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2024:PHHC:093186



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-596-DB of 2003 (O&M)
Date of Decision: 26.07.2024

Neelam and another ...Appellant

Vs.

State of Haryana ...Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate and
Ms. Kashish Sahni, Advocate
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.(Oral)

1. By way of the present appeal, the appellants have challenged the legality and correctness of the findings recorded in the impugned judgment and order dated 08.07.2003 passed by the Court of Additional Sessions Judge (Adhoc), Faridabad, whereby, the appellants were convicted under Section 302 IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- alongwith default stipulation.

2. The FIR Ex.PK in the present case was got registered on the basis of the statement Ex.PC made by Ms. Yashoda @ Jaya wife

of Dal Chand son of Bhoop Singh, which was recorded by PW3 R.P. Meena, SDM, Nazafgarh, Delhi. The statement Ex.PC made by Yashoda @ Jaya alongwith police proceedings Ex.PC/1 and Ex.PC/2 have been reproduced below:-

“ Ex. PC

Statement of Smt. Jaya w/o Sh. Dal Chand R/o 361, Ward No.2, Baselwa Colony, Old Faridabad (Hr.) age 22 years.

Q. What is your name and with whom and when your marriage was solemnized?

Ans. Jaya, my marriage was solemnized with Dal Chand in Hindu rites and customs on 6.5.1998.

Q Have you children?

Ans. No.

Q. How you burn give details ?

Ans. Yesterday at morning my mother-in-law (Chameli) and sisters-in-law (Neelam, Aarti and Babita) were quarreling with me. At once Neelam got angry and poured kerosene oil upon me from a plastic can and then Babita set me on fire with match-stick. I became burnt, I came outside from the room and gone to the bath-room where I sprinkled water upon me. Further I do not know. My husband and brother-in-law rushed me to the hospital in Auto.

Q. Whether your husband treated you well and did anybody quarrel with you?

Ans. My husband is simple in nature and treated me well and nobody. quarrel with me.

Q. Would you like to say anything?

Ans. No.

Statement was given in full conscious and the contents were read over to her.

LTI(Smt. Jaya)

Statement recorded in my own hand writing on 10.1.2000 at 12.30 P.M.

Ex.PC/1

SHO S. Nagar is directed to take appropriate action as per law.

SHO P.S. S.Nagar.

Sd/- in English

SDM. V. Vihar

dt. 10.01.2000

Sd/-in English

SDM V. Vihar,

New Delhi.

dt. 10.01.2000.

Ex.PC/2

Police proceedings:-

Today night ASI Rameshwar, P.S. Sarojini Nagar, Delhi has given an intimation to police station that Smt. Jaya w/o Dal Chand R/o H.No.361, Ward No.2, Baselwa Colony, Old Faridabad is admitted in Safdarjang Hospital, Delhi in the burnt condition, Today 1, ASI alongwith C. Parshadi lal 246 reached Safdarjang Hospital in the Burn Ward, where ASI Rameshwar Singh, P.S.Sarojini Nagar, Delhi and Sh. R.P Meena, SDM, Vasant Vihar, Delhi appeared and they produced to me/ASI hand written statement of SDM Sahab regarding injured Jaya w/o Dal Chand and MLC No. OPD 225/2000 dated 9.1.2000 regarding Jaya w/o Dal Chand in which she is declared 76% burnt condition. As per the statement of Jaya and MLC, it is

found a fit case U/s 498A/307/34IPC. In the meanwhile, rukka is being sent to the Police Station Old Faridabad through C. Parshadi Lal 246 for registration of the case. I ASI is being busy for investigation. Special report is being sent to the concerned officers through Special Constable and after registration of the case its number be intimated.

(at Safdarjang Hospital Delhi) Sd/- ASI,

P.S.Old Faridabad.”

Dt.10.1.2000 at 1.15 P.M”.

