on 4.5.2010. He prepared inquest report Ex. PC. All the accused were arrested on 5.6.2010.

12. The accused have also examined witnesses in their defence. DW1 Sukhwinder Singh deposed that entry no. 7154 was made pertaining to immersion of mortal remains of Mrs. Kamaljit Kaur wife of Gurtej Singh on 7.5.2010. In his cross-examination, he admitted that the immersion of mortal remains was not done in his presence.

13. DW2 Dr. Sanjeev Gupta, Shree Ram Hospital, Dera Bassi, deposed that in the intervening night of 26/27.4.2010 at about 11.30 P.M. to

12.00 midnight, one lady was brought to her clinic. She was in burnt condition. She was brought in a car. He examined her in the car and had referred her to GMCH, Sector-32, Chandigarh. He has admitted in his cross-examination that he had not maintained any writing in this regard.

14. Swaran Singh appeared as DW3. He deposed that the cremation of Kamaljit Kaur was performed in village Kakrali.

15. DW4 Gurdhian Singh deposed that sister of deceased Kamaljit Kaur, Kuldeep Kaur is married to him. Accused Gurtej Singh is his real brother. On the day of occurrence, he was present in the house. When they reached at the place of occurrence, Kamaljit Kaur was burning. They put the blanket on her to extinguish the fire. Thereafter, she was taken to Hospital at Dera Bassi from where she was referred to GMCH, Sector-32, Chandigarh. In his cross-examination, he admitted that when he reached at the place of occurrence, Kamaljit Kaur was already burning and her husband and other family members were also present there.

16. As per the prosecution case, Kamaljit Kaur was admitted in the Hospital at Chandigarh with burn injuries. She succumbed to the injuries on 4.5.2010. In her dying declaration, she levelled allegations against her husband, mother-in-law and father-in-law. In his deposition, PW4 Ranjit Singh has categorically deposed that on 26.4.2010, he received a telephonic call from Kamaljit Kaur that she was being beaten by her husband, mother-in-law and father-in-law. He went there at about 7.00 P.M. He stayed there. At about 12 midnight, he heard the cries of her niece Kamaljit Kaur, '*mainu bachao, mainu bachao*'. He came down and found Kamaljit Kaur lying on the ground. The accused were standing nearby her. She was unconscious at that time. She had suffered severe burn injuries. She told him the manner in

which she was being beaten by the accused and set on fire.

17. Father of the deceased, Gurdial Singh appeared as PW3. He categorically deposed that his daughter Kamaljit Kaur was beaten by the accused. He deposed that when he came to know about the incident, he went to the hospital, where appellant Surjit Kaur met him, who told him that only hands and feet of Kamaljit Kaur had suffered burn injuries. Thereafter, he came to know from PW4 Ranjit Singh that his daughter Kamaljit Kaur had suffered severe burn injuries. He met his daughter, who told him the manner in which she was beaten and set her on fire. She also told that earlier statement was given under threat exerted on her by her husband Gurtej Singh.

18. Learned counsel appearing for the appellants placed strong reliance upon statement, Ex.PW8/A. In this statement, she deposed that she was married to accused Gurtej Singh. Her husband was truck driver. On the day of incident, he had asked her to prepare tea for him and in that process from a candle she caught fire and suffered burn injuries. Her husband Gurtej Singh, brother-in-law Gurdhian Singh and sister-in-law Kuldeep Kaur, extinguished the fire by putting the blanket on her. She was taken to Civil Hospital, Dera Bassi for treatment. Thereafter she was referred to Chandigarh. This statement was recorded by PW8 ASI Jagroop Singh. Further it has come in the statement of PW3 Gurdial Singh that she had told him that she had given the statement, Ex. PW8/A, under threat exerted by her husband Gurtej Singh. This statement was recorded on 28.4.2010. Thereafter, her statement was recorded by PW7 Ranjeev Kumar, Judicial Magistrate 1st Class at Chandigarh on 3.5.2010. He deposed that he recorded the statement of Kamaljit Kaur, who was admitted in the hospital

