



CRA-D-154-DB-2012

[1]

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

CRA-D-154-DB-2012

Reserved on 30.08.2024

Date of decision: 11.11.2024

Rattan Lal @ Rattan kumar and others

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Argued by: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate for the appellants.

Mr. Ashok S. Chaudhary, Addl. A.G. Haryana.

KARAMJIT SINGH, J.

The instant appeal is directed against the judgment and order dated 12.01.2012 passed by the learned Sessions Judge, Sirsa, in case bearing FIR No.21 dated 23.02.2009 registered under Sections 306, 498-A, 511 IPC Police Station Nathusari Chopta District Sirsa, vide which the appellants were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each, and in default of payment of fine, to further undergo simple imprisonment for three months,



under Section 302 read with Section 34 IPC.

2. Briefly stated the case of the prosecution is that on 23.02.2009, PW-10 SI Sita Ram, who was present in Police Station Nathusari Chopta, received a telephonic message from MHC, Police Station City Sirsa regarding admission of Anuradha wife; Karamjit (son) and Simran (daughter) of Rattan Lal, resident of village Nejia Khera, in a burnt condition in General Hospital Sirsa. On this, PW-10 telephonically informed PW-18 Inspector/SHO Daljit Singh, who directed PW-10 SI Sita Ram to approach the Magistrate concerned for recording a dying declaration of injured. PW-10 went to the Government Hospital Sirsa and moved an application Ex.PR to seek opinion about the medical condition of Anuradha and the concerned duty Doctor declared her fit to make statement. Then, PW-10 SI Sita Ram approached the duty Magistrate Sirsa with a request to record the statement of Anuradha, on which the Magistrate concerned directed him to firstly initiate proceedings as per Rules. Accordingly, PW-10 informed PW-18 Inspector Daljit Singh. Then PW18 reached General Hospital, Sirsa and recorded the statement of injured Anuradha wherein she stated that she got married with Rattan Lal of village Nejia Khera and they were having two children and on that day at



about 9/9.30 a.m. she set herself and both her children Karamjit and Simran, on fire by pouring kerosene oil because she was annoyed with her husband as he did not use to come to the house and she also set on fire both the children as their future was uncertain after her death. She further stated that she studied upto 8th class. Injured Anuradha after understanding the contents of aforesaid statement and accepting the same to be correct appended her right thumb impression thereunder, as she was unable to put her signatures. PW18 obtained medical papers from the Medical Officer concerned, who opined that Anuradha had suffered 90% burns, whereas Karamjit and Simran suffered 75% to 80% and 90% to 95% burns, respectively. On finding commission of offence punishable under Sections 306, 498-A, 511 IPC, PW18 made his endorsement below the aforementioned statement of Anuradha and then sent the same to Police Station through Constable Ashok Kumar and resultantly the FIR was registered in the present case. The investigation of the case was initiated. Thereafter, on the same day, separate request was made to the Duty Magistrate concerned to record the statement of Anuradha under Section 164 Cr.P.C. The Duty Magistrate concerned reached Civil Hospital Sirsa and after obtaining opinion



regarding fitness of the injured to make statement, recorded her statement wherein she stated that her husband Rattan Lal, her mother-in-law, sister-in-law (Jethani) and brother-in-law (Jeth) had set her ablaze after pouring kerosene oil and they had been harassing her for the last so many days and also used to beat her and they also set on fire both her children along with her. She further stated that one another woman was the cause of quarrel. She requested that her children be handed over to her parents and the accused be awarded severe punishment.

3. Later on injured Anuradha was shifted to a Private Burn Hospital at Hisar on the same very day i.e. 23.02.2009. However Karamjit aged about 6 years and Simran aged about 1 ½ year died, while they were being shifted to hospital at Hisar. Post mortem examination on the dead bodies of both children was conducted at General Hospital Sirsa on 24.02.2009 and Offences under Section 302, 307 read with Section 34 IPC were added. Accused Rattan Lal was arrested. Anuradha, who was undergoing treatment in a private hospital at Hisar also succumbed to her injuries on 26.02.2009 in the early morning. Post-mortem on her dead body was conducted on the same very day. During investigation which was verified by Deputy



Superintendent of Police, accused Diwan Singh (father-in-law), Narsi (elder brother of Diwan Singh), Raj Kumar (Jeth) Raman Devi (Jethani), Meera (Nanad) and Indero Devi (mother-in-law) of deceased Anuradha were found innocent. On completion of investigation Police presented its final report and challaned accused Rattan Lal under Section 306 IPC.

