

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal No.D-619-DB of 2010
Date of decision: December 03, 2015.

Sandeep

... **Appellant**

v.

State of Haryana

... **Respondent**

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

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

Present: Shri Jasjit Singh, Advocate for the appellant.

Ms. Bindu Goel, Advocate, amicus curiae.

Shri Vivek Saini, Assistant Advocate General,
Haryana for the respondent-State.

Raj Rahul Garg, J.

This appeal is directed against the judgment dated 4.5.2010 rendered by learned Additional Sessions Judge, Hisar whereby the appellant-accused was convicted for committing offence punishable under Sections 449, 451, 354 and 302/34 of the Indian Penal Code (hereinafter mentioned as the IPC). Vide order on sentence dated 7.5.2010, the accused-appellant Sandeep was sentenced to undergo life imprisonment and fine of Rs.10,000/-, in default of payment of fine to undergo further rigorous

imprisonment for six months, for committing offence punishable under Section 302/34 IPC; to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for three months for committing offence punishable under Section 449/34 IPC; to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/- and in default of payment of fine to undergo RI for one month for committing offence under Section 451 IPC, for offence under Section 354 IPC, he was sentenced to undergo rigorous imprisonment for one year and fine of Rs.2,000/-, in default of payment of fine to undergo RI for one month.

Briefly, prosecution case is like this: that Veena @ Parveen wife of Bittu received burn injuries and was got admitted in the hospital. In the hospital, statement of Veena was recorded by ASI Sher Singh of Police Station City Hansi. Statement of Veena is Ex.P21. It is dated 5.3.2008. She stated before the police that on the previous evening i.e. 4.3.2008 at about 8 p.m., she was all alone at her house. The electricity had gone off. Sandeep (appellant-accused) son of Krishan, her neighbour, entered her house under the influence of liquor. On finding her alone, he tried to molest her. On hearing noise of someone in the street, Sandeep climbed up the stairs of the house and then jumped in the adjoining house on the back side. After some time, her husband came there. She disclosed the entire story to him. Her husband told her to take action in the matter on the next morning as it was dark at that time. The following morning, her husband had gone to the house of Sandeep in order to lodge report for what had happened the

previous evening. At this, Sandeep, his mother Nirmal @ Guddi, sisters Dhona and Mohni got enraged and said that he was levelling false allegations against them as such they will teach them a lesson.

At about 11.30 a.m./12 noon, she was present at her house all alone. Her husband had gone out for doing labour work. Sandeep, Nirmala @ Guddi, Dhona and Mohni entered into her house and started hurling filthy abuses. Nirmala remarked that Veena had levelled false allegations against her son, as such she should not be spared. All the four assailants had taken her to the last room of her house and gave her beating. Sandeep, lifted a canny containing kerosene oil from her house. Dhona and Mohni caught hold of her whereas Sandeep poured kerosene oil on her and thereafter Nirmala lit matchstick and set her on fire. on raising her alarm, her father in law Kishori Lal and Jeth Ashok reached there. On seeing them, all the four assailants fled away after giving push to them. She was taken to Govt. Hospital, Hansi, from where the doctor referred her to PGIMS, Rohtak as her condition was serious. She was then taken to PGIMS, Rohtak. ASI Sher Singh recorded the aforementioned statement of Veena after obtaining opinion of the doctor by moving application before him, who opined that Veena was fit to make statement. On this statement, initially case under Section 307, 354, 452 and 34 IPC was registered. Investigations were conducted; statements of witnesses were recorded; spot was inspected. The matter was investigated by Inder Singh Inspector, SHO, PS Hansi. On 7.3.2008, DSP Ranbir Singh verified the investigation. After investigations, all the four assailants were found to be involved. Veena expired in the

hospital on 11.3.2008 whereupon Section 302 IPC was added. Accused Sandeep was arrested on 6.3.2008. He suffered disclosure statement (Ex.P1) stating that he can get recovered one plastic can having some kerosene oil under the cot lying in a room of his residential house. He then ed the police party to his house and got recovered plastic can from the pointed place and the same was taken into police possession vide memo Ex.P2. This can was sealed with the seal of 'SS'. The aforesaid plastic can was sent to the FSL. As per report FSL Ex.P26, kerosene oil was found in canny Ex.P3. Ram Phal DSP (D) verified the investigation and found all the accused involved in the commission of the crime.

