

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

**Crl. Appeal No.D-688-DB of 2003
Date of Decision: January 29, 2020**

Satnam Singh alias Gama

...Appellant

VERSUS

State of Punjab

...Respondent

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

Present: Mr.Priyawrat Prashar, Amicus Curiae
for the appellant.

Mr.Bhupinder Beniwal, Asstt. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction and order of sentence dated 16.08.2003 passed by learned Sessions Judge, Hoshiarpur, vide which appellant was held guilty and convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

The background facts in nutshell are, as follows:-

That, on 08.01.2003, in pursuance of receipt of the ruqa from Civil Hospital, Tanda, with regard to the admission of Naresh Bala in burnt condition, ASI Surinder Kumar had gone to the Civil Hospital, Tanda,

wherefrom, he came to know about Naresh Bala to have been referred to

Civil Hospital, Hoshiarpur. Soon thereafter, ASI Surinder Kumar reached Civil Hospital, Hoshiarpur, where he met Karam Chand, father of the victim, who had apprised him that his daughter is unconscious and she will give statement on the next day. On 10.01.2003, ASI Surinder Kumar, again had gone to the Civil Hospital, Hoshiarpur and after obtaining opinion qua fitness from the concerned doctor, ASI Surinder Kumar had recorded statement of Naresh Bala to the effect that 'she was married with accused Satnam Singh about six years back and her husband is a labourer; that she has one daughter and one son. Her husband consumes liquor, on account of which, there used to remain dispute between them. One day prior to yesterday (while making reference to 08.01.2003), she stated that her husband had poured kerosene oil upon her and set her ablaze. She has got recorded her statement and legal action be initiated against Satnam Singh.

The aforesaid statement was read over and explained to Naresh Bala. After admitting the contents of the same to be correct, she had signed the statement in Hindi. While making his endorsement on the said statement, ASI Surinder Kumar sent the same to the police station for registration of a case and thereupon, formal FIR under Section 307 IPC was registered against Satnam Singh alias Gama by ASI Mann Singh.

During the course of investigation, accused Satnam Singh alias Gama was arrested on 10.01.2003. On 16.01.2003, Naresh Bala had succumbed to her burn injuries at Civil Hospital, Hoshiarpur. Qua the same, ruqa was received by the Investigating Officer. Head Constable Kewal Krishan along with other police officials had reached there and post-mortem examination was got conducted on 17.01.2003. The offence was

converted into Section 302 IPC.

On completion of the investigation, accused Satnam Singh alias Gama was sent up to face trial, for commission of offence under Section 302 IPC.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 9 witnesses, besides adducing documentary evidence.

PW-1 Dr.Amit Sharma has deposed about ASI Surinder Kumar to have moved application on 09.01.2003 to obtain opinion regarding fitness for recording statement of Naresh Bala. He also deposed that he declared her fit to make statement vide endorsement Ex.PA/1 on 10.01.2003. He further deposed that he had declared her fit to make statement at 11.30 a.m. In his presence, ASI Surinder Kumar had recorded statement of Naresh Bala. After recording of the statement, Naresh Bala signed the same and he again certified at 11.50 a.m., that she remained fit during her statement before the police. It also bears his signatures. Ex.PB is the statement and his endorsement is Ex.PB/1. He also deposed that he had given treatment and bed head ticket is Ex.PC. The patient was admitted on 08.01.2003 and expired at 10.00 p.m. on 16.01.2003.

PW-2 Karam Chand, is father of the deceased. Besides deposing about the relationship with the deceased, he also deposed about the factum of marriage of Naresh Bala with Satnam Singh alias Gama about

