

SUBHASH  
v.  
STATE OF HARYANA  
(Criminal Appeal No. 184 of 2006)

DECEMBER 16, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Penal Code, 1860 – ss. 306 and 498A – Death of married woman due to 70% burn injuries – Dying declaration recorded by Magistrate to the effect that the victim suffered harassment on account dowry demands and as a result she made an attempt to commit suicide – Conviction of husband and father-in-law by courts below u/ss. 306 and 498A – On appeal, held: Dying declaration recorded by Magistrate not reliable – In the statements u/s. 161 Cr.P.C., father and brother of the victim omitted to state as regards the oral dying declarations made to them by the victim, thus, their statements does not inspire confidence – Dying declaration recorded was planned at the instance of the brother of the victim – Possibility that victim was burnt in an accident cannot be ruled out – Thus, conviction of appellant set aside – Code of Criminal Procedure, 1973 – ss. 161 and 162 – Crime against women – Evidence – Dying declaration.*

According to the prosecution case, the victim was repeatedly harassed by the appellant-husband, her parents-in-law and other in-laws for not bringing sufficient dowry and raised dowry demands. On the fateful day, the victim suffered 70% burn injuries and later succumbed to her injuries in the hospital. The doctor recorded the statement of the victim which was attested by the Sub-Inspector. PW 13, the SDM, recorded the dying declaration of the victim that she made an attempt to commit suicide on account of the harassment meted

- A out to her. The trial court on basis of the evidence of the  
relatives of the victim, the doctors, the Sub Inspector, the  
dying declaration recorded by PW 13 and the oral  
declaration made to PW 10, the brother of the victim,  
convicted the appellant and his father for the offences  
B punishable under Sections 306 and 498A IPC and  
sentenced them to rigorous imprisonment for five years.  
The High Court upheld the conviction of both appellant  
and his father but while doing so, reduced the sentence  
of the appellant's father to that already undergone by him.  
C Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

- HELD: 1.1 The primary evidence against the  
appellant is the dying declaration recorded by PW13 -  
D SDM. It appears that information about victim's admission  
in the Hospital was received in the police station at about  
3.05 p.m. on 27.10.1985 but her statement could not be  
recorded as she was unconscious at that time. The Sub-  
Inspector made efforts to record her statement at 8.30  
E p.m. but the same could not be recorded for the same  
reason. It appears that, thereafter, the victim's statement  
was recorded by the doctor and attested by ASI on  
27.10.1985 in which she stated that she was burnt in an  
F accident. Therefore, it is evident that the investigating  
agency made repeated efforts to record her dying  
declaration, but there was some delay because of the  
incapacity of the victim. The dying declaration was  
recorded by PW-13 on 28.10.1985 after an application  
was moved before him by PW-10, brother of the victim.  
G PW 13-SDM, when cross-examined in court, stated that  
on 28.10.1985 he was present at his residence when the  
application was presented to him on which he went to the  
Hospital and recorded the dying declaration after the  
doctor certified the victim's fitness to make a statement.  
H He also stated that a copy of the statement was handed

over to the police on 30.10.1985. However, he admitted that the application was not produced by him before the investigating agency and he was tendering this document for the first time during his evidence in court and that there was no noting on the dying declaration that he had gone to the hospital on the application or that a copy of the dying declaration was handed over the police on 30.10.1985. He also admitted that he did not obtain any opinion in writing from the doctor about the victim's fitness to make a statement. He further admitted that the area of the Hospital did not fall within his jurisdiction but clarified that it was the practice that a dying declaration could be recorded by any Magistrate when the Magistrate of the area concerned was not available but clarified that he had made no efforts to find out as to whether the Magistrate of the area in which the said Hospital lay was available or not. He also admitted that he was not approached by the police or the medical authorities for recording the dying declaration. If any doubt is left with regard to the sanctity of the dying declaration, it stands dispelled by the testimony of the doctor (who had made the endorsement that the victim was fit to make a statement) when he deposed that the endorsement had been taken from him after the statement of victim had been recorded. This statement was to be read with the admission made by PW-13 that he had not taken any endorsement before actually recording the statement. Therefore, the so-called pivot that both the courts below have found in the dying declaration is, in fact, non-existent. The very conduct of PW-13, SDM and the manner in which he had recorded the dying declaration, raises a deep suspicion about its veracity. [Para 3] [1075-F-H; 1076-A-H; 1077-A-B]

