

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

**Criminal Appeal No. 1485-DB of 2015
Date of Decision: 15.03.2022**

Dilbagh Singh ... Appellant

versus

State of Punjab ...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Navjot Singh, Advocate
for the appellant.

Mr. H.S. Grewal, Addl. A.G, Punjab.

RITU BAHRI, J.

This appeal is against the judgment and order dated 19.08.2015/21.08.2015 passed by the learned Addl. Sessions Judge, Moga (herein after to be referred as 'the trial Court'), whereby appellant, Dilbagh Singh, was convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine, the appellant shall further undergo imprisonment for one year.

Accused-Appellant-Dilbagh Singh has been sent up by the police station City South, Moga to face trial under Section 306 of IPC.

Brief facts of the case are that on 8.11.2010, Sub Inspector Puran Chand received information qua hospitalization of Ravinder Kaur (since deceased), due to fire injuries, from C.M.C.Hospital, Ludhiana. She was opined fit to make statement and Duty Magistrate Shri Jarnail Singh had recorded dying declaration which was sent to the Chief Judicial

Magistrate.

On 9.11.2010, Amarjit brother of deceased came and stated that his sister was very serious and he got recorded his statement to the effect that he is a property dealer. His younger sister Ravinder Kaur (since deceased) married almost 13/14 years ago with the accused-appellant. She had one son and three daughters. On 7.11.2010 at about 10.00 p.m., his nephew-Kaku informed him on telephone that his mother i.e Ravinder Kaur sustained injuries due to fire. He asked him to bring his mother on the line. His sister then revealed that her husband is having illicit relations with Balwinder Kaur, an employee in Punjab Police at Amritsar. She used to restrain him from meeting her, but he used to pick-up quarrel. Her elder brother-in-law Harcharan Singh and his two wives Kulbir Kaur and Raj Kaur and their niece Baljinder Kaur used to help her husband Dilbagh Singh in meeting Balwinder Kaur. Her husband had poured kerosene oil on her and set her ablaze. It was done by him in connivance with Harcharan Singh, Kulbir Kaur, Raj Kaur and Balwinder Kaur. As her brother-in-law tried to extinguish the fire, his hands had also got burnt. He then told his nephew to hospitalize his sister. When they reached near Jagraon, he came to know that his sister has been referred to C.M.C. Hospital, Ludhiana. Jaspal Singh and his nephew had got her hospitalized there. So, his sister had been set ablaze by Dilbagh Singh, in connivance with Harcharan Singh and his two wives Kulbir Kaur and Raj Kaur and niece Baljinder Kaur. So he prayed for action. The complainant signed his aforesaid statement in token of its correctness. SI Puran Chand made his endorsement on the said statement and sent the same to police station City South, Moga through HC Jarnail Singh where on its basis FIR under Section 306 of IPC was registered. Then

SI Puran Chand visited the place of occurrence and prepared site plan of the place of occurrence.

During investigation, Jasvir Kaur filed an application to Senior Superintendent of Police, Moga, qua innocence of Harcharan Singh, Kulbir Kaur, Raj Kaur and niece Baljinder Kaur. During inquiry conducted by Satpal Singh Bhangu, Deputy Superintendent of Police (City), Moga, Accused-Dilbagh Singh was found to be involved in commission of offence whereas remaining accused were found to be innocent. Lateron, offence under Section 306 IPC was made out in place of Section 302 of IPC. Accused Dilbagh Singh could not be traced-out and proclamation proceedings against him were initiated. He was declared as proclaimed offender on 01.04.2013 and challan against him was presented in the Court on 4.06.2013. On 18.08.2013, accused Dilbagh Singh was arrested.

On completion of investigation, challan was presented by police against accused in Court. Copies of the documents referred in Section 207 of Cr.P.C. were supplied to the accused by the Ilaqa Magistrate. The offence under Section 306 IPC being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions by the Miss Sanjeeta, the then Chief Judicial Magistrate, Moga, vide commitment order dated 5.10.2013.

Vide Rapat No.3 dated 14.11.2010, offence under Section 302 of IPC was added, due to death of Ravinder Kaur on 13.11.2010 at C.M.C. Hospital, Ludhiana.

Thereafter, charge under Section 302 of IPC against the accused was framed on 4.12.2013, to which, the accused pleaded not guilty and claimed trial.

