

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

CRA-D-298-DB-2003

Date of decision: 2.3.2020

Gutti Ram @ Gattu

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.Mandeep Kaushik, Legal Aid Counsel
for the appellant

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 16.12.2002 passed by learned trial Court, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- 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 six months, whereas, co-accused Gordhan was given the benefit of doubt and was acquitted.

The facts necessary for adjudication of the matter as narrated in para 1 of the impugned judgment are as under:-

“On 11.1.2001 Sumitra Devi wife of Sheo Lal, a resident of Ding was admitted in General Hospital at Sirsa with

burn injuries. At the request of the police a Judicial Magistrate went to the hospital to record her dying declaration. Sumitra Devi disclosed in her statement that accused Gattu, who is her brother-in-law, had set her ablaze after sprinkling Kerosene. However, Sumitra Devi succumbed to the injuries on 23.1.2001. Bharat Singh son of the deceased and Lal Chand, who is also related to her, made their statements before the police under Section 161 Cr.P.C. in which they alleged that, in fact, Sumitra Devi had been murdered by accused Gattu and co-accused Gordhan. It was also disclosed by them before the police that Gordhan had illicit relations with Sumitra Devi. Accused Gattu @ Gutti Ram was arrested. After completion of investigation, the police presented challan against him in the Court. However, co-accused Gordhan was found innocent by the police.”

After investigation, challan was presented against the present appellant. Co-accused Gordhan was later on summoned by the Court under Section 319 Cr.P.C. to face trial alongwith the main accused. Both the accused were chargesheeted under Section 302 IPC read with Section 34 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, Lal Chand as PW1, Bharat Singh as PW2, Dr.Vijay Kumar Bhargav as PW3, Dr.Vinod Kumar Doodi, Medical Officer, PHC, Ding as PW4, Sh.HS Dahiya, JMIC as PW5, Radhey Sham, Draftsman as PW6, ASI Dilbag Singh as PW7, Dalip Singh as PW8, Dr.NK Mittal, Medical Officer, General Hospital, Sirsa as PW9, ASI Balbir Singh as PW10, SI Hawa Singh as PW11, Dr.Dale Singh, Medical Officer,

General Hospital, Sirsa as PW12 and Inspector Daya Nand as PW13.

When both the accused were examined under Section 313 Cr.P.C., they denied all the incriminating circumstances appearing in the prosecution evidence against them, and claimed innocence. They deposed that they have been falsely implicated. In defence, they examined Chander Singh as DW1.

After hearing learned counsel for both the parties and on perusal of evidence, learned trial Court convicted and sentenced accused-appellant Gutti Ram @ Gattu for the offence and term as indicated at the outset whereas, Gordhan was acquitted of the charge levelled against him as the prosecution had failed to prove its case beyond reasonable shadow of doubt against him.

Feeling dissatisfied, appellant Gutti Ram @ Gattu has filed the present appeal.

Heard.

It is pertinent to mention here that co-accused Gordhan was summoned on an application moved by the prosecution under Section 319 Cr.P.C. Learned trial Court while deciding the matter observed that in the dying declaration recorded by the Magistrate, the deceased had named one person i.e. Gutti Ram alone. PW1 Lal Chand and PW2 Bharat Singh made material improvement in their respective statements by testifying about the involvement of Gordhan also alongwith accused Gutti Ram in the commission of the alleged offence, whereas in the statements of these two persons recorded under Section 161 Cr.P.C. by the police, there was no

mention of the name of accused Gordhan. After the conclusion of trial, learned trial Court found that the prosecution has failed to prove the charge against co-accused Gordhan.

PW12 Dr.Dale Singh, Medical Officer, General Hospital, Sirsa
deposed as under:-

*“I was posted as Medical Officer, G.H.Sirsa on 22.1.2001. At 9.25 PM I medico legally examined Smt. Sumitra wife of Sheo Dhan aged 30 yeas, female, r/o Ding and found following injuries on her person:-
Patient was conscious. Blood pressure and pulse were not recordable due to burns. Smell of kerosene all over the body was present. Burnt clothes were attached to the body at places of abdomen and limbs. Local examination; there was superficial to deep burns all over the body except lower part of both legs. All places blister formation was there and skin was peeled off at places. Burns were about 95% on her body which were kept under observation. Probable duration was within 24 hours.”*

The dying declaration of deceased Sumitra i.e. Ex.PD/3
recorded by PW5 Mr.HS Dahiya, the then JMIC, Sirsa, reads as under:-

Q.1. How did you catch fire?

Ans. I was set ablaze by Gattu my brother-in-law (Jeth).

Q. What substance was used in the incident?

Ans. By pouring kerosene.

RO & AC

Sd/ JMIC/Sirsa

RTI /- Sumitra

22.1.2001

In his deposition PW5 Mr.HS Dahiya, JMIC stated that vide
endorsement Ex.PD/2, the Medical Officer declared the patient fit to make

statement. After satisfying himself that Smt. Sumitra voluntarily wanted to make statement, he recorded her statement which is Ex.PD/3.

In pursuance of written request Ex.PD made by the police, Mr.HS Dahiya, Judicial Magistrate reached to the hospital and recorded the statement of Sumitra Devi. PW 12 Dr.Dale Singh, doctor on duty in the hospital has stated that he remained present during the recording of the statement of the patient by the Magistrate. He further clarified that she remained fit during the course of her statement. Ex.PD/2 is the endorsement to this effect made by him. No doubt, after making a statement in part, she had severe pain and was unable to make any further deposition but it does not mean that she was not able to make statement.

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 "Nemo moriturus 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.”

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 the instant case, the dying declaration of the deceased is worthy of credence as the same was recorded by the Judicial Magistrate, in the presence of the doctor, who had given fitness certificate. Thus, the case of the prosecution is fully established and there is no perversity or illegality