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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**CRA-D-388-DB-2004 (O&M)**

Date of Decision: 02.05.2025

Darshna Devi

... Appellant

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**Present: Mr. Amandeep Singh Manaise, Advocate as Amicus Curiae,
for the appellant.

Mr. Sidharth Attri, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. Darshna Devi assails judgment dated 24.11.2003 passed by learned Sessions Judge, Ludhiana, vide which she has been held guilty of having committed offence under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and also to pay a fine amounting to Rs.10,000/-.
2. The matter arises out of FIR No.188 dated 08.05.1999 registered at Police Station Sadar Ludhiana, under Section 302/34 IPC (Ex.PG/2), at the instance of Balbir Chand (deceased). The translated gist of Balbir Chand's statement (Ex.PG) on the basis of which FIR was lodged reads as under:

"My marriage was solemnized with Darshna Devi. However, subsequently she developed illicit relations with Gulzari Lal, milk vendor, in whose house we had been residing. We had then divorced each other. After divorce, Gulzari Lal and Darshna Devi had come to my house and had threatened to kill me. Out of our wedlock, a son namely Sharanvir was born. A few days



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back, Darshna Devi and Gulzari Lal sent a message to him through Chundi, who is elder brother of Gulzari Lal, to the effect that I should take away my son Sharanvir. Today, I alongwith my cousin Shiv Dayal went to the house of Darshna Devi at Extension Basant Vihar Mohalla. As soon as we reached Darshna Devi's house she started quarreling and hurled abuses at me. While I was standing under a *verandah*, Pawan Kumar, son of Darshna Devi from her previous marriage, pushed me and resultantly I fell on the ground. While I was lying down, Darshna Devi poured kerosene oil on me from a can and told her son Pawan Kumar to set me on fire. Pawan Kumar lit a match and set me on fire. I raised hue & cry. My cousin Shiv Dayal extinguished the fire by throwing sand and water on me. The incident was witnessed by one Sushil Kumar, who was standing on a nearby roof. Upon alarm being raised, several persons from the locality gathered there. I was taken on a three-wheeler to the Civil Hospital by my brother as well as by Darshna Devi on the asking of residents of the locality. All this has been done by my wife Darshna Devi and by Pawan Kumar on the provocation of Gulzari Lal. Darshna Devi and Pawan Kumar had intended to kill me. My statement has been recorded, which is correct. LTI – Balbir Chand.”

3. The aforesaid statement of Balbir Chand was recorded in the Civil Hospital, Ludhiana by ASI Sarup Singh, who had gone to the Civil Hospital upon receipt of intimation from the hospital authorities regarding admission of Balbir Chand in an injured condition. It may here be mentioned that while Balbir Chand had been declared unfit at 5.20 PM on 07.05.1999, but later at about 9.45 PM on the same very day, he was declared fit to make statement by the doctor concerned vide endorsement Ex.PW-10/C and it was thereafter that the aforesaid statement of Balbir Chand (Ex.PG) came to be recorded at 11.50 PM on 07.05.1999 itself. ASI Sarup Singh thereafter went to the spot and prepared a rough site plan of the place of occurrence. An iron can, a burnt shirt and a match box recovered from the spot were taken into possession. Statements of the witnesses were recorded in terms of Section



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161 Cr.P.C. Balbir Chand could not survive and succumbed to the burn injuries the next day i.e. on 08.05.1999 at about 12.50 PM. Inquest proceedings were conducted. The dead body of Balbir Chand was subjected to post-mortem examination. Accused Darshna Devi and her son Pawan Kumar were arrested on 11.05.1999.

4. Upon conclusion of investigation, challan was presented against accused Darshna Devi and Pawan Kumar on 21.07.1999 in the Court of learned Judicial Magistrate Ist Class, Ludhiana, who committed the case to the Court of Sessions vide order dated 14.08.1999. Since accused Pawan Kumar was a juvenile, he was proceeded against separately before the Juvenile Justice Board. Learned Sessions Judge, Ludhiana framed charges against accused Darshna Devi on 30.08.1999 for offence punishable under Section 302 IPC, to which she pleaded not guilty and claimed trial.
5. 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:-

PW-1 Dr. Jasbir Singh, Medical Officer, Civil Hospital, Ludhiana, who had conducted post-mortem examination on the dead body of Balbir Chand on 08.05.1999, proved the post-mortem report as Ex.PA. He stated that as per his opinion the cause of death was due to cardio respiratory arrest as a result of extensive burns resulting in shock, which was sufficient to cause death in ordinary course of nature.