To prove its case, the prosecution has examined PW-1 Manpreet Kaur, PW-2 ASI Major Singh; PW-3 Dr. Jasbir Singh, Deputy Medical Commissioner, Civil Hospital, Ludhiana; PW-4 SI Puran Chand, Investigating Officer, PW-5 Jarnail Singh, Chief Judicial Magistrate, Pathankot; PW-6 Bimal Kumar, Senior Clerk, C.M.C. Hospital, Ludhiana; PW-7 Karunesh Kumar Kakkar, Additional District & Sessions Judge, Ludhiana; PW-8 Baljinder Singh Rana, Draftsman, Judicial Court Complex, Moga; PW-9 Dr. Amit Sood, Consultant Plastic Surgery, Amar Hospital, Patiala; PW-10 Amarjit Singh, complainant and the Public Prosecutor closed the prosecution evidence.

Statement of the accused was recorded under Section 313 of Cr.P.C. In his testimony under Section 313 of Cr.P.C. the accused has denied the prosecution evidence appearing against him. He pleaded his innocence and false implication. He has also pleaded that he has not committed any offence. The accused has not examined any witness in his defence and close the same.

The trial Court after going through the entire evidence, convicted and sentenced the appellant. The trial Court held that the dying declaration of Ravinder Kaur (since deceased) was clear, precise and free from any ambiguity. As per the dying declaration, she was set on fire after husband-Dilbagh Singh had poured oil upon her along with four other persons Harcharan Singh, Kulbir Kaur, Raj Kaur and niece Baljinder Kaur. Further the medical evidence confirmed that the cause of death in this case was shock, as a result of septicemia which was sufficient to cause death in ordinary cause of nature.

Learned counsel for the appellant has argued that the dying

declaration has not been recorded as per Chapter 13-A of Punjab and Haryana High Court Rules and Orders, Volume 3 (for short 'High Court Rules'). Learned counsel for the appellant has referred to Rule No. 8 of High Court Rules and Orders, Chapter 13-A (Volume 3) to contend that the Judicial Magistrate or other officer who is recording the dying declaration shall certify that the dying declarant was fit to make a statement and it contained a correct and faithful record of the statement made by him as well as of the questions, if any, that were put to him by the person recording the statement. If the accused or his counsel happens to be present at the time of dying declaration is recorded, his presence and objection, if any raised by him shall be noted by the Judicial Magistrate or the officer recording the dying declaration but the accused or his counsel shall not be entitled to cross-examine the declarant.

Learned counsel for the appellant further submits that in the present case, the Judicial Magistrate has not given any finding that the declarant was fit to make statement and no questions have been separately placed on record which were put to the declarant at the time of recording of her statement.

To give force to its contention, reference has been made to judgment of this Court in a case of *State of Punjab vs. Sita Devi*, 1996 (3) R.C.R (Crl) 320 wherein the prosecution story was that the accused sprinkled kerosene oil on the deceased and set the victim on fire. This Court held that the prosecution story was unnatural. Dying declaration was not believed as it was not recorded in accordance with Chapter 13-A of Punjab and Haryana High Court Rules and Orders (Vol 3).

Reference has further been made to judgment of this Court in a

case of ***Smt. Raj Rani vs. State of Haryana***, 1993 (2) Crimes 67 wherein appellant (mother-in-law of the deceased) was convicted on the basis of dying declaration recorded by the Magistrate. The conviction was set aside and it was held that the doctor making endorsement of fitness of deceased for making statement was not examined. Endorsement remained unproved. No evidence was placed on record to suggest that the deceased was in a fit state of health to make the alleged dying declaration. No question put by Magistrate to deceased whether she was mentally capable to make dying declaration. Further witness who was named in the dying declaration by the deceased was not examination.

Reference has further been made to a judgment of Delhi High Court in a case of ***State vs. Kumari Mubin Fatima and others***, 2013 (8) R.C.R. Criminal 1568 wherein the doctor had given his consent that the injured was fit to make a statement at about 4:00 A.M. However, the dying declaration was recorded at about 7:50 A.M after a gap of about 4 hours. Further no questions appear to have been put to the injured person which could establish her fitness to make a statement. The gap of 4 hours could not be explained. Further the doctor who had examined the injured was also not examined.

