

Manoj Kumar Verma Vs. State

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Court : Delhi

Decided On : May-22-2014

Judge : Kailash Gambhir

Appellant : Manoj Kumar Verma

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: May 22, 2014 + CRL.A. 3/2000 MANOJ KUMAR VERMA Through Appellant Mr.Aditya Aggarwal & Mr.Rahul Kumar, Advocates versus STATE Through Respondent Mr. Ravi Nayak, APP for the State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J1 To commit a murder is brutal in itself, but it is most dehumanizing and bestial when one fellow human is set ablaze by the hands of another human in a moment of rage. There can be various reasons which may drive a person to commit a crime. There exists no logic or rationality which may excuse any crime irrespective of its magnitude. Moreover, in no circumstances an action as nefarious or inhuman as burning a person alive may be justified. The acts of a man is the mirror to his mind and it is a dark reflection of his soul that we see when he loses his rationality and reason and is overcome by emotion so extreme as to turn into a barbaric criminal. None else but the victim alone

undergoes horrendous pain, agony and trauma due to burn injuries which cause irreversible damage even if the victim survives. In the present case, the question before this court is that whether the given facts and circumstances result in a similar situation of inhumanity.

2. Challenge in the present appeal is to the impugned judgment dated 20.11.1999 and order on sentence dated 22.11.1999 whereby the learned Additional Sessions Judge had convicted the appellant for committing an offence punishable under Sections 302 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and sentenced him to undergo rigorous imprisonment for life along with a fine of Rs.2000/- only and in default of payment of fine, he had been sentenced to further undergo rigorous imprisonment for six months.

3. The germane case of the prosecution in brief is summarized as under:

On 21/11/1995 at 2:55pm information was received at Police Station Kalkaji that one woman had burnt herself at B-72, Kalkaji and that information was recorded vide D.D.No.27-B and its copy was handed over to SI Dhiraj (PW-15) for follow-up action and then he along with one Constable went to the place of occurrence where he came to know that Mrs.Soma Dass w/o Sammer Dass had already been taken to Safdarjung Hospital in burnt condition in a PCR Van by her husband. Thereafter SI Dhiraj went to Sardarjung Hospital, leaving behind the Constable at the spot, where Mrs.Soma Dass was found admitted in the burn ward with 95% burns and she was declared fit for statement. She gave her statement Ex. PW1/A alleging inter-alia that Manoj Kumar Verma was living with her in house No.B-72, Kalkaji for two years and that on the morning of 21.11.1995 Manoj fought with her for Rs.200/that she owed him as she had spent the said money and on this Manoj had pressed her throat and then went away. It was further stated that Manoj again came back to the house at 2pm when she was all alone and told her that in case she would not give the money he would kill her and when she told the Appellant that she did not have the money, Appellant poured kerosene on her and set her on fire and despite efforts she was not able to extinguish the fire and the appellant then ran away when she started shouting leaving behind the attach case. On the basis of that statement of Mrs.Soma Dass FIR No.632/95 was registered against

the accused Manoj for the offence punishable under Section 307 I.P.C. On 22/11/1995 Mrs. Soma Dass died in the hospital and thereafter the case, which was earlier registered for the offence of attempt to murder punishable under Section 307 I.P.C., was converted into one for the offence of murder punishable under Section 302 I.P.C. Accused was arrested by the police on 22.11.1995. After completion of investigation, charge sheet was submitted against the accused.

4. To prove its case, the prosecution examined as many as 22 witnesses. The statement of the appellant was recorded under Section 313 Cr.P.C. The appellant was confronted with the entire incriminating evidence adduced by the prosecution and responded to various questions put to him. The appellant pleaded his innocence and false implication.

5. On behalf of the Appellant - Manoj, arguments were addressed by Mr. Aditya Aggarwal, Advocate. The State was led by Mr. Ravi Nayak, learned Additional Public Prosecutor.

