



**324 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-84-DB-2014

Date of Decision: 17.07.2026

Sandeep @ Kala

..... Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Aditya Jain, Advocate,
Mr. Raghav Chadha, Advocate and
Mr. Tara Dutt, Advocate, for the appellant.
Ms. Shaveta Sanghi, DAG, Haryana.

Rajesh Bhardwaj, J.

1. Present appeal emanates from the judgment of conviction dated 23.12.2013 and order of sentence dated 23.12.2013 passed by learned Additional Sessions Judge, Rohtak, whereby the appellant was sentenced to undergo 12 years of rigorous sentence for the offence under Sections 452, 376 and 306 IPC and to pay fine of Rs.40,000/- and further the appellant was directed to pay Rs.1 lac as compensation to the family of the deceased under Section 357 Cr.P.C.

Facts of the case

2. The FIR in the present case was registered on the statement of the prosecutrix, namely, "S" wife of Subhash, which was recorded at PGIMS, Rohtak on 02.08.2010 at 09:45 p.m. It was alleged by the prosecutrix that she was alone at her home and then, Kala (appellant) came and embraced her. Thereafter, father of her children came there. Kala



imposed himself upon her forcibly. There was grappling and man handling and she was also given beatings. Before the arrival of others, Kala had committed *bura kaam* with her by breaking open her string (*nada*). Thereafter, she took out two tablets of sulphas (Aluminium Phosphide) from *theka* and consumed the same with tea. The prosecutrix was subsequently shifted to the hospital by her husband Subhash (PW-13). She was medico legally examined on 02.08.2010 at 07:22 p.m. Medical *ruqa* was sent by the Doctors on 02.08.2010 at 08:35 p.m. (Ex.PN) to the police. Her statement was recorded at 09:45 p.m. and pursuant to which, FIR under Sections 376, 309 read with Section 34 IPC was registered on 03.08.2010 at 00:30 hrs. However, during treatment, she died on 03.08.2010 at 12:05 a.m. Special report was received by learned Duty Magistrate, Rohtak on 03.08.2010 at 05:05 a.m. Postmortem of the dead body was conducted on the same day at 01:15 p.m. Thereafter, samples were taken, which were sent to the FSL. As per the FSL report (Ex.PG), Aluminium phosphide was detected and thus, cause of death was ascertained to be due to poisoning. Thereafter, on the basis of the allegations, the appellant was arrested. On completion of the investigation, the challan was presented and on framing of charges, trial commenced. To substantiate the allegations against the appellant, the prosecution examined as many as 21 witnesses and produced the documentary evidences as well. Thereafter, statement under Section 313 Cr.P.C. of the appellant was recorded. On appreciation of the evidence on record, learned trial Court found the charges having been proved by the prosecution against the appellant and thus, convicted him vide judgment



dated 23.12.2013 and sentenced him to undergo 12 years of rigorous imprisonment vide order dated 23.12.2013 under Sections 452, 376 and 306 IPC. Hence, the appellant is before this Court impugning the judgment of conviction and order of sentence dated 23.12.2013.

Contentions raised by learned Senior Counsel for the appellant

3. It has been vehemently contended by learned Senior Counsel for the appellant that the appellant has been made a scapegoat and has been falsely and frivolously implicated in the present case. He contends that there is a delay in recording the statement of the prosecutrix and lodging the FIR. He contends that case of the prosecution is primarily based on the statement of the prosecutrix, which has been considered as a dying declaration as she died after recording the same. He contends that statement of the prosecutrix was recorded by the police official ASI Naresh Kumar, which was totally in violation of the settled principles of law. He contends that material witnesses in the present case examined by the prosecution, are the husband of the prosecutrix, namely, Subhash (PW-13) and ASI Naresh Kumar (PW-14) and both these witnesses had not supported the case of the prosecution and hence, they were declared hostile. He further contends that admittedly, the prosecutrix was shifted to the hospital by her husband and she was examined by Dr. Jatin Ahuja (PW-11). It is contended that the case of the prosecution suffers from serious doubts on the appreciation of the deposition made by Dr. Jatin Ahuja (PW-11), wherein he deposed that he did not endorse on the statement of the patient that she remained fit throughout the recording of her statement by the Police. He also deposed that despite the treatment given to the patient, her condition did not improve and



