

# **SUPREME COURT OF INDIA**

Prem Kumar Gulati

Vs.

State of Haryana

Crl.A.No.1422 of 2009

(M.Y. Eqbal and Pinaki Chandra Ghose)

23.09.2014

## **JUDGMENT**

### **M.Y. EQBAL, J.**

1. These appeals are directed against judgment and order dated 06.09.2008 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 342-DB of 2006, whereby the High Court dismissed the appeal of the accused persons and upheld the judgment dated 25.04.2006 passed by the Additional Sessions Judge, Bhiwani (Haryana) in Sessions Case No.8 RBT of 18.3.2004, inflicting sentence with rigorous imprisonment for life under Section 302/498-A read with Section 34, Indian Penal Code and imposed fine with default clause.

2. The facts leading to the prosecution story are that on 16.1.1995, Rajni-deceased was married with Mahender Singh alias Mahender Gulati and out of this wedlock, three children were born. Both the appellants, namely Mahender Gulati and Prem Kumar Gulati (brother in-law (jeth) of deceased) are the brothers. The prosecution case is that on receipt of V.T. message on 10.12.2003, ASI Ram Singh rushed to PGIMS, Rohtak with regard to admission of Rajni in burnt condition. After obtaining Doctor<sup>TM</sup>s certificate regarding fitness of the victim to give statement, Additional Chief Judicial Magistrate, Rohtak recorded her statement (dying declaration) to the effect that on 9.12.2003, at around 9.30/10.00 P.M. the accused persons being her husband, Jeth and Jethani poured kerosene oil on her and set ablaze. It is also stated in her dying

declaration that her husband had illicit relation with his Bhabi Bimla (since deceased), with the result she used to pick up quarrel with him. Her husband gave her beatings under the influence of intoxication. None made attempt to extinguish fire.

3. On the basis of the above dying declaration a case was registered and the investigation agency swung into action. Statements of witnesses were accordingly recorded under Section 161, Cr.P.C. The Investigating Officer investigated the spot and prepared rough site plan with correct marginal notes and took into possession burnt clothes of Rajni, ash of burnt clothes, one kerosene lamp after converting the same into sealed parcel. On the night of 12.12.2003, message was received from PGIMS, Rohtak that Rajini had died as a result of burn injuries. Post mortem report was obtained, site plan was sketched and FSL report was obtained. After completion of investigation, only accused Mahender Singh alias Mahender Gulati was arraigned to stand trial under Sections 302/498A, I.P.C. by Police, whereas Prem Kumar Gulati and Smt. Bimla alias Nirmla were summoned to face trial along with other accused Mahender, as additional accused, by invoking the provisions of Section 319, Cr.P.C.

4. In order to substantiate the charges, the prosecution examined nine witnesses. According to Dr. Ravi Kanta (PW-1), who conducted post mortem examination, burn injuries were approximately 50% and cause of death of Rajni was due to ante mortem burns, which were sufficient to cause death in ordinary course of nature. According to Dr. Naresh Kumar Kardwal (PW-3), who medico-legally examined the deceased, found superficial deep burns all over the body except back, hip, lower leg, left hand and forearm. He stated that possibility of burn injuries in this case by fall of kerosene oil on the head cannot be ruled out. Agyapal (PW-7), father of the deceased, stated that accused person started harassing his daughter three months after marriage for want of dowry although sufficient dowry was given. Ultimately, she was shunted out from the matrimonial abode and her husband filed a divorce petition. Later, the matter was resolved on the apology being tendered and assurance given by the accused persons before the panchayat on 1.12.1996. Ironically she fell prey to recurrence and was turned out from the matrimonial house in the year 1997. His daughter divulged about the illicit relations between her husband and sister-in-law. Again accused persons were apologized before the Panchayat on the assurance given by them. In 2001, a criminal case was filed, which was also compromised with the intervention of panchayat. Against willingness of his daughter, he persuaded and sent her daughter back to the matrimonial house through panchayat. He further highlighted that about

one week prior to the occurrence, his daughter informed him telephonically about harassment and requested him to take her to parental house. Thereafter, on 10.12.2003 at around 5.00 A.M. a telephonic message, was received and he along with his wife and son rushed to the hospital, where the victim disclosed that accused Prem and Bimla caught hold of her and her husband Mahender poured kerosene oil and set her on fire. PW8, brother of Rajni, supported the version of his father PW7.