6. Learned counsel for the appellant vehemently contended that the appellant is an absolutely innocent person and he has been falsely implicated in the present case at the instance of the husband of the deceased Ms. Soma Dass, who was under a misconception that the appellant was having an illicit relationship with his wife, herein the deceased. Laying his attack on the alleged illegal reasoning given by the learned trial court against the appellant, learned counsel submitted that the case of the prosecution is primarily based on the dying declaration made by the deceased to the Investigating Officer (PW-15) but the alleged dying declaration is surrounded by many suspicious circumstances and thus cannot be accepted as a reliable piece of evidence to convict the appellant. The suspicious circumstances which the learned counsel pointed out are that; the dying declaration was not in a question answer form; the same was not recorded in the presence of the Magistrate; no plausible explanation was given by the Investigating Officer to seek the presence of the Magistrate to record the dying declaration of the victim and even no name of SDM was disclosed whose services were requisitioned by the Investigating Officer for the said purpose; the SDM was not made a prosecution witness; PW-15 recorded the dying declaration and the same was not read over

and explained to the deceased; the deceased was tutored by her husband to falsely implicate the appellant; the Investigating Officer and the other police officials colluded with the husband of the deceased in doing so; both hands of the victim were completely burnt and in such circumstances it cannot be believed with certainty that the patient would be able to sign the documents; the manner of signature as appeared on the alleged dying declaration looks like that the signature of the victim was taken on a blank paper that too on the next page of the paper instead of taking her signature on the same paper. The contention raised by learned counsel was that the condition of the victim Ms. Soma Dass was such that if one had pressed a finger in the burnt portion of the body, then the same would have easily gone inside such portion of the burnt body of the victim and therefore the deceased could not have signed the statement with the burnt fingers.

7. Learned counsel for the appellant further argued that there is inconsistency in the depositions of PW-15, PW-2 and PW-1 giving different versions with regard to the absence/presence of persons at the time of recording of the dying declaration by the Sub-Inspector. PW-15 stated that he was alone while recording the statement of victim Soma Dass; PW-2 deposed that he remained in the hospital throughout the night; and PW-1 deposed that 5-6 persons were present around the body of the deceased when the police was recording her statement and he remained standing silently at the time of recording the said statement.

8. Learned counsel for the appellant referred to certain other contradictions in the depositions of PW-1, PW-15 and PW-22. Highlighting such contradictions, learned counsel pointed out that PW-1 Sammer Dass in his examination-in-chief deposed that the accused was working with him in the Textile House, Nehru Place, New Delhi while in his cross-examination he denied that the accused Manoj was working with him in the Textile House, Nehru Place, New Delhi. The other contradiction pointed out by learned counsel was that as per PW-15, the accused was arrested when he was entering into the premises of No.B-16, Okhla Phase II, New Delhi, but as per PW-22, the accused was arrested while he was coming out of the factory.

9. The next contention raised by the learned counsel was that the conduct of PW-2 Surjit Kumar of rushing to Nehru Place to call the husband of the deceased after seeing her in burnt condition is highly unnatural and improbable and in such a situation, any prudent person would seek the help of the police or even the next door neighbour. Learned counsel also argued that the prosecution failed to join any independent witnesses at the time of arrest of the accused, even though he was arrested from his factory premises. Learned counsel also argued that as per its own case, the accused was easily arrested by the police on the next date of the incident and had the accused been involved in the crime, then certainly he would have absconded. Learned counsel also argued that the prosecution also failed to join any public witnesses at the time of the alleged disclosure statement made by the accused or at the time of recovery of the jersey which was allegedly worn by the accused at the time of commission of the crime. Learned counsel also argued that the prosecution even did not join any public witness to prove the said crime which took place in broad day light in a house situated in a thickly populated area. Learned counsel also pointed out that as per the evidence of PW-15, about 8-10 people were found at the house of the deceased when he had reached for the first time and therefore, non-joining of independent witnesses to prove the involvement in the commission of the crime is fatal to the case of the prosecution. Learned counsel also submitted that PW-2 in his deposition had admitted that the police officer had obtained his signatures on 4-5 papers and this fact would again show that with a view to solve the case the police was fabricating the documents. Learned counsel also pointed out that the deceased and her husband and nephew were Bengalis, but her signature on the alleged dying declaration was not in Bengali.

10. Learned counsel furthered argued that the husband of the deceased had accompanied her to the hospital in the police van, therefore possibility of the victim being tutored by her husband cannot be ruled out.

11. Learned counsel laid considerable strength on his argument that there was no motive on the part of the appellant to have burnt her. Learned counsel also submitted that as per the case of the prosecution it was just due to non return of Rs.200/- by the deceased to the appellant, the appellant had burnt Ms.Soma

Dass, wife of Sammer Dass (PW-1). The contention raised by the learned counsel is that for committing such a heinous and ghastly crime, there would have been some strong motive and not merely because of non-return of a paltry amount of Rs.200/-.