1.2 A bare reading of the statements of the two primary witnesses PW-2, the father of the victim and PW-10, the brother of the victim shows that the entire story

- A with regard to the factum of the cruelty, the manner in which the deceased was dealt with, and the behaviour of the accused towards her had been built up during the evidence recorded in court. One significant fact which was omitted in the statements under Section 161 Cr.P.C.
- B was with regard to the oral dying declarations made to them by the deceased for which no explanation was given. In addition, it is clear that the dying declaration recorded was maneuvered at the instance of PW-10. The trial court as well as the High Court did not place much
- C reliance on the statements of these two witnesses. Their statements, in fact, do not inspire confidence. [Para 4] [1077-C-F]

- 1.3 A bare reading of Explanation to Section 162 Cr.P.C. would reveal that if a significant omission is made
- D in the statement of a witness recorded under Section 161 Cr.P.C., the same may amount to a contradiction, though, whether it so amounts, is a question of fact in each case. In the instant case, the ocular evidence with regard to the events preceding the actual incident rested exclusively
- E on the statements of PWs.2 and 10. The glaring omissions made by them are writ large in the cross-examination. Therefore, the instant case is one of no evidence and the possibility that the deceased was burnt in an accident cannot be ruled out. The conviction of the
- F appellant is set aside and the order of acquittal is passed. [Para 5] [1077-H; 1078-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 184 of 2006.

- G From the Judgment & Order dated 02.08.2005 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 812 SB of 1986.

- H R.P. Gupta, P.D. Gupta, Tara Chandra Sharma, A.K. Tiwari  
for the Appellant.

Rao Rajit for the Respondent.

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The Judgment of the Court was delivered by

**HARJIT SINGH BEDI,J.**

This appeal arises out of the following facts :

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1. The deceased Anuradha, and the appellant Subhash, a resident of Mahendargarh in the State of Haryana, were married at Ganga Nagar in the State of Rajasthan on the 1st February 1984. At the time of the marriage, Kishori Lal PW-2 the father of the bride, a retired Sub-Inspector of the Rajasthan Police, spent a large amount of money and also provided appropriate dowry articles to her. It appears, however, that the accused i.e. the husband Subhash, his father Siri Ram, his brothers Sudesh and Sukesh, and Kusum, his sister were dissatisfied with the dowry articles, and Subhash made an independent demand for a scooter. Anuradha upset with her husband and in-laws, returned to her parents home but returned to Mahendargarh after staying at Ganga Nagar for a day. Rajinder Gaur PW-10 her brother, and his wife also visited Mahendargarh after about 5 or 7 days and the accused at this stage raised a demand for a refrigerator, a cooler and a colour TV. About a month thereafter, Kishori Lal PW also visited Anuradha's home at Mahendargarh and the demand for the aforesaid articles was reiterated. Anuradha also complained to her father that she was being mal-treated on account of the non-satisfaction of the demands. Kishori Lal, accordingly, brought Anuradha back to Ganga Nagar but a month thereafter Subhash came to Ganga Nagar and this time asked Kishori Lal to arrange for a sum of Rs.50,000/- as he needed the money to invest in a business. In November 1984, Kishori Lal and his wife Saraswati Devi PW-9 visited Mahendargarh on which the demand for Rs.50,000/- was repeated. Kishori Lal, however, expressed his inability to meet the demand. Anuradha again complained to her parents that she was being repeatedly harassed by the accused. On the 8th of August 1985 a daughter

