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Abhishek Sharma Vs. State

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Court : Delhi

Decided On : May-31-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 307; ;Code of Criminal Procedure (CrPC) - Section 313; ;Punjab and Haryana High Court Rules, 1966 - Rules 2, 4 and 6

Appeal No. : Criminal Appeal No. 431 of 2009

Appellant : Abhishek Sharma

Respondent : State

Advocate for Def. : Lovkesh Sawhney, APP

Advocate for Pet/Ap. : K.T.S. Tulsi, Sr. Adv. and; Dil Jit Singh, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Sikri, J.

1. Having been convicted for the murder of Mandeep Kaur (hereinafter referred to as 'the deceased') and given life imprisonment for the said offence under Section 302 of Indian Penal Code by the learned Additional Sessions Judge, Delhi vide his

judgment dated 30th April, 2009, the appellant has come up to this Court and assails the aforesaid judgment and sentence by means of the present appeal.

2. The appellant and the deceased were colleagues and were working in M/s Sai Telecom, B-304, Ground Floor, Saraswati Vihar, Delhi. The appellant was Customer Care Executive whereas, the designation of the deceased was Team Leader/Operations Manager. Their working hours in the office were 3.30 p.m. to 12.00 mid night. On the fateful night i.e. in the intervening night of 20th - 21st September, 2007 the deceased was found in flames near Queen Marry School, Model Town. PCR Van rushed her to LNJP Hospital and thereafter shifted to Maharaja Agarsen Hospital. However, she could not survive and ultimately passed away on 3rd October, 2007.

3. The appellant was accused of her murder. The prosecution version in this behalf is that while working in M/s Sai Telecom both of them developed friendship. The appellant often used to drop her in his car at her residence after duty hours. On the fateful night, both of them had left their office at about 12.15-12.30 am in the car of the appellant. The appellant was allegedly extending threats to the deceased for the last few days as he suspected her to be in love with her company boss/employer whereas he wanted her to love him. On that night, the appellant did not drop her at her residence and took her near Queen Marry School, Model Town,-III, Delhi. After parking the car, the appellant got down and also made her to come out of the car. Thereafter, he brought out a bottle containing oil and poured oil on her body saying that she did not love him and instead was loving her boss. They quarreled with each other on this issue and in the process the appellant set her on fire. While she was in flames, a PCR van reached on the spot. The accused fled away. The PCR van rushed the deceased to LNJP Hospital. On the way to hospital, deceased told SI Anoop Singh (PW-16) that she was set ablaze by the appellant.

4. The information regarding this incident was recorded in the Police Station Model Town at about 1.55 a.m. vide DD No. 8A wherein it was stated that Mandeep Kaur (deceased) who was working in a Call Centre had been set on fire by her friend. This information was passed on to SI Balwant Singh for necessary action. He went

to LNJP Hospital alongwith Constable Paramjit Singh and obtained her MLC and also recorded her statement. On the basis of her statement, FIR under Section 307 IPC was registered. SI Balwant Singh then went to the spot, prepared site plan at the instance of ASI Anoop Singh of PCR. During investigation, the appellant was arrested at about 8.30 p.m. on 21st September, 2007 from Model Town. His Alto car was also seized. On completion of investigation, chargesheet was filed and charge under Section 302 IPC was framed on 6.2.2008.

5. Since the appellant pleaded not guilty and claimed trial, the prosecution led its evidence. The prosecution examined as many as twenty five witnesses. Thereafter, statement of the appellant under Section 313 Cr.P.C. was recorded. He chose not to lead any defence evidence. Arguments were heard by the learned Additional Sessions Judge, resulting into giving the judgment holding the appellant guilty of committing the offence under Section 302 IPC and sentencing him to undergo life imprisonment.

6. Learned Additional Sessions Judge has discussed the deposition of almost every witness and has analyzed the same in the light of cross-examination conducted by the defence. It is not necessary to repeat that exercise all over again. Our purpose would be served by referring to the important witnesses and material on record, on the basis of which the learned Addl. Sessions Judge has concluded that the appellant is responsible for the murder of the deceased.