~~six~~ years back. He also deposed that about 3-4 years after the marriage, the

relations between deceased and her husband Satnam Singh remained cordial. Thereafter, accused used to give beatings to the deceased under the influence of liquor. He also deposed that on 09.01.2003, in pursuance of the telephonic call made by the accused about Naresh Bala to have sustained injuries and asking them to come to Civil Hospital, Hoshiarpur, where she was lying admitted, they reached Civil Hospital, Hoshiarpur, on the same day at 4.00 p.m. Upon reaching the hospital, they found her unconscious due to burn injuries. On 10.01.2003, police had come to the hospital. In his presence, Naresh Bala made statement Ex.PB. He also deposed that she made statement before the police that when she was present in the room, her husband poured kerosene oil on her body and set her ablaze. Furthermore, she told that she cannot tell the reason as to why her husband poured kerosene oil on her body and set her on fire. The deceased has also told him (this witness) that her husband had doused her body with kerosene oil with the intention to kill her. He also deposed that he signed inquest proceedings Ex.PD and he signed his statement in the inquest proceedings. His statement was recorded by the police.

PW-3 Dr.Amarjit Singh has deposed about himself to be posted in Civil Hospital, Tanda on 08.01.2003 and on that day, he had sent a chit Ex.PD/1 to SHO, P.S. Tanda, regarding burn case of Naresh Bala wife of Satnam Singh at 9.20 p.m. She was admitted in the hospital by him after giving emergency treatment to the patient and then she was referred to Civil Hospital, Hoshiarpur, for further treatment and management vide Ex.PE. On the same day, application Ex.PF was moved, whether Naresh Bala was fit to make statement and vide endorsement Ex.PF/1, he had stated that

patient was referred to Civil Hospital, Hoshiarpur, at 10.00 p.m. on

08.01.2003. The bed head ticket is Ex.PG.

PW-4 Head Constable Kulwinder Singh and PW-9 Constable Baljit Singh, have tendered into evidence their affidavits Ex.PH and Ex.PO respectively, which is formal evidence.

PW-5 ASI Surinder Kumar Sharma, is the Investigating Officer of the present case. He has deposed about having gone to the Civil Hospital, Tanda, on 08.01.2003 in pursuance of receipt of chit Ex.PD/1, for the purpose of recording of statement of Naresh Bala, wherefrom, he came to know about Naresh Bala to have already been referred to Civil Hospital, Hoshiarpur. He also deposed that on 09.01.2003, he had gone to Civil Hospital, Hoshiarpur. Dr.Amit Sharma, who was dealing with this case, was not available and there, he met father of Naresh Bala, who told that his daughter was incapable to make statement on that day. He also deposed that on 10.01.2003, he had again gone to the Civil Hospital, Hoshiarpur and moved application **Ex.PA** and the doctor, vide endorsement **Ex.PA/1**, declared Naresh Bala to be fit to make statement, whereupon, he recorded statement of Naresh Bala **Ex.PB**. His endorsement upon the said statement is **Ex.PB/1**, on the basis whereof, FIR **Ex.PJ** was recorded. He also deposed about having effected arrest of accused Satnam Singh. He also deposed about conducting of further investigation of the case.

PW-6 Dr.Mrs.Rajinder Raj, has deposed about conducting of post-mortem examination on the dead body of Naresh Bala on 17.01.2003 at 1.40 p.m. along with Dr.Gurdeep Singh Kapoor. She has deposed about the detail of the injuries, found on the dead body, which are as herein given:-

superior illiac spine, upper half of back of chest, both arms and hands and palms. Anterior aspect of right thigh and left knee joint on anterior aspect. The burns were almost 50%. There was formation of puss, yellowish in colour all over the burns, singing of frontal hair of forehead seen, line of demarcation present between healthy and burnt area seen. All the organs were healthy. Frothy secretion was seen in larynx and trachea.”

She also deposed that cause of death in this case was due to septicemia with shock due to burns which is sufficient to cause death in ordinary course of nature. She proved the carbon copy of the post-mortem report **Ex.PL** and pictorial diagram **Ex.PL/1**. The request for conducting post-mortem examination is **Ex.PM** and endorsement upon the same, regarding the post-mortem is **Ex.PM/1**. Inquest report is **Ex.PD**.

PW-7 Kuldip Kumar, Draftsman, has deposed about having prepared scaled site plan **Ex.PN**, at the instance of Karam Chand, father of Naresh Bala deceased.