12. Based on the aforesaid submissions, the learned counsel strongly urged for setting aside the impugned judgement and order on sentence dated 20.11.1999 and 22.11.1999 respectively, by allowing the present appeal filed by the appellant. In support of his arguments, learned counsel for the appellant has placed reliance on the following judgments:- 13. a) K.Ramakrishnappa vs. State of Karnataka, 2006 Cr.LJ4314 b) Abdul Riyaz Abdul Bashir vs. State of Maharashtra, 2012 Bom.Cr (Cri) 329; Per contra, Mr. Ravi Nayak, Learned APP strongly contended that the dying declaration was recorded by the Investigating Officer (PW-15) after the deceased was declared medically fit to give her statement, therefore, the dying declaration is absolutely reliable, truthful and free from any kind of suspicion and the conviction can be based on the same. Learned APP also argued that at the time of recording the dying declaration, the same was in the nature of a complaint and therefore, it was not required to be recorded in question and answer form, not by the Magistrate and not even to be attested by the doctor. The contention raised by the learned APP was that the said statement made by the victim acquired the character of dying declaration after her demise and therefore the objections raised by the learned counsel for not following certain norms in recording the dying declaration have no legs to stand. Learned APP also submitted that due efforts were made by the Investigating Officer to requisition the services of the SDM, but the SDM refused to come on the ground that the marriage is more than seven years old and in such circumstances, he was not required to record the statement of the victim. The next submission of learned APP was that the deceased was fit for making the statement as per the medical opinion given by the doctor even despite the fact that she had suffered 95% burn injuries and therefore, it cannot be held that she was not in a position to make any statement. Learned APP also pointed out that the patient was found conscious and oriented at the time of her admission by the doctor who examined her, as per the MLC report.

14. Learned APP also argued that the fitness certificate given by the doctor to declare the victim fit for giving her statement cannot be challenged by the appellant as there could be no reason for the doctor to give a false fitness certificate, nor there is any such allegation levelled by the defence against the doctor or the Investigating Officer that they were having any animosity or personal grudge to falsely implicate the appellant.

15. Countering the contention of learned senior counsel for the appellant that the victim Ms. Soma Dass was not in a position to sign the declaration, after having received burn injuries to the extent of 95%, learned APP submitted that no such question was put by the defence to the three doctors examined by the prosecution and therefore, there can be no reason to disbelieve the signatures of the victim and her fitness which was duly certified by the doctor. Learned APP also submitted that PW-2 was a boy of 17 years and did not possess any medical qualification, therefore his deposition about the burnt condition of the victim cannot be equated with the medical expertise of the three doctors whose testimonies remained unrebutted and uncontroverted.

16. Learned APP also submitted that with regard to the contention raised by the learned counsel that the husband of the victim had accompanied the victim in the PCR van and therefore the possibility of 1 in his cross-examination and therefore the appellant cannot be permitted to raise any such plea at the appellate stage. Learned APP also submitted that the MLC of the deceased was prepared by Dr.R.K. Srivastav and in her MLC the victim herself told the doctor that she was set on fire by the appellant after some altercation over monetary dispute and the said MLC report was duly proved on record as Ex.PW-9/H in the testimony of Dr.R.K. Srivastav.

17. Learned APP also submitted that the oral dying declaration was also made by the victim to PW-12 - ASI Johri Lal who had reached the house of the victim on receiving the information of the incident and to him also, the victim disclosed that she was set on fire by the appellant. Learned APP also submitted that the oral dying declaration was also made by the victim to PW-2 - Surjit Kumar Nandi who is the son of brother of the deceased and he was the first one to have seen the

victim in the burnt condition and to him also, she disclosed that the appellant had sprinkled kerosene oil on her and then set her ablaze. Learned APP thus submitted that all the dying declarations are mutually corroborating and consistent to each other collectively and even individually they are sufficient to convict the appellant for committing such a barbaric crime. Learned APP also argued that PW-2 was only around 16-17 years old and therefore instead of calling the police or the neighbours he rushed to call the husband of the victim who was working nearby to the house of the victim and therefore, no fault can be found to challenge his wisdom in taking such a decision.

18. Learned APP also submitted that the non-joining of public witnesses at the time of recovery of the jersey/sweater or at the time of his arrest or even to prove the commission of the crime cannot create any doubt on the case of the prosecution which was otherwise convincingly proved by the prosecution. Learned APP also submitted that the contradictions pointed out by the learned counsel are minor and trivial in nature and the same cannot be given any credence to create dent in the case of the prosecution.