7. The learned Trial Court has taken note of the fact that there were as many as four statements of the deceased which she made before her death which assume the colour of dying declarations:

(a) First dying declaration was purportedly made to PW-16 SI Anoop Singh of PCR Van. He has deposed to the effect that he was posted as Incharge PCR Van Commander 63 and was on duty from 8.00 p.m. to 8.00 am. in the intervening night of 20th and 21st September, 2007 and at about 1.00 a.m. after taking permission from the headquarter for taking tea he alongwith his colleagues was going to Azadpur via Prince road and when they reached near Queen Marry School on the Prince Road, they saw a girl on fire who was crying 'bacho, bacho'; they stopped the van and put off the fire on the body of the girl with the help of a

blanket which was with them in the van; they took her to LNJP Hospital and got her admitted there and reported the matter to Police Station Model Town. He further deposed that on enquiry by him the girl had told her name as Mandeep Kaur resident of Shalimar Bagh and further told that one of her colleague Abhishek Sharma who was working with her at the Call Centre had set her on fire by pouring oil on her body. He was called by the Investigating Officer and the site plan was prepared at his instance and his statement was also recorded.

(b) Second dying declaration is recorded in the MLC which was prepared by PW-18/Dr. Raj and is proved as PW-8/A. He examined the deceased when she was brought to LNJP Hospital in burnt condition. PW-8 Dr. S.N. Basna has also supported the version of PW-18 stating that the patient was examined by Dr. Raj, Jr. Resident (PW-8) under his supervision. As per this MLC, the deceased was examined at about 2.15 a.m. and it records:

Alleged h/o burn at front of Queen Marry School, North Land, Model Town, Delhi at around 1.40 am. dated 21.9.2007 as told by patient by Abhishek.

(c) As per the findings of the learned Trial Court, the deceased had made a statement (Ex.PW-17/A) before SI Balwant Singh. In this statement again accused appellant is accused of pouring oil and lighting fire by matchstick, as a result of which, her clothes got fired. In this statement, it is also mentioned that appellant was threatening to kill her for the last many days.

(d) As per the prosecution, the deceased had also made a declaration in the form of narration of incident to her mother PW-5 Smt. Jasmer Kaur which is on the same lines and is also treated as dying declaration.

8. The learned Trial Court has discussed the veracity of dying declarations in detail in the light of the objections of the defence challenging these dying declarations. The learned Addl. Sessions Judge did not agree with any of the contentions of the appellant's counsel and held that the dying declarations were creditworthy and that there were no material contradictions or inconsistencies therein. They were made voluntary and in a fit mental condition, without being influenced by others. The learned Trial Court has also recorded that PW-6 Yasin Nagpal, employer of the

deceased and the appellant had in his deposition sufficiently established that the deceased was last seen in the company of the appellant when they left the office at 12.30 a.m. on 21st September, 2007 in the car of the appellant. Further, PW-16 SI Anoop Singh found the deceased in burning condition at about 1.00 a.m. This shows that there was not much time gap when the deceased was last seen with the appellant when they left the office and when she (the deceased) was found in burning condition and these circumstances established from the evidence on record, leads to the conclusion that it was the appellant who is the author of the crime. In this backdrop, the explanation of the appellant in his statement recorded under Section 313 Cr.P.C. that he had left the office alone at 12.00 midnight and at that time, deceased was still in the office who used to take Cab for going to her residence is not believed by the learned Addl. Sessions Judge, holding the appellant guilty of the offence.