she suffered cardiac arrest on 02.08.2010 at about 11:30 p.m. and died at 12:05 a.m. on 03.08.2010. Learned Senior Counsel has drawn the attention of this Court to the deposition of Dr. Jatin Ahuja (PW-11) and has submitted that there was cutting where time was mentioned in Ex.PK/1. He contends that after cutting, the time was made from 09:45 p.m. to 09:25 p.m. It has been further contended that Dr. Ashok Chauhan (PW-12) had medico legally examined the prosecutrix on 02.08.2010 and sent *ruqa* Ex.PN to the Incharge Police Post PGI MS Rohtak. During his cross-examination, he deposed that the prosecutrix was unconscious at the time of her medico legal examination. He has submitted that the patient was admitted on 02.08.2010 and as she expired on 03.08.2010, the *ruqa* Ex.PC regarding her death was sent by Dr. Sachin (PW-5) to the Police Post. He has further submitted that Dr. Dolly Sharma (PW-6) examined the appellant and in her cross-examination, she deposed that there were no injury marks on the person of the appellant. She also deposed that possibility of injury on the person of the accused in case of rape cannot be ruled out. He contends that Dr. Pawan Mittal (PW-10) had conducted the postmortem of the prosecutrix and while entering into the witness-box, he deposed that death of the prosecutrix was due to the consumption of Aluminium Phosphide. During cross-examination, Dr. Pawan Mittal (PW-10) specifically deposed that no injury was found on the body of the prosecutrix including upon both her wrists. He has submitted that the statement of the prosecutrix, which has been considered as dying declaration, was recorded by ASI Naresh Kumar (PW-14). He contends that there are material contradictions in his statement



which totally belies the case of the prosecution. ASI Naresh Kumar (PW-14) deposed that *ruqa* from the PGI MS, Rohtak was received at 08:35 p.m. and on asking of SI Daya Nand, he went to record the statement of the prosecutrix. He further deposed that he did not obtain any permission from SHO regarding recording of the statement. It is also deposed by him that he started recording of statement of the prosecutrix at about 08:40 p.m. accompanied by one constable. Thereafter, he deposed that he reached the hospital at 09:25 p.m. and recording of the statement was completed at 09:45 p.m. This witness also deposed in his cross-examination that he did not find it necessary to get the statement of the prosecutrix recorded by a Magistrate, as she was in critical condition. The specific suggestion was given by this witness that he was known to Subhash i.e. the husband of the prosecutrix and on his asking he got prepared the statement Ex.PL to falsely implicate the appellant.

Learned Senior Counsel for the appellant has further contended that SI Daya Nand was examined as PW-20 and on appreciation of the depositions of PW-20 and PW-14, material contradictions were found in the same. He contends that the dying declaration Ex.PL recorded by ASI Naresh Kumar was totally in a premeditated manner, when the patient was not even conscious. On reading the evidence on the of the Doctor, it is apparent that the prosecutrix was under heavy medication and she was never in a position to make the statement as relied upon by the prosecution. ASI Naresh Kumar was not even authorized to record the statement. The prosecutrix died on 03.08.2010 at 12:05 a.m. and the prosecution intentionally did not make any



effort to get her statement recorded from the Judicial Magistrate only to suppress the truth. He has contended that the husband of the prosecutrix and ASI Naresh Kumar were there with the prosecutrix throughout, however, they did not support the case of prosecution and both were declared hostile. The appellant had taken specific stand in his deposition at the time of recording the statement under Section 313 Cr.P.C. that there was enmity between both the families and husband of the prosecutrix was not even present at the time of the alleged occurrence which is evident from the statement of the prosecutrix. He, thus, contends that the dying declaration has totally lost the sanctity and is full of serious doubts. It does not inspire any confidence and once the dying declaration does not inspire the confidence, then the conviction based on such a dying declaration is totally illegal. He, thus, contends that the view drawn by learned trial Court in convicting and sentencing the appellant being totally unsustainable in the eye of law, deserved to be set aside, by acquitting the appellant from the charges framed against him.