19. Based on the aforesaid submissions, learned APP strongly urged for upholding the impugned judgment of conviction and order on sentence passed by learned trial court and to dismiss the present appeal. In support of his arguments, learned APP has placed reliance on the following judgments: a) Lakhan vs. State of Madhya Pradesh, (2010) 8 SCC 514 20. b) Betal Singh vs. State of M.P., JT1996(4) SC 734 c) Ram Swaroop vs. State (Govt. of NCT) of Delhi, 2013 (3) JCC 129 (Narcotics) We have heard the learned counsel for both the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the trial court record.

21. The appellant herein has been convicted by the learned trial court for committing the most barbaric and ghastly murder of Ms. Soma Dass and her only fault was that she could not return back a sum of Rs. 200/which she owed to the appellant. The incident is of the year 1995 and therefore, this amount may look small and negligible now but must be sizeable in the year 1995. Whatever may be the extent of the amount, the appellant and the deceased alongwith her husband

were living in the same property as tenants in their respective portions under a common landlord. It is unthinkable and unimaginable that any person would turn so barbaric to kill his next door neighbour and that too a lady in a most treacherous manner by setting her ablaze just because she could not return back an amount of Rs.200/-. Such people are living beasts who create menace in the society.

22. The prosecution case is based on oral dying declaration made by the deceased to her husband - Sammer Dass (PW-1), her brothers son Surjit Kumar Nandi (PW-2), Police officer - ASI Johri Lal (PW-12) and Dr. R.K. Srivastav (PW-5) and the first information statement made by the victim Ms. Soma Dass to the Investigating Officer (PW-15) which after her death acquired the character of her dying declaration.

23. The incident in question had taken place on 21.11.1995 at about 2 pm and as per the deposition of PW-2 - Surjit Kumar, when he had returned to his house at about 2 pm he saw the accused - Manoj running away from the house and when he went inside the house he saw Soma Dass in a burnt condition from bottom to her neck. The victim Soma Dass was the aunt of PW-2 Surjit Kumar. He was the first one to whom Soma Dass had told that the accused Manoj had sprinkled kerosene oil on her and then set her ablaze. PW-2 immediately rushed to Nehru Place to call her husband Sammer Dass and when both of them reached back the police had already reached at the spot and the police had put Soma Dass into PCR Van so as to take her to the hospital. In the PCR Van Soma Dass told her husband PW-1 and ASI Johri Lal PW-12 that she did not return back money to Manoj and then Manoj poured kerosene oil on her and then set her ablaze. PW12 ASI Johri Lal in his deposition stated that at about 2 pm he had received a wireless message that a lady had got burn injuries at B-72, Kalkaji so he went to the spot in the PCR Van and found one lady in flames inside the house who was shouting. By extinguishing the flames after putting cloths over her body, she was shifted to the PCR Van and was taken to Safdarjang Hospital. He also deposed that the husband of Ms. Soma Dass had accompanied him in the PCR Van to Safdarjang Hospital and that lady was shouting that she had been set on fire by Manoj Kumar Verma. At the hospital she was attended by PW-5 - Dr. R.K. Srivastava. To Dr.

Srivastava also, Ms. Soma Dass had herself narrated the incident by disclosing that she was set on fire by Mr. Manoj Kumar who poured kerosene oil on her body and set her ablaze after some altercation over monetary dispute. The name of Sammer Dass (husband) is duly found mentioned in the MLC report in the column of name of relative and friends. The MLC report also clearly mentions that the information to the doctor was given by the patient herself. The MLC report also records that at the time of admission, she was conscious and well oriented. It also records that there were fresh thermal injuries all over the body except on front of the face comprising 95% of the total body surface area (TBSA) burnt.

24. PW-5 Dr. R.K. Srivastava in his court deposition deposed that on examination, he found general condition of the patient critical but she was well oriented and conscious. He also deposed that the patient herself had given the alleged history of assault on her by stating that she was set on fire by Mr. Manoj Kumar who poured kerosene oil on her body and then set her ablaze after some altercation over some monetary dispute.