4. The Court of Ilqa Magistrate committed the case to the Sessions Court. The trial Court on finding a *prima facie* case framed charge against accused Rattan Lal under Section 302 IPC to which he pleaded not guilty and claimed trial.

5. While the prosecution was at the stage of recording its evidence, it had moved an application under Section 319 Cr.P.C to summon Indero Devi, Raj Kumar, Raman Devi, all residents of village Nejia Khera as additional accused. The said application was allowed by the trial Court and Indero Devi, Raj Kumar, Raman Devi were summoned as additional accused to face trial along with Rattan Lal.

6. On receiving the notice/summons, the aforesaid additional accused appeared in the trial Court. Finding a *prima facie* case, charge was framed under Section 302 read



with Section 34 IPC against Rattan Lal and all the above stated additional accused, to which they did not plead guilty and claimed trial.

7. In order to prove its case, the prosecution had examined PW-1 is Dr. S.K. Soni Burn Hospital, Hisar who produced the bed head ticket of the deceased who was admitted in his hospital on 23.02.2009 with history of 100% burns and was treated by his son Dr. Rajat Soni; PW-2 Archana Aggarwal, MO, General Hospital Sirsa, who proved post mortem report Ex.P-B, diagram showing the seat of burn injuries Ex.P-B/1 and police request Ex.P-C which was accompanied by the inquest report Ex.P-D of Simran; PW3- Dr. Kuldeep Sain, Medical Officer, CHC, Ellanabad, District Sirsa, who proved post mortem report Ex.P-F of Karamjit; PW4- Rajesh Kumar, resident of village Chaharwala, District Sirsa, who deposed regarding the marriage of the deceased with Rattan Lal and the alleged demands of dowry raised by her in-laws; PW5- ASI Narender Singh, who prepared the inquest reports Ex.P-D and Ex.P-G of Simran and Karamjit; PW6- MHC Narender Kumar who recorded FIR Ex.P-I/2 on the basis of ruqa Ex.P-I; PW-7 Prem Kumar (complainant); PW8-S.K. Sharma, JMIC, Chandigarh (the then JMIC, Sirsa, who had recorded



the second dying declaration); PW9-HC Mahabir Singh, who proved copy of special report (FIR) Ex.P-I/2; PW10- SI Sita Ram; PW11-Dr. Joginder Singh Incharge Scene of Crime team, who proved his report Ex.PS; PW-12 Constable Mukesh Kumar, who had deposited the sealed parcels in FSL Madhuban; PW13-Dr. Vikas Bhadoo, Medical Officer, General Hospital Sirsa, who proved medico legal report Ex.P-U, pictorial diagram Ex.P-U/1 and bed head ticket Ex.P-U/2 of Anuradha, medico legal report Ex.P-V and pictorial diagram Ex.P-V/1 of Karamjit and medico legal report Ex.PW and pictorial diagram Ex.PW/1 of Simran; PW-14 Dr. Manjula, Medical Officer, General Hospital Hisar, who deposed as regards conducting of post mortem examination on the dead body of Anuradha and proved inquest report Ex.P-BB and post mortem report Ex.P-CC; PW15-ASI Subhash Chander deposed that on 26.02.2009 he prepared inquest report Ex.P-BB of dead body of deceased-Anuradha; PW16-HC Sita Ram, who handed over the sealed parcels to Constable Mukesh Kumar for depositing the same with DFSL Madhuban; PW-17 Radhey Sham Draftsman in the office of SP Sirsa proved scaled site plan Ex.P-EE of place of occurrence; PW-18 Inspector Daljit Singh (Investigating Officer) and PW-19 Dr. Rajat Soni of



Soni Burn Hospital Hisar, who proved bed head ticket Ex.P-JJ of the patient Anuradha. Besides that several documents were also tendered into evidence. Thereafter, statements of the accused under Section 313 Cr.P.C. were recorded. The entire incriminating material were put to the accused, which they denied and pleaded their false implication. In defence, one Sahab Ram S/o Sh. Ram Dhan, was examined by the prosecution.