Arguments raised by learned State counsel

4. Learned State counsel has vehemently opposed the submissions made by learned Senior Counsel for the appellant. She has submitted that the case of the prosecution is duly proved. The dying declaration was recorded totally in accordance with law. She submits that opinion of the Doctor was sought before recording the statement of the prosecutrix declaring her fit. Her statement was recorded by ASI Naresh Kumar (PW-14). She submits that on the registration of the FIR, the investigation



commenced. During investigation, broken bangles were recovered from the place of occurrence, which corroborate the ocular version of the prosecutrix as alleged in the dying declaration. She submits that semen was also detected from the mattress (*gadda*). It is contended that though the husband of the prosecution i.e. Subhash (PW-13) and ASI Naresh Kumar (PW-14) were declared hostile, however, as per the settled law, the whole deposition of a hostile witness is not washed off, and the part of the deposition which is consistent with the prosecution case, can always be relied upon. It is contended that dying declaration of the prosecutrix suffers from no infirmity and the same inspire confidence. She contends that there is no perversity in the conclusion arrived by the trial Court in convicting and sentencing the appellant. She, thus, submits that in these circumstances, the appeal being devoid of any merit deserves to be dismissed.

Analysis and Findings

5. This Court has heard learned counsel for the parties at length and perused the record with their able assistance. On hearing arguments advanced and appreciating the record, the main issue that arises for determination is the evidentiary value and reliability of the statement of the prosecutrix (Ex.PL), which upon her death, assumed the character of dying declaration. The statement was recorded by ASI Naresh Kumar (PW-14). As per the case of the prosecution, the alleged occurrence took place on 02.08.2010. It is alleged that the appellant grappled with the prosecutrix and thereafter, he committed rape on her. The prosecutrix subsequently consumed poison. She was taken to PGIMS, Rohtak by her husband Subhash (PW-13), wherein she was medico legally examined on 02.08.2010



at 07:22 p.m. Medical *ruqa* (Ex.PN) was sent by the Doctors on 02.08.2010 at 08:35 p.m. to the police. Her statement was recorded at 09:45 p.m. by ASI Narender Kumar. However, during treatment, she died on 03.08.2010 at 12:05 a.m. The main point of consideration by this Court is whether the statement of the prosecutrix which after her death became a dying declaration, inspires confidence and is of such quality as to become basis of conviction. On the appreciation of the deposition of ASI Naresh Kumar (PW-14), who recorded the statement of the prosecutrix, it was found that he received *ruqa* at 08:35 p.m. from PGIMS, Rohtak and he reached there at 09:25 p.m., whereas, he also deposed that he started recording the statement of the prosecutrix at 08:45 p.m. In his cross examination, he admitted that he did not obtain any permission from his Incharge for recording the statement. On appreciation of the depositions of the Doctors, it was found that the prosecutrix was in a critical condition and was being administered sedative by the doctors to save her life, however, her condition did not improve. Though it was deposed that before recording her statement by ASI Naresh Kumar, her fitness was checked, however, in the light of the evidence on record, it is seriously doubted that the prosecutrix was in a position to depose in such state of mind. Even if, the statement of the Doctor is believed that she was in fit state of mind, then it is evident that no efforts whatsoever were made by the Investigating Agency for recording her statement by a Judicial Magistrate. This omission assumes greater significance in the facts of the present case particularly when prosecution itself seeks to base the conviction on dying declaration. Besides this, she



was shifted to the hospital by none other than her husband Subhash, who was accompanied by ASI Naresh Kumar. Both these witnesses were examined before the trial Court as PW-13 and PW-14, respectively. Both these witnesses have not supported the case of the prosecution. Thus, the case of the prosecution is totally based on the statement of the prosecutrix termed as a dying declaration, which has been recorded by ASI Naresh Kumar, which is full of material contradictions and circumstances, casting serious doubts on its authenticity and reliability. To resolve the controversy in the case in hand, appreciation of Section 32 of the Indian Evidence Act, 1872, which deals with dying declaration reads as under:-