9. Learned Senior Counsel appearing for the appellant spearheaded frontal and scathing attack at the approach adopted by the learned Trial Court in the manner the evidence is analysed and dying declarations accepted as reliable. His submission was that each of the four dying declarations inherently improbable and self contradictory. On the one hand, the motive for murder is said to be that the deceased was having an affair with her boss on account of which the appellant had given several threats to the deceased, yet the evidence suggests that every day the deceased travelled with the appellant from the office to her residence, in his car and did not avail of the company's transport. He also submitted that it was inherently improbable that a person who had suffered 25% burn injuries would still be in a position to make detailed statements. Placing heavy reliance on Modi's Jurisprudence, (23rd Edition), he pointed out that the said book classifies that a person with 25% burns as 3rd degree burns in which there is destruction of cuticle and part of the true skin. There is exposure of nerve endings giving rise to much pain. Further opinion of Modi is that there is marked fluid loss resulting in shock when over 20% of the body is affected...severe pain and marked protein fluid loss resulting in shock and fright. Furthermore, it states that burns caused by kerosene oil are usually very severe...water loss may amount to 60%. He emphasized that as per the experts opinion in the given condition, there would be acute respiratory distress syndrome, severe trauma, hemorrhage shock and sepsis. It was fervent

submissions that in this condition it was not possible for the deceased to make any such statements (treated as dying declarations), that too, four successive declarations. He thus made a passionate plea that these dying declarations should be ignored. Another reason for glossing over these dying declarations, as advanced by the learned Senior Counsel, was that the procedural requirements while recording these statements of the deceased were not fulfilled. In this behalf he submitted that the rules with regard to the recording of Dying Declaration are contained in Chapter 13-A of the Punjab and Haryana High Court Rules 1966. Rule 2 expressly requires the confession to be recorded by the Judicial Magistrate when the victim is in danger of dying. Rule 4 requires the questions and answers to be taken down and not merely their substance. Under Rule 6, the medical or police officers is permitted to record the dying declarations only if death is imminent in which case it must note down as to why it was not considered expedient to approach the Judicial Magistrate for recording of the dying declaration. It was argued that the aforesaid rules have been observed in their complete breach. None of the dying declarations i.e. Exhibits PW-1/A, 8/A, 17/A and statement of PW-5 contain any note as to why it was not considered expedient to apply to the Judicial Magistrate for recording the dying declaration, nor do they contain opinion that at the time of recording the statements, death was imminent. There was thus, a total breach of requirement of Rule 6. Further since none of the three declarations contain the questions and answers nor the actual words of the declarant have been taken down instead of the substance, the exhibits are in complete breach of Rule 4. Similarly, no evidence was led to satisfy the requirement of Rule 2. There was no evidence that the IO either applied to the CJM for recording of the dying declaration or that there was any material to show that at the time of recording the statement the victim was in the danger of dying. In this regard, he referred to and relied upon the following decisions:

(i) State v. Lakshman Kumar : (1985) 4 SCC 476

(ii) State (NCT of Delhi) v. Navjot Sandhu : (2005) 11 SCC 600 (Pr. 157)

(iii) Surinder Paul v. State of Punjab : 1997 Cr. LJ 1745 (Punjab and Haryana High Court) (Pr.7)

(iv) Madbhu Bala v. State (Delhi Administration) : 1990 Crl LJ 790 (Pr.11)

10. It would be advisable to reconstruct the scene/occurrence in the light of the prosecution evidence which has come on record, before we examine the aforesaid submissions of the learned Senior Counsel. Incident relates to the intervening night between 20th - 21st September, 2007. As per PW-6, employer of the appellant and the deceased, they both left the office together at about 12.00 to 12.30 a.m. on 21st September, 2007 in the car of the appellant. Thus, as per his deposition, he had seen both of them leaving the office together at the same time. The deceased was found inferno at 1.00 a.m. by PW-16 SI Anoop Singh, Ct. Subodh Kumar (Driver) and Ct. Ram Niwas (Gunman). He saw her crying 'bacho bacho'. He was in a PCR Van. He stopped the van and put off the fire on the body of the deceased with the help of a blanket that he was carrying in the van. They took the deceased to LNJP Hospital and got her admitted there. At that time DD No. 8A was received at PS Model Town by SI Balwant Singh. The time of admission in the hospital is 1.55 a.m. The Doctor who examined her in the first instance and prepared the MLC has mentioned the time of preparation of MLC as 2.15 a.m. PW-17 SI Balwant Singh states that on receiving DD No. 8A, he went to LJPN Hospital alongwith Constable Paramjit Singh and obtained MLC of the injured Mandeep Kaur and recorded her statement Ex. PW-17/A which was signed by her at point 'A'. On the basis of this statement, FIR was registered at 3.30 a.m. under Section 307 of Indian Penal Code.