25. At the hospital, PW-15 Investigating Officer of the case had recorded the first statement of Ms. Soma Dass. Before recording the statement, the IO PW- 15- Dhiraj Singh had filed an application addressed to the CMO of Safdarjung Hospital so as to permit him to record her statement. On this application, which was proved on record as Ex. PW-15/A, PW-20 - Dr. Ashok Kumar Tiwari, certified Ms. Soma Dass as conscious and oriented and fit for statement. PW-20 - Dr. Ashok Kumar had proved his endorsement on the application as Ex. PW-20/A. After Ms. Soma Dass was declared fit for making statement, the Investigating Officer - Dhiraj Singh PW15 had recorded her statement, which was proved on record as Ex. PW-1/A. This statement made by Soma Dass was the basis of registration of FIR under Section 307 of IPC. Ms. Soma Dass could survive only for about 29 hours and after her death the offence was converted from Section 307 IPC to Section 302 IPC and the said first statement made by the deceased acquired the character of her dying declaration. This first statement made by Soma Dass is of great significance and therefore, it will be appropriate to reproduce the English translation of her statement, which is as under:

A man named Manoj Kumar Verma had been staying with me at B/72 Kalkaji since the past two years. He belongs to Kanpur and his brother-in-law resides in Faridabad. Today, in the morning, Manoj quarrelled with me for taking back his money. I owed him Rs.

200. When I told him that I had spent the money for buying things for the house, he pressed my throat and went away. He then returned at 2pm in the afternoon when I was alone in the house. He threatened me that if I did not return his money he would kill me. When I informed him that I do not have the money, he poured kerosene oil over me and with a matchstick set me ablaze. I tried very hard to extinguish the fire but failed. When I started screaming, he left his suitcase and ran away.

26. As can be seen from the oral dying declarations made by the deceased and her own statement recorded by the Investigating Officer (PW-15) which later became her dying declaration, one cannot find any inconsistency with regard to the clear and candid version of the victim specifically naming Manoj Kumar Verma setting her ablaze after pouring kerosene oil over her because of some monetary dispute. There can arise no reason for at least PW- 5 Dr. R.K. Srivastava and PW-15 Investigating Officer of the case to have falsely implicated the appellant or to have written something which was not told to them by the victim of the crime. It is not the case of the appellant that there was any kind of animosity between the appellant and PW-5 and I.O. of this case PW-12 to falsely implicate the appellant and then to leave the actual culprit of the crime. In any case, it is beyond our comprehension that Dr. R.K. Srivastav (PW-5) will write something which was not stated to him by the patient herself in the MLC report proved on record as Ex.PW-9/H.

27. The principle underlying admissibility of the dying declaration is based on the well known legal maxim *Nemo moriturus praesumitur mentire* which means that a man will not meet his maker with a lie in his mouth. The Truth said Mathew Arnold, sits upon the lips of a dying man".

28. The principles governing the dying declaration were eloquently summed up long back by the Honble Apex Court in the matter of Paniben vs. State of Gujarat

reported in AIR 1992 SC1817 The same are reproduced as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (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. (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration has to look to the medical opinion. But where the eye-witness has said that the deceased was in a fit conscious state to make this dying declaration, the medical opinion cannot prevail. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (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.

29. The issue of reliability of the dying declaration also came up for consideration before the Honble Supreme Court in Laxman vs. State of Maharashtra, (2002) 6 SCC710 the Constitution Bench of the Honble Supreme Court took a view that there is no requirement of law that there should always be medical certification that injured was in a fit state of mind at the time of making a dying declaration. Relevant paras are as under:

A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence, it has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration, is not a statement on oath and the maker thereof be subjected to cross-examination.

The Court also took a view that there is no requirement of law that the dying declaration must necessarily be made to a Magistrate and when such statement is recorded by the Magistrate there is no specified statutory form for such recording. The Court also held that a certification by the doctor is essentially a rule of caution and, therefore, voluntary and truthful nature of the declaration can be established otherwise. The relevant para of the said judgment is reproduced as under:

3. The justice 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 death bed 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 court 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 to always be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting 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 look up to the medical opinion.

30. The issue of reliability of dying declaration also came up for consideration before the Supreme Court in *State of Rajasthan vs. Wakteng*, AIR 2007 SC2020 and it was held as under:

While great solemnity and sanctity is attached to the words of dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the Court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the Court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the Court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction.

The Supreme Court in the case of *Bhajju @ Karan Singh v. State of M.P.*, (2012) 4 SCC327 has further elaborated on this point as under :

The law is well-settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as CrI.A. No.3/2000 Page 22 of 37 disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the Court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the Court, the same may be refused to be accepted as forming basis of the conviction.

