

Parveen Kumar Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Dec-11-1998

Reported in : 1999CriLJ1919

Judge : B. Rai and; V.K. Bali, JJ.

Appeal No. : Criminal Appeal No. 481-DB of 1995

Appellant : Parveen Kumar

Respondent : State of Punjab

Advocate for Def. : S.S. Dhaliwal, DAG

Advocate for Pet/Ap. : A.P.S. Deol, Adv.; Narinder Singh, Adv.

Judgement :

B. Rai, J.

1. Parveen Kumar, aged 22 years, his father Jagdish Ram, aged 51 years, his mother Kulwinder Kaur alias Baljinder Kaur, aged 51 years, and his sister Kirna Rani, aged 19 years, all residents of village Jandanwala were put on trial for the offences punishable under Section 498-A, 302 read with Section 34, IPC and in the alternative under Section 304-B in the Court of Session in case F.I.R. No. 3 dated 5-1-1994 registered at Police Station Nehianwala for causing the death of Geeta Rani, aged 18 years wife of Parveen Kumar. Parveen was convicted under

section 302 as also in the alternative under section 304-B, IPC and was ordered to undergo imprisonment for life and to pay fine of Rs. 500/- and in default thereof to further undergo R.I. for 4 months, under section 302, IPC. In view of the fact that Parveen Kumar was sentenced for the graver offence under section 302, IPC, no sentence was awarded to him under Section 304-B, IPC in the alternative charge. Jagdish Ram, Kulwinder Kaur alias Baljinder Kaur and Kirna Rani were acquitted of all the charges framed against them, vide judgment and order dated September 12, 1995.

2. Feeling aggrieved, Parveen Kumar has challenged his conviction and sentence by filing Criminal Appeal No. 481-DB-1995.

3. Brief facts of the case are that Geeta Rani, aged about 18 years was married to Parveen Kumar about 1 1/4 years back. Immediately after the marriage her husband, her mother-in-law, father-in-law and sister-in-law (husband's sister) started maltreating her on the pretext that she had not brought sufficient dowry. Geeta Rani told about it to her parents on her visit to them. About 20 days back her father Gurdas Ram s/o Atma Ram, r/o Mandi Debwali, Hardial Singh s/o Laik Ram Sharma r/o Malout Distt. Faridkot, Ramesh Kumar s/o Roshan Lal and Kulwant Rai s/o Atma Ram residents of Mandi Dabwali and some more persons went to the house of her-in-laws at village Jandanwala and implored her father-in-law Jagdish Ram, her husband, Parveen Kumar, mother-in-law Kulwinder Kaur and her sister-in-law Kirna Rani to rehabilitate her and assuring them that they would fulfil their demand of scooter and furniture etc. At this, her husband and her mother-in-law told her parents that they would not rehabilitate her if their demand for scooter and furniture was not fulfilled. Thereafter, her relatives went back. On 4-1-1994, her husband and her mother-in-law told her 'your parents have been making promise, but they had not kept their promise, therefore we will not let you live in our house. Today we will finish you once for all'. At about 5.00 a.m. her mother-in-law Kulwinder Kaur sprinkled kerosene oil on her and her husband Parveen Kumar, who had come back after supplying milk set her on fire with match stick. However, her father-in-law and sister-in-law exhorted them to do away with her by setting her on fire. When she raised hue and cry, her father-in-law Jagdish Ram extinguished the fire and thereafter her husband Parveen Kumar