Learned State counsel on the other hand, has supported the judgment and order dated 19.08.2015/21.08.2015 passed by the learned Addl. Sessions Judge, Moga convicting/sentencing the appellant under Section 302 IPC.

Learned State counsel has argued that in the present case, ***Chapter 13-A of the High Court Rules and Orders, Volume 3, with regard to dying declaration has been followed while recording the***

statement of the deceased, as Dr. Sonal of C.M.C. Hospital, Ludhiana, declared patient Ravinder Kaur fit to give her statement vide endorsement Ex.PW-4/B. Thereafter, on 8.11.2010, statement (Ex P.W.4/D) of patient Ravinder Kaur was recorded by Jarnail Singh, the then Judicial Magistrate 1st Class, Moga around 4 P.M, which was read-over and explained to her and in token of its correctness, she put her signatures at Point X. Further SI Puran Chand submitted an application Ex P.W.4/A to the Medical Officer, C.M.C Hospital, Ludhiana with regard to fitness of patient Ravinder Kaur to record her statement, vide endorsement Ex P.W.4/B. Ravinder Kaur gave her statement on 08.11.2010 and she was declared dead on 13.11.2010 at 9:15 p.m. Hence, when her dying declaration was recorded, she was fit to make statement.

PW-6 Bimal Kumar, Senior Clerk, Medical Record, C.M.C Hospital, Ludhiana, has brought the original admission record of Ravinder Kaur at C.M.C. Hospital, Ludhiana. He has proved the record of the patient as Ex.PW-6/A. PW-6 Bimal Kumar has testified that Dr.Amit Sood, Dr.Vijay Obed and Dr.Sonal have already left the hospital, but he can identify their signatures and handwritings. Patient Ravinder Kaur was admitted in their hospital under the observation of Dr. Vijay Obed. He has further testified that Dr.Amit Sood and Dr.Sonal were specialists in plastic surgery. Now Dr.Pinki is posted in their hospital as specialist of plastic surgery.

Learned State counsel has further argued that in the present though the complainant/P.W.10-Amarjit Singh, P.W.1-Manpreet Kaur (daughter of the deceased) turned hostile, but the dying declaration of Ravinder Kaur was clear, precise and free from any ambiguity.As per her

dying declaration, she was set on fire after husband Dilbagh Singh had poured oil upon her. The deceased Ravinder Kaur had maintained the same version of occurrence at all stages of the case, when she rang up her brother Amarjit Singh on 07.11.2010 as well as when she gave her statement to P.W.5 Jarnail Singh.

We have heard the learned counsel for the parties and have gone through the records of the case.

Reference at this stage can be made to statement of PW-9 Dr.Amit Sood, Consultant, Plastic Surgery at Amar Hospital, Patiala, who stated that on 8.11.2010, Ravinder Kaur was brought to emergency with alleged history of flame burns. After initial treatment, patient was referred to the local hospital for further treatment. The patient was having 95% burns on the Total Body Surface Area, deep flame burns, with respiratory burns. On 13.11.2010 at 9.15 p.m., the patient suffered cardio respiratory arrest and was declared dead. He declared injuries of the deceased as dangerous vide injury report Ex.PW-3/D. Dr.Amit Sood has also identified signatures of Dr.Sonal on the bed head ticket as Ex.PW-6/A. That Dr.Sonal has left the hospital and her whereabouts are not known.

PW-3 Dr.Jasbir Singh, Deputy Medical Commissioner, Civil Hospital, Ludhiana has proved the postmortem report of deceased Ravinder Kaur wife of Dilbagh Singh as Ex.PW-3/A and pictorial diagram showing seat of injuries as Ex.PW-3/B. As per postmortem report, PW-3 Dr.Jasbir Singh has opined that the dead body was 5'-2" There was superficial to deep infected burns present all over the body sparing only back and upper part of chest. On exploration of the skull, the brain was congested and on exploration of the chest, the lungs and pleura was congested and chest

cavity contained puss like fluid. PW-3 Dr.Jasbir Singh opined that death in this case was caused due to shock as a result of septicemia which was sufficient to cause death in the ordinary course of nature. All the flame burns were ante-mortem in nature. Time elapsed between injuries and death was seven days and between death and postmortem examination was about 24 hours. He has prepared pictorial diagram regarding the site of injuries PW-3 Dr.Jasbir Singh has proved the injury report as Ex.PW-3/D, as per which, he opined the nature of injuries as dangerous. He has proved copies of bed head tickets as Ex.PW-3/C, Ex.PW-3/D and Mark-A/1.