3. Both the appellants, namely, Neelam and Babita are unmarried daughters of Bhoop Singh and sisters of Dal Chand. The marriage of Yashoda @ Jaya was solemnized with Dal Chand on 06.05.1998. After suffering the burn injuries, Yashoda @ Jaya died in Safdarjang Hospital, New Delhi. After necessary investigation, the final report under Section 173 Cr.P.C. was presented before the Court of Area Magistrate.

4. Since, the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions Judge, Faridabad. Vide order and charge sheet dated 13.06.2000, the Court of Additional Sessions Judge, Faridabad, found a *prima-facie* case under Section 302 IPC against the present appellants and they were ordered to be charge sheeted for commission of an offence punishable under Section 302 IPC. Both the accused pleaded not guilty to the charge and claimed trial.

5. To substantiate the charge against the appellants, the prosecution relied upon 12 witnesses. The prosecution examined PW1 Niranjana Lal, brother of Yashoda @ Jaya and he supported the case of the prosecution. As per him, on 06.05.1998, his sister Yashoda @ Jaya was married to Dal Chand and he had spent an amount of Rs.1,50,000/- at the time of the marriage. After the marriage, the accused used to demand dowry from Yashoda @ Jaya. They used to demand Rs.50,000/- and a scooter. They paid an amount of Rs. 8,000/- to the accused and made a complaint about this matter. On 28.11.1999, a Panchayat was held at their residence to take their sister back, however, the accused had assured that no harm would be done to his sister. On 09.01.2000, he visited the house of Yashoda @ Jaya to invite them for marriage of his cousin and came to know that his sister had received burn injuries in the morning. He immediately informed his cousin and after reaching the hospital, he met his sister. At that time, his sister told him that her mother-in-law and sisters-in-law were quarreling with her. Neelam had thrown kerosene oil on her and Babita had set her on fire with the help of a match stick. Yashoda @ Jaya further told him that she rushed to bathroom to put off the fire. In his cross-examination, he admitted that they had never reported the matter to the police regarding the harassment on account of demand of dowry. They had never taken any Panchayat to the house of her in-laws, prior to this incident. He had reached

Safdarjang Hospital, New Delhi, at 07.30 p.m. When he met his sister, she was alone. They had reported the matter to the police at Faridabad after the same was narrated to him by his sister. They told that they had already received intimation from Police Station Sarojni Nagar, Delhi and they were going to Safdarjang Hospital, New Delhi. He had informed the police at Faridabad on 10.01.2000. He had also accompanied the police at 09.30 a.m. on 10.01.2000.

6. The prosecution further examined PW2 Constable Dharam Singh, whose testimony is formal in nature. Shri R. P. Meena, S.D.M., Nazafgarh, Delhi, was examined as PW3, who had recorded the statement of Yashoda @ Jaya on 10.01.2000 and took her thumb impression on the statement Ex.PC and he made endorsement Ex.PC/1. He also recorded the statement of Udal Singh, father of deceased and Niranjana Lal on 13.01.2000. He also conducted inquest report Ex.PG. In his cross-examination, he stated that he did not remember the exact time when he had received information. He reached the hospital at 12 O'clock (noon). He had started recording statement at 12.15 p.m.. He had taken the opinion of doctor regarding fitness of Yashoda @ Jaya to make the statement and that opinion was obtained separately and was written by Ramesh Chand, Investigating Officer. The Investigating Officer had obtained the opinion on his behalf and at his instance. He had not taken the opinion of the doctor again after completion of recording of the

statement that Yashoda @ Jaya remained fit to make statement throughout, her statement was recorded. He further volunteered that doctor remained present with him during the period and as such there was no need for his opinion. 35/40 minutes were taken in the proceedings. He did not remember whether she made a statement continuously or after some intervals. There were no signatures on the dying declaration of Yashoda @ Jaya.

7. Dr. Chanderkant from Safdarjang Hospital, New Delhi, was examined as PW4, who had conducted the postmortem examination on the dead body of Yashoda @ Jaya on 13.01.2000. As per him, there was no smell of kerosene oil from the body. He had noted 80% superficial and deep antemortem burns covering the whole body. He admitted that there was no smell of kerosene oil from the body of the deceased and he had mentioned this fact in the postmortem report. He had given the details of antemortem burns, which were present on the body and were not present on the left hand of the body.