due to burn injuries. He consulted the duty doctor about her fitness. The doctor declared her conscious and fit to make statement. The said endorsement was done by the doctor in his presence. Thereafter, he recorded the statement of Kamaljit Kaur (Ex. PW7/C) word by word as narrated to him by her without any addition or alteration. The same was read over to her, which was admitted to be correct by her. She put her thumb impression on that. She remained fit and conscious throughout the period her statement was recorded. A certificate (Ex. PW7/D) to this effect was issued by Dr. Vaneet. PW7 Ranjeev Kumar also made his endorsement, Ex. PW7/E, on it. The deceased has categorically stated that she made the statement with her own consent. She deposed that on the day of occurrence at 12.30 A. M., her husband had beaten her on the pretext that she could not bear a baby. Her mother-in-law dragged her from her hairs and slapped her and dragged her inside the room by pulling her hairs. Her husband poured kerosene oil on her. After igniting match stick, he set her on fire. She became unconscious.

19. The statement (Ex. PW7/C) had been recorded in accordance with law. It was voluntarily in nature. PW7 Ranjeev Kumar, who is Judicial Magistrate, has categorically deposed that he recorded the statement of Kamaljit Kaur word by word as narrated by her without any addition or alteration. In his cross-examination, he stated that only doctor was present at the time of recording of statement, besides injured and him. The statement was sealed in a parcel with seal and thereafter it was sent to the learned CJM, Chandigarh. The statement, thus, cannot be doubted. The earlier statement made by her was due to threat and pressure.

20. Their Lordships of Hon'ble the Supreme Court in Ram Chander and others vs State of Punjab 1998 (9) Supreme Court Cases 303, have held

that when first dying declaration was recorded by ASI wherein deceased alleged to have caught fire accidentally and second dying declaration was recorded by the Magistrate, which was free from any infirmities; and the third oral dying declaration made to her brother by the deceased, the oral and the one recorded by the Magistrate can be relied upon. Their Lordships have held as under:-

“6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in

respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the offence under Sections 498A and 304B Indian Penal Code could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was

sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted. Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.”

21. Their Lordships of Hon'ble the Supreme Court in Harjit Kaur vs State of Punjab 1999 (6) Supreme Court Cases 545, have held that dying declaration recorded by police wherein the deceased stated that she caught fire by accident and second dying declaration recorded by SDM wherein she stated that her husband and his parents set her on fire, second dying declaration can be believed, which appeared voluntary and true. Their Lordships have held as under:-

“6. It was further submitted by the learned counsel that the statement of Parminder Kaur was not recorded by the witness in question and answer form. The evidence of the witness is that she narrated the incident and therefore the Dying Declaration is not in the question-answer form. It was then contended by the learned counsel that the Dying Declaration bears her thumb mark but according to the medical evidence, the skin over the two thumbs was burnt and, therefore, the S.D.M. could not have obtained

her thumb impression on it. Whatever impression could be taken was taken by the S.D.M. The medical evidence in this case does not disclose that she could not have put her thumb mark on the Dying Declaration. We fail to appreciate how this circumstance can create any doubt regarding the evidence of this witness or genuineness of the Dying Declaration. P.W. 7 was an independent witness and was holding a high position and had no reason to do anything which was not proper or correct. Except a bare suggestion made to him that the Dying Declaration was manufactured by him after her death, we do not find anything in his cross-examination as would create any doubt regarding truthfulness of what this witness has deposed. We fully agree with the finding recorded by the courts below that the Dying Declaration was voluntarily made by Parminder Kaur and that it was correctly recorded by P.W.-7.

7. It was then contended by the learned counsel that this Dying Declaration should not be accepted as true because in her first Dying Declaration made to the Police officer on 30.4.92, Parminder Kaur has stated that she had received burns as a result of an accident and that no one else was responsible for the time. Both the courts below after considering this inconsistency have though it fit to rely upon the second Dying Declaration. It has been rightly held as an attempt on her part to save her husband and the in-laws. The circumstance clearly indicate that she was not a free person then. The reasons given by the trial Court and the High Court for not considering the first Dying Declaration as voluntary and true are quite convincing and we see no reason to differ from them. Therefore, the second Dying Declaration cannot be regarded as untrue merely because it is contrary to her statement made earlier. What she has stated in the second

Dying Declaration, appears to be more probable and natural. If she had really received injuries at 2.00 a.m., because of bursting of stove then her in-laws would have taken her to the hospital immediately and would not have waited till 7.30 a.m.. They would have informed the parents of Parminder Kaur as early as possible. They were not informed for two days in which hospital their daughter was admitted. All the circumstances indicate that the first Dying Declaration made before the Police Officer was not a correct one. As we find that the appellants have been rightly convicted, both these appeals are dismissed.”