8. The learned trial Court, after taking into consideration the rival contentions and evidence on record, convicted the accused of the offence under Section 302 read with Section 34 IPC and sentenced them as noticed above, by recording the following findings:-

- (i) The testimony of the Investigating Officer PW18-Daljit Singh, that the second dying declaration recorded by S.K., Sharma, Judicial Magistrate 1st Class, Sirsa, contained a tutored version, is not tenable as the Investigating Officer has toed the line to make out a case under Section 306 IPC, in view of the statement (Ex.P1) of the deceased.
- ii) There is nothing on record that Investigating Officer had recorded the statement (Ex.P1) of the deceased in the presence of any Doctor, Nurse or any other person and, thus, the said statement is liable to be discarded.
- iii) The second dying declaration Ex.PO made by the



deceased before the Judicial Magistrate 1st Class, Sirsa inspires confidence.

iv) The link evidence stands proved from the testimony of PW12-Constable Mukesh Kumar and PW16-H.C. Sita Ram. There was no tampering with the sealed parcels and the case property during the period it remained in the police possession.

9. The learned Senior counsel for the appellants has submitted that the appellants were falsely implicated in the present case and the impugned judgment and order of the trial Court are not sustainable. It has been further argued that from the very initial stage, the prosecution tried to project that the in-laws of deceased-Anuradha used to demand dowry from her parents and they also subjected her to cruelty and when their demands were not met, the accused persons committed murder of Anuradha and her children by setting them ablaze. It has been further argued that it has come on record that one boy, namely, Vikram of the village of accused, used to visit Anuradha in her matrimonial home, which was objected to by her in-laws and other inhabitants of village and due to the aforesaid relationship, the deceased had ended her life by committing suicide on 23.02.2009 and at that time she also set on fire her two children, as she was worried about their future,



after her death. The learned Senior counsel has further argued that the allegations regarding demand of dowry or cruel treatment given to Anuradha by her in-laws, were not established during the investigation and that is why offence under Section 498A was dropped by the Police. It has been further contended that on 23.02.2009, when the Police received information regarding the occurrence and admission of three injured in the Civil Hospital, Sirsa, the Police officials made sincere efforts to record the statement of injured Anuradha by approaching the Duty Magistrate concerned, but the said Magistrate called upon the Police firstly to initiate the police proceedings as per law and accordingly, PW18-Daljit Singh, recorded statement Ex.P1 of Anuradha, after she was declared fit to make statement by the concerned Doctor. It has been further contended that in the said statement Ex.PI, Anuradha clearly stated that she set herself and her two children on fire after having poured kerosene oil and that she had been fed up with her husband Rattan Lal, who did not use to come to the house and that there were no allegations of demand of dowry or cruel treatment being given to her by her in-laws. It has been further contended that on the basis of the statement Ex.PI, the Investigating Officer sent ruqa and consequently,



FIR was registered in the Police Station under Sections 306, 498A and 511 IPC against accused Rattan Lal only.

10. The Senior counsel for the appellants has further argued that the second dying declaration recorded on the same day i.e. 23.02.2009 at 2.30 p.m., by PW8 the Duty Magistrate concerned, contains a tutored version, as it has come in the testimony of PW8 that when he went to the hospital to record the statement of the deceased, some relatives of hers were present near her. This fact is further corroborated from the testimony of PW13-Dr. Vikas Bhadoo, who stated that on 23.02.2009 at 2.10 pm, when the treatment was being given to Anuradha by the Surgeon, many relatives of the patient were present in the Hospital. It is further argued that PW-19 Dr. Rajat Soni, who had treated the deceased at Soni Burn Hospital, Hisar, deposed in his testimony that the deceased gave him the history of self inflicted burns by pouring kerosene oil on herself. It is further submitted that at the time of inquest proceedings of deceased, the dead body was identified by Sahab Ram Sarpanch and Bal Chand son of Pat Ram and both of them made statements under Section 175 Cr.P.C., wherein they stated that Rattan Lal got married with Anuradha about 7/8 years back and they used to quarrel with each other



and on account of the said marital discord Anuradha had committed suicide by pouring kerosene oil and then setting ablaze herself and her two children. It is further argued that during investigation, the police found all the other accused, except the husband of the deceased (Rattan Lal), innocent and the challan was only filed against Rattan Lal under Section 306 IPC.