5. Accused denied all the charges and in defence accused Mahender Singh stated that at the time of occurrence he was present on the ground floor and was working at flour mill. His wife and children were on the first floor. After hearing cries of children, he went upstairs on the first floor and saw that his wife was having burn injuries accidentally due to falling of a lamp upon her in the kitchen. Complaint against his brother and bhabhi, who were residing separately, was filed at the instance of her parents. The accused examined deceased<sup>TM</sup>s eight years<sup>TM</sup> old daughter Kumari Manshu (DW-1), who deposed that she heard cries of her mother in the kitchen. She came out and told that she had caught fire due to falling of burning lamp on her as glass of the lamp got broken after falling upon her. The Child called her father, who was on the ground floor in the flour mill at that time. Her father and neighbours extinguished fire and took her mother to the hospital. Upon this, trial court has opined that the child has been tutored as she was residing with accused persons, namely, Prem and Bimla, after the death of her mother and she had come along with them on the date of examination in the Court. Trial court further observed that broken glasses of the lamp had fallen in the verandah and not in the kitchen.

6. After careful examination of the evidence and pleadings of the parties, the trial court held that the prosecution has proved that the accused persons, in furtherance of the common intention, subjected Rajni to cruelty as her husband had illicit relations with co-accused Bimla (Bhabhi). The Trial Court convicted all the three accused persons under Section 302/498-A read with Section 34 IPC and sentenced them with rigorous imprisonment for life and imposed a fine of Rs.5,000/-under Section 302 read with Section 34 IPC and rigorous imprisonment for one year and fine of Rs. 500/-under Section 498A-read with Section 34 IPC on each accused convicts.

7. Aggrieved by the decision of the trial court, the accused persons preferred criminal appeal before the High Court of Punjab and Haryana at Chandigarh, which was dismissed by the Division Bench of the High Court upholding the judgment of the trial

Court. Hence, the present appeals by special leave by two accused persons.

8. Mrs. Meenakshi Arora, learned senior counsel appearing for the appellants assailed the judgment of conviction as being contrary to law and the facts of the case and that the prosecution has not proved the case beyond reasonable doubt. At the very outset, learned senior counsel submitted that two of the accused persons, viz., Prem Kumar Gulati and his wife were in no way involved in the commission of the alleged offence. She drew our attention to the evidence of PW-2 Sub-Inspector who investigated the case and recorded the statement of witnesses under Section 161 of Cr.P.C. He deposed that during investigation the accused Prem Kumar Gulati and his wife were found innocent. Hence they were not summoned to face trial along with the deceased<sup>TM</sup>s husband Mahender Singh Gulati. Similarly, PW-9 ASI Ram Singh Investigating Officer in the case deposed inter alia that the accused appellant Prem and his wife Bimla were residing separately. However, they could not escape themselves from the clutches of law on the basis of so called dying declaration. She further submitted that the dying declaration cannot be relied upon and conviction cannot be based on vague statement. She submitted that in the dying declaration, there is neither any mention of time of its recording nor there is any mention about the state of mind of the deceased while making her statement before the Magistrate. The dying declaration is also not in question answer form. Learned senior counsel submitted that in case of any inconsistency between the dying declaration and the evidence adduced by the prosecution such dying declaration cannot be relied upon. Learned senior counsel relied upon few of the decisions of this Court viz., *P. Mani vs. State of Tamil Nadu*, (2006) 3 SCC 161; *Mohan Lal & Ors. vs. State of Haryana*, (2007) 9 SCC 151.