11. The first and foremost aspect which needs discussion is as to whether dying declarations made by the deceased are worthy of reliance. Before we analyze these declarations, we deem it proper to discuss the legal principles relating to dying declarations which are to be kept in mind.

12. In Panneerselvam v. State of Tamil Nadu (SC) 2008 (3) RCR (Criminal) 54, it was held as under:

7. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination

are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Smt. Paniben v. State of Gujarat : 1992 (3) RCR (Criminal) 552 : AIR 1992 SC 1817:

(i) There is neither rule of law nor of prudence that dying declaration ca not be acted upon without corroboration. (See Mannu Raja and Anr. v. The State of Madhya Pradesh : (1976) 2 SCR 764.)

(ii) The court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of Uttar Pradesh v. Ram Saga Yadav and Ors. : 1985 (1) RCR (Crl.) 600 : AIR 1985 SC 416 and Ramvati Devi v. State of Bihar AIR 1983 Supreme Court 164.

(iii) 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 an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramacharandra Reddy and Anr. v. The Public Prosecutor : AIR 1976 SC 1994).

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg. v. State of Madhya Pradesh : 1974 (4) SCC 264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kaka Singh v. State of M.P. : AIR 1982 SC 1021)

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

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.(See State of Maharashtra v. Krishnamurthi Laxmipati Naidu : AIR 1981 Supreme Court 617).

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. See Surajdeo Oza and Ors. v. State of Bihar : AIR 1979 SC 1505.

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanahau Ram and Anr. v. State of Madhya Pradesh : AIR 1988 SC 912).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon (See State of U.P. v. Madan Mohan and Ors. : AIR 1989 SC 1519).

(xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohan Lal Gangaram Gehani v. State of Maharashtra : AIR 1982 SC 839).

13. In Anoop Singh v. State of M.P. : (SC) 2008 (3) RCR (Crl.) 602 : 2008 (4) R.A.J. 343 : 2008 (5) S.C.C. 468, it was held that:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declaration but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent (See.: Kandula Bala Subramanyam v. State of A.P. : (1993) 2 SCC 684). However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely whether they are material or not. While scrutinizing the contents of carious dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

14. It thus follows that the conviction can be based solely on dying declaration. At the same time, one has to tread a cautionary path and ensure that all the circumstances which may make such dying declaration a suspect, stand eliminated before dying declaration is acted upon. The assignment of the Court, in the process, is to arrive at a conclusion that dying declaration is of such a nature which inspires full confidence of the Court in its truthfulness and correctness making it reliable. For this purpose, the Court is required to see that following circumstances do not exist:

(a) statement was as a result of tutoring or prompting;

(b) it is not a product of imagination which means that it is to be ensured that deceased was in a fit statement of mind and hand ample opportunity and identify the culprit;

(c) if there are more than one dying declarations, there is a consistency in the same and they do not suffer from material contradictions;

(d) It is to be ensured that the statement which is projected by the prosecution as dying declaration was made by the deceased himself/herself; the same was read over to him/her who accepted its correctness before appending his/her signatures

and/or thumb impressions.