and her father-in-law Jagdish Ram got her admitted in a private hospital at Jaitu. On 5-1-1994 her uncle (father's younger brother) Kulwant Kumar went to village Jandanwala to see her. He came to know about the occurrence in the village. He got her admitted in Civil Hospital, Bathinda after getting her discharged from private hospital at Jaitu. It was further stated by Geeta Rani that her husband Parveen Kumar, father-in-law Jagdish Ram mother-in-law Kulwinder Kaur and her sister-in-law Kirna Rani had set her on fire after sprinkling kerosene oil on her with the intention to kill her for bringing insufficient dowry. Sub-Inspector Kewal Singh, Officer in charge of Police Station Nehianwala (PW-7), who along with police officials happened to be at Bathinda in connection with a meeting came across ASI Manjit Singh and ASI Manjit Singh delivered the wireless message which was received from Incharge Police Post Civil Lines, Bathinda about the admission of Geeta Rani with burn injuries in Civil Hospital containing a request that her dying declaration be got recorded. SI Kewal Singh along with police officials reached Civil Hospital, Bathinda from where he collected Medico Legal examination report of Geeta Rani. He moved application before SDM Bathinda for recording the dying declaration, who in turn directed Sh. Harjit Singh, Tehsildar Bathinda to record the dying declaration. Consequently Harjit Singh Tehsildar accompanied by SI Kewal Singh reached Civil Hospital Bathinda and recorded the dying declaration Exhibit PD of Geeta Rani and directed SI Kewal Singh to take further steps in the matter. After obtaining opinion from the Doctor regarding the fitness of Geeta Rani in the presence of her uncle Kulwant Kumar, SI Kewal Singh recorded the statement Exhibit PH. SI Kewal Singh made his endorsement Exhibit PH/1 and sent the same to PS Nehianwala, on the basis of which case under sections 498-A and 307 read with Section 34, IPC was registered against the accused persons. On 14-1-1994 at about 7.40 a.m. Geeta Rani succumbed to the burn injuries in Civil Hospital, Bathinda. SI Kewal Singh on receipt of information from the Civil Hospital, Bathinda, where the dead body of Geeta Rani was lying in the mortuary, prepared the inquest report, Exhibit PF. He got the autopsy done on the dead body of Geeta Rani. Prior to that SI Kewal Singh inspected the spot and prepared visual site plan Exhibit PJ with correct marginal notes. He also took into possession burnt pieces of clothes of the deceased, a match box and an empty bottle of kerosene oil, after turning the same into sealed parcel. After the death of

Geeta Rani, the offence was converted into one under section 304-B, IPC. The accused persons were arrested. After completion of usual investigation, final report under Section 173, Cr.P.C. was submitted in the Court of Illaqa Magistrate. After commitment of the case by the Illaqa Magistrate, Parveen Kumar, Jagdish Ram, Kulwinder Kaur alias Baljinder Kaur and Kiran Rani, accused were initially charged under sections 498-A, IPC and 304-B, IPC. Subsequently the charges were amended and the charge under Sections 498-A and 302, IPC read with Section 34, IPC and in the alternative under section 304-B, IPC were framed to which they pleaded not guilty and claimed trial.

4. In order to bring the charges home to the accused persons, the prosecution examined PW-1 Dr. Sat Pal Garg. He medico legally examined Geeta Rani, aged about 18 years on 5-1-1994 at about 3.30 p.m. and noticed that the patient was conscious. Pulse rate was 112/min. General condition was serious. There was Dermo epidermal burns present on the following area of the body of Geeta Rani :-

'1. On the face including neck, singeing of scalp hair present near anterior hair line.

2. Whole of chest on the front and back.

3. Whole of abdomen on the front and back excluding a strip near iliac line.

4. Whole of left arm and forearm excluding hands.

5. Right upper arm and forearm excluding a small portion on the back of forearm and right hand.

6. Medio-anterio surface of both thighs.

7. Red line of demarcation was present. Blisters were present at places. All burn areas were covered with surgical dressing.

Probable duration of injuries was within 36 hours.'

5. He proved medico-legal report Exhibit-PA and pictorial diagrams showing the seats of injuries, Exhibit PA/1-2. He further stated that on 5-1-1994 SHO Kewal

Singh, PS Nehianwala moved an application Exhibit PB before him. He vide his endorsement Exhibit PB/1 opined that patient Geeta Rani wife of Parveen Kumar was in fit condition to make statement. According to him endorsement Exhibit PB was made on 5-1-1994 at 6.00 p.m. It was also stated by him that sometime before he made endorsement Exhibit PB/1, an application Exhibit PC was presented to him by Tehsildar, Sh. Harjit Singh and on that application he made endorsement Exhibit PC/1 at 5.35 p.m. on 5-1-1994 certifying that patient Geeta Rani was fit to make statement. The Tehsildar recorded the statement Exhibit PD of Geeta Rani in his presence. Dr. Garg further stated that Geeta Rani wife of Parveen Kumar remained conscious throughout while making statement (5.35 p.m. to 5.45 p.m.) on 5-1-1994. PW-2 Dr. Naresh Kumar stated that he and PW-3 Dr. Khem Raj Bansal conducted post-mortem examination on the dead body of Geeta Rani on 14-1-1994 at 12.30 p.m. They noticed that injuries were surgical dressed on both the arms, chest, abdomen, back and thighs. Rigor mortis was present. Post-mortem staining was present except pressure points and burnt area. Venesection scar marks on the right ankle region was present. On removal of surgical dressing, dermo epidermal burns on the face, neck, chest, abdomen, back of chest and abdomen except a strip measuring 3.5 cms in breadth on the lower abdomen and its back, at the level of iliac spine, left upper limbs except hands, right upper arm and forearm except hand and a portion on back of right forearm near the wrist joint and medioanterior surface of both the thighs. Red line was also present around the burnt area. Foul smell was present. Sloughing of the wound was present at some places. Whitish creamish greenish points of pus seen. At some places whitish cream was also seen. On scalp there was singeing of the scalp hair near the forehead was present. Pleura was congested. Larynx and trachea were oedematous (sic) and congested. Right lung and left lung were congested. In their opinion, the person had died due to septicaemia as a result of burns which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. Probable time that elapsed between injury and death was about 10 days and between death and post-mortem was about 6 hours. He proved the post-mortem report Exhibit PE and also the signatures thereon of Dr. Khem Raj Bansal. In cross-examination it was stated by him that kerosene oil burning causes sooty blackening. According to him in this case he did not observe