31. As can be seen from the above principles, the dying declaration made by the deceased must represent a truthful version of the incident and in a case where there are more than one dying declaration then there should be consistency,

particularly on the material facts in all the dying declarations. If there are intrinsic contradictions and inconsistencies in multiple dying declarations and there are suspicious circumstances which surround such multiple dying declarations then it is for the prosecution to clear all such doubts with the help of other corroborative evidence otherwise it may not be safe to act upon such inconsistent and discrepant dying declarations particularly where such discrepancies are on the material aspects.

32. Applying the aforesaid principles of law to the facts of the present case, we are satisfied that the guilt of the accused stands conclusively established on the basis of the said dying declaration made by the deceased as in all her dying declarations the victim took a consistent stand of naming the appellant in setting her on fire due to altercation on a monetary dispute. Learned counsel for the appellant had raised certain contentions to challenge the authenticity and reliability of the said dying declarations made by the deceased, such as; that the dying declaration was not recorded in a question and answer form; the same was not recorded in the presence of the Magistrate; no name of SDM was disclosed whose services were requisitioned by the Investigating Officer for such purpose; the SDM was not made as prosecution witness. We find no merit in these contentions raised by counsel for the appellant. The learned trial court held that at the time the Investigating Officer had recorded the statement of Ms. Soma Dass, the same was in the nature of the complaint and not in the form of dying declaration and therefore the norms for recording the dying declaration of victim were not required to be adhered to by the Investigating Officer. The FIR in this case was registered based on the first statement made by the victim and the said statement acquired the status of dying declaration after the death of the victim on 22.11.1995. Learned trial court also referred to the judgment of the Apex Court in the case of Paras Yadav vs. State of Bihar, AIR 1999 SC644 wherein also Sub-Inspector had recorded the FIR on the basis of the statement made by the victim which was treated as a dying declaration after her death and the Apex Court took a view that FIR was recorded in a routine manner by the Sub-Inspector as a complaint and not as a dying declaration and therefore no question could arise to record the same as a dying declaration of the victim. So far as the submission that the Investigating Officer had failed to requisition the services of SDM to record the dying declaration of the

victim, learned trial court had referred to the cross-examination of Investigating Officer (PW-15) where he stated that on 21.11.1995 and also on 22.11.1995 he had contacted the area SDM for recording the statement of Ms. Soma Dass but the SDM who was a lady officer had told him that since Soma Dass was married for more than seven years, therefore she need not come to record the statement. Although, in our view the SDM should have acceded to the request of the Investigating Officer in recording the dying declaration of the deceased as in all such cases of unnatural deaths, the services of the concerned SDMs need to be requisitioned and the SDMs would be failing in their duties if they do not visit the spot and record the last statement of the victim of the crime. Therefore the excuse taken by the SDM that the death of the victim did not take place within the period of seven years of marriage, hardly satisfy us. Be that as it may, once the Investigating Officer had made requisite efforts in requisitioning the services of SDM, no blame can be fastened on him for not making due efforts in this regard. So far as the contention of the learned counsel that the name of the SDM was not disclosed by the Investigating Officer, suffice it to state that the argument deserves outright rejection.

33. Dealing with the next contention raised by the learned counsel that both the hands of the victim were completely burnt and in such a situation, it cannot be believed that the patient would be able to sign her statement and the other connected argument that the signature of the victim as appeared on the next page but not on the same page suggests that the same was taken on a blank paper. To support his argument, learned counsel for the appellant referred to the cross-examination of PW-2 - Surjit Kumar, wherein he stated that if one would push a finger on the burn portion of Soma Dass then finger would have gone inside the body. Learned counsel also submitted that the fingers and palm of Soma Dass were completely burnt. The statement of the victim Soma Dass was recorded by the Investigating Officer after she was declared medically fit to make her statement on being found conscious and oriented. At the time of her admission in the hospital also, the victim was found to be well oriented and conscious even though she had suffered burn injuries to the extent of 95%. Learned trial court is right in observing that the prosecution had examined three doctors but from none of them any specific question was asked as to whether the deceased after having suffered

95% burn injuries could be in a position to sign her statement. Undoubtedly, the medical experts were better placed who could satisfactorily answer this question raised by learned counsel for the appellant but in the absence of any question put by the defence to these doctors, there is every reason to believe that the victim was in a position to sign her statement despite having suffered 95% burn injuries.