9. Mrs. Arora further submitted that there is no eye-witness in the case except one eight year old daughter of the deceased who was examined as DW-1. She further submitted that it is wrong to disbelieve the child on the ground that she is a tutored witness being residing with the accused persons after the death of her mother and on the date of examination in court, she had come along with them. It was contended that father of the deceased (PW-7) did not express that he would keep the child in his care and guardianship. Learned counsel submitted that because of the past history of alleged torture and several litigations, the motive of giving dying declaration cannot be ruled out.

10. Mrs. Arora, specifically mentioned the innocence of the accused- appellant Prem

Kumar Gulati (brother of the main accused) who is found innocent during the investigation and was not put on trial. It was only after the orders passed under Section 319 of Cr.P.C. he faced the trial along with the main accused. Finally, she submitted that in the absence of eye-witness to the incident the prosecution story based on inconsistent evidence of the witnesses cannot be relied upon.

11. Mr. Rupansh Purohit, learned Addl. Advocate General appearing for the State, firstly submitted that the statement made by the deceased on the dying declaration is sufficient to convict the appellants for the offence committed by them. Ld. AAG submitted that dying declaration is not necessary to be in question answer form, rather dying declaration in narrative form is more natural. In this connection he relied upon a decision of this Court in State of Karnataka v. Shariff (2003) 2 SCC 473. Learned AAG further submitted that evidence given by the father (PW-7) is more reliable evidence and there is nothing on record to suggest that the deceased made a dying declaration on the influence of her father. Lastly, he submitted that the accused Prem Kumar Gulati and his wife were residing in the same building and there is no evidence that they were living separately.

12. First of all we shall consider the authenticity of the dying declaration recorded by the Magistrate. The dying declaration reads as under:-

Statement of Rajni W/o Mahender, aged 28 years, Household, Jamalpur, District Bhiwani.

Stated that yesterday night at 9.30/10.00 my husband Mahender, my Jeth Prem Gulati, my Jethani Bimla have poured kerosene oil upon me. My husband used to reside with his bhabhi. There was quarrel between us daily. After drinking liquor, I was beaten up with lathi and shoes. None has extinguished the fire. I have three children. I have heard my statement, which is correct. I do not want to say anything else. RO & AC Sd/-

Sd/- ACJM, Rohtak

R.T.I. Rajni

10.12.2003

13. It is well settled that a truthful and reliable dying declaration may form the sole basis of conviction even though it is not corroborated. However, the reliability of

declaration should be subjected to close scrutiny and the courts must be satisfied that the declaration is truthful. In the case of *Godhu & Anr. vs. State of Rajasthan*, (1975) 3 SCC 241, a three Judge Bench of this Court has thoroughly discussed the evidentiary value and reliability of dying declaration observed:-

16. We are also unable to subscribe to the view that if a part of the dying declaration has not been proved to be correct, it must necessarily result in the rejection of the whole of the dying declaration. The rejection of a part of the dying declaration would put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. There may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct.

14. In the case of *K. Ramachandra Reddy vs. Public Prosecutor*, (1976) 3 SCC 618, this Court observed that:-

6. The accused pleaded innocence and averred that they had been falsely implicated due to enmity. Thus it would appear that the conviction of the accused depends entirely on the reliability of the dying declaration Ext. P-2. The dying declaration is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the court has to be on guard against the

statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. The law on the subject has been clearly and explicitly enunciated by this Court in *Khushal Rao v. State of Bombay*, AIR 1958 SC 22, where the Court observed as follows: On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

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. The above observations made by this Court were fully endorsed by a Bench of five Judges of this Court in Harbans Singh v. State of Punjab AIR 1962 SC 439. In a recent decision of this Court in Tapinder Singh v. State of Punjab,(1970) 2 SCC 113, relying upon the earlier decision referred to above, this Court observed as follows: [SCC p. 119, para 5] It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances. In Lallubhai Devchand Shah v. State of Gujarat, (1971)3 SCC 767, this Court laid special stress on the fact that one of the important tests of the reliability of a dying declaration is that the person who recorded it must be satisfied that the deceased was in a fit state of mind and observed as follows: [SCC p. 772 : SCC (CRI) p. 18, para 9] The Court, therefore, blamed Dr Pant for not questioning Trilok Singh with a view to test whether Trilok Singh was in a ~fit state of mind™ to make the statement. The ~fit state of mind™ referred to is in relation to the statement that the dying man was making. In other words, what the case suggests is that the person who records a dying declaration must be satisfied that the dying man was making a conscious and voluntary statement with normal understanding.