any sooty blackening. He further stated that there was possibility of some inhalation of carbon mono-oxide and smoke in the process of burning. PW-3 Dr. Khem Raj Bansal stated that he had joined Dr. Naresh Sharma in conducting the post-mortem examination on the dead body of Geeta Rani on 14-1-1994. He endorsed the opinion and facts stated by Dr. Naresh Sharma. PW-4 is Harjit Singh, Tehsildar now resident of Peerwala Gate, Sunam. He stated that on 5-1-1994 while he was posted as Tehsildar, Bathinda, SI SHO, Kewal Singh, PS Nehianwala made an application Exhibit PC whereon there was a endorsement. Exhibit PC/2 of Sh. H. L. Kumar, the then SDM, Bathinda for taking immediate action. On his direction, he went to Civil Hospital, Bathinda. Dr. S. P. Garg was on duty in the hospital. The said doctor after examining the patient, Geeta Rani declared her fit to make statement vide Exhibit PC/1. Then he recorded the statement Exhibit PD of Geeta Rani. He further stated that it was recorded by him in his own hand and it was correct, and Geeta Rani had put her thumb impression on that statement. He further stated that on conclusion of the statement, he again obtained opinion of the doctor and made endorsement Exhibit PD/1 that Geeta Rani remained fit to make the statement throughout and the Doctor also remained present throughout near the patient.

6. PW-5 Kulwant Kumar is the complainant, who deposed to the facts contained in the FIR. PW-6 Gurdas Ram is father of Geeta Rani- deceased. PW-7 Kewal Singh, SI, SHO is the Investigating Officer. He deposed to the manner in which the investigation of this case was conducted by him. He further stated that after completion of investigation he prepared the challan and presented the same in the Court of Illaqa Magistrate. Kewal Chand, Ramesh Kumar, Bant Ram, Hardial Singh and Kamal Sharma were given up as having been won over by the accused. Affidavits Exhibit PQ of HC Jasbir Singh and Exhibit PR of Constable Bhura Singh were tendered in evidence and the prosecution evidence was closed. When examined under section 313, Cr.P.C. all the accused denied the correctness of the circumstances appearing in the prosecution evidence against them and pleaded their innocence. Parveen Kumar, accused took up the following plea :-

'I am innocent. At the time of occurrence I was away from the house to collect milk as milk vendor. I and my wife were living separately from the family for the

previous 6 months. My wife received burn injuries in my absence when she tried to prepare chapatis on a stove. The fire was extinguished by my mother Kulwinder Kaur and my sister Kirna Rani, accused and they also received burn injuries in this process.'

7. Three witnesses were examined by the accused in their defence. DW-1 is Dr. Charanjit Garg, Medical Officer, Mini Primary Health Centre, Ranghrial, District Mansa. He stated that on 7-1-1994 while he was posted as Emergency Medical Officer, Civil Hospital, Bathinda he medically examined Kirna Rani, daughter of Jagdish Rai and found the following injury :-

'Multiple infected scolds (sic) along with the superficial burns over palmer aspect of left hand.'

The nature of injury was simple. Probable duration of injury was about 72 hours. He further stated that the injury on her person could be sustained during the process of extinguishing of fire and that the possibility of burn injury having been sustained on 4-1-1994 at 5.00 a.m. cannot be ruled out. He proved MLR Exhibit DB. DW-2 is Dr. Amrik Singh, Civil Surgeon's Office, Bathinda. He stated that on 10-1-1994 at 4.00 p.m. he medico-legally examined Kulwinder Kaur alias Baljinder Kaur wife of Jagdish Ram brought by ASI Manjit Singh of Police Station Nehianwala and found the following injuries on her person :-

'1. Superficial burn 2.5 cm x 1 cm on the dorsal surface of the left ring finger over the medial phalynx. The skin was dry and shrivelled. In the middle of burn there was depression 1.5 cm x 0.5 cm covered with necrotic tissue. Tenderness present.

