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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-D-515-DB-2004 (O&M)

Date of Decision: 26.05.2025

Des RajAppellant

Versus

State of PunjabRespondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Prem Singh Bhangu, Advocate, for the appellant.

Mr. Sidharth Attri, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. Desraj assails judgment dated 23.04.2004 passed by learned Additional Sessions Judge, Kapurthala, vide which he has been held guilty of having committed offence under Sections 302 IPC and has been sentenced to undergo rigorous imprisonment for life and also to pay a fine amounting to Rs.2000/-.
2. The matter arises out of FIR No.89 dated 06.06.2001, under Sections 304-B/34 IPC, Police Station City Phagwara, lodged at the instance of Shital (deceased) pursuant to her statement recorded by a Magistrate in the shape of a 'dying declaration'. Shital (deceased), aged about 18 years, died an unnatural death i.e. on account of burn injuries, which she received in her matrimonial home on the night intervening 05/06.06.2001.



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3. As per prosecution, upon receipt of information regarding admission of Shital (deceased) in Civil Hospital, Phagwara with 80% burn injuries, ASI Dalbir Singh went to the hospital at about 1.00 AM on 06.06.2001 and thereafter moved an application (Ex.PL) at about 1.30 AM requesting the SDJM, Phagwara to record the statement of Shital. Upon being requested, Shri Harbhajan Dass, SDJM, Phagwara reached at the Civil Hospital, Phagwara where he sought opinion of the doctor concerned regarding fitness of Shital to make statement. Pursuant to the doctor having declared Shital fit to make a statement at about 2.40 AM, Shri Harbhajan Dass, SDJM, Phagwara recorded the statement of Shital. The translated version of Shital's statement (Ex.PQ), is reproduced herein under:

Q No.1. : How did you catch fire?

Answer : It was 12.30 at night. My husband Des Raj poured kerosene oil on me and set me on fire.

Q No.2 : Why were you set on fire?

Answer : My husband was drunk. He was maintaining another lady as wife. My husband was having illicit relations with her. He used to tell me that he will not treat me as a wife and will divorce me.

Q No.3 : Are you making this statement under pressure?

Answer : No, I am not making statement under anyone's pressure. I am making statement out of my own wish.

Q No.4 : Do you want to say anything else?

Answer : My father-in-law used to tell me to bring more dowry. My father is not alive. My son is residing with his maternal (*Nanka*) family. Des Raj should be punished.

4. Pursuant to recording of statement of Shital, FIR was lodged for offences under Sections 304-B/34 IPC against Des Raj (husband) and Tarsem Lal (father-in-law). However, Shital could not survive and succumbed to her



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injuries on same day i.e. 06.06.2001. ASI Dalbir Singh conducted inquest proceedings. The dead body was subjected to post-mortem examination. ASI Dalbir Singh visited the place of occurrence i.e. matrimonial home of the deceased, from where some burnt pieces of clothes, a match box and a plastic can were taken into possession. A rough site plan of the place of occurrence was prepared. Statements of the witnesses were recorded in terms of Section 161 Cr.P.C. Accused Des Raj and Tarsem Lal were arrested on 08.06.2001 and 10.07.2001 respectively.

5. Upon conclusion of investigation, challan was presented against accused Des Raj and Tarsem Lal on 04.09.2001 in the Court of Sub Divisional Judicial Magistrate, Phagwara, who committed the case to the Court of Sessions vide order dated 18.09.2001. Learned Additional Sessions Judge, Kapurthala, framed charges against both the accused for offence punishable under Section 302 IPC in the alternative under Section 304-B, 498-A IPC read with Section 34 IPC on 05.10.2001 to which they pleaded not guilty and claimed trial.
6. Subsequently, upon an application under Section 319 Cr.P.C. moved by prosecution, accused Pushpa, mother-in-law of Shital (deceased) was ordered to be summoned to face trial. Upon securing her presence, fresh charges were framed against all the accused on 03.02.2003 for offences under Section 302/304-B/498-A IPC.
7. The prosecution in order to establish its case examined as many as 11 PWs. The gist of their testimonies is being briefly referred to herein under:-



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PW-1 HC Makhan Singh stated that on 06.06.2001, he was entrusted with special reports of the case, which he delivered to the Illaqa Magistrate as well as to senior police officers.