PW-2 Shiv Dayal, who is an eye-witness, stated identically with the version got recorded by Balbir Chand (deceased) to the police on the basis of which FIR came to be lodged.

PW-3 Anil Kumar, Draftsman, stated that he had prepared a scaled site plan of the place of occurrence and proved the same as Ex.PE.



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- PW-4** HC Charanjit Singh stated that on 08.05.1999, he was posted at P.S. Salem Tabri, Ludhiana and was associated with ASI Sarup Singh for the purpose of investigation of the present case. He stated that one iron container, one half burnt shirt and one match box were recovered from the spot in his presence and that he had signed on the recovery memos.
- PW-5** Constable Surinder Singh, who is a formal witness, tendered into evidence his affidavit Ex.PW-5/A, wherein he deposed that on 08.05.1999, ASI Manjit Singh after preparing the special reports had handed over the same to him, which he delivered to the Illaqa Magistrate and to other higher officers and that as long as the reports remained in his possession, the same were not tampered with.
- PW-6** Sushil Kumar, who is another eye-witness, stated that his house adjoins the house of accused Darshna Devi. He stated that on 07.05.1999 at about 1.30 PM, when he was taking lunch, he heard noise from the house of Darshna Devi and at that time Balbir Chand (deceased) and Darshna Devi (accused) were abusing each other. He also stated identically as regards pouring of kerosene oil on Balbir Chand by Darshna Devi (accused) and that Pawan Kumar lighted match stick and set Balbir Chand on fire. He further stated that Shiv Dayal, brother of Balbir Chand, who was standing nearby, poured water and sand on Balbir Chand and extinguished the fire.
- PW-7** ASI Manjit Singh stated that on 08.05.1999 while he was posted in Police Station Sadar, Ludhiana, ruqa Ex.PG was received on the basis of which he recorded formal FIR (Ex.PG/2) under his signatures.
- PW-8** Prem Kumar, Mechanic in Punjab Roadways, Ludhiana stated that apart from identifying the dead body of Balbir Chand, he attested the inquest report Ex.PE prepared in his presence and that his statement was also recorded by the police.
- PW-9** Avtar Singh, Sub Inspector, Punjab Roadways, Ludhiana, stated that he was President of Punjab State Employees Union, Roadways



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Department and that Balbir Chand (deceased) was a mechanic in Punjab Roadways, Ludhiana. He stated that on 08.05.1999, he was present at the Civil Hospital, Ludhiana and that Balbir Chand disclosed to him that he had solemnized second marriage with Darshna Devi and out of said marriage, a son namely Sharanvir was born. He stated that Balbir Chand further told him that Darshna Devi also had a son from her earlier marriage and that Darshna Devi had now developed illicit relations with Gulzari Lal on account of which the marriage between them i.e. Balbir Chand and Darshna Devi, was dissolved by divorce. PW-9 further stated that Balbir Chand and his cousin Shiv Dayal had gone to the house of Darshna Devi in Basant Vihar, Ludhiana and when they reached there, then Pawan Kumar gave Balbir Chand a push as a result of which he (Balbir Chand) fell down and Darshna Devi poured kerosene oil on him and told Pawan Kumar to set him on fire.

PW-10 ASI Sarup Singh, who had recorded the statement of Balbir Chand (deceased) on the basis of which FIR in question was lodged and had also conducted the initial investigation of the case including inquest proceedings, stated in detail with regard to the same. He further stated that subsequently the investigation of the case was taken over by SHO Gurmit Singh.

PW-11 Inspector Gurmit Singh, who had conducted the remaining investigation of the case, stated with regard to the same. He specifically stated that he has arrested Darshna Devi and Pawan Kumar on 11.05.1999 and that upon completion of investigation of the case, the accused have been challaned.