15. If there are weighty circumstances which would put a question mark on the veracity on dying declaration, then the dying declaration is to be discarded. Thus, the Court has to undertake strict scrutiny to find out whether it is reliable or not. Once the Court forms the opinion that it is reliable and free from any blemish, conviction can be based solely on such dying declaration without any corroboration. There is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. Of course, if there is other evidence which corroborates the dying declaration, that circumstance can be seen while scrutinizing the dying declaration and making up the mind whether such dying declaration is reliable or not. The dying declaration must be of a stellar quality. Two facts have to be established before a dying declaration can be relied upon for basing a conviction. The first is that it must be established that the statement, which is sought to be labeled as 'a dying declaration of the deceased person' is a statement actually made by that person without any tutoring or influence from any other person and it must be made by that person in a fit state of mind. The second is that the court must be satisfied that what is stated by the dying person is the truth. When both these facts are established, then the dying declaration is of such a quality and caliber that it can by itself be made the basis of a conviction without requiring any corroboration. However, if there is any doubt with regard to either of the two aspects then corroboration becomes necessary. Corroboration need not be on every aspect but it is sufficient if there is corroboration on material and crucial aspects.

16. In Geeta and Anr. v. State : 170 (2009) DLT 268 a Division Bench of this Court has succinctly summed up the law in the following manner:

The law with regard to dying declarations is quite well settled. It is an established principle that a conviction can be based solely upon a dying declaration. But, before this can be done, the dying declaration must be established to be authentic and correct as well as truthful. Insofar as the authenticity and correctness of the dying declaration is concerned, the prosecution has to establish that the dying declaration in question was, in fact, made by the person who lost his life. Even

where it can be established that the statement, which purports to be the dying declaration of the deceased, was in fact made by the deceased, the prosecution has also to establish that the statement was truthful. Of course, it is normally presumed that a dying person in his last moments does not utter any falsehood. But that does not rule out the possibility that in some cases this may not be the position. There may be instances where out of hate or spite a person may falsely implicate his enemy, even in his dying moments. It is also quite possible that the person making the dying declaration is under the influence or control of someone else and out of fear or other reasons, he may make a false statement prior to his death. There is also a possibility that a person, in order to save his honour and the honour of his family, who would survive him, may make statements which are not entirely correct or truthful. There is also a possibility that the person making the dying declaration is under some medication or because of his precarious condition is suffering from hallucinations and, therefore, the statements he makes at that point of time may be far removed from the truth. It is only when all these circumstances are ruled out and the court is of the belief and opinion that what the dying declaration states is truthful, can a conviction be based upon it without seeking corroboration. A dying declaration must always pass the scrutiny by the Court because, after all, it is merely hearsay evidence and it is admissible and relevant only because the person who made the declaration is no longer alive and cannot be produced before Court for testifying. At the same time, the courts need to exercise caution in relying upon dying declarations because the maker of the statement is not before it and nor does the defence have an opportunity to cross-examine him. Thus, while there is no rule of law which suggests that a conviction cannot be based solely upon a dying declaration, the courts, as a rule of prudence, look for other corroborative material. If the dying declaration is of such a stellar and unimpeachable quality that it fully inspires confidence of the Court, there is nothing to prevent the Court from relying solely on such a dying declaration and on basing a conviction thereupon. But, the emphasis must be on the quality of the dying declaration. If the dying declaration is suspicious or suffers from some infirmity, then it should not be acted upon without any corroborative evidence.

17. When we consider the arguments advanced by the learned Senior Counsel for the appellant keeping in view the aforesaid parameters in mind and analyse the

veracity of dying declarations in that backdrop, we come to the conclusion that the finding of the learned Addl. Sessions Judge holding that these dying declarations are worthy of acceptance, is flawless. The so-called infirmities pointed out by the learned Senior Counsel are hardly of any significance and it is a vain attempt to dig-out loopholes which otherwise do not exist. While giving our reasons discarding the submissions of the appellant, we would like to proceed step by step.