8. The prosecution further examined PW5 ASI Girraj Singh, who had recorded the formal FIR Ex.PK and make his endorsement as Ex.PK/1. S.I. Ramesh Chander was examined as PW6. He stated that on 09.01.2000 (wrongly written as 09.01.2001), he was posted as ASI in the Police Station Sarojani Nagar. Vide application PL, he had requested the doctor for opinion in respect of

injured Yashoda @ Jaya as to whether she was fit to give statement or not. The application was made on 10.01.2000 to doctor. On this application, the doctor had given the opinion Ex.PL/1 to the effect that she was fit to give statement. Thereafter, he informed PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi, who appeared in the hospital and recorded the statement of Yashoda @ Jaya as Ex.PC. He admitted that on 09.01.2000 (wrongly written as 09.01.2001), he had gone to the hospital but the SDM was not available and the statement of Yashoda @ Jaya could not be recorded.

9. The prosecution further examined Keshav Dev as PW7, who had attended the Panchyat between the parties on 22.11.1999. PW8 SI Ram Dutt had prepared the report under Section 173 Cr.P.C. PW9 Ashok Kumar, Draftsman, had prepared the scaled site plan on the orders of ASI Desh Bandhu. The prosecution further examined PW10 ASI Desh Bandhu. As per him, on 09.01.2000, he was posted in Police Station Old Faridabad and in the night, he received a telephonic message from Safdarjang Hospital, New Delhi that Yashoda @ Jaya was admitted in a burnt condition in the hospital. He could not visit the hospital on that day due to late hours. On 10.01.2000, he went to Safdarjang Hospital, New Delhi, with Constable Parshadi Lal where PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi and ASI Ramesh Chand, Police Station Sarojani Nagar met there. He made endorsement on the statement Ex.PC and got the FIR

registered. Yashoda @ Jaya expired on 13.01.2000. He had also conducted the initial investigation in the present case. In his cross-examination, he stated that he received the intimation at about 01.30 a.m. and reached at the spot at about 12.30 p.m. on 10.01.2000. He had started from the police station at 10.00 a.m. and had gone by bus.

10. The prosecution further examined PW11 Dr. Sanjay Sharaf, Plastic Surgeon, who had medico legally examined Yashoda @ Jaya at Safdarjang Hospital, New Delhi. The patient was brought by Dal Chand with alleged history of accidental burn injuries, which were sustained when her synthetic *Sari* got fire while preparing food. On examination, the general condition was low, pulse was 120 per minute, the patient was afebrile and dehydration was present. She had suffered 76% burns and he had proved the original MLR Ex.PS. As per him, Ex.PL was the application of police regarding the fitness of Yashoda @ Jaya, while endorsement Ex.PL/1 was made by Dr. Anuj Jain. He identified the signatures of Dr. Anuj Jain as they worked together. In his cross-examination, he stated that he did not know whether any official executive came in his presence or not and had not seen Ex.PC/1.

11. The prosecution further examined Narender Pal Singh, U.D.C., Safdarjang Hospital, New Delhi as PW12. He had brought the summoned record from Safdarjang Hospital, New Delhi. He had

seen the opinion Ex.PL/2 dated 10.01.2000 regarding the fitness of Yashoda @ Jaya to make statement. The opinion and signatures thereunder were not in the hand of Dr. Monika Jamwal. She resigned from the hospital on 10.05.2000 and her whereabouts were not known. He had seen the doctor's writing and signing and identified her writing and signatures. On that day, Dr. Monika Jamwal was on duty in the ICU. However, in his cross-examination, he admitted that he had not worked directly under the supervision of the said doctor. He had been working in the office of the hospital and not in the wards. The application was not made in his presence nor the opinion by the doctor was given in his presence.