PW-2 Kamlesh, mother of Shital (deceased), in her examination-in-chief recorded on 29.01.2002 stated that her daughter Shital was married to Des Raj on 22.11.1997, however, Des Raj, Tarsem Lal and Pushpa used to harass her daughter for having brought less dowry and demanded a scooter from her daughter for which she had paid an amount of Rs.20,000/- to Des Raj and although Des Raj promised to return the said amount in installments, but he never returned the same. She stated that all the accused used to harass Shital to press upon the demands of more dowry. She further stated that on the day of occurrence, Des Raj had made a telephonic call to her and she has requested Des Raj to enable her to talk to Shital, but she was told that Shital had been taken to Civil Hospital, Phagwara and when she made a telephonic call to Civil Hospital, Phagwara to enquire about the condition of her daughter Shital, the official at Civil Hospital informed her that the condition of Shital was serious and thereafter she alongwith her son Sanjeev and other persons proceeded to Civil Hospital, Phagwara and met her daughter, who disclosed that Des Raj had consumed liquor at about 9.00 PM and had come home in an inebriated condition and when she (Shital) asked him as to why he had come so late, Des Raj started beating her and poured kerosene oil on her and set her on fire.

While the aforesaid examination-in-chief of PW-2 Kamlesh was recorded on 29.01.2002, the cross-examination was deferred as the prosecution wanted to move an application under Section 319 Cr.P.C. However, upon acceptance of the aforesaid application and summoning of additional accused Pushpa, mother-in-law of Shital (deceased), when PW-2 Kamlesh was called upon to depose in Court again on 15.04.2003, she resiled from her



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statement and stated that her daughter Shital was not harassed or maltreated by the accused nor did they ever raise any demand of dowry.

PW-3 Sanjeev, brother of Shital (deceased), also resiled from his statement and stated that his sister was not maltreated by the accused and that they had never demanded any dowry from her sister.

PW-4 Harjit Kaur, Peon in the Civil Hospital, Phagwara, stated that her house is situated in front of the house of the accused and that during night at about 12.00 PM, she heard a noise commotion from the house of Des Raj and found that Shital was on fire and that she alongwith others extinguished the fire and thereafter Shital was taken to Civil Hospital, Phagwara.

PW-5 Dr. Rajiv Aggarwal stated that on 06.06.2001, he was posted as Medical Officer, Civil Hospital, Phagwara and had medico legally examined Shital, who was having superficial burns over the face, chest, arms, abdomen, legs, feet and genitalia area. He stated that her vitals were within normal limits and that he had sent information to the police pursuant to which police had come to the spot. He further stated that the Judicial Magistrate had also come at the Civil Hospital and recorded the statement of Shital. He stated that he had furnished his opinion (Ex.PB) declaring Shital fit to make statement. He further stated that he remained present by the side of the injured throughout the recording of her statement. He further stated that the injured remained fit throughout the course of recording of her statement by the Magistrate.

PW-6 Dr. Ajit Singh, Medical Officer, Civil Hospital, Phagwara, who had conducted post-mortem examination on the dead body of Shital on 06.06.2001 at about 2.30 PM, proved post-mortem report as Ex.PO. He opined that the cause of death in this case



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was on account of severe pain and marked loss of fluid from the burnt areas leading to shock and that the burn injuries were sufficient to cause death in ordinary course of nature.

PW-7 Naresh Kumar Lehri stated that his wife is working as Staff Nurse in Civil Hospital, Phagwara and that they were residing in the official quarter and that on the day of occurrence i.e. 06.06.2001 at about 12.30 mid-night, they noticed fire in Quarter No.9-D and when they rushed to the said quarter, they found that Shital was on fire and that they immediately removed Shital to the Civil Hospital, Phagwara.

PW-8 ASI Dalbir Singh, who is the Investigating Officer in the present case, stated that on 06.06.2001, upon receipt of an intimation from the hospital authorities regarding admission of Shital with burn injuries, he went to the Civil Hospital, Phagwara and thereafter contacted the Magistrate for the purpose of recording statement of Shital and that pursuant to his request, Shri Harbhajan Dass, SDJM, Phagwara came to the hospital and sought opinion of the Doctor as regards fitness of Shital to make a statement and upon fitness having been opined by the Doctor, he (Shri Harbhajan Dass) recorded the statement (Ex.PM) of Shital on the basis of which formal FIR (Ex.PM/2) was recorded. He further stated that Shital, however, could not survive and thereafter he conducted inquest proceedings and also visited the place of occurrence and conducted investigation in the matter.