18. Cause of death of the deceased is septicemia as a result of burn injury sustained by her in a consequence of being set on fire by pouring oil upon her. This has been proved from the testimonies of PW-8 Dr. S.N. Basana in whose supervision the deceased was examined by PW-18 Dr. Raj; PW-16 ASI Anoop Singh who took the deceased to the hospital when he found her in burning condition; PW-12 Dr. K. Goyal who conducted post mortem on the dead body of the deceased and opined that she (the deceased) died because of the burn injuries sustained by her which were ante mortem in nature and caused by flame or fire. Even PW-17 SI Balwant Singh, PW-25 Jr. Scientific Officer, CFSL who examined/chemically analyzed the plastic bottle and some burnt material have corroborated the aforesaid version.

19. The death is clearly homicidal in nature, is not in dispute. It is not even the defence of the appellant that the death was an act of suicide committed by the deceased herself. Even otherwise, it is unimaginable that a girl will set herself on fire, with intention to commit suicide in the open on a road. The moot question in these circumstances is as to whether the appellant is responsible for pouring oil upon the deceased and setting her on fire thereby committing her murder.

20. For this purpose, we have already analysed the other evidence coming on record. It is in this backdrop, we now proceed to conduct the 'post mortem' of these dying declarations.

21. The first dying declaration is sought to be proved by the prosecution in the statement of PW-16 SI Anoop Singh who has spotted the deceased in a burning condition. Apart from other statement that he took the deceased to LNJP Hospital, he has also deposed that on enquiry by him the girl had told her name as Mandeep Kaur resident of Shalimar Bagh and further told that one of her

colleague Abhishek Sharma who was working with her at Call Center had set her on fire by pouring oil on her body. The presence of this witness and the fact that he had rushed the injured to the hospital undisputedly stands established from the MLC Ex. PW8/A where his name find mentioned as the person who has brought the patient to hospital. It is established beyond doubt that he brought the deceased to the hospital in his PCR van. It would be but natural for a police official to find out from such an injured person as to how the incident happened. Therefore, his statement that he inquired from the deceased and elicited this information from the girl about the incident is a natural event. The attempt made by the defence to persuade this Court to disbelieve his testimony by pointing out to the statement of PW-15 would be of no avail. What was argued was that PW-15 Ct. Subodh Kumar who was also in PCR van has stated that the deceased had not stated anything in his presence while she was taken to the hospital. However, we cannot loose-sight of the circumstances in which he answered this question and explained all the same in his cross examination by the APP for the State. He clarified that the deceased might have told the fact that the appellant was responsible for the incident to PW-16. He had not heard the same because he was driving the PCR Van while keeping the siren on. Obviously, when the driver was taking the deceased, who had sustained serious burn injuries, to the hospital, his entire focus and anxiety would be to reach the hospital well in time so that she is given treatment as early as possible. It is because of this reason, he put the siren on to ensure free and smooth passage even when it was dead of night and there would be hardly any traffic on the roads. With his mind and attention totally diverted on the road, coupled with the aforesaid anxiety to reach the aforesaid hospital as early as possible and further coupled with loud sound of siren while he was sitting on the driving seat, if he did not hear what the deceased informed PW-16, it hardly springs any surprise. Otherwise, hardly anything has emerged in the cross-examination of W-16 which would impeach his credibility.

22. On reaching the hospital when the patient was examined by PW-18 Dr. Raj under the supervision of PW-8 Dr. S.N. Basana, the deceased made another statement (treated as second dying declaration) in the form of history of burn injury. It is entirely in tune with the first statement made to SI Anoop Singh (PW-16). Dr. Raj has categorically deposed that her statement was to the effect that

she was set on fire by appellant at around 1.150 a.m. PW-18 has categorically stated that she was fit for making such a statement which fact is also mentioned on the MLC at point 'X-3'.

23. Learned Counsel made an attempt to persuade us not to accept the MLC as according to him the words 'by Abhishek' on the MLC appeared to have been written subsequently. His argument was that she did not name the appellant in the first instance but at the behest of the police those words are added subsequently by the Doctor. This very suggestion was put to PW-18 who denied the same by specifically stating that the words 'by Abhishek' on the MLC were not written subsequently at the instance of the police. This deposition of PW-8 is fully corroborated by PW-18 also. There is no reason to disbelieve these two Doctors.

