

In the High Court of Punjab and Haryana at Chandigarh
CRA-D-569-DB-2010 (O&M)

Date of decision: 03.09.2015.

Om Parkash

..... Appellant

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. Gaurav Sharma, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab

RAJ RAHUL GARG.J.

This is an appeal filed by appellant Om Parkash against the judgment of conviction dated 30.03.2010, recorded by the then learned Sessions Judge, Jalandhar, whereby he was convicted for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'), for setting on fire Sushma, wife of Devi Dayal-complainant, by pouring petrol on her.

On the statement of Devi Dayal Ex.PC, this case was registered.

As per prosecution case, Devi Dayal along with his family members has been residing in the house of Parmod Kumar, situated at Sadique, Jalandhar and his wife Sushma was a house-hold lady. Accused was also residing there. On 10.11.2008, at about 6:30 pm, complainant and his wife Sushma were preparing meals, when Om Parkash accused came to them and started abusing Sushma in the presence of complainant. Accused told that he would set her (complainant's wife) on fire. Accused had brought

a bottle containing petrol and he sprinkled the petrol on the body of Sushma and then set her on fire.

As per complainant, after extinguishing the fire, he removed her to the Civil hospital for treatment. The complainant gave the motive behind this occurrence that the accused was keeping an evil eye and she was restraining him from doing so.

SI Sarabjit Singh, recorded the aforesaid statement of complainant and then after making his endorsement on it, sent the same to the police station for registration of the FIR, whereupon, formal FIR was recorded. Spot was inspected. Rough site plan of the spot Ex.PF was prepared with correct marginal notes. One empty plastic bottle of petrol was recovered from the spot. It was sealed with the seal of 'SS' and then the same was taken into police possession vide memo. Ex.PG. Accused was arrested on 11.11.2008. Sushma, remained unfit to give statement as the opinion of the doctor obtained at different times. On 15.11.2008, she had died in the hospital. Thereafter, offence under Section 302 IPC was added. Inquest report Ex.PJ was prepared. Post-mortem examination of dead body of Sushma was got done and, thereafter, the same was handed over to the legal heirs of Sushma. Accused was re-arrested for the offence under Section 302 IPC.

After completion of necessary investigations, challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused, he was charge-sheeted for committing offence punishable under Section 302 IPC, to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused

under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation appearing against him and pleaded his innocence. By way of defence, he pleaded that he was falsely implicated in this case.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court convicted the appellant for committing offence punishable under Section 302 IPC. Vide order of sentence, the appellant-accused was sentenced to undergo life imprisonment and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo RI for one year under Section 302 IPC.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on record.

It was argued by learned counsel for the appellant-accused that as per Devi Dayal (PW3), he has five children but only PW5 Abhilesh Kumar has been kept as a witness in this case. The children who were elder in age to Abhilesh, have not been kept as witnesses. Abhilesh is a child of the age of 9-10 years. So he is a tutored witness. As such, this fact creates doubt regarding genuineness of the present case.

The above argument of learned counsel for the appellant-accused is not sustainable as PW5 Abhilesh deposed that Vas Raj is his elder brother. He leaves the house at 5:00 am and come back during the night. Under these circumstances, if Vas Raj was not kept as a witness, it does not go against the prosecution. There is nothing on record to show that any child of the complainant who was elder in age to Abhilesh, was present in the house, had seen the occurrence, but was not kept as a witness. The age of other children of complainant is not on the record.

It was next argued by Mr. Gaurav Sharma, Advocate, counsel for the appellant that as per prosecution case, Devi Dayal, and his children were present in the house at the time of alleged occurrence but nobody stopped the accused from resorting to the deadly act of setting Sushma on fire. This is highly improbable. It creates doubt regarding the very presence of Devi Dayal (PW3) at the spot.

The above argument of learned counsel for the appellant-accused is not sustainable as Devi Dayal (PW3) furnished an explanation in this regard to the effect that he is a weak person. This explanation of Devi Dayal appears to be plausible as otherwise no outsider would dare to come to the house of complainant and abuse his wife in his very presence. It is the case in which Devi Dayal (PW3) categorically stated that Om Parkash-accused was keeping an evil eye on his wife and wanted to keep her with him, to which she was not agreeing. On that account, he committed this crime. This very statement of complainant further shows the weak character of complainant as otherwise no one would dare to think to keep other's wife with him, during the life time of her husband. From this statement of PW3, motive to commit this crime also becomes vivid. The act of sprinkling petrol from the plastic bottle on Sushma and then setting her on fire is a spontaneous act which hardly gives any time to the family members to restrain the wrong doer. Devi Dayal (PW3) and Abhilesh (PW5) have categorically stated that they extinguished the fire and, thereafter, took Sushma to the hospital.

It was also argued by learned counsel for the appellant-accused that no independent witness was joined in the investigation of this case. As per PW3, there are 8/9 quarters at the place of occurrence. Thus, non-

joining of any independent witness makes the prosecution story doubtful.

This argument is again devoid of any force. Sarbjit Singh (PW6) stated that 4 quarters were lying vacant at that time. Under these circumstances of the present case, the neighbours would always desist from incurring any kind of enmity and thus would not come forward to stand as a witness against the accused. Above all, it is not the prosecution case that so and so neighbour also witnessed the occurrence. As such, not joining of independent witnesses from the neighbourhood does not cause a dent in the prosecution case. It is also the settled proposition of law that conviction can well be based on the statements of relation witnesses. The only caution for the Court in such like cases is to sift the evidence with great care and caution and if the statement of relation witnesses inspire confidence in the mind of the Court regarding guilt of the accused, the conviction can well be based. In the case in hand the statement of Devi Dayal (PW3) is fully supported by Abhilesh (PW5). The statement of both the aforesaid witnesses are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. Their presence at the spot is natural. Medical evidence on record i.e. the statement of PW1, who conducted the post-mortem on dead body of deceased and proved the post-mortem report Ex.PA and gave the cause of death as shock due to burn injuries, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature; is consistent with the ocular evidence.

There is no material on the file to show that PW3 and PW5 have any reason to falsely implicate the accused in this case and to spare the real culprit.

The contention of learned counsel for the appellant-accused

that the accused himself has set his wife on fire, is not sustainable as there is no evidence on the file to support this claim of the appellant-accused. It is of course true that the burden of proof by the defence is not that strict as on the prosecution and if the defence version is probable that would be sufficient to create doubt for the prosecution case. In the case in hand, there is not even an iota of evidence available on record to show that the complainant PW3 was having strained relations with his wife to an extent to commit this crime rather it is PW3 who had extinguished the fire; and also had taken Sushma to the hospital and was present at her bed side when the police recorded his statement i.e. FIR.

It was lastly argued by learned counsel for the appellant that the police did not lift the finger prints from the plastic bottle. As such, this deficiency in investigation creates doubt regarding genuineness of the prosecution case. This argument is again not sustainable as it is the case based on the statement of eye witnesses who are the husband and son of the deceased. Police had also taken into the possession plastic bottle wherein accused had brought petrol whereby he committed this crime. With this clinching evidence on the file, in case Investigating Officer did not lift the finger prints from the bottle, it would not be sufficient to discard, otherwise fully proved case of the prosecution.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 30.03.2010 and order of sentence of even date, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

September 03,2015