PW-9 Shri Harbhajan Dass, Addl. CJM, Chandigarh, stated that on 06.06.2001, he was posted as SDJM, Phagwara and on the said day, ASI Dalbir Singh moved an application (Ex.PL) requesting him to record the statement of Shital and pursuant thereto he accompanied ASI Dalbir Singh to the Civil Hospital, Phagwara and ascertained about the fitness of Shital to make a statement and



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the Doctor having declared Shital fit to make statement, he recorded the statement (Ex.PQ) of Shital.

PW-10 ASI Vijay Kumar stated that he had partly investigated the case during the course of which he has arrested accused Tarsem Lal and also Pushpa, who had earlier been declared a proclaimed offender.

PW-11 ASI Massa Singh stated that on 28.08.2001, he was posted as ASI at Police Station City Phagwara and had partly investigated the case. He stated that during the course of investigation, he had taken into possession marriage card and some other documents and had recorded the statements of Dr. Rajiv Aggarwal and other witnesses under Section 161 Cr.P.C.

8. Upon closure of the prosecution evidence, statements of all the accused were recorded in terms of Section 313 Cr.P.C., wherein they pleaded false implication. Accused Des Raj, however, stated that he was having cordial relations with his wife and had never raised any demand of dowry and had never harassed her and that on the day of occurrence, he was away to the house of Sham Lal Gandhi in Mohalla Satnampura to attend a *Jagrata* and that it was in his absence that the deceased caught fire, who was taken to hospital by Naresh Kumar Lehri and Harjit Kaur and that when he reached the Civil Hospital, his parents were already there and that though he and his parents arranged for the medicines for his wife, but she could not survive.
9. The accused in their defence examined DW-1 Rajinder Parshad, who stated that he was working in the Civil Hospital, Phagwara and was residing in quarter in Civil Hospital, Phagwara and that on the night intervening 05/06.06.2001, when he was on emergency duty, he heard a



noise commotion and came to know that Shital had been taken to Civil Hospital, Phagwara on account of burn injuries. He stated that while accused Tarsem Lal and Pushpa Rani, father-in-law and mother-in-law of Shital (deceased) respectively, were residing in old Civil Hospital at Phagwara, accused Des Raj alongwith his wife Shital was residing in the quarter in Civil Hospital, Phagwara and that the distance between new Civil Hospital and old Civil Hospital was about 3-4 Kms. He further stated that he alongwith Anil Masih and Som Nath went to bring Tarsem Lal and Pushpa Rani from their residence and that the mother and father of Des Raj came alongwith them to the Civil Hospital, Phagwara.

10. The learned trial Court, upon appreciating the evidence on record, held that while prosecution has failed to establish the charges against Tarsem Lal and Pushpa, but had established charges against accused Des Raj and consequently, while holding him guilty of having committed offence under Section 302 IPC, sentenced him to undergo imprisonment for life vide impugned judgment.
11. Learned counsel for the appellant, while assailing the impugned judgment, submitted that he has falsely been implicated in the present case and as a matter of fact, PW-2 Kamlesh (mother of deceased - Shital) and PW-3 Sanjeev (brother of deceased - Shital) had both categorically stated that the accused never harassed the deceased and had never raised any demand of dowry. Learned counsel submitted that there is no eye-witness to the occurrence and PW-2 Kamlesh (mother of deceased - Shital) and PW-3 Sanjeev (brother of deceased - Shital) having



categorically stated that the accused had never maltreated the deceased, the findings of guilt as recorded by the trial Court could not sustain and are liable to be set aside.

12. Opposing the appeal, learned State counsel submitted that it is a case wherein shortly before her death, Shital (deceased) had made a 'dying declaration', which was recorded by a Judicial Magistrate, wherein she stated in unambiguous terms that she had been set on fire by her husband Des Raj, who had poured kerosene oil on her and then lit her and as such, the complicity of accused Des Raj is clearly evident. Learned State counsel, thus, prayed for dismissal of the appeal.
13. We have considered the rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
14. It is a case of an unnatural death of a girl, aged about 18 years, who died on account of burn injuries which she sustained in her matrimonial home. The case of prosecution mainly rests on the 'dying declaration' of Shital (deceased) herself. While it is correct that there is no eye-witness to the occurrence and PW-2 Kamlesh (mother of deceased - Shital) and PW-3 Sanjeev (brother of deceased - Shital), who had initially leveled allegations against the accused regarding maltreatment of deceased, resiled from their statements when they stepped into the witness-box and categorically stated that the accused had never harassed Shital and had never demanded any dowry, but it is a case where the deceased shortly before her death made a 'dying declaration'.