11. The Senior counsel for the appellants has further argued that the conduct of PW-7 Prem Kumar, father of deceased Anuradha was totally unnatural and he did not come forward to collect the dead bodies of his daughter and grandchildren, and all three of them were cremated in the village of in-laws of Anuradha. It is yet further argued that the testimony of complainant-Prem Kumar, if examined in detail, would only bring out that it contains only a hearsay version and the said witness has contradicted himself in many aspects, which creates a dent in the case of prosecution.

12. On the other hand, the State Counsel, while supporting the judgment and order passed by the trial Court has submitted that the dying declaration Ex.PO which was recorded by the Duty Magistrate concerned, after the Doctor on duty found the patient to be mentally fit, was



rightly relied upon by the learned trial Court while, convicting the appellants. The State counsel has further argued that in case of multiple dying declarations which are contradictory to one another as is there in the present case, the statement recorded by the Magistrate can be relied upon keeping in mind the element of truthfulness and being free of suspicion. The State counsel has further argued that it has come on record that after the occurrence had taken place, no one informed about the same to the family members of Anuradha, including her parents. While countering the arguments of the learned Senior Counsel for the appellants, regarding the second dying declaration being the result of tutoring and prompting, it is submitted that when the relatives of the deceased had learnt about her and her children's admission in the hospital after having suffered burn injuries, it was but natural for them (relatives) to visit the said hospital and thus, their mere presence would not render the second dying declaration as tutored or prompted, especially when such dying declaration was recorded by the Duty Magistrate himself. The State counsel in support of his contentions has placed reliance on the judgment of Hon'ble Supreme Court in case of Naeem Versus State of Uttar Pradesh, 2024 AIR Supreme



Court 1381.

13. We have heard the learned counsel for the parties and have also gone through the records of the case carefully. In our opinion the following questions would arise for determination:-

- “1. Which of the two dying declarations made by the deceased, is more authentic and believable?
2. Whether in view of the diverging dying declarations, the conviction of the appellants can be maintained?

14. In the instant case, there are two dying declarations of the deceased Anuradha. In the first dying declaration dated 23.02.2009 made before SHO/ Inspector PW-18 Daljit Singh in the Civil Hospital, Sirsa, the deceased stated that on 23.02.2009 at around 09-9:30 a.m., she had poured kerosene oil upon herself and her two children and then set herself and her children ablaze and that she had taken said extreme step after having been tortured by her husband. She further stated that her husband never visited her and that was why she had taken the said extreme step. Subsequently, in another dying declaration made on the same day i.e., 23.02.2009 at 2:20 PM before the Judicial Magistrate 1st Class, Sirsa, the deceased stated that she



had been set ablaze by her husband, her mother-in-law, sister-in-law (jethani) and brother-in-law (jeth), by pouring kerosene oil upon her. She further stated that they had been torturing her for the last so many days and they used to beat her and that her children were also set on fire by them. It was further stated by her that she was having dispute with her husband because of his involvement with other women and that there was no demand of dowry. She had further stated that her children should be given to her parents and they should also be given their rights and that a strict action should be taken against the accused.