On 26.3.2008, Dr. Ajay Kumar, Senior Scientific Officer of Scene of Crime visited the spot. His report is Ex.P12. Abhay Singh DSP conducted investigation and found that offence under Section 306 IPC was made out and Section 302 was deleted. Nirmala @ Guddi, Dhona and Mohni could not be arrested and were declared proclaimed offenders. Initially challan under Section 306, 324, 452 IPC was prepared but in view of the material available on the file, Section 302 IPC was added and challan was finally put up in the court of Illaqa Magistrate under Section 302 IPC.

Finding a prima facie case against appellant-accused, he was charge sheeted for offence under Sections 449, 302, 451, 354 IPC. After taking the entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein the appellant-accused denied each prosecution allegation and pleaded his innocence and false implication. By way of defence, it was pleaded that the deceased Veena committed suicide

by closing door of her house. She committed suicide due to bad behaviour of her husband. Her husband was a drunkard. Krishan, Vicky and Jitender broke open the door of the house of Veena and rescued her. In defence evidence, he examined Jadish DW1, Vicky DW2, Saroj DW3 and Constable Kanhaiya Lal as DW4.

After hearing both the sides and perusing the entire evidence and material coming on record, the trial court recorded the impugned judgment of conviction and the order on sentence, as set out in the earlier part of the judgment.

We have heard Shri Jasjit Singh, Advocate, and Ms. Bindu Goel, Advocate, amicus curiae appearing on behalf of the appellant, and learned Shri Vivek Saini, Deputy Advocate General, Haryana, for the State besides going through the entire record of this case.

First of all, it was argued by learned Counsel for the appellant-accused that the statement of Veena Ex.P24 cannot be termed as dying declaration. The Investigating Officer who recorded the statement of Veena did not try to get the dying declaration recorded from the Magistrate. Even otherwise, as per medical record of PGIMS, Rohtak Ex.P25, Veena was having 95 to 100% burns. This record is proved by Dr. mukesh PW16. He also deposed that the pulse rate of Veena on 5.3.2008 was 96. Thus, under these circumstances, Veena cannot be said to be in a condition to make dying declaration. Not only this, even PW16 Dr. Mukesh stated that when the statement of Veena was recorded by the Police, he was not present by the side of the patient, as such there is no evidence on the file to show that the

patient remained fit throughout during the course of recording of her statement Ex.P21 by the police. For these reasons, as per the learned Counsel for the appellant-accused, no reliance can be placed on the statement of Veena and that such conviction recorded by the learned trial court is liable to be set aside.

Above contention of learned Counsel for the appellant-accused is not sustainable as the statement of Veena was recorded in PGIMS, Rohtak on 5.3.2008 by the Investigating Officer by moving application Ex.P19 and after obtaining opinion of Dr. Mukesh PW16 regarding her fitness, who opined vide opinion Ex.P20 that the patient was fit for statement. It is opinion of the doctor which is to prevail. There is nothing on record to show that the patient was unconscious or was otherwise not in a fit state of mind to give statement. Regarding not approaching the Magistrate for getting the statement of Veena recorded from him, PW15 ASI Sher Singh categorically stated and explained that he reached PGIMS, Rohtak at about 5.30 pm. He made efforts for recording statement of Veena from a Magistrate but as the court time was over and he could not find out the name of the Duty Magistrate, therefore, the statement of Veena could not be recorded by the Magistrate. This explanation under the given circumstances is believable and in that eventuality, if the statement of Veena was not signed by Dr. Mukesh, it does not make any difference. As per medical record Ex.P25 and also the statement of PW16 Dr. Mukesh, who treated Veena from 5.3.2008 to 11.3.2008, it is evident that Veena had died on 11.3.2008. It is not a case where Veena had died just after making her