22. Their Lordships of Hon'ble the Supreme Court in Laxman vs State of Maharashtra 2002 (6) SCC 710, summed up the law in regard to dying declaration as under:-

“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 death bed 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 court 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 to

always 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 look 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 in 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 is 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.

4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the court which persuaded the bench to make the reference to the Constitution Bench. In *Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh* 1999 (7) SCC 695 the dying declaration in question had been recorded by a judicial magistrate and the magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. Doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the court also had found serious lacunae and ultimately did not accept the dying declaration recorded by the magistrate. In the latter decision of this court in *Koli Chunilal Savji & Another vs. State of Gujarat* 1999 (9) SCC 562, it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The court

relied upon the earlier decision. In *Ravi Chander vs. State of Punjab* 1998 (9) SCC 303 wherein it had been observed that for not examining by the doctor the dying declaration recorded by the executive magistrate and the dying declaration orally made need not be doubted. The magistrate being a disinterested witness and is a responsible officer and there being no circumstances or material to suspect that the magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the magistrate does not arise.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjeet Kaur VS. State of Punjab* 1999(6) SCC 545 case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in *Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh* 1999 (7) SCC 695 to the effect that "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind

especially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Therefore, the judgment of this court in Paparambaka Rosamma & Ors. vs. State of Andhra Pradesh 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji & Another vs. State of Gujarat 1999 (9) SCC 562 case.”

23. Their Lordships of Hon'ble the Supreme Court in Sayarabano @ Sultanabegum vs State of Maharashtra 2007 (12) SCC 562, have held that the earlier statement was made by the deceased stating that she hit a burning kerosene oil lamp by accident and caught fire. This declaration was made when she was surrounded by her family members. Second declaration was made on the next day when her family members had come. She stated that her mother-in-law poured kerosene oil and set her on fire. The accused was convicted on the basis of second dying declaration alone, even though it was inconsistent to earlier dying declaration. Relevant paragraphs therefrom are extracted below:-

“12. The learned counsel for the appellant contended that both the Courts have committed an error of law in relying upon the second dying declaration. It was contended that the first dying declaration was correct and the deceased had stated true facts in the said declaration. It was also stated that after parents of the deceased had come to the hospital, they had persuaded the deceased to involve and implicate the appellant and that is how the second dying declaration was recorded which could not have been relied upon. It was also submitted that no

motive was established by the prosecution inasmuch as only thing stated by the deceased in her dying declaration was that she had got up late in the morning and could not go for Namaz. For such a trivial matter, no person would kill another person. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the Trial Court and confirmed by the High Court.

13. The Public Prosecutor for the State, on the other hand, supported the order of conviction and sentence passed by the Trial Court and confirmed by the High Court. He submitted that the conduct of the deceased Halimabi was natural. She was believed by both the Courts. It was obvious that on August 13, 1998, she was pressurised by her mother-in-law for not giving name of her assailant. Moreover, she was surrounded by her in-laws and nobody from her parental family was present. It was only after her family members had come that she got courage to narrate true facts and that is how on August 14, 1998, second dying declaration was given by her which inspired confidence and both the Courts believed it. It was also submitted that from the evidence of parents of the deceased, it was clearly proved that she was ill-treated and was frequently beaten by the appellant. Instances were also cited which went to show that the appellant was cruel to the deceased. The counsel also stated that both the Courts were right in observing that Special Judicial Magistrate was an independent witness and when on the basis of his evidence, a finding of guilt of the appellant was recorded, no interference is called for. He, therefore, submitted that the appeal be dismissed.

