

SATPAL

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v.

STATE OF HARYANA

(Criminal Appeal No. 261 of 2021)

MARCH 03, 2021

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[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Indian Penal Code, 1860:

s. 302 – Prosecution under – Death caused by husband of wife by setting her ablaze – Dying declaration recorded by Magistrate – Conviction by courts below – Appeal to Supreme Court – Held: The dying declaration is natural and the same is corroborated by statements of PWs 5 and 6 – The evidence clearly establishes the guilt of the accused beyond reasonable doubt – Conviction affirmed.

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Dismissing the appeal, the Court

HELD: 1 On coming to know that the deceased was admitted to hospital with the burn injuries, as informed by the police, the ASI went to the hospital along with other police officials. When it was noticed that the deceased has suffered 90 per cent injuries and was in a fit condition to make a declaration, he sent a request to the concerned Magistrate, upon which, the Judicial Magistrate, First Class, recorded the statement of the deceased. In her dying declaration, she has clearly stated that the appellant has poured Kerosene Oil on her and set her ablaze. Though, the family members of the appellant were also chargesheeted, they were subsequently discharged. [Para 13][497-C-E]

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2. The dying declaration looks natural and there is no reason to disbelieve the same. In addition to the dying declaration, the statements of PW-5 and PW-6, who are mother and maternal uncle respectively of the deceased, corroborate the case of prosecution. It is clear from their statements that the deceased was tortured at the hands of the appellant and his family members. The Magistrate in her deposition, has clearly stated that the relatives

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- A of deceased were not there at the time of recording dying declaration of the deceased. Merely because the parents and other relatives of the deceased were present in the Hospital, when the statement of the deceased was recorded, it cannot be said that the said statement was a tutored one. Merely because they were in the hospital, the same is no ground to disbelieve the dying declaration, recorded by the Magistrate. The dying declaration along with the depositions of PW-5, PW-6 and other witnesses clearly establishes the guilt of the appellant, beyond reasonable doubt. [Paras 14 and 16][497-F-H; 498-B-D]
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C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 261 of 2021

From the Judgment and Order dated 05.09.2016 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-147-DB of 2010.

D Mrs. Nanita Sharma, Adv. for the appellant.

Deepak Thukral, Dy.A.G., Gautam Sharma, Dr. Monika Gusain, Advs. for the respondent.

The Judgment of the Court was delivered by

E **R. SUBHASH REDDY, J.**
1. Leave granted.

2. This appeal has been filed by the accused in Session Case No.20 of 2008, on the file of the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, aggrieved by the judgment and order dated

F 05th September, 2016, passed by the High Court of Punjab and Haryana at Chandigarh, whereby, his conviction and order of sentence, for offence under Section 302 of the Indian Penal Code (IPC), was confirmed.

3. On information received from J. P. Hospital, Yamuna Nagar, regarding admission of the deceased, Pooja Rani, on account of burn injuries, a case was registered in FIR No. 112 on 20.03.2008, initially under Section 307 read with Section 34 of the Indian Penal Code and on death of Pooja Rani i.e. on 27.03.2008, Section 302 of the Indian Penal Code was added. On receipt of information, Mr. Ishwar Singh, A.S.I. of Police Station City, Yamuna Nagar, went to the J. P. Hospital along with other police officials and noticed that the deceased suffered 90 per cent

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A injuries and at that stage, she was declared fit to make statement. On the request of the police, Ms. Kumud Gugnani, Judicial Magistrate, First Class, Yamuna Nagar, Jagadhri, recorded the statement of deceased, Pooja Rani.

B 4. In the declaration, recorded by the Judicial Magistrate, First Class, Yamuna Nagar, Jagadhri, the deceased has stated that the appellant / accused has poured kerosene oil and set her ablaze. After investigation, Charge-Sheet was filed against the appellant / accused and three others namely Kamlesh, Mitter Sain and Anjali, mother-in-law, brother-in-law and sister-in-law respectively of the deceased. However, vide order dated 12.08.2008, the other accused persons were discharged and charge was framed against the appellant herein, for offence punishable under Section 302 of the IPC, to which he pleaded not guilty and claimed trial.

C 5. To prove the charge framed by the appellant herein, the prosecution examined C. Narender Kumar as PW-1, C. Ram Kumar as PW-2, Jai Pal, ASI as PW-3, EHC Prem Singh as PW-4, Varsha Rani as PW-5, Kashmiri Lal as PW-6, Pyara Singh, Inspector as PW-7, Jai Kishan, ASI as PW-8, Dr. Manisha Singh as PW-9, EHC Satwinder Singh as PW-10, Raj Kumar, SI as PW-11, Lal Singh, ASI as PW-12, Dr. Amit Goel as PW-13, Balraj Singh, ASI as PW-14, Ishwar Singh, ASI as PW-15 and Kumud Gugnani as PW-16.

D 6. When the statement of the appellant under Section 313 of the Code of Criminal Procedure (Cr.P.C.) was recorded, the appellant denied the allegations levelled against him and pleaded that he was falsely implicated inasmuch as the deceased, Pooja Rani, was under a misconception that he had illicit relations with Anjali (sister-in-law). On behalf of the appellant / accused, no witnesses were examined.

E 7. The Trial Court, by appreciating oral and documentary evidence on record, by judgment and order dated 03.11.2009, convicted the appellant for offence, punishable under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- with a default clause to undergo further rigorous imprisonment of two years.

