

16. *In the present case, we have come to the irresistible conclusion that the role of the appellants is clear from the dying declaration and other records. However, the point which has also weighed with this court are that the deceased had survived for around 30 days in the hospital and that his condition worsened after around 5 days and ultimately died of septicemia. In fact he had sustained about 35% burns. In that view of the matter, we are of the opinion that the conviction of the appellants under section 302 of Indian Penal Code is required to be converted to that under section 304(I) of Indian Penal Code and in view of the same appeal is partly allowed.*

55. A Division Bench of this Court in the case of **Criminal Appeal No.1944 of 2014, Ram Prakash Alias Pappu Yadav Vs. State of U.P.** decided on 12.11.2021 wherein one of the judges (Justice Dr. K.J. Thaker) was a member had the occasion to consider the legal issue as to whether in case of a death on account of septicemia either the provisions contained under Section 302 IPC or 304(1) of the IPC would apply. This Court mandated that once facts of the death is septicemia that conviction under Section 302 IPC to be converted into conviction under Section 304 (1) IPC.

56. Over all scrutiny of the facts and circumstances coupled with the medical evidence and the opinion of the Medical Officer and considering the numbers of law laid down by the courts of law in the above referred cases, we are considered opinion that in the case at hand the offence would be punishable under Section 304(1) IPC.

57. Upshot from the aforesaid discussion and inescapable position emerges that the death caused by the accused of the victim/deceased was on account of

septicemia and further accused had no intention to caused the death of the deceased. The injuries were though sufficient in ordinarily course of nature to have cause death however accused had no intention to do away with deceased. Hence the incident falls under Ex.1 and 4 to Section 300 IPC, while considering the Section 299 IPC offence committed will fall under Section 304(1) IPC.

58. In view of the aforesaid discussion, we are of the view that appeal has to be partly allowed. The conviction of the appellants under Section 302 IPC is converted into conviction under Section 304 (Part-I) IPC and the appellants are sentenced to undergo seven years of incarceration with fine of Rs. 10,000/- and in case of default of payment of fine, the appellants shall further undergo simple imprisonment for 1 year.

59. Accordingly, the appeal is partly **allowed.**

(2022)01ILR A508
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.12.2021

BEFORE

THE HON'BLE DR. KAUSHAL JAYENDRA THAKER, J.

THE HON'BLE AJAI TYAGI, J.

Criminal Appeal No. 2209 of 2019

Smt. Preeti & Anr. ...Appellants
Versus
State Of U.P. ...Opposite Party

Counsel for the Appellants:

Sri Shiv Sharan Tripathi, Sri Noor Mohammad

Counsel for the Opposite Party:

A.G.A.

Criminal Law - Indian Evidence Act, 1872 - Section 32- Dying Declaration- The dying declaration can be acted upon without collaboration if it inspires truth. Thus having summarize the law we are of the considered opinion that no other view than that taken by the learned Judge can be taken for upholding the conviction of the accused on the basis of dying declaration.

It is settled law that if the Court is satisfied that the dying declaration is true and voluntary, it can record conviction on its basis without corroboration.

Criminal Law - Indian Penal Code, 1860 - Section 302 - Section 304 II - Death was due to ante thermal burns and due to septicemia. The law as far as it concerned septicemia is well settled the death occurred after few days. The deceased died during treatment, this High Court substituted the sentence as the deceased died out of septicemial septicemia. The offence is not under Section 302 of I.P.C. but is culpable homicide.

Where the deceased died as a result of septicaemia after a few days of the occurrence, the offence would be one of culpable homicide not amounting to murder. (Para 10, 12, 13, 14, 15)

Criminal Appeal partly allowed. (E-3)

Judgements/ Case law relied upon:-

1. **Krishan Vs. St. of Har,(2013) 3SCC 280**
2. **Crl. Appeal No. 245 of 2004 of the Guj. High Court** dec. on 13.09.2013.
3. **Crl. Appeal No.83 of 2008 (Gautam Manubhai Makwana Vs. St. of Guj.)** dec. on 11.9.2013

(Delivered by Hon'ble Dr. Kaushal
Jayendra Thaker, J.)

1. By way of this appeal, the appellant has challenged the Judgment and order 20.2.2019 passed by Additional Sessions Judge, Court No.1, Etah in S.T. No. 228 of 2016, State Vs. Veerpal @ Anuj and another arising out of Case Crime No. 0014 of 2016, under Sections 302/34 of IPC, Police Station Marhara, District Etah whereby the accused-appellant was convicted under Section 302 IPC and sentenced to life imprisonment with fine of Rs.25,000/-, and in case of default of payment of fine, to undergo further imprisonment for one year.

3. The brief facts as per prosecution case are that complainant's daughter Manisha was married to Mahipal and he had given dowry and gifts according to his capacity, a 4 year daughter was born out of their wedlock. Manisha in-laws were not happy with the dowry and gifts and there was a demand of motor-cycle by them but due to nonfulfilment of demand they use to torture and harass Manisha. On 07.01.2016 at about 2:00 O' clock, they poured kerosene oil on Manisha and put her ablaze, On telephonic information by the villagers complainant and his family reached to Manisha's matrimonial home and brought her to Varun Trauma Centre, Aligarh for treatment where she succumbed to death on 13.01.2016.

