

# SUPREME COURT OF INDIA

Ravi Chander

Vs.

State of Punjab

(G Ray and B Hansaria JJ.)

05.12.1996

## ORDER

1. This appeal is directed against the judgment dated 29-10-1991 passed by the Division Bench of the Punjab and Haryana High Court in Criminal Appeal No. 360 DB of 1989. By the impugned judgment, the High Court has affirmed the conviction and sentence passed against the appellants by the learned Additional Sessions Judge, Ludhiana in Sessions Case No. 42 of 1988. The learned Additional Sessions Judge convicted the appellant Lachhmi Devi and the other two appellants under Section 302 read with Section 34 IPC and passed the sentence of life imprisonment against them. They were, however, acquitted of the charges under Sections 498A and 304B of the IPC. The said convicted accused faced the trial before the learned Sessions Judge in connection with the death of Sarita alias Sunita alias Veena on 4-10-1988 at about 8.00 a.m. The said Sarita died within four years of her marriage in her matrimonial home, the marriage being solemnised on 12-7-1985. Sarita was admitted in the C.M.C. Hospital, Ludhiana by her husband, Ravi Chander, one of the accused. The dying declaration was recorded by the ASI of the police station at about 10.00 a.m. in the hospital. The said dying declaration is Ex. DB. The said dying declaration is stated to be countersigned by the doctor of the hospital. Another dying declaration was recorded by the Executive Magistrate at about 2.45 p.m. and the said Executive Magistrate, Ashok Singla, has also deposed as PW 3. The prosecution has also relied on the third dying declaration which was oral and the said dying declaration is stated to have been made by the deceased at about 5.00 p.m. to her brothers. In support of such dying declaration, Prem Chand PW 4, the brother of the deceased, has deposed.

2. It may be stated that in the first dying declaration recorded by the Assistant Sub-Inspector of Police, the deceased is alleged to have made a statement that while she was pouring kerosene in the stove it started coming out and such kerosene came out on her clothes and the clothes caught fire. She had come out from the kitchen which was in the upper storey of the house. Hearing her cries, her husband Ravi came there and threw clothes on her. A number of other persons also assembled. She specifically stated that nobody had poured kerosene on her. It may be stated that it is the prosecution case that the brother of the deceased met the ADC at Ludhiana and made a request that the dying declaration should be recorded by a Magistrate. In view of such request in writing, the ADC sent a requisition to the Executive Magistrate, PW 3 Ashok Singla who recorded the said dying declaration at 2.40 p.m. in the hospital after ascertaining from the doctor that the deceased

was in a fit condition to make a statement. Such dying declaration was recorded by the Executive Magistrate in question and answer form. It appears from such dying declaration of the deceased that her mother-in-law had sprinkled kerosene on her and the husband Ravi caught hold of her by her hands and Suresh Kumar, the brother of the husband, lit a matchstick and she was set on fire. On her raising alarm, persons from the street gathered and thereafter she was taken to the hospital by the husband but on the way she was warned by the husband and husband's brother not to disclose the said act of setting her on fire and she was threatened that otherwise her relations would be done to death. So far as the third oral dying declaration, said to have been made to the brothers of the deceased is concerned, PW 4 Prem Chand has deposed that at about 5.00 p.m. when the said Prem Chand had met his deceased sister in the hospital, she had stated that in the previous evening the mother-in-law had assaulted her with a rolling pin (belna) on her head and the brother of the husband had also dragged her by her long hair. On the next day, at about 8.00 a.m. i.e. on the date of incident, when she was in the room, all the three accused came and said that she should be done to death as she was creating problem for them daily. The mother-in-law Lachhmi then brought a can of kerosene and sprinkled the same on the deceased. The husband caught hold of her by her hair and Suresh, the brother of the husband, who was carrying a matchbox, set her on fire. She also made a statement to Prem Chand that previously by threatening her in the hospital, a signature was taken on some statement by the police officer though she had not made any such statement.