15. The prosecution had examined Dr. Rajat Soni, as PW-19. The said Doctor had treated the deceased at Soni Burn Hospital, Hisar. He deposed in his examination-in-chief that deceased had given him the history of self inflicted burn injuries by pouring kerosene oil on herself. Still further, in her cross-examination Doctor i.e. PW-2 Dr. Archana Aggarwal, had corroborated the fact that in the inquest report, it was mentioned that the deceased had poured kerosene upon herself and her children and then set them and herself ablaze. Similar was the testimony of PW3- Dr. Kuldeep Sain Medical Officer, CHC Ellahanabad, District Sirsa. Still further, PW-14 Dr. (Mrs) Manjula,



Medical Officer, GH, Hansi, who had conducted post mortem examination on the dead body of deceased-Anuradha, deposed in her cross-examination that it was mentioned in the inquest report that the deceased had sprinkled kerosene over her body and her children and set herself and her children on fire.

16. PW-8 S.K. Sharma, JMIC, before whom the second dying declaration dated 23.02.2009 at 2:20 PM, was made, stated in his cross-examination that when he reached the hospital for recording the dying declaration of the deceased, some persons were present near the patient. He deposed to the following effect:-

“It is correct that some persons were present near the patient when I reached the hospital. I did not ask their names, addresses and their relation with the injured or her husband. No other person was present when Medical Officer gave above opinion Ex.PM/1. The Medical Officer declared the patient fit to make her statement after examining her but he did not give his observations. The Medical Officer had put some general questions to the witness but he did not record the same. I also did not record the said questions and their answers. I did not ask the doctor to make a record of his observations of the patient. Except Medical Officer



no other person was present near the bed of the patient when I recorded her statement. I also did not record anywhere that I had directed the other persons to go away when I reached there. I did not administer oath to the witness before recording her statement.”

17. Still further, the most material witness in this case is the father of the deceased i.e. PW-7 Prem Kumar. However, in his testimony, the said witness stated that he had not visited the Hospital at Hisar, where his daughter was admitted with the burn injuries. The said witness had also stated about the inquiries conducted by the Deputy Superintendent of Police and the Additional Superintendent of Police, but he could not disclose about the fate of the said inquiries. The relevant extract from the testimony of the said witness would read as under:-

“I got application Ex.PK typed at Nathusari Chopta on 23.2.2009 after visiting the hospital at Sirsa. I do not know the name of Typist but I got this application typed from Bhagwati Book Store. My statement was recorded by the police but I do not recollect the date. I did not tell the police that marriage of Anuradha and Rattan Lal was solemnized in February, 2003. This fact was also



not got typed by me in application Ex.PK. It is correct that I did not get recorded in my application that in-laws of Anuradha started harassing her after one and half year. Volunteered I told that her in-laws started harassing her. Narsi has his wife, sons and daughters. Diwan, father of accused, and his brother Narsi are separate in mess and cultivation. Meeran is sister of accused Rattan Lal. I do not know whether Meeran was married prior to or after Anuradha's marriage. Meeran has two children but I do not know their age. She is married in village Ali Mohammad and she resides there. It is incorrect to suggest that Rattan Lal was residing separately from his family for the last several years and was cultivating land separately. It is correct that Anuradha was taken to Hisar hospital by the family of the accused. Volunteered no intimation was given to us by them. It is correct that dead body of Anuradha was also cremated by her in-laws in their village. Volunteered no intimation about her death was given to us by her in-laws. I did not visit Anuradha in Hisar Hospital to enquire about her well-being. After the incident I went to my village and talked to Om Parkash and Pala Ram who are sons of my paternal uncle. Police had visited the hospital and recorded statement of Anuradha. It is incorrect that Vikram used to visit Anuradha in the



absence of Rattan Lal. It is incorrect that Anuradha committed suicide as people came to know about her relations with Vikram. It is incorrect to suggest that in-laws of Anuradha never either harassed her nor demanded dowry. It is also incorrect to suggest that accused was residing separately from his family. It is incorrect to suggest that I got this application typed after due deliberations with my family members. It is correct that this application was addressed to the Director General of Police but its copy was also endorsed to the SHO. It is correct that DSP had made enquiry about this occurrence and I and others had appeared before him. It is correct that in the typed application I had made allegations against seven persons including Rattan Lal. Later on I came to know that the police did not challan the six relatives of Rattan Lal and challaned only Rattan Lal and to that extent my application was declined by the police. Addl.SP had also conducted enquiries and I had appeared in that enquiry also. I do not know if Addl.SP had also found my allegations against six relatives of Rattan Lal to be false. It is correct that Diwan Chand father of accused Rattan Lal owns 40/42 area of agricultural land. It is 'incorrect to suggest that both sons of Diwan Chand had separated from him after the marriage of Rattan Lal. I do not know if