24. Another statement given by the deceased (treated third dying declaration) is to SI Balwant Singh (PW-17). He has proved the statement Ex PW-17/A. As per this statement, the deceased once again named the appellant. On the basis of this statement, FIR was registered initially under Section 307 IPC. We have already pointed out the time of registration of the FIR as 3.30 a.m. What is to be borne in mind is that between 1.40 a.m. to 3.30 a.m., three consecutive statements are given by the deceased. First statement to PW-16 SI Anoop Singh while he was taking her to hospital, second before the Doctor at 2.15 a.m. when she was examined and third statement to SI Balwant Singh when he reached the hospital and recorded her statement. The time gap when she was spotted in a burning condition on the road and the registration of the FIR is only two hours. During this period no other person known to the deceased had surfaced on the scene. All persons who came into contact with the deceased were stranger to her viz the Doctors or the police officers. They did not know the appellant and it is nobody's case that (neither it can be) that they would have known the appellant or the relationship between the deceased and the appellant. In this scenario, how the name of the appellant could crop up? Obviously, it could be from the mouth of the deceased alone. And obviously, the purpose of mentioning the name of the appellant, in this context, would be only to tell that he is responsible for the entire heinous act.

25. In addition, the aforersaid reasoning which makes the dying declarations credible, we also reproduce herein below the manner in which statement of PW-17 is dissected by the learned Addl. Sessions Judge:

The statement Ex. PW-17/A has been assailed by the learned defence counsel on the ground that the IO has only obtained the signature of the injured in the hospital on a blank paper and manipulated the same as FIR despite the fact that the DD entry No. 8/A Ex. PW-1/A was sufficient to constitute an FIR. Even this argument of the learned defence counsel does not benefit the accused because DD No. 8/A Ex. PW-1/A has clearly mentioned that the girl Mandeep who was found burning has told that Abhishek Sharma her friend has done this mischief with her. There is nothing for the accused to escape the predicament of his involvement suggested by DD No. 8/A Ex. PW-1/A and statement Ex. PW-17/A which points towards him as the author of the crime. The defence wanted to put a question mark on this evidence by arguing that though the deceased survived for many days, but no attempt was made to get her statement recorded by the SDM. This, however, is adequately explained by SI Balwant Singh (PW-17) who has stated that there was no apprehension of death of injured who was speaking well till six days after sustaining injuries. The aforesaid statement in the MLC was recorded by the doctor as it was necessary for the doctor to find out the history of burns. Likewise, PW-17 recorded the statement to find out the cause of incident so that he could take necessary steps for put into motion the criminal machinery. These statements became dying declarations only when the maker of the statement died within few days thereafter. However, if at the time of recording the statement, it was not within the contemplation of the doctors or the police officials that the injured would succumb to the injuries, naturally step like getting her statement recorded by the SDM would not be taken.

26. Another argument of the defence that Ex. PW-17/A was not attested by the doctor and he had not given any certificate on the said statement to the effect that patient was fit for statement, again has no merit. In Sher Singh v. State of Punjab AIR 2008 SC 1423, the Apex Court held that even if dying declaration is not certified by the Doctor it will still have to be accepted because the person recording it had stated that the victim was fit to make the statement and had said

that he took the doctor's opinion regarding the same. We state at the cost of repetition that the endorsement by the Doctor is only a matter of prudence and the ultimate test is to find out as to whether dying declaration is voluntary and truthful. Dr. Raj (PW-18) categorically deposed in the Court that at the time of recording the statement of injured by the police she was fit for making the statement.