2. Superficial burns. 5 cm x. 5 cm covered with brownish necrotic patch on the inner surface of the left middle finger at the level of D.I.P. joint.'

The nature of injuries was simple, the probable duration of which was 5 to 7 days. These were flame injuries. He further stated that the injuries on her person could be sustained in the process of extinguishing fire. He proved the MLR Exhibit DC. DW-3 is Balwinder Singh. He is Sarpanch of the village Panchayat. His house is situated near the house of the accused. He knew Parveen Kumar and his co-

accused. Relations between Parveen Kumar-accused and his deceased-wife had been cordial. Parveen Kumar accused was separate in residence from his parents for the past about 5-6 months prior to the occurrence. About 1 1/4 years ago, at about 5.15 a.m., he heard an alarm emanating from the house of Parveen Kumar-accused. He went to the spot and found crowd of people having assembled there. The wife of Parveen Kumar was found ablaze. Jagdish Ram and his wife Kulwinder Kaur were extinguishing the fire. Kirna Rani was also extinguishing the fire. According to him, Geeta Rani told that she was burning a stove for preparation of tea and she accidentally caught fire. They (PW-5 and others) advised Jagdish Ram to inform the parents of Geeta Rani and take her to the hospital. Later on the police visited the Civil Hospital and he narrated this occurrence.

8. After considering the evidence led by the prosecution and the accused in their defence, the learned Sessions Judge found that the prosecution also failed to establish its case against Parveen Kumar under Section 498-A, IPC and the prosecution also failed to establish its case against Jagdish Ram, Ms. Kulwinder Kaur alias Baljinder Kaur and Ms. Kirna Rani, co-accused of Parveen Kumar for the commission of offences under sections 498-A, 302 read with Section 34, IPC and in the alternative Section 304-B, IPC and they were acquitted of those charges. However, Parveen Kumar was convicted and sentenced as indicated in the earlier part of the judgment.

9. We have heard the learned counsel for the appellants and Mr. S. S. Dhaliwal the learned Deputy Advocate General, Punjab and have scrutinised the record.

10. At the outset it may be noticed that the case of the prosecution is based on the dying declaration of Geeta Rani, wife of appellant. In fact, there are three dying declarations; one made before Kulwant Kumar, PW-5. This was oral dying declaration. It was stated by him that on 5-1-1994 he alone went to the village Jandanwala with a view to assure the accused that their demands would be met shortly. On reaching the village Jandanwala, he learnt that accused had set Geeta Rani on fire and that Geeta Rani had been taken to some private doctor at Jaitu Mandi. He then went to Jaitu Mandi. He further stated that all the four accused

were present at Jaitu Mandi where some lady was giving treatment to Geeta Rani. He removed Geeta Rani to Civil Hospital, Bathinda. On the way, Geeta Rani told him that 'her husband had sprinkled kerosene oil on her and that Jagdish Ram and others were saying that she should be finished. At this she raised raula.' On 14-1-1994 Geeta Rani died as a result of burn injuries in the hospital.

11. Second dying declaration was recorded by SI Kewal Singh, PW 7 on 5-1-1994. It was stated by him that on 5-1-1994 he received a wireless message, when he was attending a meeting at Bathinda from In-charge Police Post Civil Lines, Bathinda that Geeta Rani w/o Parveen Kumar was lying admitted in Civil Hospital with burn injuries and that an Investigating Officer might be deputed to record her dying declaration. On receipt of this wireless message, SI Kewal Singh accompanying police officials reached Civil Hospital, Bathinda. He obtained medico-legal report SPG/45/94 from the doctor in respect of Geeta Rani wife of Parveen Kumar, Brahmin resident of Jandanwala. He made application Exhibit PC to the Sub-Divisional Magistrate, Bathinda for recording the dying declaration of the injured. The Sub-Divisional Magistrate marked that application to Harjit Singh, Tehsildar for recording the dying declaration of Geeta Rani. Accordingly the Tehsildar reached the Civil Hospital, Bathinda and recorded the statement of Geeta Rani and directed S. I. Kewal Singh to take further action in the matter. S. I. Kewal Singh obtained the medico-legal report Exhibit PA from the doctor and made application Exhibit PB to get his opinion whether Geeta Rani was in a fit condition to make the statement. The doctor gave opinion Exhibit PB/1 that the patient was fit to make the statement. Thereafter, SI Kewal Singh recorded the statement Exhibit PH of Geeta Rani. That statement reads as under :-