PW-8 Head Constable Kewal Krishan has deposed that on 17.01.2003, in pursuance of receipt of wireless message, he had collected chit **Ex.PD/1** and thereafter, went to Civil Hospital, Hoshiarpur, where he prepared inquest report **Ex.PD**. He also recorded statement of Karam Chand, who identified the dead body and recorded statement of brother of deceased. He moved request **Ex.PM** for conducting of the post-mortem examination on the dead body.

Thereafter, learned Public Prosecutor closed the evidence.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to accused Satnam Singh alias Gama in his statement under Section 313 Cr.P.C.

However, the accused denied those allegations and pleaded innocence. The

plea so taken by the accused, for the convenience of discussion, is reproduced as herein given:-

“I am innocent. I have been falsely implicated in this case. I have good and cordial relations with my wife Naresh Bala. I have never taken liquor nor I gave beatings to her. I did not sprinkle kerosene oil on her nor set her on fire. Actually, it was the accidental fire. There was no electric connection in my house and I used to burn kerosene oil lamp (Deeva). On 8.1.2003 the kerosene lamp was lying/placed in the Allah of wall in my house. My wife was lying there on the bed adjoining to that wall and when she was in process of covering her body with the shawl, the same came in contact with the burning kerosene oil lamp and as a result of which she caught fire. At that time, I was present in the courtyard of my house and I rushed to extinguish the same and meanwhile, my neighbourer Manjit Singh, Arjan Singh and some others also came there and the fire was controlled. At that time also, my wife told Arjan and Manjit Singh that she has got accidental burns and then she was removed to Civil Hospital, Tanda and then to Civil Hospital, Hoshiarpur where she died. I have absolutely no ill-will or demand nor I subjected her to beatings etc. The alleged dying declaration of Naresh Bala is the tutored version after delay of 3 days.

In defence, accused examined DW-1 Arjan Dass, his neighbour.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment of conviction and order of sentence dated 16.08.2003, accused-appellant was held guilty, convicted and sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant-convict has filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as

learned State counsel and have perused the record.

At the very outset, learned counsel for the appellant has assiduously submitted that the learned trial Court has not appraised the evidence brought on record, in correct perspective. In fact, from the evidence, so coming forth, the innocence of the appellant/convict Satnam Singh alias Gama is amply established. In fact, he had facilitated in extending medical treatment to the deceased as he had taken her to the hospital. Moreover, there was no motive against him to murder Naresh Bala. Also, there was no smell of kerosene oil while conducting post-mortem examination of the dead body, which itself counters the claim of the prosecution. As such, the prosecution has miserably failed to establish the guilt of the accused, beyond shadow of doubt. Thus, summing up his arguments, learned counsel for the appellant has made a prayer for acceptance of the appeal while setting aside the judgment of conviction and to acquit the appellant.

On the contrary, learned State counsel has resisted the claim of the appellant, tooth and nail. He submits that learned trial Court has rightly considered the dying declaration Ex.PB of deceased Naresh Bala, which she had made before the Police Officer, after her fitness to get recorded the statement was given by the concerned doctor. Also, it is pointed out that motive, as such, for setting her ablaze by Satnam Singh alias Gama has been mentioned in Ex.PB, as there often used to remain dispute between them on account of intake of liquor by Satnam Singh alias Gama. He has also pointed that in Ex.PB, the victim has categorically stated about legal action to be taken against her husband, who had set her ablaze. It is also pointed

been rightly made sole basis for conviction of the accused. As such, a prayer has been made for the dismissal of the appeal.