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- A was born to Subhash and Anuradha on which Siri Ram appellant addressed a letter to Kishori Lal wherein he made a demand for several articles including 21 sarees, some articles of jewellery and other garments to be presented as per custom on the birth of a child. Owing to his illness Kishori Lal could not go to Mahendargarh but Saraswati Devi PW went to that place and presented several articles such as sarees and ornaments worth Rs.10,000/-. The accused, however, were completely dissatisfied with the gifts and expressed their unhappiness in no uncertain terms. As per the prosecution story, a letter Ex.PF dated 26th of August 1985 was addressed by Siri Ram to Kishori Lal in which the former complained that the gifts sent at the time of birth of the child were not in accordance with the status of the family. It appears that at 2.10 a.m. on the night intervening 26th and 27th October 1985 Anuradha was removed to the Civil Hospital, Mahendargarh with severe burn injuries. Prior to this, however, Subhash had approached Udai Singh PW-8, a car driver of Mahendargarh at about 1 a.m. seeking his assistance in shifting Anuradha to Delhi on account of her burn injuries. Udai Singh, accompanied by Subhash, accordingly reached the latter's house, just as Anuradha was being shifted to the Civil Hospital, Mahendargarh in a cycle rickshaw by the other accused on which Udai Singh asked Subhash as to what had happened. Anuradha was thereupon taken to the Civil Hospital, Mahendargarh in the car of Udai Singh. A bed-head ticket Ex.PA was accordingly prepared by Dr. Janak Raj Singal PW-10, Medical Officer Incharge of the Civil Hospital, who found 70% burns on her face, arms, neck, chest, abdomen and thighs. He also addressed a communication to the police on which ASI Amir Singh PW-16 of Police Station Mahendargarh reached the hospital but the Doctor opined that Anuradha was unfit to make a statement. The ASI then recorded the statement Ex.PGG of Subhash, who too was admitted in the hospital with burn injuries, in which he attributed the injuries to an accident and sustained while she was heating milk for the baby girl on a kerosene stove. Dr. Janak Raj PW also advised Anuradha's attendants that she be

shifted to Safdarjung Hospital, New Delhi on account of her serious condition. She was, accordingly, moved to Safdarjung Hospital and medically examined by Dr. M.Y. Sharif. On getting information that Anuradha was in the Safdarjung Hospital, her brother Rajinder Gaur PW, who was a resident of Delhi, also rushed to the hospital at about 10.30 a.m. on 27th October 1985 and questioned Siri Ram, Sukesh and Sudesh as to what had transpired but they failed to give a satisfactory reply. He then went inside the hospital to meet his sister who informed him that she had been treated with cruelty by all the accused and also starved for 7 days. She further told him that her thumb impression had been obtained on some papers by some police officials who had been brought to the hospital by the accused. Rajinder Gaur thereupon requested the doctor on duty to make arrangements for the recording of Anuradha's statement by a Magistrate. A Magistrate came to the hospital at about 4.00 p.m. on the 27th October 1985 but could not record her statement as she was found to be unconscious. It is at this stage that Rajinder Gaur lodged a report at Police Station Vinay Nagar, New Delhi on the evening of 27th October 1985 and also informed the SHO, Mahendargarh about the admission of his sister in the Safderjung hospital. ASI Chander Bhan also reached the Safderjung hospital and recorded her statement on the 27th October 1985, which was attested by the doctor, to the effect that the burn injuries had been sustained by her in an accident. On the 28th October 1985, Rajinder Gaur allegedly approached the Vinay Nagar Police Station for recording of Anuradha's statement but no action was taken on the request. He thereafter approached Ravi Malik, PW-13 Sub Divisional Magistrate at his residence in Panchsheel Enclave and moved an application before him requesting him to record Anuradha's statement in the hospital. PW-13 then went to the hospital and recorded her statement Ex. PCC at 9.00 a.m. on the 28th October 1985 after Anuradha had been certified by the doctor to be in a fit condition to make a statement. In this statement, she blamed the accused of having harassed her which had driven her to make an attempt at suicide. Kishori Lal