12. After recording the prosecution evidence, the entire incriminating evidence was put to both the appellants and their statements under Section 313 Cr.P.C. were recorded by the trial Court. Neelam, appellant No.1 had stated that it was a false case and the witnesses had deposed falsely. She was not even present when Yashoda @ Jaya accidentally caught fire while cooking the meal. Similarly, Babita, appellant No. 2 stated that she had been falsely implicated in the present case. There was no person at the place of occurrence.

13. To prove their case, the appellants examined DW1 Dr. Rakesh Gupta, who had examined Yashoda @ Jaya in Survodya Hospital, Old Faridabad on 09.01.2000. She was brought to the

hospital by her husband Dal Chand. She had about 60% burns on all over her body. She was brought between 09.00 a.m. and 10.00 a.m. in the morning. She was referred to Safdarjang Hospital, New Delhi. The defence further examined DW2 Dal Chand husband of Yashoda @ Jaya. He stated that he was married to Yashoda @ Jaya on 06.05.1998 and they were leading happy married life. She was cooking meal in his house on 09.01.2000 and accidentally got fire. When she came out of the kitchen, she was on fire. He threw water on her to save her and tried to extinguish the fire and took her to Survodya Hospital and first aid was given to her. The occurrence had taken place at 09.30 a.m. He was residing with his wife separately from other relations. They had a separate ration card Ex.DB.

14. The defence further examined Mukesh as DW3, who was neighbour of the accused. He stated that Yashoda @ Jaya wife of Dal Chand had accidentally got fire, while cooking meal in her house and she suffered injuries. He came out of his house and saw that Yashoda @ Jaya was being taken to the hospital by Dal Chand and Attar Singh. Neelam and Babita were not at home and they were informed telephonically. The accused further examined DW4 Manjeet Singh, who supported the statement of DW3 Mukesh. The defence further examined DW5 Raj Kumar, who brought the attendance register of M/s Sarla, Fashion Garments, Faridabad. Babita reached on duty at 08.30 a.m. on 09.01.2000 and she left the factory at about 10.25 a.m.

He proved the attendance register Ex.DC, copy of gate pass Ex.DD and certificate Ex.DE.

15. Learned senior counsel for the appellants vehemently argued that both the appellants are young unmarried daughters of Bhoop Singh and have been falsely involved in the present case. The prosecution has wrongly alleged that both the appellants and their mother had raised demand of a scooter and a sum of Rs. 50,000/-. Further, there is no allegation that Dal Chand, husband of Yashoda @ Jaya also raised similar demand and, thus, the allegation is palpably false. Still further, the alleged occurrence had taken place at about 09.30 a.m. on 09.01.2000 and Yashoda @ Jaya was immediately shifted to Survodya Hospital, Old Faridabad, where she was examined by Dr. Rakesh Gupta, DW1. Thereafter, she was referred to Safdarjang Hospital, New Delhi. Learned senior counsel submitted that from 09.30 a.m. on 09.01.2000 to 12.00 p.m. on 10.01.2000, no efforts were made by the police at Faridabad or Delhi to record the statement of Yashoda @ Jaya. Still further, as per the medical evidence, Yashoda @ Jaya had suffered 80% burn injuries, however, neither her statement was recorded by the police nor any efforts were made to call the Magistrate. In the present case, PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi had recorded the statement of Yashoda @ Jaya between 12.15 p.m. to 12.30 p.m. on 10.01.2000. Whereas the fitness certificate was taken by PW6 ASI Ramesh Chander at 12.30

p.m. on 10.01.2000. Moreover, the statement of Yashoda @ Jaya was not even signed by the doctor and there was no certificate that Yashoda @ Jaya remained fit throughout the recording of the statement and the statement of Yashoda @ Jaya carried no evidentiary value. Learned senior counsel further submitted that even Dr. Monika Jamwal, who had given the opinion Ex.PL/2 was neither cited as a witness nor was examined by the prosecution. Even, PW12 Narender Pal Singh had never worked with Dr. Monika Jamwal and was not in a position to identify the handwriting and signatures of Dr. Monika Jamwal. Learned senior counsel further submitted that there was sufficient defence evidence, which proved the innocence of the appellants. In fact, the defence evidence cannot be brushed aside only on the ground that the witnesses have been produced by the accused. He, thus, prayed that the appeal may be accepted and the appellants may be acquitted by this Court.