34. The extent of burn injuries on the surface area of the body is a separate issue from that of the degree of the burn injuries as it is the degree and not the surface area of the burn which would determine the intensity and severity. Even with the extent of 95% burn injuries, it is not necessary that the hand or the fingers would have been affected so severally so as to totally disable the victim from putting her signatures. We are thus, not persuaded to accept the argument of the appellant that the victim was not in a position to sign her statement having suffered burn injuries to the extent of 95%. We also do not find any merit in the contention raised by learned counsel for the appellant with regard to the deposition of PW-2 in his cross-examination stating that if one would push a finger on the burnt portion of Soma Dass then finger would have gone inside the body and based on his statement, it should be believed that the victim did not sign the said statement proved on record as Ex.PW-1/A. Learned trial court was right in observing that PW-2 was not an expert to give his views on the medical condition of the victim and it was for the medical experts to give their expert views and for not putting any question to the three doctors on this aspect, the blame squarely lies on the defence. In any event of the matter and in the facts and circumstances proved on record, we find no reason to suspect or doubt the said last statement made by the victim. The other contention of the counsel for the appellant that the signatures of the victim appeared on the next page also lacks merit.

35. Dealing with the next contention of the learned counsel for the appellant that there were inconsistencies in the depositions of PW-1, PW2 and PW-15 giving different versions with regard to the absence/presence of persons at the time of recording of the statement of the victim Soma Dass by the sub Inspector. Undeniably, PW-15 - SI Dhiraj Singh in his cross-examination stated that when he had recorded the statement of Soma Dass in the hospital, then besides him nobody else was present near her. He also denied the suggestion that husband of

Soma Dass was present when he had recorded her statement and contrary to the same, PW-1 Sameer Dass in his cross-examination stated that 5-6 persons were present around the body of his wife when the police was recording her statement. So far as PW-2 - Surjit Kumar is concerned, in his cross-examination, he had stated that he remained in the hospital throughout the night and PW-1 Sameer Dass also remained there. The inconsistencies in the deposition of these three witnesses taking different stands with regard to the presence/absence of the persons at the time of recording of the statement of victim Soma Dass by Investigating Officer - Dhiraj Singh, in our view is hardly of any significance. This is so because the statement made by the victim Soma Dass to the Investigating Officer was in the nature of a complaint based on which the case was registered by the police vide FIR No.632/95 and therefore, the presence and absence of the persons at the time of recording of her statement cannot put any question mark on the reliability and trustworthiness of the statement made by the victim to the Investigating Officer. Certainly, the position would have been different, had the Investigating Officer recorded the statement of the victim as her dying declaration and then the presence of PW-1 and PW-2 and other family members could have been taken a good ground to suspect the reliability of the dying declaration. The fact situation in the present case is undoubtedly different and therefore, the plea of inconsistencies in the deposition of PW-1, PW-2 and PW-15 to suspect the statement made by the victim Soma Dass needs to be rejected. Another contention raised by the learned counsel for the appellant was that the conduct of PW-2 Surjit Kumar of rushing to Nehru Place to call the husband of the deceased on seeing the deceased in burnt condition was highly unnatural and improbable as in such a grave situation the first and foremost duty of PW-2 was to call for the police or the ambulance for providing immediate medical help to the victim. PW-2 Surjit Kumar Nandi was a young boy of 16 years of age on the date of the incident. When PW-2 Surjit Kumar returned to his house at about 2 pm on the date of the incident, he saw the accused running away from the house and when he entered the house, he saw the victim Soma Dass had burn flames up to her neck from the bottom. Soma Dass on seeing her nephew told him that the accused - Manoj Kumar had sprinkled kerosene oil on her and then set her ablaze. On hearing this from Soma Dass, PW-2 Surjit Kumar rushed to Nehru Place to call PW-1 Sameer

Dass and then both of them reached the spot. This conduct of PW-2 of not giving any priority to take the victim to the hospital but to call her husband first can be termed as unusual conduct. However, it is correct to say that different persons react in different manner to the same kind of situations and no test can be laid down as to why a particular person has not reacted or acted in a particular manner as is expected of any normal person. In *Rana Pratap and Ors. v. State of Haryana*, 1988 (3) S.C.C. 327, Chinnappa Reddy J.

speaking for the Supreme Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed:

Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

36. We cannot lose out sight from the fact that PW-2 was still a minor of 16 years of age and must have panicked to see her aunt in a burnt condition and in such a situation, in his wisdom he thought of informing and bringing the husband of Soma Dass to the house rather than to take other actions. We also do not question his wisdom keeping in view the fact that the office of PW-1 Sammer Dass was not far away from his residence at Kalkaji. It is also a matter of record that PW-1 immediately reached his house alongwith PW-2, the police had already reached the spot and then PW-1 accompanied the police in the PCR Van for taking the victim to the hospital. We thus find no merit in the said argument raised by the learned counsel for the appellant and the same is rejected.