15. In the case of Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808, a three Judge Bench of this Court elaborately discussed the mode of appreciation of evidence and the general principles regarding presumption of innocence of the accused. The Bench observed:-

25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This

principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of *State of Punjab v. Jagir Singh* (1974) 3 SCC 227 a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.

27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction

are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on p. 157 of *The Proof of Guilt* by Glanville Williams, 2nd Edn.:

I dare say some sentimentalists would assent to the proposition that it is better that a thousand or even a million guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.

16. The submission of Ms. Meenakshi Arora, learned senior counsel appearing for the appellant that the dying declaration is untenable being without mentioning the time when the statement was recorded as also not in the question answer form, cannot be sustained. Merely because dying declaration was not in question answer form, the sanctity attached to a dying declaration as it comes from the mouth of a dying person cannot be brushed aside and its reliability cannot be doubted.

17. In the light of the law settled by the Supreme Court, we shall first examine the case of the accused appellant Prem Kumar Gulati, whose wife (Bimla, since deceased) was also co-accused. Immediately after the occurrence took place, the police reached the place of occurrence and recorded the statement of witnesses in course of investigation and found that the said accused Prem Kumar Gulati was innocent and he was not involved in the commission of the offence.

18. Admittedly, they were not put on trial along with the main accused- appellant Mahender Singh. It was only at the stage of Section 319, Cr.P.C. the accused persons namely Prem Kumar Gulati and his wife were summoned and put on trial. Except dying declaration there is nothing on record to strongly suggest that they were involved in the commission of crime. There is nothing in the findings of sessions court which suggest that the said accused persons participated in the commission of the

aforsaid crime, and this fact has been reiterated by the High Court also.

19. As noticed above, in the dying declaration, the deceased declared that her husband Mahender Singh along with the accused Prem Kumar Gulati and Bimla (deceased) have poured kerosene oil upon her. Except that, nothing has been said in the dying declaration as against the accused Prem Kumar Gulati or his wife- Bimla as to which accused poured kerosene oil upon her and the accused lighted the fire. In the later part of dying declaration, the deceased stated that her husband Mahender Singh used to reside with his Bhabhi. After drinking liquor, she was beaten up by her husband with lathi and shoes. In other words, in her dying declaration she said that her husband Mahender Singh used to beat her after drinking liquor. There is no eye-witness to the occurrence. PW-2, the police officer deposed that he recorded the statement of several persons and collected all the papers including ration card and compromise letter written to the Panchayat etc. He further deposed that during the investigation, the accused Prem Kumar and Bimla were found innocent as they were living separately. Although the trial court and the appellate court convicted both the accused Prem Kumar Gulati and his wife Bimla, but after scrutiny of all the evidence, we are of the view that there are no corroborative evidence to come to the conclusion that these two participated along with the main accused Mahender Singh for the commission of the offence. As noticed above, one of the accused Bimla already expired. We do not find any reason why Prem Kumar also participated in the commission of the offence. Admittedly, neither in the dying declaration nor in the statement of witnesses it has come in light as to what act was done by the accused- Prem Kumar.

20. In our considered opinion, the benefit of doubt should be given to accused-appellant Prem Kumar and his conviction cannot be sustained.

21. Sufficient evidence has come on record and the prosecution has established the case that it was Mahender Singh at whose instance and instigation she was subjected to death by pouring kerosene oil and lit on fire. We are, therefore, of the view that the finding recorded by the trial court as also by the Appellate Court as against main accused Mahender Singh (husband of the deceased) cannot be interfered with.

22. We, therefore, dismiss Criminal Appeal No. 1423 of 2009 and uphold the conviction of Mahender Singh.

23. Criminal Appeal No.1422 of 2009 is allowed and the appellant Prem Kumar Gulati is acquitted from charges. He is directed to be released forthwith.