16. On the other hand, learned State counsel has vehemently opposed the submissions made by learned senior counsel for the appellants. She submitted that in the present case, the statement of Yashoda @ Jaya was recorded by PW3 PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi. He was an independent witness and had no reason to record the dying declaration wrongly. In fact, he had categorically stated that he had obtained a medical opinion prior to recording of the statement of Yashoda @ Jaya and she remained conscious throughout

the recording of her statement. She further contended that even PW6 SI Ramesh Chander had obtained an opinion from the doctor with regard to the fitness of the injured to make statement and after taking opinion, the statement was recorded by PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi. She further contended that the accused have examined DW2 Dal Chand, who is the real brother of the appellants and had a reason to support the defence version. Apart from that DW3 Mukesh and DW4 Manjeet Singh were neighbours of the appellants and their statements were liable to be disbelieved by this Court. Apart from that DW5 Raj Kumar was also an interested witness and the defence evidence has been rightly disbelieved by the trial Court.

17. We have heard learned counsel for the parties and perused the trial Court record carefully.

18. The Hon'ble Supreme Court in the matter of Smt. Laxmi Vs. Om Parkash and others, 2001(3) R.C.R. (Criminal) 358; 2001 AIR (Supreme Court) 2383, has discussed the principles, which govern the credibility of dying declaration and held as under:-

“29. A dying-declaration not being a deposition in Court, neither made on oath nor in the presence of the accused and therefore not tested by cross-examination is yet admissible in evidence as an exception to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. The weak points of a dying declaration serve to put the Court on its guard while testing its reliability and impose on

*the Court an obligation to closely scrutinise all the relevant attendant circumstances. [See **Tapinder Singh v. State of Punjab, 1971(1) SCJ 871**]. One of the important tests of the reliability of the dying declaration is a finding arrived at by the Court as to satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded. The statement may be brief or longish. It is not the length of the statement but the fit state of mind of the victim to narrate the facts of occurrence which has relevance. If the Court finds that the capacity of the maker of the statement to narrate the facts was impaired or the Court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement the Court may in the absence of corroborate evidence lending assurance to the contents of the declaration refuse to act on it. In **Bhagwan Das v. State of Rajasthan, AIR 1957 Supreme Court 589** the learned Sessions Judge found interalia that it was improbable if the maker of the dying declaration was able to talk so as to make a statement. This Court while upholding the finding of the learned Sessions Judge held the dying-declaration by itself insufficient for sustaining a conviction on a charge of murder. In **Kaka Singh @ Surendra Singh v. State of M.P., AIR 1982 Supreme Court 1021** the dying declaration was refused to be acted upon when there was no specific statement by the doctor that the deceased after being burnt was conscious or could have made coherent statement. In **Darshan Singh v. State of Punjab, AIR 1983 Supreme Court 554***

*this Court found that the deceased could not possibly have been in a position to make any kind of intelligible statement and therefore said that the dying declaration could not be relied on for any purpose and had to be excluded from consideration. In **Mohar Singh and others etc. v. State of Punjab, AIR 1981 Supreme Court 1571** the dying declaration was recorded by the Investigating officer. This Court excluded the same from consideration for failure of the investigating officer to get the dying declaration attested by the doctor who was alleged to be present in the hospital or any one else present.*

*30. A dying declaration made to a police officer is admissible in evidence, however, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or the police officer later on relied on as dying declarations. In **Munnu Raja and another v. The State of Madhya Pradesh, AIR 1976 Supreme Court 2199**, this Court observed - "investigating officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to be encouraged". The dying declaration recorded by the investigating officer in the presence of the doctor*