6. Upon closure of the prosecution evidence, statement of the accused Darshna Devi was recorded in terms of Section 313 Cr.P.C., wherein apart from denying the entire case of prosecution and pleading false implication, she stated that she was arrested from the hospital soon after she had shifted Balbir Chand there, whereas her son was arrested two days thereafter. In her



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defence, the accused examined as many as 4 DWs. The gist of their testimonies is being briefly referred to herein under:

DW-1 Ranjit Singh stated that he knew accused Darshna Devi, as she and Balbir Chand (deceased) used to live in his locality. He stated that on 07.05.1999 at about 12.45 PM (noon), when he was present in his house, he heard cries of Balbir Chand. He stated that after coming out of his house, he saw that Balbir Chand had caught fire and was crying in the street (*gali*). He further stated that accused Darshna Devi was not present in the house. He further stated that when all the neighbourers were in the process of extinguishing fire, then accused Darshna Devi alongwith her two children came there, as she had gone to bring her children from the school. He further stated that after arranging a three wheeler, all the neighbourers and Darshna Devi took Balbir Chand to Civil Hospital, Ludhiana.

DW-2 Manjit Singh stated that he knew accused Darshna Devi, as she lived in his neighbourhood with her husband Balbir Chand. He stated that on 07.05.1999 at about 12.45 PM (noon), he heard noise in front of Balbir Chand's house. He stated that he saw that house of Balbir Chand was lying open and accused Darshna Devi was not there. He stated that he alongwith other neighbourers extinguished the fire by putting clothes on Balbir Chand and during that time, accused Darshna Devi alongwith her two children, who were in school uniform, came there.

DW-3 Tejinder Singh stated that he knew accused Darshna Devi and that he used to run a dairy farm at a distance of about 100 yards from Darshna Devi's house. He stated that on 07.05.1999 at about 12.00/1.00 PM (noon), when he was present in his dairy farm, he heard a noise commotion which was being raised by 20-25 persons outside the house of Darshna Devi. He stated that he rushed to that place and saw the husband of Darshna Devi engulfed in flames, as his clothes had caught fire and he was crying in the courtyard of his house. He further stated that Darshna Devi was not present in the



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house, as she had gone to fetch her children from the school and that she had come to the place of occurrence after 20/25 minutes.

DW-4 Dr. Subash Batta, Medical Officer, Civil Hospital, Ludhiana, who had brought the bed head ticket in respect of Balbir Chand (deceased), proved the same as Ex.DW-4/A. He stated that as per entry dated 07.05.1999 at 5.20 PM, the patient was not fit for making statement. He further stated that the patient expired at 12.10 PM on 08.05.1999 due to cardiac respiratory arrest due to shock. DW-4 after seeing endorsement Ex.PW-10/C wherein it is recorded that the patient was fit to make statement at 9.45 PM on 07.05.1999, stated that most probably the said endorsement had been made by Dr. Gurcharan Mongia and that there is no entry of this endorsement in the bed head ticket Ex.DW-4/A.

7. The learned trial Court, upon marshalling the evidence brought on record, held that the prosecution had fully established the charges framed against accused Darshna Devi and consequently, held her guilty for having committed offence under Section 302 IPC vide impugned judgment, which is under challenge before this Court.
8. Learned counsel for the appellant, while assailing the impugned judgment, submitted that the trial Court fell in error while relying upon the 'dying declaration' allegedly made by Balbir Chand (deceased), whereas it is a case where the fitness of Balbir Chand (deceased) to make a statement is questionable inasmuch as neither his statement is said to have been recorded by any Magistrate nor even the Doctor, who had found him fit to make statement, has been examined and that under these circumstances, it is unsafe to rely upon such type of 'dying declaration'. Learned counsel further submitted that although the case of prosecution is that Balbir Chand (deceased) as well as accused Darshna Devi had dissolved their marriage by



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divorce and that they were living separately, but no document regarding such divorce has been brought on record and in fact the witnesses examined by the accused i.e. DW-1 to DW-3 have stated to the contrary and have categorically stated that the deceased and the accused were residing together. Learned counsel further submitted that it could perhaps be a case where the deceased had committed suicide and in the absence of any evidence to show that the accused had abated the commission of suicide, she cannot even be held responsible for the death of the deceased. It has further been submitted that the very fact that Darshna Devi is present in the hospital would also go a long way to show that she had not committed the offence and that apparently it was a case of accidental death or suicide.