The sole basis to record conviction of the accused is the statement made by Naresh Bala to the Investigating Officer on 10.01.2003, which has been proved as **Ex.PB**. This is dying declaration of Naresh Bala. Now, it is assiduously submitted that this statement **Ex.PB**, is tutored statement as it has not been made, soon after the admission of the deceased in the hospital, therefore, it has to be discarded and same does not establish incriminating role of the accused. However, it is pertinent to mention that as already detailed aforesaid, PW-6 Dr.Rajinder Raj, has very categorically stated about extent of burn injuries found on the dead body of Naresh Bala and it is stated that her burns were almost 50%. Further, the cause of death in this case has been opined to be due to septicemia with shock due to burns, which is sufficient to cause death in ordinary course of nature. The extensive burn injuries suffered by the deceased, soon after the taking place of the occurrence, ought to be the reason to have not been able to make statement earlier. In fact, PW-2 Karam Chand, who is father of the deceased, has categorically stated that her daughter was not in a position to make statement. Even, PW-1 Dr.Amit Sharma has deposed about ASI Surinder Kumar to have moved the application before him for recording statement on Naresh Bala on 09.01.2003 and again, the said application was put up before him on the next day, whereupon, he declared her fit to make statement vide endorsement **Ex.PA/1**. Keeping in view the extensive burn injuries, so suffered by Naresh Bala, it becomes quite obvious that she was not in a position to make the statement and if otherwise, it was not so, the

09.01.2003. It was only on 10.01.2003, the concerned doctor had opined Naresh Bala to be fit to make statement and therefore, delay if any, having occurred in the interregnum period, cannot stated to be utilized for tutoring Naresh Bala to make statement.

No doubt, as submitted by learned counsel for the appellant that this statement was made to the police officer and that Magistrate was not so called, but however, even if it be so, it cannot be outrightly rejected. There is no bar, as such, that statement got recorded by the police officer, is not to be believed. At this juncture, in the given circumstances, it is important to make reference to the decision of the Hon'ble Supreme Court rendered in '**Nallapati Sivaiah vs. Sub-Divisional Officer, Guntur, A.P., 2007(4) RCR (Criminal) 439**, vis-a-vis evidentiary value of dying declaration and therein, it was held as herein given:-

“18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth. This court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

19. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is a thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be last to give untruth as he stands before his creator. There is a legal maxim "Nemo

Moriturous Praesumitur Mentire" meaning, that a man will not meet his maker with lie in his mouth. Woodroffe and Amir Ali, in their treatise on Evidence Act state : "when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with."

In this backdrop, the Court has to consider the circumstances of each case, while appraising the dying declaration. However, it is settled principle of law that dying declaration is substantive evidence and the order of conviction can be safely recorded, on the basis of dying declaration, if it inspires confidence.

In the case in hand, as already detailed in the earlier portion of the judgment, PW-1 Dr.Amit Sharma has categorically stated about the application Ex.PA to have been filed and therein, on 10.01.2003 at 11.30 a.m., he had categorically stated the patient to be fit to make statement to police. His endorsement on the application is Ex.PA/1. Perusal of Ex.PA/1 clearly shows that it was observed by the concerned doctor that **Pt. is conscious oriented in time, place and person and is therefore fit to make a statement to police'**. Upon receipt of this fitness, the statement of Naresh Bala was got recorded, which is **Ex.PB**. Also, after conclusion of the statement, admitting the contents to be correct, Naresh Bala had signed the said statement. It was also attested by ASI Surinder Kumar. Not only this, even Dr.Amit Sharma, at the tail-end of the statement, had made an endorsement at 11.50 a.m. on 10.01.2003, thereby stating that **Pt. remained fit during recording of statement'**. Thus, it becomes evident that Naresh Bala was in a fit mental condition, when she made statement Ex.PB. Therefore, there is no reason as to why said statement should not be

Gama. It is pertinent to mention that in statement Ex.PB, the deceased herself, besides stating about the factum of her marriage with Satnam Singh alias Gama, had stated about herself having two children; one daughter and one son. Furthermore, she has categorically stated that her husband consumes liquor, on account of which, there used to remain dispute between them. Further, she had also stated that day before yesterday (while making reference to 08.01.2003), when she was present in her room, her husband poured kerosene oil upon her and lit matchstick and set her ablaze. Furthermore, she has specifically mentioned in Ex.PB of her (Naresh Bala) getting recorded statement and she had also stated to initiate legal action against Satnam Singh alias Gama.