37. Dealing with the other contention raised by the learned counsel for the appellant that at the time of the alleged disclosure statement made by the accused or at the time of recovery of the jersey, which was allegedly worn by the accused at the time of commission of the crime and also nonjoining of public witness to

prove the incident which took place in broad day light in a house situated in a thickly populated area, clearly makes the entire prosecution case doubtful.

38. By now, this fact has been well accepted that public witnesses do not easily come forward to assist the Investigating Agency in any criminal case. There are so many fears due to which public witnesses do not lend a helping hand to join investigation in criminal cases, first is the fear of inviting enmity of an accused, then is the fear of harassment at the hands of the police and third is the ordeal to be faced in appearing in court. We are not suggesting that the police should not make all possible endeavours to seek the help of independent public witness to prove any criminal case as the evidence of independent witnesses stands at a higher pedestal to prove any crime. However, the courts cannot shut their eyes from the hard realities of life, therefore, we cannot attach any significance to non-joining of the public witnesses by the police who were present at the time of disclosure statement, recovery of jersey which was worn by the accused at the time of commission of crime to prove the commission of crime.

39. In the case of Appabhai and Anr.v. State of Gujarat, AIR 1988 SC696 the Supreme Court has made the following observation with regard to non joining of the public as witnesses:

Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore CrI.A. No.3/2000 Page 33 of 37 this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused.

40. Learned counsel for the appellant has also raised a contention that the husband of the deceased had accompanied her to the hospital in a PCR van and

therefore the possibility of the victim being tutored cannot be ruled out. This contention of the learned counsel has been convincingly dealt with by the learned trial court and we find no reason to disagree with the same and such submission is liable to be rejected because no suggestion was put to the husband of the deceased in cross-examination that he had tutored his wife for naming the accused as the perpetrator of the crime. Learned trial court is also right in observing that it was not the husband alone who was present in the PCR Van and there was presence of other police officials as well who would not have allowed him to prompt or tutor his wife.

41. Dealing with the next contention raised by the learned counsel for the appellant that there was no motive on the part of the appellant to have set the victim Soma Dass on fire. Learned counsel for the appellant contended that non return of Rs.200/- could afford no reason for the appellant to resort to such a drastic and dreadful action that too with a neighbour. We have already stated above that this amount of Rs.200/may look as a small amount at present, but certainly Rs.200/- by no means was a small amount in the year 1995 looking into the background of the people involved. Nevertheless, this contention raised by the learned counsel for the appellant cannot discredit or refute the dying declaration made by the deceased proved on record as Ex.PW-1/A, which clearly spells out the said non return of money of Rs.200/- being a principal cause of issue due to which the appellant turned barbaric and beastly, to commit such a ghastly crime of burning his own neighbour. We thus, find no force in the contention raised by the learned counsel for the appellant.

42. A feeble argument was also advanced that the deceased was a Bengali woman and therefore her signature on the alleged dying declaration should have been in Bengali language and not in vernacular English. There is no merit in this contention raised by the learned counsel for the appellant. No such suggestion was put to the Investigating Officer by the defence that the victim only knew Bengali language and used to sign only in Bengali. No evidence was also produced by the defence in support of this plea. To say that a Bengali woman would not sign in English or would not speak Hindi and only Bengali language is a most absurd argument, which is to be out rightly rejected.

43. In the light of the aforesaid discussion we find ourselves fully satisfied that the said dying declaration was made by the deceased voluntarily and truthfully, free from any kind of prompting or tutoring and it was duly recorded by the Investigating Officer.

44. Taking cumulative view of the facts and circumstances of the present case, we are of the view that there is no perversity or illegality in the reasoning given by the learned Additional Sessions Judge in the impugned judgment vide which the learned trial court has rightly convicted the appellant for the offence committed by him under Section 302 IPC. Hence, the impugned judgment dated 20.11.1999 and order on sentence dated 22.11.1999, passed by the learned Sessions Judge are upheld. Finding no merit in the present appeal the same is dismissed.

45. The appellant is on bail. His bail bonds and sureties are forfeited. He is ordered to be taken into custody forthwith.

46. A copy of this order be sent to the concerned Jail Superintendent for information and necessary compliance. KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

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