9. Opposing the appeal, learned State counsel submitted that it is a case where the case of prosecution is supported by two eye-witnesses i.e. PW-2 Shiv Dayal and PW-6 Sushil Kumar and as such, even if the dying declaration is not taken into account, the case of prosecution would otherwise also stand substantiated.
10. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
11. Before proceeding further, it is apposite to first of all refer to the medical evidence led by the prosecution as regards the unnatural death of Balbir Chand (deceased) i.e. by way of burning. The dead body was subjected to the post-mortem examination, which was conducted by PW-1 Jasbir Singh, Medical Officer, Civil Hospital, Ludhiana, who while proving the post-mortem report as Ex.PA, opined as regards cause of death as under:



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“.....The cause of death in this case in my opinion was due to cardio respiratory arrest as a result of extensive burns resulting in shock sufficient to cause death in ordinary course of nature. The burns were ante mortem. Stitched dead body and PMR were handed over to the police, police papers 1 to 24 duly signed by me. Probable time that elapsed between injuries and death about 24 hours and between death and post mortem examination about 4 to 6 hours. Ex.PA is the correct carbon copy of the original post mortem report of Balbir Chand.....”

12. Although the aforesaid witness was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of cross-examination so as to either doubt his veracity or his opinion as regards the cause of death.
13. It is the specific case of the prosecution that the FIR was lodged on the statement of Balbir Chand (deceased) himself, which was stated to have been recorded in the Civil Hospital on 07.05.1999 i.e. on the day of occurrence itself. PW-10 ASI Sarup Singh had proceeded to the Civil Hospital upon receipt of information regarding admission of Balbir Chand in the hospital in an injured condition i.e. on account of burn injuries. PW-10 stated that he had sought opinion of the SMO, Civil Hospital, Ludhiana regarding the condition of the injured to make statement, but the Doctor declared Balbir Chand unfit to make statement at 5.20 PM on 07.05.1999. However, subsequently, when PW-10 ASI Sarup Singh again went to the Civil Hospital later in the evening, Balbir Chand was declared fit at 9.45 PM for the purpose of making statement and consequently, his statement came to be recorded at 11.50 PM, the same night.
14. While in terms of Section 32 of the Evidence Act, a statement made by a person in anticipation of his death could be taken into account, but at the



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same time, the Courts would normally be a little cautious before accepting such statement. In the instant case, the statement has been recorded by the Police Officer himself. No Doctor has been examined to substantiate the fact that Balbir Chand was in a fit state of mind at the time of recording his statement. Since an element of doubt has crept in, this Court deems it appropriate to examine the other evidence led by the prosecution for substantiating its case.

15. The prosecution mainly banks upon the testimonies of PW-2 Shiv Dayal and PW-6 Sushil Kumar. While PW-2 Shiv Dayal had accompanied Balbir Chand (deceased) to the house of accused, PW-6 Sushil Kumar is a neighbourer of the accused, who claims to have seen the occurrence from the roof top upon being attracted by the noise commotion. PW-2 Shiv Dayal while in the witness-box categorically stated that he had accompanied Balbir Chand to the house of accused Darshna Devi on 07.05.1999, as Balbir Chand and Darshna Devi had been residing separately on account of differences having cropped up between them. He stated that they had gone to the house of the accused for the purpose of getting along with them the son of deceased, who had been born from the wedlock of accused Darshna Devi and the deceased. He further stated that on 07.05.1999, when he alongwith Balbir Chand reached the house of accused Darshna Devi, she started quarreling with Balbir Chand and that in the meantime, Pawan Kumar, a son of Darshna Devi from her earlier marriage, pushed Balbir Chand as a result of which Balbir Chand fell down. He further stated that thereafter accused Darshna Devi poured kerosene oil on Balbir Chand and told her son Pawan Kumar to set him on fire and accordingly Pawan Kumar lighted a match and set Balbir



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Chand on fire. He further stated that he collected some sand and threw the same on Balbir Chand and also poured some water on him and raised alarm, which attracted some persons of the locality and thereafter, he alongwith some other persons from the locality took Balbir Chand to the Civil Hospital. He further stated that accused Darshna Devi also accompanied them to the Civil Hospital on his asking. To a similar effect is the statement of PW-6 Sushil Kumar, who stated that his house adjoins the house of accused Darshna Devi and that on 07.05.1999 at about 1.00 PM when he was present in his house, he heard noise commotion from the house of Darshna Devi and that accused Darshna Devi and Balbir Chand (deceased) were abusing each other. He further narrated the incident regarding Pawan Kumar having pushed Balbir Chand and Darshna Devi having poured kerosene oil on Balbir Chand and thereafter Pawan Kumar having lighted a match stick on the asking of his mother (Darshna Devi) and set Balbir Chand on fire. Both the eye-witnesses i.e. PW-2 Shiv Dayal and PW-6 Sushil Kumar were cross-examined at length, but nothing substantial could be elicited during their cross-examinations so as to create any dent in the case of prosecution.