statement. Veena has also given details of the incident as to how it had taken place. She has also given the details of the incident which had taken place on the previous evening i.e. 4.3.2008. She also deposed about her admission in Civil Hospital, Hansi and then her taking to PGIMS, Rohtak. Thus, she was in a fit statement of mind to make her deposition as Ex.P21. Besides this, there is nothing on record to show that the complainant party was in any way inimical to the accused so as to implicate the accused and his family members falsely in this case. The incident of the noon time on 5.3.2008 and the FIR was recorded at 7 pm that very day. During this time, she was medico-legally examined and then referred to PGIMS, Rohtak. ASI Sher Singh also obtained ruqa Ex.P5 along with MLR of Veena from the Police Station whereupon she was referred to PGIMS, Rohtak and then had gone over there and moved application before the doctor, sought his opinion regarding fitness of Veena and then recorded her statement. As such time taken by the police in recording the statement of Veena at 7 pm, cannot be said to be unreasonable. During this period, Veena who was fighting between life and death cannot be said to be in a position to concoct story falsely against the accused. As such, dying declaration of Veena cannot be doubted in any manner.

The next argument raised by learned Counsel for the appellant-accused is this that in fact it is a case of suicide which was turned into a case of homicide. Veena committed suicide as she was fed up from her husband. The police also recommended challan of accused under Section 306 IPC. Krishan, vicky and Jitender reached the house of Veena after hearing her

shrieks. They forcibly broke open the door of the room of the deceased and rescued her. Vicky as DW2 supported the defence version. He categorically stated that on 5.3.2008 at about 11 am, he along with Jitender, Krishan and Sunil was standing in chowk in Balmiki Mohalla, Hansi. On hearing the noise of 'bachao-bachao' coming from the house of Bittu, they came running to the house of Bittu. They all entered the house of Bittu. They broke open the gate of the house and found that Veena was lying in burnt condition, unconscious. They poured water on her body. After few minutes, her husband Bittu reached there who took her to hospital. At that time, Veena was not in a position to say anything as she was unconscious. In support of this version, learned Counsel for the appellant-accused referred to the statement of PW16 Dr. Ajay, Senior Scientific Officer, Scene of crime, who visited the spot and prepared report Ex.P12. In that report, he made a mention that the door of the house was recently repaired.

The above argument of learned Counsel for the appellant is again not sustainable as no reliance can be placed on the statement of DW2 Vicky. As per the defence taken by the accused, Krishan and Jitender were also present with Vicky at the relevant time but none of them was examined as witness so as to support the statement of Vicky. If the door of the room was reported to have been recently repaired, it hardly makes any case in favour of the defence. The incident of burning has undisputedly taken place. Even Bittu admitted during the course of his statement that the door of the room was got repaired. As such, with the repair of the door of the room it cannot be made out that it was a case of suicide and not a case of

homicide. In case of homicide as well, the door of the room could have been repaired. The history of the case shows that the police did not act above board. DSP Abhay Singh investigated the case and recommended challan under Section 306/34 IPC but DSP Abhay Singh was not examined in defence as witness so as to know how and under what circumstances and on what basis he reached the conclusion that offence under Section 306 IPC was made out. Marked documents i.e. Mark D1 to Mark D3 cannot be read into evidence as the same have not been proved in accordance with law. In the statement of Veena which is Ex.P21 and a dying declaration corroborated by the statement of eye witnesses PW2 Kishori Lal, father-in-law, and PW3 Ashok, jeth of Veena, the case against the appellant-accused as that of homicide stands established. Even PW5 Bittu, husband of Veena deposed about the occurrence which had taken place on 4.3.2008 whereupon he lodged protest with the appellant and co-accused which gave cause to the commission of this offence by the accused. Thus, with the statement of PW5 Bittu, offence under Section 354 IPC and further the motive of the accused to commit the crime, stands proved on the file.

The next contention of learned Counsel for the appellant-accused is this that as per the case of the prosecution on the previous evening i.e. On 4.3.2008 on hearing the noise of someone from outside, the accused climbed up the stairs and jumped down the adjoining house, remained unproved as Saroj DW3 deposed that nobody jumped in her house from the house of Bittu on the previous evening. This contention is again devoid of any force, as, if we peruse the statement of DW3, it becomes clear

that she also stated that she did not notice if anybody jumped in her house. This goes to show that Saroj DW3 was siding with the accused. She was given up as having been won over by the accused. Later on, she was examined as witness by the defence. If she stated that she did not notice if anybody jumped in her house, it does not mean that nobody jumped in her house. As such, statement of DW3 is of no help to the accused.