*and some of the friends and relations of the deceased was excluded from consideration as failure to requisition the services of a Magistrate for recording the dying declaration was not explained. In **Dalip Singh v. State of Punjab, AIR 1979 Supreme Court 1173** this Court has permitted dying declaration recorded by investigating officer being admitted in evidence and considered on proof 'that better and more reliable methods of recording dying declaration of injured person' were not feasible for want of time or facility available. It was held that a dying declaration in a murder case, though could not be rejected on the ground that it was recorded by a police officer as the deceased was in a critical condition and no other person could be available in the village to record the dying declaration yet the dying declaration was left out of consideration as it contained a statement which was a bit doubtful”.*

19. Still further, the Hon'ble Supreme Court in the matter of **Jayamma and another Vs. State of Karnataka** and its connected case titled as **Lachma s/o Chandyanika and another Vs. State of Karnataka, 2021(3) R.C.R. (Criminal) 50: 2021 AIR (Suprem Court) 2399** has held as follows:-

“14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court

on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

*A. In **P.V. Radhakrishna. v. State of Karnataka, (2003) 6 SCC 443**, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.*

*B. In **Chacko v. State of Kerala, (2003) 1 SCC 112**, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to*

the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

*C. In **Sham Shankar Kankaria v. State of Maharashtra, (2006) 13 SCC 165**, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in **Paniben v. State of Gujarat, (1992) 2 SCC 474** wherein this Court summed up several previous judgments governing dying declaration, the Court in **Sham Shankar Kankaria (Supra)** reiterated::*

*"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See **Munnu Raja v. State of M.P. [(1976) 3 SCC 104]**);*

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See **State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211]**);*

*(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See **K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]**);*

(iv) Where dying declaration is suspicious, it should not

*be acted upon without corroborative evidence. (See **Rasheed Beg v. State of M.P. [(1974) 4 SCC 264]**);*

*(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See **Kake Singh v. State of M.P. [1981 Supp SCC 25]**);*

*(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See **Ram Manorath v. State of U.P. [(1981) 2 SCC 654]**);*

*(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See **State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]**);*

*(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See **Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769]**);*

*(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See **Nanhau Ram v. State of M.P. [1988 Supp SCC 152]**);*

*(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See **State of U.P. v. Madan Mohan [(1989) 3 SCC 390]**);*

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying

declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700])”.

20. The principal contention raised by learned senior counsel on behalf of the appellants is that the trial Court had committed error in placing reliance on the dying declaration Ex.PC made by Yashoda @ Jaya. Now we have to evaluate the said submission in the light of the evidence led by the parties. In the present case, the occurrence is stated to have taken place at about 09.30 a.m. on 09.01.2000 and it is apparent from the evidence that at about 09.30 a.m. she was shifted to Survodya Hospital, Old Faridabad, where she was medico legally examined by DW1 Dr. Rakesh Gupta. Since her condition was critical, she was provided first aid and was referred to Safdarjang Hospital, New Delhi for treatment vide Ex.DA. She was shifted to Safdarjang Hospital, New Delhi on 09.01.2000 itself. She was medico legally examined on 09.01.2000 itself by PW11 Dr. Sanjay Sharaf. In the MLR, it was mentioned that there was alleged history of accidental burns. We find sufficient force in the submission made by learned senior counsel appearing on behalf of the appellants that from 09.30 a.m. on 09.01.2000 to 12.00 p.m. on 10.01.2000, no efforts were made by the police at Faridabad or Delhi to get the statement of Yashoda @ Jaya recorded. Even, PW1 Nirananjan Lal had admitted that he had reached and met his sister at about 07.30 p.m. on

09.01.2000. Similarly, PW6 SI Ramesh Chander had also got information with regard to the occurrence on 09.01.2000 itself. Similarly, PW10 ASI Desh Bandhu had also got the information on the night of 09.01.2000 with regard to the occurrence. In the present case, neither the complainant nor the police officials made any efforts to get the statement of Yashoda @ Jaya recorded. Even, she had suffered 80% burn injuries and no attempts were made to get the fitness certificate and to call a Magistrate for recording her statement. Thus, the case of the prosecution is shrouded with doubtful circumstances from the very inception.