Reference at this stage can be made to statement/dying declaration (Ex P.W.4/D) of Ravinder Kaur, which reads as under:-

“It is stated that yesterday, time was around 9:30 p.m, I was present in my house. That my husband had illicit relations with a lady and he did not give money to me for house-hold expenses. Harcharan Singh, Kulbir Kaur wife of Harcharan Singh, Raj Kaur wife of Harcharan Singh and niece Baljinder Kaur were in joint conspiracy, they met my husband with that lady. They used to ask my husband to keep illicit relations with that lady. Name of that lady is also Balwinder Kaur, who is an employee in Police and is residing at Amritsar. Yesterday my husband fought with me on the pretext that I used to restrain him from meeting Balwinder Kaur. Thereupon my husband set me on fire by pouring oil. When my children raised alarm, then my husband tried to extinguish the fire and his hands also got burnt. If my children had not raised alarm, I would have died. I was set on fire by my husband along with Harcharan Singh (Jeth) accompanied by his two wives Kulbir Kaur and Raj Kaur and niece Baljinder Kaur. My jeth Jaspal Singh got me admitted in the hospital, from where, I was referred to C.M.C, Hospital, Ludhiana. Statement has been got recorded and the same is correct.

Reference at this stage can be made to statement (Ex PW4/T/Ex.PW4/U/Ex.PW4/S) of Amarjit Singh-complainant, which reads

as under:-

“Statement of Amarjit Singh son of Sardar Gurdev Singh, Weaver, resident of R-2, Moti Nagar, Ludhiana, aged about 37 years. It is stated that I am resident of above said address and is a property dealer. I am alone and I have two sisters. Younger to me is Ravinder Kaur, who was married to Dilbagh Singh son of Inder Singh, Jat, resident of Bazigar Basti, Hakam Ka Agwar, about 13/14 years ago. She had one son and three daughters. On 7.11.10 at about 10 p.m, my nephew Kaku informed me on telephone that his mother has got fired and they have put off the same. I asked him to bring her on the line. My sister then revealed that Kaku's father is having illicit relation with Balwinder Kaur, an employee in Punjab Police posted at Amritsar. She used to restrain him from meeting her, but he used to pick-up quarrel. Her elder brother-in-law Harcharan Singh and his two wives Kulbir Kaur and Raj Kaur and their niece Baljinder Kaur used to help Kaku father in meeting Balwinder Kaur. Her husband poured kerosene oil on her and set her ablaze. Her husband in connivance with Harcharan Singh, Kulbir Kaur, Raj Kaur and Bajinder Kaur had set her ablaze. At the time of extinguishing the fire, hands of my sisters husband also got burnt. I told my nephew to hospitalize her immediately, we are coming. We reached near Jagroan, my sister, who has been referred to C.M.C. Hospital, Ludhiana, was taken by my nephew and Jaspal Singh, to whom we got admitted in Ludhiana. My sister had been set ablazed by Dilbagh Singh, in connivance with Harcharan Singh and his two wives Kulbir Kaur and Raj Kaur and Baljinder Kaur. Statement has been got recorded, heard and the same is correct. Action be taken.”

The above statement of the deceased-Ravinder Kaur and complainant-Amarjit Singh is identical that the appellant had poured oil on deceased as he was having illicit relation with Balwinder Kaur, an employee in Punjab Police posted at Amritsar. She used to restrain him from meeting her, but he used to pick-up quarrel. Even though the complainant-Amarjit Singh was declared hostile but his first statement to the police is very much clear that the appellant had poured oil on deceased and due to this, the deceased expired.