'I was married to Parveen Kumar s/o Jagdish Ram Pandit resident of Jandanwala about 1 1/4 years back. Immediately after the marriage my husband, my mother-in-law, father-in-law and sister-in-law (husband's sister) started maltreating me on the grouse that I had brought insufficient dowry. I told about it to my parents on my visit to them. About 20 days back my father Gurdas Ram s/o Atma Ram r/o Mandi Dabwali, Hardial Singh s/o Laik Ram Sharma r/o Malout District Faridkot, Ramesh Kumar s/o Roshan Lal and Kulwant Rai s/o Atma Ram residents of Mandi Dabwali and some more persons came to the house of my in-laws at village Jandanwala

and implored my father-in-law Jagdish Ram, my husband, my mother-in-law Kulwinder Kaur and my sister-in-law Kirna Rani to rehabilitate me and further assured that they would fulfil their demand for scooter and furniture etc. At this my husband and my mother-in-law told my parents that they would not rehabilitate me if their demand for scooter and furniture was not fulfilled. After that my relatives went back. On 4-1-1994 my husband and my mother-in-law said to me 'your parents have not kept their words and as such we will not let you live in our house. Today we will finish you once for all.' At about 5.00 a.m. my mother-in-law Kulwinder Kaur sprinkled a bottle of kerosene oil on me and my husband Parveen Kumar who had come back after supplying milk set me on fire with a match stick. However, my father-in-law and my sister-in-law exhorted them to do away with me by setting me on fire. When I raised hue and cry my father-in-law Jagdish Ram extinguished the fire and thereafter my husband Parveen Kumar and my father-in-law Jagdish Ram got me admitted in a private hospital at Jaitu. Today my uncle (father's younger brother) Kulwant Rai came to village Jandanwala to see me. He came to know about the occurrence in the village. Accordingly after getting me discharged from the private hospital at Jaitu he got me admitted in Civil Hospital, Bathinda. My husband Parveen Kumar, my father-in-law Jagdish Ram, mother-in-law Kulwinder Kaur and sister-in-law Kirna Rani have set me on fire after sprinkling kerosene oil on me with the intention to kill me for bringing insufficient dowry. Action may be taken.' Sd/-

RTI

Geeta Rani

Attested

Sd/-

(Kewal Singh)

SI/SHO Police Station,

Nehianwala (In Punjabi)

5-1-1994.'

12. On the basis of this dying declaration formal FIR Exhibit PH/2 was registered at PS Nehianwala.

13. As stated earlier on receipt of wireless message SI Kewal Singh, PW-7 had made an application Exhibit PC requesting the Sub-Divisional Magistrate Bathinda that dying declaration may be recorded on which Tehsildar Harjit Singh, PW-4 was deputed to do the needful. Tehsildar Harjit Singh recorded the statement Exhibit PD of Geeta Rani on 5-1-1994 on the direction, Exhibit PC/2 of Shri H. L. Kumar, Sub-Divisional Magistrate, Bathinda, given on the application Exhibit PC made by SI Kewal Singh. Harjit Singh, Tehsildar, PW-4 went to Civil Hospital, Bathinda where Dr. Sat Pal Garg was on duty in the hospital. Said doctor after examining the patient Geeta Rani declared her fit to make statement vide Endorsement Exhibit PC/1 and then he (PW-4) recorded the statement Exhibit PD of Geeta Rani. That statement of Geeta Rani reads as under :-

'Statement of Geeta Rani wife of Parveen Kumar, age 18 years, village Jandanwala.

Stated that my name is Geeta Rani alias Tara Rani. That tomorrow on 4-1-1994 my husband, after delivering the milk had come at 5.00 a.m. and asked me to bring the scooter, chair and tables, double bed but I replied that I could not bring it from my parents. He sprinkled half bottle of kerosene oil on me and lit fire with match stick. On my alarm all collected and my father-in-law extinguished the fire. None else had asked me anything. Before this also my husband used to give beatings to me. I have heard the statement and the same is correct.

ROAC RTI Geeta Rani w/o Parveen Kumar

Sd/-

(in English) Harjit Singh

5.35 p.m., Executive Magistrate,

Bathinda 5-1-1994.

Exhibit PD/1

Certified that patient Geeta Rani w/o Parveen Kumar remained fit throughout her making the statement (5.35 p.m. on 5-1-1994 to 5.55 p.m. on 5-1-1994).'

Sd/-

Sat Pal Garg

M.D. Forensic Medicines Civil Hospital

Bathinda 5.50 p.m.'