As already observed aforesaid, the deceased, at the time of making of statement, has been concluded to be in fit state of mind to make the statement Ex.PB. The dying declaration has got sanctity, as nobody would wish to die with lie on his/her lips, more particularly, when a woman has children to take care of. In the light of the same, the statement Ex.PB made by Naresh Bala, is most natural, thereby spelling out the role of Satnam Singh alias Gama and therefore, reliance can be placed upon the same, to nail appellant Satnam Singh alias Gama.

During the course of arguments, much emphasis has been laid upon accused-appellant to have taken the deceased to hospital and on the basis thereof, it is submitted by learned counsel for the appellant that conduct of the appellant was bonafide. It is submitted by learned counsel for the appellant that it was accidental fire and only on this account, it was so mentioned in the history given in the hospital record. However, the aforesaid submission is not tenable. Even though, accused may have taken

the deceased to the hospital for treatment but this solely does not establish his innocence. It is pertinent to mention that when such an occurrence is caused, even the wrong doer gets panic and sometimes, only to create his defence, such bonafides are put forth to waylaid the investigating agency. Otherwise also, it is pertinent to mention that in the bed head ticket, the word is used '**alleged**' before the words '**history of accidental burns**'. There is nothing, as such, coming forth about this history to have been narrated by deceased herself. Considering the extent of burn injuries to be 50%, the injured may not have been in a position to narrate to the doctor about manner of burns caused and precisely, on this account, if the history was narrated, it was only to be given by the accused, who was husband of the deceased and if so given by him, it cannot be expected that he would have given the history of burns having been caused at his instance and he would not have implicated himself, while narrating about the act (wrong) to the concerned doctor.

Besides the aforesaid, learned counsel for the appellant submitted that there was no smell of kerosene oil coming from the clothing of the deceased or from her body and this falsifies the claim of the prosecution. However, the aforesaid submission is not tenable. Learned trial Court has appraised the plea, so taken by the accused in his statement under Section 313 Cr.P.C. about the kerosene lamp lying in the niche (*aalah*) of wall in his house, which came in contact with the shawl of deceased, while she was in process of covering the body, caught fire and she sustained burn injuries. Keeping in view the plea, so taken by the accused in his statement under Section 313 Cr.P.C., it has been rightly held that it is

the version of the accused himself that she had sustained burn injures.

However, the manner of sustaining of injuries, as such, has not been duly established by the accused. DW-1 Arjan Dass, neighbour of the accused, has been examined, who stated that when he was attracted to the house of accused on hearing *raula*, he found accused to be extinguishing fire and then deceased had apprised him about the lamp lying on the shelf by her side, to have come in contact with her shawl, which she was arranging to cover her head and thus, she caught fire. However, it is pertinent to mention that even though, there are stated to be other neighbours also coming to the spot namely Joga, Gurmel, Gulazi Ram etc. but none of them has been examined. Moreover, Arjan Dass, for the first time, had narrated about this manner of the occurrence, only when he was examined in defence. He had not bothered to narrate about catching of fire by the deceased in this manner, to the police, at any stage of time. Thus, the version, so now put forth, through the mouth of this witness, appears to be an after-thought, only with a purpose to render help to Satnam Singh alias Gama, his neighbour. In the light of the same, the plea of the accused, so taken in the statement under Section 313 Cr.P.C., about the manner of causing of the occurrence, does not stand established.

In view of the same, it is pertinent to mention that occurrence in question, had taken place at night time on 08.01.2003 and Naresh Bala died in hospital on 16.01.2003 at 10.00 p.m. Considering the duration of taking place of the occurrence and the injured having succumbed to her burn injuries, it is quite obvious that smell of kerosene oil would have vanished and therefore, no smell of kerosene oil being there, at the time of conducting of the post-mortem examination, does not carry any weight.

Considering the evidence in entirety, learned trial Court has

rightly reached the conclusion that the prosecution has successfully established the guilt of the accused beyond shadow of doubt. As such, the impugned judgment merits no interference.

As such, appeal sans merit and the same is hereby dismissed.

Accused-appellant namely Satnam Singh alias Gama, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

January 29, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No