27. Insofar as the statement of the deceased to her mother (treated as fourth dying declaration) is concerned, this is proved by the mother of Smt. Jasmer Kaur. PW-5 deposed that Mandeep Kaur was admitted in the hospital and had told her that Abhishek had taken her in a car from her office and did not drop her at her residence but had taken her at a place in Model Town where she was made to come out of the car, since she did not come out, she was beaten up by Abhishek and as soon as she came out from the car, Abhishek poured petrol on her and set her on fire. She further deposed that Mandeep Kaur had died on 3.10.2007 in hospital. In her cross examination she has deposed that on 17th September, 2007 while Mandeep Kaur was with her at Ropar she had received a telephone call from Abhishek; she had told the police that Mandeep had met her in Agarsen hospital while she was admitted there and had told her that Abhishek had taken her to a place in Model Town and had beaten up her and after getting her out of his car, he had poured petrol on her person and set her on fire. She further clarified that the aforesaid facts were told by Mandeep to her on 22.9.2007 and she had remained with Mandeep Kaur while she was not on ventilator for about 6 days. Except arguing that she being a mother is interested witness, there is hardly any argument, advanced by the defence shaking her testimony.

28. At this stage let us examine the argument of the learned Senior Counsel for the appellant that having regard to the fact that she had suffered 25% burn injuries and she could not have been in a position to make detailed statements. For this purpose learned Senior Counsel had relied upon the Modi's Jurisprudence, which has already been taken note of while recording his submission. This argument, however is of no significance. The appellant is only trying to draw inferences from Modi's Jurisprudence as to what possibly could be the condition of such a patient. On the contrary, we have direct deposition of the doctors who examined the patient and found her fit to make a statement. Nothing could be elicited from those

medical experts in the cross examination. No even a suggestion was given that a person with such injuries would not be in a fit statement of mind to give deposition. In this backdrop, reliance upon this kind of medical jurisprudence would hardly be of any avail.

29. Once we are convinced that these dying declarations are consistent; they are not the result of any tutoring; the maker of the statements was in a fit condition and mentally alert to make these statement; and that there is a ring of truth in these statements, these can safely be relied upon as dying declarations, other argument of the appellant becomes totally blunt and insignificant. There is nothing to point out that the four dying declarations are inherently improbable or self contradictory as vainly contended by the learned Senior Counsel for the appellant. The argument that it is highly improbable that deceased would have travelled with the appellant from the office to his residence in his car when the motive for murder is said to be that the deceased was having an affair with her boss on account of which the appellant had given several threats, would also be unacceptable. It is not in dispute that appellant knew the deceased very well. They were colleagues. According to the appellant, they were in love with each other. In such a scenario, even if the appellant was nurturing the doubts that the deceased was having relationship with her boss and was objecting to this, that would not mean that she would totally severe her relationship with the appellant or would stop going with the appellant. PW-6 has categorically deposed that they used to leave together in the car of the appellant and the appellant used to drop her. The deceased Mandeep Kaur having died and not survive to give the explanation, one cannot fathom into the mind and as to why she went with the appellant on the fateful night. Having found that her statements are truthful and reliable and such an argument loose any sanctity.

30. Likewise, the argument that Rules contained in Chapter 13 A of Punjab and Haryana High Court Rules, 1966 were not readily followed while recording the dying declarations, would be of no avail. First of all, as pointed out above, when the deceased make statement, nobody expected that she would die after some days as she was coherent, mentally stable and was able to talk for six days. Her condition suddenly started deteriorating thereafter and by that time there was no

opportunity to get the statement recorded by the SDM as she became unconscious. No doubt Rules are made to ensure that dying declaration is recorded in a manner that it becomes worthy of credence. That however, would not mean that if the dying declaration has withstood the test of strict scrutiny after applying all cautions, it would still be discarded merely because it was not recorded in the manner prescribed by these Rules. For this reason, we are also hold that the judgment cited by the appellant would be of no avail, in the facts and circumstances of the present case.

31. The aforesaid discussion leads to the result that appeal is devoid of any merit. Finding no substance therein we have no reason to interfere with the judgment and sentence meted out to the appellant. We accordingly dismiss this appeal.

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