14-15. Thus there are 3 dying declarations; two written and one oral. Before advertizing to these dying declarations in order to find out their truthfulness and reliability, it would be apposite and advantageous to take note of the observations of the Apex Court made in *Thurukanni Pompiah v. State of Mysore*, AIR 1965 SC 939 : (1965 (2) Cri LJ 31). In para 9 of the judgment it was observed by their Lordships that (at page 32 of Cri LJ) :-

'Under clause (1) of Section 32 of the Indian Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis

of the declaration alone without further corroboration.'

16. Their Lordships of the Supreme Court also noted the observations in *Khusal Rao v. State of Bombay*, 1958 SCR 552 : AIR 1958 SC 22 : (1958 Cri LJ 106) that reads as under (at page 113 of Cri LJ) :-

'Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court after examining the dying declaration in all its aspects and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction.'

17. In *Khusal Rao's* case (1958 Cri LJ 106) (*supra*) several dying declarations named *Khusal* and *Tukaram* as the assailants of the deceased. In one dying declaration *Tukaram* was described as a *Teli*, whereas *Tukaram*, the accused before the Court was *Kolhi*. The evidence disclosed that there were three or four persons of the name of *Tukaram* residing in the neighbourhood and some of them were *Telis*. In those circumstances the High Court acquitted the accused - *Tukaram* and gave him the benefit of doubt created by the similarity of the names in the locality. But accused, *Khusal*, was convicted, on the basis of the dying declarations alone, and this conviction was upheld by the Supreme Court. The Apex Court pointed out that 'no part of the dying declaration has been shown to be false' and the Court had 'no reasons to doubt the truth of the dying declarations and their reliability.'

18. The case of the prosecution is that immediately after the marriage her husband, mother-in-law, father-in-law and sister-in-law started maltreating her on the pretext that she had not brought sufficient dowry. *Geeta Rani* told about it to her parents on her visit to them Her father-in-law *Jagdish Ram*, her husband *Parveen Kumar* and mother-in-law *Kulwinder Kaur* and her sister-in-law, *Kirna*

Rani were implored to rehabilitate her and assured them that they would fulfil their demand of scooter etc. At this her husband and her mother-in-law told her parents that they would not rehabilitate her if their demand of scooter and furniture was not fulfilled On 4-1-1994 at about 5 a.m. her mother-in-law Kulwinder Kaur sprinkled kerosene oil on her and her husband Parveen Kumar who had come back after supplying milk set her on fire with match stick. However, her father-in-law and sister-in-law exhorted them to do away with her by setting her on fire. When she raised hue and cry her father-in-law Jagdish Ram extinguished the fire and thereafter her husband Parveen Kumar and her father-in-law Jagdish Ram admitted her in a private hospital at Jaitu But, in the dying declaration alleged to have been made before Kulwant Kumar, PW-5 while Geeta Rani was being taken from private hospital, Jaitu to Civil Hospital, Bathinda it was nowhere stated that her husband, his parents and sister Kirna Rani used to maltreat her for not bringing sufficient dowry or that they were demanding scooter and furniture etc. The case set up by the prosecution is that on the fateful day it was her mother-in-law Kulwinder Kaur who had sprinkled kerosene oil on her and her husband Parveen Kumar had set her on fire with match stick but in dying declaration before Kulwant Kumar, PW-5 the case of Geeta Rani was that it was her husband who had poured kerosene oil on her and that Jagdish Ram and others were saying that she should be finished. The dying declaration alleged to have been made by Geeta Rani before Kulwant Kumar, PW-5 does not find required corroboration in material particulars from the contents of the First Information Report. It may also be noticed that SI SHO Kewal Singh, PW-7, PS Nehianwala had also recorded dying declaration Exhibit PD of Geeta Rani, but it was nowhere stated by Geeta Rani before him that she had already told Kulwant Kumar, PW-5 as to how, in what manner and circumstances the occurrence had taken place in which she received burn injuries. In cross-examination it was stated by Kulwant Kumar, PW-5 that he did not mention in his statement before the police that on his way from Jaitu to Bathinda Geeta Rani had told him that accused Parveen Kumar had poured kerosene oil on her or that the accused were saying that she should be finished or that she had raised alarm. That further detracts from the credibility of the dying declaration allegedly made by Geeta Rani before Kulwant Kumar, PW-5. This dying declaration, to our mind, does not inspire any confidence. Therefore,

this dying declaration deserves to be ignored.