4. The investigation Officer tookup the investigation visited the spot, prepared site plan, recorded statements of the deceased and witnesses and after completing investigation submitted charge sheet against the accused.

5. The prosecution so as to bring home the charges examined six witnesses, who are as under:-

1.	Suraj Pal (Complainant)	P.W.1
2.	Smt. Reshma Devi(mother of deceased)	P.W.2
3.	Jugendra Singh(brother)	P.W.3
4.	Sri Son Pal	P.W.4
5.	Sri Mahipal(Husba nd)	P.W.5
6.	Dr. Anil Kumar Singh	P.W.6
7.	Sri Ram Surat Pandey, S.D.M	P.W.7
8.	Dr. Virendra Singh Sisaudia	P.W.8
9.	Sri Jinendra Kumar Jain	P.W.9
10.	Sri Arun Kumar, CC	P.W.10
11.	Sri D.S Garbyal, Rtd C.O/I.O	P.W.11
12.	Sri Naurangi Lal Rtd. SHO/I.O	P.W.12
13.	Sri Manveer (faher-in-law)	P.W.13
14.	Smt. Phool Shree (mother- in-law)	P.W.14

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7. In support of the ocular version of the witnesses, following documents were produced and contents were proved by leading evidence:

1.	Tehreer	Ext. Ka-1
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2.	Postmortem report	Ext. Ka-2
3.	Proform 384B Full Body view	Ext. Ka-3
4.	Inquest Report	Ext. Ka-4
5.	Police Proforma	Ext. Ka-5
6.	Letter to R.I	Ext. Ka-6
7.	Letter to C.M.O	Ext. Ka-7
8.	Photograph of deadbody, Proforma 379	Ext. Ka-8
9.	Dying declaration of the deceased	Ext. Ka-9
10.	Chik FIR	Ext. Ka-10
11.	Copy of G.D	Ext. Ka-11
12.	Site Plan	Ext. Ka-12
13.	Charge-sheet	Ext. Ka-13

8. Heard Noor Mohammad, learned counsel for the appellant and learned AGA for the State and also perused the record.

9. It is submitted by the counsel for the appellant that P.W.-1, P.W.-2 and P.W.-3 have deposed that there was no demand of dowry. The deposition is supported by the evidence of P.W.-5 who is the husband of the deceased. The present appellants were not staying with the deceased. The appellants are in jail since 14.06.2016 and has submitted that Dr. Anil Kumar Singh who conducted the postmortem of the deceased deposed that the deceased died due to 95% of burn but there was no kerosene or petrol oil present on the body of the deceased. It was further submitted that Dr. Virendra Singh Sisodia and Dr. Jinendra Kumar Jain, Additional City

Magistrate, Aligarh who recorded the dying declaration of the deceased have conveyed no specific depositions regarding the smell of petrol or kerosene oil from the body of the deceased was recorded.

10. While going through the factual scenario we are of the opinion that even if we go by the factual data that the dying declaration was not a tutored one and could have been voluntarily made and that it satisfies the quantoes of dying declaration, we would concur with the learned trial court rather the Sessions Judge. The learned Judge has relied on several judgements . The learned Judge has categorically mentioned that when the dying declaration would be acted upon and when the same cannot be he has traced the judicial history beginning from 1962 and has traced it right upto 1992 and has summed up the same. The dying declaration can be acted upon without collaboration if it inspires truth. Thus having summarize the law we are of the considered opinion that no other view than that taken by the learned Judge can be taken for upholding the conviction of the accused on the basis of dying declaration. We are fortified in view of the decision of the Apex Court in "**Krishan Vs. State of Haryana, reported in (2013) 3SCC 280**" wherein the same decision was considered by one of us in **Criminal Appeal No. 245 of 2004 of the Gujrat High Court** decided on 13.09.2013.

11. We can safely rely upon the decision of the Gujarat High court in **Criminal Appeal No.83 of 2008 (Gautam Manubhai Makwana Vs. State of Gujarat)** decided on 11.9.2013 wherein the Court held as under:

*"12. In fact, in the case of **Krishan vs. State of Haryana reported in (2013) 3 SCC 280**, the Apex Court has held that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused. Where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. But where the dying declaration itself is attended by suspicious circumstances, has not been recorded in accordance with law and settled procedures and practices, then, it may be necessary for the court to look for corroboration of the same.*

13. However, the complaint given by the deceased and the dying declaration recorded by the Executive Magistrate and the history before the doctor is consistent and seems to be trustworthy. The same is also duly corroborated with the evidence of witnesses and the medical reports as well as panchnama and it is clear that the deceased died a homicidal death due to the act of the appellants in pouring kerosene and setting him ablaze. We do find that the dying declaration is trust worthy.