With regard to the argument of learned counsel for the appellant that in the present case, the Judicial Magistrate has not given any finding that the declarant was fit to make statement and no questions have been separately placed on record which were put to the declarant at the time of recording of her statement, the same is liable to be dismissed, as P.W.4 Puran Chand submitted an application Ex P.W.4/A to the medical Officer, C.M.C Hospital, Ludhiana with regard to fitness of patient Ravinder Kaur to record her statement. The doctor declared her fit to make her statement vide endorsement Ex P.W.4/B. Thereafter, P.W.5 Jarnail Singh, the then Judicial Magistrate 1st Class Ludhiana, recorded the statement of Ravinder Kaur, which is Ex P.W.4/D. The evidence of Dr. Amit Sood covers the mandate of Chapter 13-A of the Dying Declaration. Only on the ground that separate questions have not put to the deceased, the dying declaration cannot be discarded.

The mental fitness of Ravinder Kaur before recording the statement has been duly proved on the record. P.W.4 Investigating Officer SI Puran Chand obtained the fitness of the patient to record her statement by moving an application Ex P.W.4/A to the Doctor of C.M.C Hospital, Ludhiana. Upon this application, Dr. Sonal opined that the patient is fit to give statement. The opinion of Dr. Sonal has been proved as Ex P.W.4/B.

Reference at this stage can be made to a case of ***Bhajju @ Karan Singh vs. State of M.P***, 2012 (2) RCR (Crl) 539 (SC). The relevant portion of the judgment reads as under:-

“The law is well-settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A Court of facts is not excluded from acting upon an

uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the Court, the same may be refused to be accepted as forming basis of the conviction.

PW2 and PW3 were the persons who had met the deceased first after she was put on fire. They were not the eye-witnesses to the occurrence. It is an admitted case that they were the first persons to meet the deceased after she suffered the burn injuries and had taken her to the hospital. This was their consistent version when stated before the police and even before the court. Contrary to their statement made to the Investigating Agency, in the Court, they made a statement that the deceased had told them that she had caught fire by chimney and her burn injuries were accidental. This was totally contrary to their version given to the police where they had stated that she had told them that Bhajju had poured kerosene on her and put her on fire. To the extent that their earlier version is consistent with the story of the prosecution, it can safely be relied upon by the prosecution and court. The later part of their statement, in cross-examination done either by the accused or by the prosecution, would not be of any advantage to the case of the prosecution. However, the accused may refer thereto. But the court will always have to take a very cautious decision while referring to the statements of such witnesses who turn hostile or go back from their earlier statements recorded, particularly, under [Section 164](#) of the Cr.P.C. What value should be attached and how much reliance can be placed on such statement is a matter to be examined by the Courts with reference to the facts of a given case.

21. PW4, brother of the deceased, is another witness who has made

an attempt to help the accused. He stated that Medabai had died and Bhajju was his brother-in-law and she got burnt while cooking food and that Medabai had told him that Bhajju used to keep her nicely. Firstly, we must notice that all these witnesses who had turned hostile or attempted to support the accused are the neighbours or close relations of the deceased and also that of the appellant/accused. Their somersault appears to be founded on the consideration of saving a relation from receiving punishment at the hands of justice. They appear to have lied before this Court, more out of sympathy for the appellant/accused. The very opening part of the statement of PW4, where he says "Medabai mari ja chuki hai" and "Medabai ko khana pakate samay aag lagi thi" is sufficient indicator of his sympathy and the fact that his sister has already died and that he would not like to lose his brother-in-law and secondly, that it is also not clear from his statement as to who told him that Medabai had caught fire while cooking.

22. These are matters of serious consequences and render the statement of all these three witnesses unreliable and undependable. Thus, these statements we would refer and rely (examination-in-chief) only to the extent they support the case of the prosecution and are duly corroborated, not only by other witnesses but even by the dying declaration and the medical evidence."

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 (Ex P.W.4/B). Thus, the case of the prosecution is fully established and there is no perversity or illegality

Learned counsel for the appellant has not been able to point out any factual or legal infirmity to disregard the statement of the victim which is available on the record in the form of dying declaration (Ex P.W.4/D).

PW5 Jarnail Singh who recorded the statement of deceased-Ravinder has proved the statement of the victim. No suggestion whatsoever was put to

P.W.5 to erode the testimony. Medical opinion with respect to her physical state to depose is also on record.

It is trite law that, if the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration as held by Apex Court in *State of UP Vs. Ram Sagar Yadav (1985) 1 SCC 552*. In our view, dying declaration of the victim proved on record proves the guilt of the appellant beyond doubt.

The appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

15.03.2022.
G Arora

(ASHOK KUMAR VERMA)
JUDGE

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