Diwan Chand had given 16 killas of land to his each sons and kept 8 killa land in his own name. I do not know if house of Ram Murti adjoins the house in which occurrence took place. Then said a Nohra is situated adjacent to that house. I know Rajesh son of Rameshwar resident of Chaharwala for the last 8-10 years. It is correct that said Rajesh is living in Gurgaon and is running business of stone crushing. I do not know from which time he is living there. I also do not know for how much time prior to the marriage of Anuradha, Rajesh is living in Gurgaon. I cannot tell at what time Rajesh met me prior to the death of Anuradha. Self-stated he might have met me off and on. On the day of occurrence nor thereafter Rajesh Met me. I do not know where he was on 23rd and 24th February, 2009.

I do not know if large number of respectables of Nejia had given sworn affidavits to the police that Rattan and his family members were innocent in this case and that Rattan was residing separately from his parents. I do not know whether the village panchayat and respectables had given an application to the police that case against Rattan and his family members was false. It is incorrect to suggest that there was no demand of dowry and there was no such complaint. Self-stated Anuradha



was turned out from her house during night hours many times. It is incorrect to suggest that she was neither turned out nor maltreated and that there was no demand of dowry. I did not mention specific demand of the accused in the application Ex.PK and other applications made by me. It is incorrect to suggest that I have made a false statement.”

18. Section 32 of the Evidence Act, stipulated about the statement made by a person, who is dead or cannot be found, being relevant. Sub-section (1) provides that 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 causes of that person’s death come into question, such statement is relevant. This Section is an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence, if they refer to the cause of his death or to any circumstances of the transaction, which resulted in his death.

19. In **Laxman v. State of Maharashtra**, (2002) 6 SCC 710, the Constitution Bench of the Hon’ble Supreme Court, has summed up the principles applicable as regards the acceptability of dying declaration to the following effect:-



“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 the deathbed 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 courts 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 always to 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 looks 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 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 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.”

The Hon’ble Supreme Court in **Purhsottam Chopra Vs. State (NCT of Delhi)**, (2020)11 SCC 489, while summing up the principles regarding the admissibility of the dying declaration and its reliability, has held as under:-

“**21.** For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:-

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary



statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the



decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

20. When there are multiple dying declarations, a duty is cast upon the Court to carefully examine the entirety of the materials as also the circumstances surrounding the making of different dying declarations. While doing so, the truthfulness and such statement being voluntary one, must be examined and it must be ensured that there is no tutoring and prompting. In **Jagbir Singh Vs. State (NCT of Delhi)**, 2020 Cr.LJ 266(SC), while examining the question of multiple dying declarations, it was held by the Hon'ble Supreme Court as under:-

“We would think that on a conspectus of the law as laid down by this court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a summersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding



the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered.”

21. In the instant case, as noticed above, there are two dying declarations made by the deceased. In the first dying declaration made before the SHO/Inspector Daljit Singh, she had stated that she had poured upon herself and her children kerosene oil and set her and her children on fire and that the said step was taken by her because of the torture given by her husband. There was neither any mention of her mother-in-law, Jeth and Jethani being involved in the said incident nor there was any allegation regarding the demand of dowry. Rather, in the said dying declaration she had held her husband alone, responsible for her taking the said extreme step. However, in the second dying declaration recorded on the same date i.e. 23.02.2009 at 2:20 PM before the JMIC, Sirsa, the deceased stated that



she had been set on fire by her husband along with her mother-in-law, Jeth and Jethani.

22. As there is a complete contradiction in the aforesaid two dying declarations, this Court is to see whether there is any other evidence on record, which can support either of the aforesaid two dying declarations. In this regard, it may be noticed that the treating Doctor examined as PW-19 Dr. Rajat Soni, stated in his testimony that the deceased told him that she had suffered self-inflicted burn injuries. The said witness had been examined by the prosecution and the aforesaid part of his testimony in the examination-in-chief was neither put to the test of cross-examination nor the said witness had been declared hostile. This, in effect, means that the prosecution had accepted the version of the said witness.