3. Placing reliance mainly on the dying declaration recorded by the Executive Magistrate, the learned Additional Sessions Judge convicted the accused under Section 302 read with Section 34 IPC. As aforesaid, such conviction has been upheld by the High Court by dismissing Criminal Appeal No. 360 DB of 1989.

4. Mr Roy, the learned Senior Counsel appearing for the appellants, has submitted that although it was alleged by the brother of the deceased that the deceased used to be harassed on account of dowry demand, asking her to bring money to purchase a refrigerator, the case of dowry demand has not been accepted by the courts below and the accused have been acquitted of the charges under Section 304B and Section 498A IPC. In view of the said facts, Mr Roy has submitted that there was no reason why Santa would be set on fire by the accused. In the absence of a case of torture and dowry demand, there was no motive established by the prosecution which would impel the accused to resort to the offence of setting the deceased on fire. Mr Roy has submitted that in the instant case, there is no other material for passing the conviction against the accused excepting the dying declaration recorded by the Executive Magistrate and the alleged oral dying declaration stated to have been made by the deceased to the brother of the deceased. Mr Roy has submitted that so far as the dying declaration recorded by the Executive Magistrate at 2.45 p.m. in the hospital is concerned, there are some suspicious circumstances which raise serious doubt about the genuineness of such dying declaration. It has been contended by Mr Roy that at one or two places the initial writing has been scored out and after Question No. 6, the thumb impression of the deceased was taken. But after such thumb impression, other writings were found in the said dying declaration. It is not unlikely that later on the other portions were recorded on the reverse of the first leaf. No thumb impression of the deceased was taken on the reverse side but on the second leaf such thumb impression of the deceased appears. Mr Roy has submitted that although the Executive Magistrate has deposed to the effect that after ascertaining from the doctor that the deceased was in a fit condition to make a statement, he had recorded the dying declaration, the prosecution has failed to examine any doctor to support such statement. Mr Roy has also submitted that such dying declaration recorded by the Executive Magistrate was not immediately sent to the Judicial Magistrate and it was sent to the Investigating Officer only after 14 days. Such inordinate delay in sending the dying declaration has

not at all been explained. Mr Roy has also submitted that it is the specific case of the prosecution that on the basis of the application made by the brother of the deceased to the DC, the services of the Executive Magistrate were requisitioned for recording the dying declaration, but the alleged application said to have been made by the brother of the deceased has not been produced by the prosecution in support of such case. It is mysterious how and under what circumstance the Executive Magistrate had been to the hospital to record the dying declaration. Mr Roy has also submitted that it is revealed from the deposition of PW 4 Prem Chand, the brother of the deceased, that he did not meet the deceased in the hospital prior to 5.00 p.m. In such circumstances, there was no occasion for the said Prem Chand to entertain any suspicion about any foul play in the deceased getting burnt. Accordingly, there was no reason for the brother to go to the DC and to make a prayer for getting the dying declaration recorded by a Magistrate. Mr Roy has also submitted that according to the prosecution case, a number of neighbours assembled when the deceased was shifted after getting burnt. PW 6 Bhola was one such passer-by who had come after hearing shouts of the mother-in-law and also found that a number of passers-by had collected in front of the house of the deceased. But no such person has been examined. PW 6 Bhola has stated in cross-examination that the accused Lachhmi was shouting that somebody should inform the brother of the deceased Sarita.

