

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

CRA-D-231-DB-2017 (O&M)

Date of Decision : March 14, 2022

Akshay

.....Appellant

vs.

State of Haryana

.....Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Gautam Bhardwaj, Advocate
Legal Aid Counsel with
Mr. J.S. Lalli, Advocate
for the appellant.

Ms. Shubhra Singh, Addl. Advocate General, Haryana
for the respondent/State.

PANKAJ JAIN, J.

The appellant herein has been convicted and sentenced for the offences punishable under Sections 302, 452 of the Indian Penal Code and Section 4 of the POCSO Act by the trial Court vide impugned judgment.

2. As per prosecution, on 26th July, 2014, 'A', a minor, was brought to Government Hospital, Panipat at about 4:00 p.m. with history of burn due to stove burst. MLR, Exhibit P-4, was prepared by Dr. Raghvendra Singh (PW-2) who referred her to PGIMS, Rohtak. She was admitted at PGIMS Rohtak on the same date. On an application moved by PW-10 ASI Suresh Kumar on 27th July, 2014, 'A' was opined to be unfit to make statement by Dr. Jitender Singh Chauhan (PW-18). On 30th July, 2014 she was found to be fit to make statement. PW-10 ASI Suresh Kumar recorded statement of

'A' Exhibit P-7 which reads as under :-

“Statement of Complainant Manisha d/o Surja caste Dhanak resident of Naultha aged 16-1/2 years M.No.8930826326.

Stated that I am resident of the above said address and this time, I have passed 10th class. On 26-7-14, my parents had gone for labour as usual and at about 4 pm, I was alone in the home. Our neighborer named Akshay s/o Krishan caste Dhanak resident of Naultha came to our home and after trespassing inside, he asked whether vegetable was available, Manisha. On my refusal and seeing me alone, he bolted our door and gripped me with bad intent. When I began to raise noise, he gagged my mouth and after lying me down, he forcibly committed rape upon me. When I told him that I would disclose that matter before my parents, he angrily poured kerosene canny upon me by lifting the same from near our CHULA and fled away from my home after lighting the fire with matchstick due to which my clothes caught fire. He set ablaze me with the intention of eliminating me. On hearing my noise, my uncle (Tau) Prem reached there and many other persons also came there who all extinguished the fire of my body. After some time, my father also came there and I narrated all these facts before him. After some time, I became unconscious. Legal action may be taken against him. Now, I have regained consciousness and my father has come with me.”

3. On the aforesaid statement FIR No.136 dated 30th July, 2014 was registered against the appellant for the offences punishable under Section 452, 376(2), 307 of the IPC and Section 6 of the POCSO Act.

4. Investigation of the case thereafter was handed over to ASI Santosh, who appeared in trial as PW-12. On 31st July, 2014, ASI Santosh

moved an application Exhibit P-30, before Dr. Jitender Singh Chauhan on which 'A' was opined to be fit to make statement. On the same date, statement under Section 164 Cr.P.C. of 'A' was recorded by the Ld. JMIC, Rohtak. Doctor also opined that during the process of recording of the statement the deceased remained in fit state of mind vide Exhibits P-31, P-32 & P-33. Victim 'A' died on 3rd August, 2014 in PGIMS, Rohtak. Post Mortem Report is Exhibit P-2. As per the same, cause of the death has been recorded as :

“...Antemortem Burns and its complications.”

5. Thereafter Section 302 of the IPC was added. The appellant was put to trial. After trial the appellant has been convicted for the offences punishable under Section 302, 452 of the IPC and Section 4 of the POCSO Act.

6. With the able assistance of counsel for the parties we have carefully gone through the record of the case.

7. Counsel for the appellant states that father of the deceased (PW-5) and her uncles (PWs.4 & 6) have not supported the prosecution version and statement of deceased has been made sole basis of conviction. He, thus, contends that statement of deceased that too when earlier she has opined not fit to make statement, cannot be made sole basis of awarding life imprisonment to the appellant. He, further, relies upon the FSL Report and submits that the only inference that can be drawn from the FSL Report is that the deceased was in fact not raped prior to her death. Relying upon the

first MLR drawn up at Govt. Hospital, Panipat, he submits that it is a case of burn due to stove burst and not as reported in the FIR. He claims that it is a case of false implication of the accused and, thus, prays for appellant's acquittal.

8. Per contra, Ld. State Counsel argued that the statement of deceased 'A' recorded under Section 164 Cr.P.C. after her death has assumed the status of dying declaration. The same has been proved on record and, thus, the fact that the father and the uncles of deceased having not supported the prosecution version does not have any bearing on the present case.

9. From record we find that on 30th July, 2014 the deceased was declared fit to make the statement. Statement was recorded by the Police and is on record as Exhibit P-7. On the basis thereof, the present FIR was registered and the appellant was booked. ASI Santosh, who appeared as PW-12 has proved on record the application dated 31st July, 2014 moved by her before the Hospital Authorities for recording the statement of deceased under Section 164 Cr.P.C. Statement of 'A' was recorded by Shri Amandeep, Ld. JMIC, Panipat after she was opined to be fit to make the statement by Dr. Jitender Singh Chauhan, PW-18. Author of the statement i.e. JMIC Panipat appeared as PW-16 and has proved on record statement of the deceased as Exhibit P-24. Dr. Jatinder Singh Chauhan, who appeared as PW-18 further proved that during the process of recording of the statement the deceased remained in fit state of mind. Endorsement to the aforesaid effect in the form of Exhibits P-31 and P-32 have been proved on record.

Thus, Counsel for the State is right in submitting that after deceased died on 3rd of August, 2014, the said statement of the deceased has become relevant piece of evidence under Section 32 of the Indian Evidence Act, 1872 (for short, 'the Act'). Section 32 (1) along with Illustration 'A' of the Act reads as under :-

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. — *Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: —*

(1) when it relates to cause of death. — *When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.*

.....

Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts."

10. Now, the question arises is whether the statements of father and uncles of the deceased have any bearing on the present case. From the evidence on record it can be safely inferred that neither father nor any of the uncles of the deceased were present on the spot. Thus, in our opinion the fact of them having resiled from their statements cannot have any effect on the statement of the deceased which has been proved on record. There can be no dispute that the dying declaration itself can be sole basis for conviction if found to be reliable, voluntary and truthful. FSL Report also does not advance the case of appellant in any manner merely because as per FSL Report semen was not detected, it cannot have an effect of belying the statement made by deceased.

11. We find nothing on record which dents the statement made by the deceased 'A'. Her statement is reliable and gives cogent explanation of the occurrence. The same has been recorded in accordance with law. Author thereof has been examined, who has fully proved the contents. Medical opinion with respect to condition of the deceased before and while making her statement is on record and the same have been proved in accordance with law. It is settled law that if the Court is satisfied that the dying declaration is true and voluntary, the same can well be made basis of conviction and needs no corroboration as held by the Supreme Court in **'State of Uttar Pradesh vs. Ram Sagar Yadav and others'**, (1985) 1 SCC 552. Thus, we find that the prosecution having been able to prove the guilt

of accused beyond reasonable doubt, the judgment of the trial Court warrants no interference. Consequently, the present appeal is dismissed. Order of conviction and sentence of the accused/appellant is upheld.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

March 14, 2022

Dpr

Whether speaking/reasoned : Yes

Whether reportable : No