15. The law regarding admissibility, reliability and value of a 'dying declaration' is well settled to the effect that once such statement is found to have been made voluntarily and is not an attempt by the deceased to falsely implicate a person, then such 'dying declaration' can safely be relied upon and it can form the basis of conviction. However, the Court has to scrutinize the 'dying declaration' carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. In *Khushal Rao vs. State of Bombay, AIR 1958 SC 22*, Hon'ble Supreme Court after examining the relevant provisions of the Evidence Act and various judicial pronouncements inter-alia held 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. Reiterating the ratio of *Khushal Rao's case* (supra), a Five Judges Bench of the Hon'ble Apex Court in a case reported as *(2002) 6 SCC 710 Laxman vs. State of Maharashtra*, while stating the broad principles regarding acceptability of dying declaration held as follows:

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may effect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-



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examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant."

16. The Hon'ble Apex Court in a case reported as (2008) 17 SCC 190 Panneerselvam vs. State of Tamil Nadu, while referring to various judgments on the issue of dying declaration, enumerated the principles governing dying declaration as under :-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) The Court has to scrutinise 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.
- (iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
- (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.
- (ix) Normally the Court in order to satisfy whether 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.

- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.
- (xi) Where there 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 declarations could be held to be trustworthy and reliable, it has to be accepted.

17. While scrutinizing the manner in which the 'dying declaration' was recorded in the light of ratio laid down in above referred judgments, we find that immediately upon receipt of information by the police regarding admission of Shital in the Civil Hospital, Phagwara with burn injuries, ASI Dalbir Singh reached at the Civil Hospital and thereafter made a request to the SDJM, Phagwara, who reached the Civil Hospital, Phagwara and after ascertaining about the fitness of Shital recorded her statement. The prosecution has examined PW-5 Dr. Rajiv Aggarwal, who had medico legally examined Shital when she was brought to the Civil Hospital, Phagwara and who had also declared Shital fit for making a statement. The relevant extract from his statement recorded on 27.08.2003 is reproduced herein under:

“When the police came, I asked the police to call the Magistrate. When the Magistrate came, I was asked about the fitness of the injured to make the statement. As per Ex.PF, I declared Shital injured fit to make statement. I remained present at the side of the injured throughout the recording of her statement by the Magistrate. She remained fit throughout during her statement. The Magistrate obtained her left thumb impression on her statement as her right thumb had been burnt. On the conclusion of her statement, I gave the opinion Ex.PG that she had



throughout remained fit to make the statement. Ex.PH is the bed head ticket in respect of Shital injured. Patient Shital expired on 06.06.2001. The bed head ticket is partly in my hand.”

18. Although PW-5 was cross-examined at length on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as to doubt his statement. A perusal of the aforesaid statement indicates that not only he had given his opinion regarding fitness of Shital before her statement was recorded by the SDJM, Phagwara, but he also remained present during the course of recording of her statement and has also opined that she was fit throughout during the course of her statement. To a similar effect is the statement of PW-9 Shri Harbhajan Dass, whose cross-examination also could not shatter his statement in any manner. Although during the course of cross-examination, he did state that there were two more persons belonging to the family of the injured, who were present, but he clarified that they had been told to go out before her statement was recorded. Under these circumstances, we find that all the requisite safeguards and precautions were adhered to before the statement of Shital was recorded. As such, neither there is anything to show that there was any tutoring of the deceased or that she had been forced to make the statement. The statement was recorded by an absolute independent person i.e. a Judicial Magistrate, which was recorded after the deceased was declared to be fit. Consequently, the statement is found to be absolutely trustworthy and admissible.



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19. It is well settled that conviction of an accused can even be based on the sole 'dying declaration' and that there is no rule of law that some other corroboration should be insisted upon. In a recent judgment, AIR 2024 (Supreme Court) 2682 Rajendra vs. State of Maharashtra, Hon'ble Supreme Court, in a case based solely on dying declaration held as under:

“25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.”

20. The present case is such where the 'dying declaration' is crisp and unambiguous and has been recorded while ensuring all the safeguards. While accepting the said statement to correct and trustworthy, we find that the deceased before her death stated categorically that it was her husband namely Des raj, who had poured kerosene oil on her and had set her on fire. In the absence of any other evidence to the contrary, we do not find any ground to interfere with the findings of guilt as recorded by the trial Court that it is the appellant, who had murdered his wife Shital by setting her on fire and the same are upheld.

21. Finding no merit in the appeal, the same is hereby dismissed. The appellant be arrested immediately to undergo remaining part of sentence.



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22. A copy of this judgment be sent to the quarters concerned for necessary compliance.

(GURVINDER SINGH GILL)
JUDGE

26.05.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**