19. It is also the case of the prosecution that on the same day i.e. 5-1-1994 SI Kewal Singh, PW-7 had also recorded dying declaration Exh. PD of Geeta Rani in Civil Hospital, Bathinda after obtaining opinion of the doctor regarding her fitness to make the statement. After giving details of the circumstances in which she was leading life in her matrimonial home it was stated by her that on 4-1-1994 her husband and her mother-in-law told her that her parents had not kept their words and as such they will not let her live in the said house. It is significant to note that Geeta Rani did not level any such allegation against her father-in-law Jagdish Ram and sister-in-law Kirna Rani. The case of Geeta Rani before SI Kewal Singh, PW-7 is that on 4-1-1994 at about 5 a.m. her mother-in-law Kulwinder Kaur sprinkled a bottle of kerosene oil on her and her husband Parveen Kumar, who had come back after supplying milk set her on fire with a match stick, but in the earlier dying declaration allegedly made before Kulwant Kumar, PW-5 the allegation was that kerosene oil was poured on her by her husband. However, her father-in-law Jagdish Ram and sister-in-law Kirna Rani exhorted them to do away with her by setting her on fire. When she raised hue and cry, her father-in-law Jagdish Ram extinguished the fire and thereafter her husband and her father-in-law got her admitted in a private hospital at Jaitu. If her father-in-law and sister-in-law had exhorted them (Parveen Kumar and Kulwinder Kaur) to do away with her by setting her on fire in that event her father-in-law Jagdish Ram was not expected to extinguish the fire and thereafter her husband Parveen Kumar and Jagdish Ram were not expected to get her admitted in a private hospital at Jaitu. It was further stated by Geeta Rani that her husband Parveen Kumar, father-in-law Jagdish Ram, mother-in-law Kulwinder Kaur and sister-in-law Kirna Rani set her on fire after sprinkling kerosene oil on her with the intention to kill her for bringing insufficient dowry. Thus as per this allegation all the accused had poured kerosene oil on her and then she was set on fire. Earlier before Kulwant Kumar, PW-5 it was stated by her that her husband had poured kerosene oil on her, but before SI Kewal Singh, PW-7 it was stated that her mother-in-law Kulwinder Kaur had sprinkled a bottle of kerosene oil on her and her husband Parveen Kumar had set her on fire with a match stick. There is also no inkling in this part of the statement that her in-laws were demanding scooter and furniture etc., as a part of dowry.

According to Kewal Singh, PW-7 he made application Exhibit PB to the SMO Civil Hospital, Bathinda to obtain his opinion whether Geeta Rani was in a fit condition to make statement. The doctor vide Exhibit PB/1 gave his opinion that the patient was fit to make statement. It is pertinent to note that SI Kewal Singh, PW-7 after conclusion of the statement Exhibit PH of Geeta Rani did not record any certificate that Geeta Rani throughout remained in a fit state to make the statement. It is also not his case that the doctor who gave the opinion regarding fitness of Geeta Rani to make the statement, nowhere certified that throughout the recording of the statement he remained present by the bedside of Geeta Rani and that she remained in a fit state to make the statement. If SI Kewal Singh, PW-7 was to record dying declaration of Geeta Rani, he a responsible police officer being In-charge of the Police Station was expected to approach the Judicial Magistrate with a request that dying declaration of Geeta Rani was required to be recorded, but in his cross-examination it was stated by him that he did not approach the Chief Judicial Magistrate or any other Judicial Magistrate with the request that dying declaration should be recorded. It was also admitted by him that he did not obtain the signatures of any doctor on the statement Exhibit PH of Geeta Rani, which was recorded by him. According to him that statement was recorded by him in the presence of Kulwant Kumar, but it was not got attested from any witness. What has been stated by SI Kewal Singh, PW-7 makes the dying declaration Exhibit PH highly suspicious. At this juncture it may also be noticed that on the same day i.e. 5-1-1994 another dying declaration Exhibit PD was also recorded by Harjit Singh, Tehsildar after obtaining opinion Exhibit PC/1 of the doctor regarding the fitness of Geeta Rani to make the statement. A perusal of that statement Exhibit PD would show that Geeta Rani levelled allegation against her husband Parveen Kumar alone by stating that on 4-1-1994 her husband after delivering the milk had come at 5 a.m. and asked her to bring the scooter, chairs, table and double bed but she replied that she could not bring it from her parents. He (Parveen Kumar) sprinkled half bottle of kerosene oil on her and lit fire with match stick. As regards her father-in-law, mother-in-law and sister-in-law she did not level any allegation implicating them in the commission of crime. According to her on her raising alarm all collected and her father-in-law extinguished the fire and none else had asked her anything. What was stated by Geeta Rani before Harjit Singh, PW-4 diluted all the

rigours of a dying declaration made by her before SI Kewal Singh, PW-7. We are of the considered view that the dying declaration made by Geeta Rani before SI Kewal Singh, PW-7 is incredible and it would not be safe to place any reliance on such dying declaration. We, therefore, have no hesitation to discard this dying declaration as well.