21. Still further, the entire case of the prosecution in the present case revolves around the credibility and evidentiary value of the dying declaration Ex.PC of Yashoda @ Jaya, which was recorded by PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi. As per him, he had reached the hospital at about 12.00 p.m. on 10.01.2000. He had taken the opinion of the doctor regarding the fitness of Yashoda @ Jaya to make statement and started recording the statement at 12.15 p.m. He further stated that the opinion was obtained separately in writing by Ramesh Chand, Investigating Officer and he had obtained the opinion on his behalf and at his instance. He had not taken the opinion of the doctor again after completion of recording of the statement that Yashoda @ Jaya remained fit to make the statement throughout, while her statement was being recorded. He stated that 35/40 minutes were

taken in the proceedings and no signatures of Yashoda @ Jaya were taken on the dying declaration. However, his statement is seriously contradicted by the testimony of PW6 SI Ramesh Chander. He had moved an application Ex.PL seeking opinion of the doctor in respect of Yashoda @ Jaya, injured as to whether she was fit to give statement or not and the doctor had given the opinion Ex.PL/1 to the effect that she was fit to give statement. He, thereafter, informed PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi, who reached in the hospital and recorded the statement Ex.PC. From a perusal of the opinion Ex.PL/1, it is apparent that the opinion Ex.PL/2 was given by the doctor at 12.30 p.m. on 10.01.2000. Thus, it is apparent that the dying declaration was already concluded at 12.30 p.m. whereas the opinion was taken from the doctor at 12.30 p.m. Moreover, the dying declaration Ex.PC was not signed by any doctor. Moreover, PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi stated that doctor remained present with him during the time, when he had recorded the dying declaration. However, the prosecution has failed to examine any such doctor. Rather PW11 Dr. Sanjay Sharaf, who had treated Yashoda @ Jaya clearly stated that he did not know whether any official/executive came in his presence nor he had seen Ex.PC/1. Moreover, it is apparent from the statement of PW12 Narender Pal Singh that the opinion regarding the fitness Ex.PL/2 was given by Dr. Monika Jamwal, who was on duty in the ICU as per the duty

roster Ex.PL/3. In his cross-examination, PW12 Narender Pal Singh clearly stated that he had never worked directly under the supervision of Dr. Monika Jamwal. He had been working in the office of the hospital and not in the wards. He further stated that he had seen the dying declaration Ex.PC and it did not bear the signatures of Dr. Monika Jamwal. Thus, the defence has been able to raise serious doubts with regard to the credibility of the dying declaration in the present case.

22. Still further, in the present case, there are other factors also, which render the dying declaration of Yashoda @ Jaya unbelievable. First of all, she has levelled allegations with regard to the demand of dowry only against the appellants, who are her sisters-in-law and her mother-in-law Chameli. It has been alleged that a sum of Rs. 50,000/- and a scooter was demanded as alleged by PW1. In fact, the unmarried sisters-in-law can never be beneficiaries of such a demand. Still further, in her dying declaration Ex.PC, Yashoda @ Jaya stated that Neelam, appellant No. 1 poured kerosene oil on her from plastic can and Babita appellant No. 2 set her on fire with a match stick. However, in the present case, the postmortem on the dead body of Yashoda @ Jaya was conducted by PW4 Dr. Chanderkant and he clearly stated that there was no smell of kerosene oil from the dead body. Still further, even the pieces of partially burnt *Sari* of Yashoda @ Jaya were sent to FSL and as per

the FSL report Ex.PX, kerosene or its residue could not be detected in the pieces of burnt *Sari*, which were worn by Yashoda @ Jaya at the time of the occurrence.