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. -

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: -

(1) When it relates to cause of death.-When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.....

6. The admissibility of a dying declaration is based on legal maxim *nemo moriturus praesumitur mentiri*, which means means "no one



at the point of death is presumed to lie" and forms the basis for treating a dying declaration as substantive evidence. It is a settled proposition of law that if a dying declaration is found to be voluntary, truthful, reliable and inspires the confidence of the Court, it can, by itself, form the sole basis for conviction. Corroboration of such a declaration is not a mandatory requirement of law but merely a rule of prudence to be applied in cases where the Court finds authenticity or reliability doubtful. The position of law on the evidentiary value of a dying declaration is well settled however there should be no ambiguity in the same. However, no straitjacket formula can be laid down to determine the circumstances in which a dying declaration ought to be accepted or rejected. Whether such a declaration is worthy of acceptance must necessarily depend upon the facts and circumstances of each individual case. It is duty of the Court to carefully scrutinize the dying declaration in the light of facts and circumstances of every case and to see whether the statement was made voluntarily, truthfully and the person making such statement was in a fit physical and mental condition to comprehend the questions and furnish rational answers.

7. While relying upon **Panneerselvam v. State of Tamil Nadu, 2008(3) RCR (Criminal) 54 : 2008(3) R.A.J. 549 : (2008) 17 SCC 190** Hon'ble Supreme Court in **Muthu Kutty & Anr. v. State By Inspector of Police (2005) 9 SCC 113**, has held as under :-

"14. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to



accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the ***court is satisfied that*** the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

15. The same view has been reiterated by a three Judge Bench decision of this Court in ***Panneerselvam v. State of Tamil Nadu, 2008(3) RCR (Criminal) 54 : 2008(3) R.A.J. 549 : (2008) 17 SCC 190*** and also the principles governing the dying declaration as summed up in ***Paniben v. State of Gujarat, 1992(3) RCR (Criminal) 552 : (1992) 2 SCC 474.***

16. The analysis of the above decisions clearly shows that,

(i) **Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.**



(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the ***Court is satisfied that*** the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion

(x) If after careful scrutiny, the *Court is satisfied that* it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

8. Similar view has been taken by the Hon'ble Supreme Court in case of **Satish Ambanna Bansode v. State of Maharashtra**, (SC) 2009(11) SCC 217.

9. Weighing the evidence on record on the anvil of law settled, this Court finds that though the prosecution relied upon the dying



declaration of the prosecutrix, however, the same does not inspire confidence. Once, the dying declaration relied upon is not trustworthy, it would not be safe to hold the appellant guilty. The prosecution story suffers from several infirmities, inconsistencies and unexplained circumstances. Further the absence of judicially recorded dying declaration despite adequate opportunity creates a dent in the prosecution story. It is cardinal principle of criminal jurisprudence that where two views are possible, or where the evidence gives rise to the reasonable doubts, the benefit thereof must necessarily be extended to the accused.

10. In view of the foregoing discussion and the law relied upon by learned Senior Counsel for the appellant, we are of the considered opinion that the appellant is entitled to the benefit of doubt. Accordingly, the present appeal is allowed. The judgment of conviction and the order of sentence dated 23.12.2013 passed by the learned Additional Sessions Judge, Rohtak, are hereby set aside. The appellant is acquitted of all the charges framed against him.

(RAJESH BHARDWAJ)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

17.07.2026
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No