23. It has come on the record that after the registration of FIR, the matter was also inquired into by the gazetted police officers of the rank of Deputy Superintendent of Police and Additional Superintendent of Police and this fact has not been disputed by PW-4 and PW-7. Still further, during investigation, the police had found the parents-in-law, Jeth, Jethani and Nanad of the deceased innocent and the challan was only presented



against appellant No.1-Rattan Lal (husband of the deceased), under Section 306 IPC. However, the Court concerned had taken cognizance of the case under Section 302 IPC only against appellant No.1. Later on the prosecution had moved an application under Section 319 Cr.P.C., which was allowed and appellant Nos. 2 to 4 had been summoned as additional accused and, thereafter, charges against all the accused were framed under Section 302 read with Section 34 IPC. The testimony of the complainant PW-7 Prem Kumar also shows that the said witness did not visit the deceased in the hospital at Hisar to enquire about her well being and also did not go to any hospital to claim the dead bodies which were later on cremated in the village of in laws of Anuradha. It may further be noticed that PW-4 Rajesh Kumar, deposed in his testimony that Rattan Lal had separated from his parents about one and half years prior to the occurrence. PW-18 Daljit Singh, Investigating Officer, also deposed in his cross-examination that accused-Rattan Lal used to live separately from his brother Raj Kumar and father Diwan Singh and that Raj Kumar and Diwan Singh, were residing in a separate house.



24. The defence has also examined one Sahab Ram S/o Sh. Ram Dhan. The said witness was a co-villager of the accused. He deposed that Rattan Lal, Raj Kumar and their father Diwan Singh were residing separately and that Rattan Lal was residing in the house along with his wife and two children. In his cross-examination, he had disclosed that deceased-Anuradha had disclosed to him that she had set herself and her children on fire.

25. This being the factual position, we find that the dying declaration made at the earliest point of time, which was recorded by the Investigating Officer PW-18 Daljit Singh in the Civil Hospital, Sirsa, finds corroboration from the testimony of PW-19 Dr. Rajat Soni, who had treated the deceased at Soni Burn Hospital, Hisar. In other words, it can safely be said that a person, who happened to be at the verge of eminent death, would not speak untruth. Still further, in the inquest report, it was clearly mentioned that the burn injuries suffered by the deceased were self-inflicted and the same was further corroborated by the testimony of PW-18 Inspector Daljit Singh, Investigating Officer.

26. It has come on the record that the first dying declaration was recorded by the investigating officer PW-18 Daljit Singh. PW-7 father of deceased Anuradha while



appearing in the witness box has not disputed the fact that the police official had visited the hospital and recorded the statement of Anuradha. It cannot be said that the police official recorded the said dying declaration in a hasty manner to cover up the truth. It has come in the evidence that before recording of the said dying declaration, PW-18 deputed PW-10 to approach the duty Magistrate, Sirsa, with a request to record the statement of Anuradha on which, the Magistrate concerned directed him to firstly, initiate the proceedings as per prescribed procedure. This fact was not disputed by the said Duty Magistrate while appearing in the witness box as PW-8, as was recorded in his order Ex.P-Q dated 23.02.2009. The Hon'ble Supreme Court in Criminal Appeal No.1441 of 2022 titled as ***State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai***, decided on 31.10.2022 has held that there is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone.

The concerned doctor who medico legally examined all the three injured on 23.02.2009, while



appearing in the witness box as PW-13 has specifically stated that on that day, on police request Ex.P-Y, he declared Anuradha fit to make statement vide his endorsement Ex.P-Y/1.