16. Learned counsel for the appellant, however, referred to the testimonies of DW-1 Ranjit Singh, DW-2 Manjit Singh and DW-3 Tejinder Singh so as to contend that as a matter of fact Darshna Devi was not present in the house when the occurrence had taken place and had reached there after the incident. A perusal of the testimonies of DW-1 Ranjit Singh, DW-2 Manjit Singh and DW-3 Tejinder Singh shows that all of them stated to the effect that Darshna Devi had come to the place of occurrence after the incident had taken place and that she had gone out to pick up her children from the school. However,



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interestingly neither she was present at the time of preparation of inquest report nor she was there to claim the dead body of Balbir Chand, which was handed over to PW-2 Shiv Dayal, cousin of Balbir Chand. Further, in her statement recorded in terms of Section 313 Cr.P.C., accused Darshna Devi has not come out with any explanation with regard to the death of Balbir Chand in her house. The testimonies of aforesaid DWs do not inspire confidence inasmuch as although they claimed to be the residents of the locality and were attracted to the place of occurrence, but still no statement of any of them was recorded by the police under Section 161 Cr.P.C. So much so, DW-1 Ranjit Singh during the course of his cross-examination stated that he did not ask Balbir Chand as to how he had caught fire. He further admitted that he did not tell anything to the police when police had come to investigate the case and had never even lodged any protest with the police for having implicated Darshna Devi falsely. He has, however, admitted that PW-6 Sushil Kumar is the immediate neighbour of the accused. Even DW-2 Manjit Singh stands on identical footing inasmuch as he stated that he never saw the police coming in the *mohalla* for the purpose of investigation and that he never disclosed to the police that he had seen the occurrence and had not lodged any protest regarding false implication of Darshna Devi. DW-3 Tejinder Singh also stated during his cross-examination that neither he went to the police nor the police ever called him and that he did not disclose these facts to the police and in fact he was not on talking terms with Balbir Chand (deceased), as he was a drunkard. The aforesaid witnesses have, thus, apparently come forward in support of the accused Darshna Devi being



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residents of the same locality though they had not seen the occurrence. Their testimonies, as such, do not inspire confidence.

17. On the other hand, the prosecution version stands substantiated from the eye-witness account in the shape of PW-2 Shiv Dayal, who was present in the house of accused itself where the occurrence had taken place and also from the statement of PW-6 Sushil Kumar, who is immediate neighbourer, who had seen the occurrence. The factum of PW-6 Sushil Kumar being immediate neighbourer of accused Darshna Devi is also admitted by DW-1 Ranjit Singh. The fact that their statements under Section 161 Cr.P.C. were recorded on 08.05.1999 itself also lends credibility to their statements.
18. The collective effect of the aforesaid discussion is that even if the dying declaration is not taken into account, still the case of prosecution is fully established from the consistent testimonies of PW-2 Shiv Dayal and PW-6 Sushil Kumar, who have stated consistently to the effect that while accused Darshna Devi had poured kerosene oil on Balbir Chand (deceased), Balbir Chand (deceased) had been set on fire by Pawan Kumar having been told to do so by the accused Darshna Devi. As such, in view of the said consistent testimonies, which have survived the test of cross-examination and also keeping in view that the defence evidence does not inspire confidence, this Court does not have any hesitation in affirming the findings of the trial Court to the effect that it is the accused Darshna Devi, who had murdered the deceased and the same are hereby affirmed. Finding no merit in the appeal, the same is hereby dismissed.



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19. A copy of this judgment be sent to the quarters concerned for necessary compliance.
20. The accused be arrested to undergo the remaining part of sentence.

(GURVINDER SINGH GILL)
JUDGE

02.05.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

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