20. The dying declaration Exhibit PD was recorded by Harjit Singh, PW-4. It was stated by him that on 5-1-1994 he was posted as Tehsildar, Bathinda. Kewal Singh, SI, SHO PS Nehianwala produced before him application Exhibit PC on which there was a direction Exhibit PC/2 of Sh. H. L. Kumar, the then SDM Bathinda to take immediate action. As directed by the SDM he went to Civil Hospital, Bathinda. On that day Dr. Sat Pal Garg was on duty in the hospital. The said doctor after examining the patient Geeta Rani declared her fit to make the statement vide his endorsement Exhibit PC/1 and thereafter he recorded statement of Geeta Rani in his own hand and that it was correct. He further stated that Geeta Rani had put her thumb mark on that statement. It is also his case that at the end of the statement he again obtained opinion from Dr. Sat Pal Garg, who made his endorsement Exhibit PD/1 that Geeta Rani remained fit throughout and that the doctor also remained present throughout.

21. We have seen the original dying declaration, Exhibit PD which according to Harjit Singh, PW-4 was recorded by him. It is in Gurmukhi script. A careful examination of Exhibit PD would show that the spacing between the lines in the first little more than half of this writing is more than the spacing in the later half. It purports to have been thumb marked by Geeta Rani, wife of Parveen Kumar, but it is significant to note that from this it is not discernible whether it is right or left thumb impression. Generally the name of the person putting thumb impression on a document is written below the thumb impression and not above the thumb impression as is apparent from Exhibit PD. On the lower left corner of Exhibit PD 'R.O.A.C.' is recorded i.e. 'Read Over and Accepted Correct', but Harjit Singh, PW-4 in his statement before the Court nowhere stated that statement Exhibit PD of Geeta Rani was read over to her and it was accepted as correct and then it was thumb marked. Dying declaration Exhibit PD bears endorsement of the doctor in the left hand margin, according to which it was recorded between 5.35 to 5.55 p.m.

on 5-1-1994. The dying declaration dated 5-1-1994 Exhibit PD purported to have been recorded by Sh. Harjit Singh, PW-4 was produced by Ravinderpal Singh, Ahlmad in the Court of Chief Judicial Magistrate and it was placed on record. As per endorsement on the back of Exhibit PD it was sent to Chief Judicial Magistrate, Bathinda on 5-1-1994 at 5.50 p.m. and it was received by the Chief Judicial Magistrate under his own seal and signatures at 5.30 p.m. If the dying declaration was concluded as stated by Dr. Sat Pal Garg at 5.55 p.m., it could neither be endorsed to the Chief Judicial Magistrate at 5.50 p.m. nor it could reach the Chief Judicial Magistrate at 5.30 p.m. on 5-1-1994. What has been noticed persuades us to conclude that this dying declaration is not worth the paper on which it has been recorded. It is pertinent to note that in cross-examination of Harjit Singh, PW-4 it was suggested to him that thumb impression of Geeta Rani was obtained on blank paper and her statement was fabricated at a later stage, but this suggestion was stated to be wrong by him. In cross-examination it was stated by Kulwant Kumar, PW-5 that Tehsildar perhaps came at 6 p.m. In his presence Tehsildar had gone inside where Geeta Rani was lying as a patient. It was further stated by Kulwant Kumar that he did not go inside that room. Many other relatives were also with him outside the room at that time. According to him Tehsildar came out of the room within two or three minutes with thumb impression of Geeta Rani on a paper. Then he went to the room of the doctor. It was also stated by Kulwant Kumar that he (Kulwant Kumar) did not go to the doctor's room. The Tehsildar remained in the room of the doctor for 10-15 minutes. It was further stated by him that he had made a complaint to the Deputy Commissioner that the Tehsildar had obtained thumb impression of Geeta Rani on a blank paper, after the Tehsildar was examined in the Court as a witness. From this it is apparently clear that even the complainant party doubted the genuineness of this dying declaration Exhibit PD.

22. After considering all the aspects of the facts and circumstances of the case we are of the firm view that none of the three dying declarations is reliable by itself and that these suffer from a number of infirmities and that none of the dying declarations relied upon by the prosecution can form the basis of conviction without corroboration which is lacking in this case. Resultantly, we allow this appeal and set aside the conviction recorded and sentence passed by the trial

Court and acquit Parveen Kumar appellant of the charges framed against him.
Fine if paid, shall be refunded to him.

23. Appeal allowed.

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