5. Mr Roy has submitted that because of such request made by the mother-in-law, PW 6 went to the house of the brother of the deceased and informed him about the said incident. It is, therefore, evident that the accused had behaved in the natural way and there was no reason to suspect about the complicity of the said accused in any manner by the brother. Mr Roy has submitted that it is an admitted position that the husband and the brother of the husband had shifted the deceased to the hospital for treatment. It has also been submitted by Mr Roy that conviction may be based on the basis of dying declaration provided the statement made in the dying declaration can be accepted to be fully reliable. If there is any occasion to doubt the correctness of the statements contained in the dying declaration, the Court as a rule of prudence seeks corroboration from other independent evidences adduced in the case. In the instant case, there is no independent evidence which corroborates the statement recorded in the dying declaration. In the aforesaid facts, the dying declaration recorded by the Executive Magistrate and the oral dying declaration said to have been made to the brother being contrary to the dying declaration recorded by the police officer which was the earliest at the point of time should not be accepted. There is enough scope to doubt about the correctness of the statement recorded by the Executive Magistrate and also the alleged oral dying declaration made by the deceased to her brother. It is, therefore, only appropriate that the benefit of doubt should be given to the accused. But, unfortunately, the courts below failed to appreciate this lacuna in the prosecution case. Mr Roy has, therefore, submitted that it is pre-eminently a fit case to set aside the conviction and sentence passed against the appellants and to pass an order of acquittal in their favour.

6. After giving our anxious consideration to the facts and circumstances of the case and the evidences adduced and also after taking into consideration the two recorded dying declarations, namely, the first one recorded by the ASI and the second one recorded by the Executive Magistrate and also after taking into consideration the oral dying declaration said to have been made by the deceased to PW 4, Prem Chand, it appears to us that the first dying declaration which was recorded by the ASI cannot be accepted. The deposition of PW 4 Prem Chand appears to be reliable and his deposition also gets support from the post-mortem report. Prem Chand has deposed that his sister stated to him that previously in the hospital under threat her signature was taken on a paper by the police and she had not made any such statement. PW 4 also deposed that in the previous evening the mother-in-law hit the deceased on the head with the rolling pin. From the post-mortem report it

transpires that a lacerated injury was found in the parietal region. Such injury on the head fits in with the case of hitting the deceased with a rolling pin (belna) as alleged by the deceased. We have carefully looked into the dying declaration recorded by the Executive Magistrate and it appears to us that there is no occasion to hold that such dying declaration was not taken properly by the Executive Magistrate. Correction made in the first leaf in respect of Question No. 7 and the answer given to such question is only in respect of describing whether it was the question or the answer. The statements given by the deceased have been recorded without any overwriting or without any interpolation. Initials have been put by the Executive Magistrate at the bottom of the first leaf and only a part of the signature has touched some writing in respect of Question No. 8 for which no doubt can be entertained about the correctness of recording. So far as the flow of writing is concerned, it also appears that all the questions and answers have been recorded in the same flow. We have also looked at the reverse side of the page and considering the same it does not appear to us that there is any occasion to doubt that such writing was subsequently made by the Executive Magistrate. The Executive Magistrate has also deposed in the case and he has specifically deposed that he recorded the dying declaration in question and answer form. He has denied the suggestion in the cross-examination that there was any antedating or fabrication on his part in recording the dying declaration. The Executive Magistrate is a disinterested witness and is a responsible officer. There is no circumstance or any material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. The dying declaration recorded by him tallies substantially with the dying declaration said to have been made orally to the brother Prem Chand PW 4. Simply because the offence under Sections 498A and 304B IPC could not be established beyond doubt by the prosecution for which the accused were acquitted of the said charges, it cannot be held that the accused had no motive for committing the said murder. Although the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after about a fortnight, we do not think that for such delay, genuineness of the said dying declaration recorded by the Executive Magistrate is to be doubted. There is an entry in the despatch register by which the said statement was sent to the DSP (H) Ludhiana by the Head Constable of the police post. Mr Roy has contended that the doctor who countersigned the first dying declaration recorded by the ASI has not been examined by the prosecution. In our view, for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made to Prem Chand, PW 4, need not be doubted. Moreover, it was open to the accused to examine the doctor alleged to have countersigned the dying declaration recorded by the ASI if the accused had intended to rely on such dying declaration.

7. In the aforesaid facts, we do not find any reason to interfere with the impugned judgment. This appeal, therefore, fails and is dismissed. It appears that Appellant 1 Ravi Chander was released on bail during the pendency of this appeal by an order dated 16-8-1994. His bail bonds will stand cancelled and he is directed to be taken into custody to serve out the sentence.