- A accompanied his wife Saraswati Devi also went to the hospital at 10.30 a.m. on the 28th October 1985 and she again told him about the torment she had undergone at the hands of the accused. On the same day, ASI Amir Singh of Police Station Mahendargarh also came to the Safdarjung Hospital on which
- B a complaint Ex.PV was presented to him by Rajinder Gaur and on its basis, an FIR was registered. The investigation was, thereafter, set in motion. Anuradha subsequently died in the Safdarjung Hospital. Her dead body was subjected to a post-mortem examination at the All India Institute of Medical
- C Sciences, New Delhi on the 1st November 1985 at 10.30 a.m. and several burn injuries were detected thereon, though there was no smell of kerosene oil and the cause of death was opined as shock and septicemia as a result of burn injuries. During the course of the investigation, the police also moved
- D an application before Shri Balbir Singh, Judicial Magistrate, 1st Class, Mahendargarh on 23rd October 1985 (after the arrest of Siri Ram) for obtaining his specimen signatures for comparison with the letters Ex.PE and Ex.PF but he declined to furnish the same.
- E 2. The trial court relying on the evidence of Kishori Lal PW-2, Udai Singh PW-8, Saraswati Devi PW-9, Rajinder Gaur PW-10, Dr. Devansh Sharma PW-11, Dr. R.P.Narayan PW-12, Ravi Malik PW-13, Dr. Chander Kant PW-14 and ASI Amrik Singh PW-16 and the oral dying declarations made to Rajinder
- F Gaur, Kishori Lal, Saraswati Devi and the dying declaration Ex.PCC made to Ravi Malik, SDM held that the case against Siri Ram and Subhash was proved beyond doubt, but as the dying declaration Ex.PCC did not inculcate the other accused, no case was made out against there. It is also held that the
- G Letters DH, DH/1, DH/2, DH/3 allegedly written by Anuradha, even if proved, which showed the relationship between the couple and her in laws as being cordial, would not absolve Siri Ram and Subhash of their misconduct. The trial court, accordingly, in its judgment dated 28th November 1986,
- H convicted Siri Ram and Subhash for offences punishable under



Sections 306 and 498A of the IPC and by order dated 29th November 1986 sentenced them to undergo RI for 5 years and a fine of Rs.4,000/- and in default to undergo further RI for 6 months each under Section 306 of the IPC, and RI for one year and a fine of Rs.1000/- in default to undergo further RI for 2 months each under Section 498A; both the substantive sentences to run concurrently. An appeal was, thereafter, taken to the Punjab and Haryana High Court by Subhash and Siri Ram. The High Court in its judgment dated 2nd August 2005, has placed almost complete reliance on Ex. PCC and has held that this statement was sufficient to prove the case against the accused. Reliance has also been placed to a very limited extent on the statements of Kishori Lal, Saraswati Devi and Rajinder Gaur, PWs. The Court has also observed that as the accused had been charged under Sections 306 and 498A of the IPC, a presumption under Section 113A of the Evidence Act was available to the prosecution. The High Court, accordingly, upheld the conviction but reduced the sentence of Siri Ram to that already undergone as he was about 75 years of age as on the date of the judgment and with this modification in the sentence, dismissed the appeal. This matter is before us after the grant of special leave.

3. As already indicated above, the primary evidence against the appellant is the dying declaration Ex.PCC recorded by PW13 Ravi Malik, SDM. The trial court and the High Court have held that this was the pivot of the prosecution story. It appears that information about Anuradha's admission in the Safdarjung Hospital was received in the Vinay Nagar Police Station at about 3.05 p.m. on 27th October 1985 but her statement could not be recorded as she was unconscious at that time. Further efforts had been made by the Sub-Inspector to record her statement at 8.30 p.m. which again could not be recorded for the same reason. It appears that thereafter Anuradha's statement had been recorded by the Doctor and attested by ASI Chander Bhan on the 27th October 1985 in which she stated that she had been burnt in an accident. It is

