

**2009(7) SCR 591
BAWA RAM & ANR.**

V.

**STATE OF U.T. CHANDIGARH
Criminal Appeal No. 988 of 2007**

MAY 5, 2009

[DR. ARIJIT PASAYAT, ASOK KUMAR GANGULY, JJ.]

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted in S.L.P.(Crl.) No 4210 of 2006.

2. Since both these appeals arise out of a common judgment and order of the High Court of Punjab & Haryana at Chandigarh, they are being disposed of by a common judgment.

3. Challenge in these appeals is to the judgment of the Division Bench of the Punjab & Haryana High Court upholding the conviction of the appellants for offence punishable under section 302 read with Section 34 of the Indian Penal Code (in short IPC).

4. The prosecution version as unfolded during the trial was that on 16.7.2000 on account of previous enmity the accused persons poured kerosene oil on Nazar Khan (hereinafter referred to as the deceased). He was set on fire by them. The incident was witnessed by the father (PW-3), mother (PW-4), uncle (PW-5) and other persons, who are stated to be closely related to the deceased (P.Ws.2, 3 and 7). After completion of the investigation, charge sheet was filed and the accused persons faced trial. They pleaded innocence and denied the accusations. In order to establish the accusations the prosecution relied upon the testimony of the so called eye witnesses (P.Ws. 2 to 7). Curiously, all of them resiled from the statements made during the investigation. The prosecution, however, relied upon two dying declarations recorded on 16.7.2000. The first was recorded by the A.S.I. and the second by the District Magistrate. The first one was recorded at 10.10 a.m. and the

second at 11.40 a.m. on the same day. The Trial Court noticed that though the relatives and the injured persons had resiled from the statements made during investigation but the dying declarations were sufficient to record the conviction. Accordingly, the accused persons were held guilty. In appeal the High Court concurred with the views of the Trial Court.

5. In support of the appeal, it is submitted that the so called dying declarations have to be tested on the background of what the father, mother and the brother of the deceased deposed. They categorically stated that the deceased was mentally unsound and was having suicidal tendency and it was natural that he himself tried to commit suicide by pouring kerosene oil on himself.

6. Learned counsel for the respondent, on the other hand, submitted that the dying declarations were reliable and on the basis of dying declarations the conviction as recorded cannot be sustained.

7. It is true that the dying declaration can be the basis of conviction even when the eye witnesses do not support the prosecution case.

8. In the peculiar facts of the case where the father, mother and other relatives and even a person who claimed to have sustained injuries resiled from the statements made during investigation and deposed to the effect that the deceased was of unsound mind and had a suicidal tendency the effect thereof cannot be lost sight of. The statement of a person with unsound mind has to be considered in that background. In the peculiar facts of the case we are of the view that it would be safe to sustain the conviction on the basis of the dying declarations. The appellants are therefore, acquitted of the charges. The appellants shall be released from custody forthwith unless required to be detained in connection with any other case.

9. The appeals are accordingly, disposed of.