23. Still further, in the present case, PW1 Niranjn Lal, brother of Yashoda @ Jaya clearly stated that on 09.01.2000, he visited the house of his sister at about 5.30 p.m. to invite them for the marriage of his cousin. He came to know that his sister had received burn injuries in the morning and he reached Safdarjang Hospital, New Delhi at 07.30 on 09.01.2000. When he meet his sister, she was alone. It is also apparent that the dying declaration of Yashoda @ Jaya was recorded at about 12.30 p.m. on 10.01.2000 and there is a possibility that she was tutored by her brother and other family members, who had reached Safdarjang Hospital, New Delhi in the night of 09.01.2000 itself. Apart from that, in the present case, it is a matter of common knowledge that victims of burn injuries are oftenly administered highly sedative pain killers. Since, it is apparent from the testimony of PW11 Dr. Sanjay Sharaf that she had suffered approximately 76% burns on her body, it can be conveniently inferred that she might be in great pain and agony and there is a possibility of her being in a state of delusion and hallucination. In such cases, it is always advisable to take a certificate of fitness from the doctors where the patient is under treatment. In the instant case, it is apparent that the recording of statement was over at 12.30 p.m. on 10.01.2000

whereas the fitness certificate obtained after that. Not only that, Dr. Monika Jamwal, who had rendered the opinion Ex.PL/2 was not examined by the prosecution. Rather the prosecution examined PW12 Narender Pal Singh to prove her signatures, who had never worked with her in the hospital. Moreover, PW3 R. P. Meena, S.D.M., Nazafgarh, Delhi stated that a doctor remained present with him during the period of recording the statement, but no such doctor was examined by the prosecution. Apart from that, not only the history of accidental burns was given by DW2 Dal Chand to DW1 Dr. Rakesh Gupta from Survodya Hospital, Old Faridabad and the prosecution could not lead any evidence to rebut the said information. Apart from that, in the present case, the accused had examined DW2 Dal Chand, brother of the appellants and husband of Yashoda @ Jaya. He clearly stated that he was residing with his wife separately from other family members and were having a happy married life. They had a separate ration card. He brought the original copy of the same as Ex.DB. He further stated that Yashoda @ Jaya got fire accidentally on 09.01.2000, while she was cooking meal in their house.

24. No doubt, Dal Chand is closely related to both the appellants being the real brother and his statement has to be relied upon by the Court with a note of caution. However, he has withstood the test of cross-examination. Moreover, DW3 Mukesh, who was the neighbour of the appellants clearly stated that Yashoda @ Jaya had

caught fire accidentally while cooking meal in her house. Dal Chand and Attar Singh had asked him to call his sisters and mother. He called Babita from factory and Neelam and Chameli had gone to Chatterpur for a *Sewa* in a *Satsang* and they were also informed telephonically.

25. Similarly, DW4 Manjeet Singh also stated that Neelam, appellant No. 1 was present with other at Chattarpur. Still further, DW5 Raj Kumar produced the attendance register of M/s Sarla, Fashion Garment, Faridabad where Babita appellant No. 2 was working. She reported on duty at 08.30 a.m. on 09.01.2000 and left the factory at 10.25 a.m. He proved the copy of the attendance register Ex.DC, gate pass Ex.DD and certificate Ex.DE. Thus, the appellants have been able to create sufficient doubt with regard to the veracity of the case of the prosecution.

26. In view of the above discussion, the possibility of Yashoda @ Jaya committing suicide and implicating the accused in the present case cannot be ruled out in the facts and circumstances of the present case as available on record. We find ourselves persuaded to reverse the findings recorded by the trial Court and overturn the impugned judgment passed by the trial Court.

27. As a consequence, the appeal succeeds and the appellants are ordered to be acquitted of the charge. The bail bonds and surety bonds of the convicts are ordered to be discharged. The convicts if in

custody, and, if not required in any other case, are directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to them, but in accordance with law.

- 28. All pending applications, if any, are disposed off, accordingly.
- 29. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.
- 30. Records of the Court below be sent back.
- 31. All concerned may be intimated.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

26.07.2024
amit rana

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