- A evident, therefore, that repeated efforts had been made by the  
investigating agency to record her dying declaration, but there  
was some delay because of the incapacity of the victim. The  
dying declaration Ex.PCC was recorded by Ravi Malik PW on  
the 28th October 1985 after an application Ex.PBB had been  
B moved before him by Rajinder Gaur, PW. Ravi Malik, when  
cross-examined in Court, stated that on the 28th October 1985  
he had been present at his residence in Panchsheel Enclave,  
New Delhi when the application Ex.PBB had been presented  
to him on which he had gone to the Safdarjung Hospital and  
C recorded the dying declaration after the doctor had certified  
Anuradha's fitness to make a statement. He also stated that a  
copy of the statement had been handed over to the police on  
the 30th of October 1985. When cross-examined, however, he  
D admitted that Ex.PBB had not been produced by him before  
the investigating agency and he was tendering this document  
for the first time during his evidence in Court and that there was  
no noting on Ex.PCC that he had gone to the hospital on the  
application Ex.PBB or that a copy of the dying declaration had  
E been handed over the police on the 30th October 1985. He also  
admitted that he had not obtained any opinion in writing from  
the doctor about Anuradha's fitness to make a statement. He  
F further admitted that the area of Safdarjung Hospital did not fall  
within his jurisdiction but clarified that it was the practice that a  
dying declaration could be recorded by any Magistrate when  
the Magistrate of the area concerned was not available but  
G clarified that he had made no efforts to find out as to whether  
the Magistrate of the area in which Safdarjung Hospital lay was  
available or not. He also admitted that he had not been  
approached by the police or the medical authorities for  
recording the dying declaration, If any doubt is left with regard  
H to the sanctity of this dying declaration, it stands dispelled by  
the testimony of Dr. Devansh Sharma (who had made the  
endorsement Ex.PZ. that Anuradha was fit to make a statement)  
when he deposed that the endorsement had been taken from  
him after the statement of Anuradha had been recorded. This  
statement has to be read with the admission made by PW Ravi

Malik that he had not taken any endorsement before actually recording the statement. We are, therefore, of the opinion that the so-called "pivot" that both the courts below have found in the dying declaration Ex.PCC is, in fact, non-existent. The very conduct of this witness and the manner in which he had recorded the dying declaration, as already indicated above, raises a deep suspicion about its veracity.

4. We have also very carefully gone through the statements of the two primary witnesses PW-2 Kishori Lal, the father of the victim and PW-10 Rajinder Gaur, her brother. A bare reading of their statements shows that the entire story with regard to the factum of the cruelty, the manner in which the deceased was dealt with, and the behaviour of the accused towards her had been built up during the evidence recorded in Court. We may refer to one significant fact which has been omitted in the statements under Section 161, Cr.P.C. This is with regard to the oral dying declarations made to them by the deceased and when confronted could give no explanation for the omission. In addition, it is clear that the dying declaration recorded Ex.PCC had been maneuvered at the instance of Rajinder Gaur PW. As already indicated above, the trial court as well as the High Court have not placed much reliance on the statements of these two witnesses. We are of the opinion that their statements, in fact, inspire no confidence. We may also refer to the Explanation to Section 162 of the Cr.P.C. The same is reproduced hereinbelow:

Explanation. – An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

5. A bare reading of this Explanation would reveal that if a significant omission is made in the statement of a witness

- A recorded under Section 161 of the Cr.P.C., the same may amount to a contradiction and that whether it so amounts is a question of fact in each case. It is clear to us that the ocular evidence with regard to the events preceding the actual incident rested exclusively on the statements of PWs.2 and 10. The
- B glaring omissions made by them are writ large in the cross-examination. We are, therefore, of the opinion that the present case is one of no evidence and the possibility that the deceased had been burnt in an accident cannot be ruled out. We, accordingly, allow the appeal, set aside the conviction of
- C the appellant and order his acquittal.

N.J.

Appeal allowed.