Lastly, it was contended by learned Counsel for the appellant-accused that there are contradictions in the statements of PW2 Kishori Lal and PW3 Ashok which makes the prosecution case doubtful. Referring to the statement of PW2 Kishori Lal, it was argued that when he appeared in the court, he deposed that on 5.3.2008 at about 11.30 am/12 noon, he and his son Ashok were having conversation in the street. In the meantime, they heard shrieks from the house of Bittu 'mardi-jaladi'. Immediately thereafter, they had gone to their house and found accused Sandeep, his sisters Dhona and Mohni and mother Guddi present there. Sandeep was having plastic can in his hand. They found Veena in flames. Sandeep and others pushed them aside and then had gone out of the house. They extinguished the fire by putting blanket on Veena and then enquired from Veena as to how it happened to which she replied that Sandeep, Dhona, Mohni and Guddi had come to her house and Sandeep lifted can containing kerosene oil. Dhona and Mohni caught hold of her while Sandeep poured kerosene oil on her and Guddi lit the matchstick and set her ablaze. He was confronted with the statement Ex.D1 on the point that he did not state in his statement made to the police Ex.D1 that they heard the voice 'mardi-jaladi'. This is the

improvement done by Kishori Lal in his statement when he appeared as witness in the court. As such, no reliance can be placed on his improved statement. Likewise, he did not mention in his statement Ex.D1 that they extinguished the fire by putting a blanket on Veena. Thus, on this point as well he has given the improved version. Even the statement of PW2 giving details as to who caught hold of Veena, who poured kerosene oil on her and who lit the matchstick, there is no mention in the statement Ex.D1.

Now, if we peruse the statement Ex.D1, it would become clear that in fact there is no such improvement in the statement of PW Kishori Lal. In Ex.D1, he deposed that while he and his son Ashok were standing outside in the street, they heard the shrieks of Veena from her house. Under these circumstances, if at that time, he did not mention the words 'mardi-jaladi' and if later on the same were mentioned in the statement given in the court, it cannot be termed as material improvement made by PW2. Likewise, Kishori Lal in statement Ex.D1 did not mention that when they reached the house of Bittu, they saw Veena lying in a burnt condition in the back room of her house. On seeing them, Sandeep son of Krishan, who was holding plastic can in his hand, Nirmala @ Guddi wife of Krishan and Dhona and Mohni daughters of Krishan who were present in the house gave them a push and had run away. Thus, this witness has categorically deposed before the police about the presence of all the four accused at the relevant time in the house of Veena while she was lying in burnt condition and also Sandeep holding plastic can in his hand. After the occurrence, Kishori Lal asked Veena about the occurrence who disclosed the facts and this witness

later on when he appeared as a witness in the court, stated as to who held Veena, who poured kerosene and who lit the matchstick, putting her on fire, would not be termed as material improvement. Likewise, Kishori Lal in his statement Ex.D1 Stated before the police that they extinguished the fire of Veena and if at that time he did not make a mention that with the help of blanket they extinguished the fire, it cannot also be termed as material improvement in the statement of Kishori Lal. Kishori Lal did not make a mention of some other manner of extinguishing the fire than the blanket. He simply stated that they extinguished the fire and when appeared as a witness if he explains that they extinguished the fire by putting the blanket on Parveena @ Veeana, it does not make the statement of Kishori Lal doubtful in any manner. Likewise is the statement of PW3 Ashok. It can also not be termed as improved statement in any manner.

For the reasons recorded above, discrepancies in the statements of the two witnesses on the point of articles lying in the room, i.e., scene of crime and further regarding catching fire or not catching fire of articles lying in the room do not make doubtful the otherwise fully proved case of the prosecution.

The impugned judgment of trial court is detailed and well reasoned judgment. We do not find any error apparent in the impugned judgment of conviction either owing to misreading of evidence, non-reading of evidence or mis-appreciation of evidence calling for interference in the instant appeal.

For the reasons recorded above, finding no merit in this appeal,

and as such maintaining the judgment of conviction and the order of sentence, as stated above, this appeal is dismissed.

December 03, 2015.
kadyan

[**Hemant Gupta**]
Judge

[**Raj Rahul Garg**]
Judge