F 8. Aggrieved by the conviction recorded and sentence imposed by the learned Additional Sessions Judge, Yamuna Nagar, Jagadhri, the appellant herein, preferred Criminal Appeal No. D-147-DB of 2010 before the High Court of Punjab and Haryana, at Chandigarh. The High Court, vide impugned judgment and order dated 05th September, 2016,

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- A dismissed the appeal by confirming the conviction recorded and sentence imposed on the appellant.

9. We have heard Mrs. Nanita Sharma, learned counsel appearing for the appellant and Mr. Deepak Thukral, learned Dy. A.G., appearing for the respondent-State.

- B 10. Learned counsel for the appellant has contended that though, the evidence on record led by the prosecution, is not sufficient to prove the guilt of the accused, the Trial Court has erroneously convicted the appellant for offence under Section 302 of the IPC and the same was confirmed by the High Court without considering various grounds, raised C on behalf of the appellant. It is, further, contended by the learned counsel that the conviction is mainly based on the dying declaration, recorded by the Magistrate, who was examined as PW-16. It is submitted that the dying declaration was tutored one and the same was made at the instance of family members of the deceased, who were there with the deceased in hospital at the relevant time. It is submitted that, in fact, when the D deceased made attempt to commit suicide, the appellant has tried his best to extinguish the fire. Lastly, he has submitted that the conviction, recorded by the Trial Court, as confirmed by the High Court, is fit to be set aside by this Court.

11. On the other hand, the learned Dy. A.G., appearing for the E State, has contended that the prosecution has proved the guilt of the accused for offence under Section 302 of the IPC beyond reasonable doubt. It is submitted that immediately on receipt of information, Mr. Ishwar Singh, ASI went to the hospital, along with other police officials and found that the deceased has suffered 90 per cent injuries, but she F was in a fit condition to make statement. It is submitted that, on request, Ms. Kumud Gugnani, the then Judicial Magistrate, First Class, Yamuna Nagar, Jagadhri, recorded the statement of deceased, Pooja Rani under Exhibit 'Ex-PL', wherein she stated that she was married to the appellant three years prior to the incident and that the appellant was under the influence of his brother's wife and used to act on her instigation. In the G statement recorded, the deceased clearly stated that the appellant has poured kerosene oil on her and set her ablaze. It is submitted that merely because her family members have reached the hospital, on coming to know of the burn injuries, suffered by the deceased, it cannot be said that the declaration made by the deceased before the Magistrate was a tutored one. It is submitted that at the time of recording of statement of H

deceased, all the family members were sent out and the statement was recorded, as deposed by the deceased. It is submitted that if the entire evidence is considered, it clearly proves the case of the prosecution for offence under Section 302 of the IPC. It is submitted that the evidence on record is properly appreciated by the Trial Court as well as the High Court, and in view of the concurrent findings, recorded by both the Courts below, no case is made out to interfere with the same.

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12. Having heard learned counsels on both sides, we have perused the impugned judgment, judgment of the Trial Court and other material evidence placed on record.

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13. In this case, it is to be noticed that, at first instance, on coming to know that the deceased, Pooja Rani, was admitted to hospital with the burn injuries, as informed by the police, the ASI went to the hospital along with other police officials. When it was noticed that the deceased has suffered 90 per cent injuries and was in a fit condition to make a declaration, he sent a request to the concerned Magistrate, upon which, the Judicial Magistrate, First Class, Yamuna Nagar, Jagadhri, recorded the statement of the deceased, Pooja Rani, which was exhibited as **Ex-PL**. In her dying declaration, she has clearly stated that the appellant has poured Kerosene Oil on her and set her ablaze. Though, the family members of the appellant were also chargesheeted, they were subsequently discharged vide Order dated 12.08.2008. On information given to the parents of the deceased, they have come to hospital. The deceased, Pooja Rani was admitted in the hospital on 20.03.2008 and ultimately, succumbed to injuries on 27.03.2008. It is also clear from the material evidence, placed before this Court, that though the family members of the deceased were in the hospital, they were sent out, when the dying declaration was recorded by the Magistrate, who was also examined on behalf of the prosecution as PW-16.

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14. If we look at dying declaration, recorded by the Magistrate, it looks natural and no reason to disbelieve the same. In addition to the dying declaration, the statements of PW-5 and PW-6, who are mother and maternal uncle respectively of the deceased, corroborate the case of prosecution. It is clear from their statements that the deceased was tortured at the hands of the appellant and his family members. The Magistrate, in her deposition, has clearly stated that the relatives of deceased, Pooja Rani, were not there at the time of recording dying declaration of the deceased.

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- A 15. Further, it is also relevant to notice here, though the appellant has stated in his statement, recorded under Section 313 of Cr.P.C., that many persons from the neighbourhood came to the house of the appellant at the time of incident, no one was examined on his behalf.
- B 16. If the dying declaration, recorded by PW-16, is considered along with the depositions of PW-5, PW-6 and other witnesses, who were examined on behalf of the prosecution, it clearly establishes the guilt of the appellant, beyond reasonable doubt, as such, we find no merit in any of the contentions, advanced by the learned counsel for the appellant. Further, merely because the parents and other relatives of the deceased were present in the Hospital, when the statement of the deceased was recorded, it cannot be said that the said statement was a tutored one. It is quite natural that when such an incident happens, the parents and other relatives try to reach the hospital immediately. Merely because they were in the hospital, the same is no ground to disbelieve the dying declaration, recorded by the Magistrate, who was examined as PW-16.
- C 17. For the above stated reasons and the reasons recorded by the High Court, we are of the view that there is no error committed in the impugned judgment and order, so as to interfere with the same in this Appeal. This Criminal Appeal is devoid of merits and the same is accordingly dismissed.

Kalpana K. Tripathy

Appeal dismissed.