14. However, we have also not lost sight of the fact that the deceased had died after a month of treatment. From the medical reports, it is clear that the deceased suffered from Septicemia which happened due to extensive burns.

15. *In the case of the B.N. Kavatakar and another (supra), the Apex Court in a similar case of septicemia where the deceased therein had died in the hospital after five days of the occurrence of the incident in question, converted the conviction under section 302 to under section 326 and modified the sentence accordingly.*

15.1 Similarly, in the case of **Maniben (supra)**, the Apex Court has observed as under:

"18. The deceased was admitted in the hospital with about 60% burn injuries and during the course of treatment developed septicemia, which was the main cause of death of the deceased. It is, therefore, established that during the aforesaid period of 8 days the injuries aggravated and worsened to the extent that it led to ripening of the injuries and the deceased died due to poisonous effect of the injuries.

19. It is established from the dying declaration of the deceased that she was living separately from her mother-in-law, the appellant herein, for many years and that on the day in question she had a quarrel with the appellant at her house. It is also clear from the evidence on record that immediately after the quarrel she along with her daughter came to fetch water and when she was returning, the appellant came and threw a burning tonsil on the clothes of the deceased. Since the deceased was wearing a terylene cloth at that relevant point of time, it aggravated the fire which caused the burn injuries.

20. There is also evidence on record to prove and establish that the action of the appellant to throw the burning

tonsil was preceded by a quarrel between the deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under clause (4) of Section 300 of IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 Part II of IPC."

16. In the present case, we have come to the irresistible conclusion that the role of the appellants is clear from the dying declaration and other records. However, the point which has also weighed with this court are that the deceased had survived for around 30 days in the hospital and that his condition worsened after around 5 days and ultimately died of septicemia. In fact he had sustained about 35% burns. In that view of the matter, we are of the opinion that the conviction of the appellants under section 302 of Indian Penal Code is required to be converted to that under section 304(I) of Indian Penal Code and in view of the same appeal is partly allowed.

17. The conviction of the appellants - original accused under Section 302 of Indian Penal Code vide judgment and order dated 19.12.2007 arising from Sessions Case No. 149 of 2007 passed by the Additional Sessions Judge, Fast Track Court No. 6, Ahmedabad is converted to conviction under Section 304 (Part I) of Indian Penal Code. However, the conviction of the appellants - original accused under section 452 of Indian Penal Code is upheld. The appellants - original accused are

ordered to undergo rigorous imprisonment for a period of ten years and fine of Rs. 5000/- each in default rigorous imprisonment for six months under section 304 (Part I) of Indian Penal Code instead of life imprisonment and sentence in default of fine as awarded by the trial court under section 302 IPC. The sentence imposed in default of fine under section 452 IPC is also reduced to two months. Accordingly, the appellants are ordered to undergo rigorous imprisonment for a period of ten years and fine of Rs. 5000/-, in default, rigorous imprisonment for six months for offence punishable under section 304(I) of Indian Penal Code and rigorous imprisonment for a period of five years and fine of Rs. 2,000/-, in default, rigorous imprisonment for two months for offence punishable under section 452 of Indian Penal Code. Both sentences shall run concurrently. The judgement and order dated 19.12.2007 is modified accordingly. The period of sentence already undergone shall be considered for remission of sentence qua appellants - original accused. R & P to be sent back to the trial court forthwith."

12. The death was because of after effect of the treatment as she had developed other diseases also and the deceased developed what is known as septicemia.

13. No doubt suspicion, however graved it may be, it can not take place of proof but here we are clear that it is not only suspicion but based on truth and we concur with the learned Judge. This takes us to the issue of whether the case would fall within under Section 304 or Section 302 I.P.C. We are convinced that from the basis of the postmortem report which was conducted on 13.01.2016, the death was due to ante thermal burns and due to septicemia. The law as far as it concerned septicemia is well settled the death occurred after few days. The deceased died during treatment, this High Court

substituted the sentence as the deceased died out of septicemia.

14. We come to the definite conclusion that the death was due to septicemia. The judgments cited by the learned counsel for the appellant would permit us to uphold our finding which we conclusively hold that the offence is not under Section 302 of I.P.C. but is culpable homicide.

15. The accused is in jail since 14.06.2016. The decision of this Court and of the Gujarat High Court in **Gautam Manubhai (Supra)** wherein the undersigned (Dr.K.J. Thaker,J.) was also a signatory and the decision in **Maniben (Supra)** wherein the Apex Court has converted the conviction under Section 302 of I.P.C. to Section 304 Part II of I.P.C. which will come to the aid of the accused.

16. In view of the aforementioned discussion, we are of the view that the appeal has to be partly allowed, hence, it is partly allowed.

17. Appellant-accused is in jail since 14.06.2016, if 8 years of incarceration for all the offences and the default sentence is maintained would start after the period of eight years is over, the accused would be entitled to all remissions. The judgment and order impugned in this appeal shall stand modified accordingly.

18. Let a copy of this judgment along with the trial court record be sent to the Court and Jail Authorities concerned for compliance.

19. We are thankful to learned counsels has ably assisted the Court.