14. Having heard the learned counsel for the parties, in our opinion, the Courts below were right in convicting

the appellant. From the evidence, it is proved that on August 13, 1998, after the incident took place, the family members of the appellant took the deceased to the hospital. The record revealed that before few days of the incident, the deceased had been brought to her marital home. Before that, she was beaten by the appellant. She left marital home and went to parental home. It is also in the evidence that the deceased was beaten by her mother-in-law and two instances had been cited. Obviously, therefore, on August 13, 1998, when the deceased was taken to hospital by her mother-in-law appellant, who insisted not to give the name of any of the family members of the appellant, the deceased had no courage to name her. In the circumstances, she stated that it was merely an accident. But, after her parents came, she could state true facts, the Special Judicial Magistrate was called again and the second dying declaration was recorded. From the evidence of PW1- Dr. Kishan-Medical Officer, it was clear that total burns were about 57%. It is also in evidence of PW6- Dr. Kishore that the deceased was "in a position to make statement". He, therefore, accompanied Special Judicial Magistrate to the ward of Halimabi and her dying declaration was recorded. He also stated that he was present throughout till the statement of Halimabi was recorded by the Special Judicial Magistrate and when it was over, he put endorsement on the paper given by Special Judicial Magistrate. The Trial Court as well as the High Court considered both the dying declarations of the deceased Halimabi and both the Courts held the second dying declaration true and inspiring confidence having disclosed true facts so far as the incident was concerned. Ill-treatment towards the deceased was clearly established and completely proved. The evidence of

PW2-father as well as PW3- mother of the deceased was clinching on the point. Both the Courts were right in holding that nothing could be elicited from the cross-examination of those witnesses. It, therefore, cannot successfully be contended that the only cause of throwing burning lamp on the deceased by the appellant was getting up late in the morning by the deceased and not performing Namaz. Even prior to that incident, the appellant used to beat the deceased and on the fateful day, it was an excuse to kill the daughter-in-law by the mother-in-law.

15. xx xx xx

16. In our opinion, criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. In our view, both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased Halimabi. In the light of the evidence of parents of the deceased (PW2 and PW3), Dr. Kishore (PW6) and Special Judicial Magistrate (PW5), it cannot be said that the Courts below had committed any error and the conviction deserves to be set aside.”

24. In Vikas and others vs State of Haryana 2008 (2) Supreme Court Cases 516, their Lordships of Hon'ble the Supreme Court have summarized the admissibility of dying declaration in evidence. Their Lordships have held as under:-

“36. The Court, referring to earlier case law, summed up principles governing dying declaration as under:

(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.

37. One of the principles formulated by this Court in Khushal Rao was that where a dying declaration is recorded by a competent Magistrate, it would stand on a “much higher footing”. We are in respectful agreement with the above view. In our judgment, this is also based on ordinary course of human conduct. A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the Court.”

25. According to the post-mortem report, the cause of death was septicaemic shock. The burns were about 75%. The probable time duration between injuries and death was 1-2 weeks and between death and post-mortem examination was 12-24 hours.

26. There is no inordinate delay in lodging the FIR. The incident had taken place on the midnight of 26/27.4.2010. First attempt was to get the injured treated. She was referred to Chandigarh, where her statement was recorded by PW8 ASI Jagroop Singh and thereafter her statement was recorded by PW7 Ranjeev Kumar.

27. Learned counsel for the appellants has also relied upon outlines of human body. According to him, there was no burn injuries on the back of deceased Kamaljit Kaur. However, as per the statement of Dr. Amandeep Singh, there were about 75% burns.

28. In view of the above discussion, the prosecution has proved the case against the appellants beyond reasonable doubt that the deceased was beaten by them, thereafter, she was put on fire by her husband Gurtej Singh.

There was no occasion for her to make tea at midnight. The dying declaration is genuine, which inspire confidence and the same is duly corroborated by the statement of PW4 Ranjit Singh, who was present in the house at that time. All of them had common intention to kill her. Accordingly, the appeal is dismissed affirming the judgment and order under challenge.

29. The sentence of imprisonment of appellants Jeet Singh and Surjit Kaur was suspended vide orders dated 30.7.2014 and 27.1.2017, respectively. Their bail bonds are cancelled. The police is directed to take them in custody forthwith.

(Rajiv Sharma)
Judge

20.3.2019
vs

(Anil Kshetarpal)
Judge

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