27. So far as the second dying declaration made before the JMIC, Sirsa, is concerned, it may be noticed that the said JMIC appeared as PW-8 and deposed that when he reached the hospital for recording the dying declaration of the deceased, some persons were present near the patient and that he did not ask their names, addresses or their relations with the injured or her husband. Thus, from the testimony of the said witness, the possibility of a tutored version of the deceased, cannot be ruled out, especially when in the previous dying declaration nothing of the sort was mentioned. Even PW-18 Inspector/SHO Daljit Singh, in his testimony had deposed that during investigation, except Ratan Lal (husband of the deceased), all other accused were found innocent. It was further deposed by him that during investigation, it was found that deceased Anuradha was tutored by her father and relatives to name the family members of her husband.

28. PW-4 Rajesh Kumar has admitted in his deposition that appellant No.1 Rattan Lal got separated



from his parents about one and 1½ year prior to the occurrence. Even PW-18 also stated so in his cross examination. DW-1 a co-villager of the accused, also deposed on the similar lines. Thus, making it clear that appellant No.1 Rattan Lal, his wife and children were living separately from appellants No.2 to 4. So, it seems to be highly improbable that Anuradha was persistently ill treated and tortured by appellants No.2 to 4, who got separated by mess and residence about 1½ year prior to the occurrence in question. This fact also creates suspicion regarding the truthfulness of the second dying declaration wherein Anuradha named appellants No.2 to 4 to be the culprits along with appellant No.1. The contents of the first dying declaration recorded by PW-18 wherein Anuradha named only appellant No.1 seems to be more probable, in the light of the fact that the other appellants were living separately from her husband.

29. Thus, while answering Question No.1, we hold that the first dying declaration made by the deceased, which finds corroboration from the testimony of treating Doctor PW-19 Dr. Rajat Soni and PW-18-Investigating Officer Daljit Singh and the inquest report, is more authentic whereas the second dying declaration being surrounded by the



suspicious circumstances, is liable to be discarded. In totality, we find that the second dying declaration is a result of tutored version as it had come in the testimony of PW-8 S.K. Sharma, JMIC, that when he had reached the hospital for recording the statement of the deceased, some persons were present near her.

30. So far as appellant Nos. 2 to 4 are concerned, we find that it has come in the testimony of PW-4 Rajesh Kumar that accused-Rattan Lal had separated from his parents about one and half years prior to the occurrence. Still further, PW-18 Daljit Singh, Investigating Officer, also deposed in his cross-examination that accused-Rattan Lal used to live separately from his brother Raj Kumar and father Diwan Singh. Even defence witness Sahab Ram, co-villager of the accused, had also deposed on the similar lines. Apart from that, as noticed above, the said appellants were found innocent during investigation and they had been summoned under Section 319 Cr.P.C. as additional accused. The learned trial Court, has convicted and sentenced appellant Nos. 2 to 4 only on the basis of the second dying declaration. As the second dying declaration has been discarded by us, we find that the conviction of appellant No.2 to 4, under Section 302 read with Section 34



IPC is not tenable in the eyes of law. Accordingly, their conviction and sentence is set aside and they are acquitted of the charges framed against them.

31. As regards, appellant No.1-Rattan Lal, we find that in the first dying declaration, the deceased had named him and held him responsible for her taking the extreme step of setting herself and her children ablaze. Thus, it is clear that appellant-Rattan Lal had abetted the deceased to commit suicide. We, thus, convert his conviction into the one under Section 306 IPC from Section 302 read with Section 34 IPC.

32. Coming to the sentence part, the occurrence took place on 23.02.2009 and the impugned judgment and order was passed on 13.01.2012. The sentence of appellant-Rattan Lal was suspended by a Coordinate Bench of this Court vide order dated 23.11.2021 by noticing that the said appellant had already undergone more than 7 years of actual sentence. The appellant has been facing protracted trial since 2009 and thus, the ends of justice would be fully met if the sentence imposed upon appellant-Rattan Lal, is ordered to be one, already undergone by him.

33. Consequently, while holding appellant-Rattan Lal guilty of the offence under Section 306 IPC, we impose upon



CRA-D-154-DB-2012

[36]

him the sentence already undergone by him. Question No.2 is answered, accordingly.

34. Appeal stands disposed of in the above terms.

(KARAMJIT SINGH)
JUDGE

(SUDHIR SINGH)
JUDGE

11.11.2024
Yogesh

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