

**In the High Court of Punjab and Haryana at Chandigarh**

**CRA-D-789-DB-2010 (O&M)**

Date of decision: 21.09.2015

Jagdeep Singh and another

..... Appellants

Vs.

State of Punjab

..... Respondent

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

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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: Ms.Aditi Girdhar, Advocate as amicus curiae for the appellants.

Ms. Manjari Nehru Kaul, Additional Advocate General Punjab.

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**RAJ RAHUL GARG.J.**

This appeal is directed against the judgment dated 22.07.2010 rendered by learned Additional Sessions Judge, Fatehgarh Sahib whereby both the appellants were convicted for committing offence punishable under Sections 302/120-B of Indian Penal Code (for short 'IPC'). Thereafter, vide order of sentence dated 23.07.2010, both the appellants were sentenced to undergo rigorous imprisonment for life each, with fine of ₹20,000/- each. In default of payment of fine to further undergo rigorous imprisonment for 2 years each for offence under Section 302 IPC. They were also sentenced to undergo rigorous imprisonment for life with fine of ₹10,000/- each. In default of payment of fine to further undergo rigorous imprisonment for 1 year each for committing offence punishable under Section 120-B of IPC.

Briefly, prosecution case is like this; that on receipt of telephonic information on 02.04.2008 from the Control Room, Fatehgarh Sahib, regarding admission of Harwinder Kaur, wife of Jagdeep Singh, admitted in civil hospital Fatehgarh Sahib on account of burn injuries, ASI Hans Raj along with police officials had gone to the aforesaid hospital. He moved an application before the doctor to know about the condition of injured whereupon he was informed that Harwinder Kaur was referred to PGI Chandigarh. On reaching PGI Chandigarh, Investigating Officer moved an application to the doctor for recording the statement of Harwinder Kaur, whereupon, she was declared fit to make statement. As a result, statement of Harwinder Kaur was recorded in the presence of doctor. Harwinder Kaur stated that she is a house-hold lady. She got married to Jagdeep Singh (accused) four years ago. She had a daughter and a son. Her father-in-law Bahadur Singh, mother-in-law Surinder Kaur and her husband Jagdeep Singh used to tease and harass her while she does house-hold work. On the day of occurrence, at about 8-9 A.M., her mother-in-law poured kerosene oil on her and set her ablaze with the help of match stick. At that time, her father-in-law was not present but her husband was present there. She raised *raula* "*marta-marta*". Her paternal mother-in-law Paramjit Kaur (chachi saas) and paternal father-in-law Nirmal Singh (chacha sauhra) and the neighbours took her to Civil Hospital, Fatehgarh Sahib, from where she was referred to PGI Chandigarh. After hearing and taking the same as correct, Harwinder Kaur put her thumb impression on the statement. Regarding condition of the patient, doctor made endorsement to the effect that patient remains fit during statement. *Ruqa* was sent to the police station whereupon

formal FIR was recorded. Investigating Officer visited the spot along with Harbhajan Singh. Photographs of the place of occurrence were obtained. Site plan of the spot was prepared. One stove, lid, matchbox and two half burnt curtains were taken into police possession. Statement of witnesses were recorded.

On 03.04.2004, on receipt of information from PGI Chandigarh, regarding death of Harwinder Kaur, the offence under Section 302 IPC was added. ASI Hans Raj prepared the inquest report at PGI Chandigarh. Dead body was handed over to ASI Hans Raj for its post-mortem examination. After post-mortem of the dead body, the same was handed over to legal heirs. Post-mortem report was obtained. On the direction of SI/SHO Ajaypal Singh, a lady Constable Sumanjeet Kaur was sent to village Sangatpura Sodhian. She was joined in the police party and, thereafter, raid was conducted at the house of accused. Accused were not available. Thereafter, on receipt of secret information about the presence of accused Bahadur Singh, Jagdeep Singh and Surinder Kaur by the side of Electricity Grid Chaurwala, the police party reached there and arrested the accused. On 11.04.2008, an application was moved by Harbhajan Kaur for investigation in this case. Under these circumstances, on investigation conducted by SP(D), Bahadur Singh was found innocent. As such, he was kept in column No.2 of the report under Section 173 Cr.P.C. Challan was presented against accused Jagdeep Singh and Surinder Kaur.

Finding a *prima-facie* case against the accused for committing offence punishable under sections 302/120-B and 120-B IPC was framed to which accused did not plead guilty but claimed trial.

After taking entire prosecution evidence, the statement of accused under Section 313 Cr.P.C. were recorded wherein accused denied each prosecution allegation appearing against them and pleaded their innocence and false implication. Accused Jagdeep Singh and Surinder Kaur have taken the same defence. Both the accused took the defence that they did not commit any offence. Harwinder Kaur deceased was belonging to Mohali. In the year 2008, Jagdeep Singh was working in a Hotel in Calcutta (West Bengal). He came back in March 2008 from Calcutta on account of marriage of his sister. Brother of Jagdeep Singh had already died. After the marriage of his sister, his parents felt loneliness and were depressed due to the death of their son. Father of Jagdeep Singh has been running a flour mill in village Sangatpura Sodhian. On his advise to run flour mill, Jagdeep Singh with his wife and children started living at village Sangatpura Sodhian. However, his wife Harwinder Kaur was not in agreement to live at village. She had always insisted him to live in some city. She has been telling him that she was born and brought up in Mohali and she cannot cope with the village life. Jagdeep Singh declined her request and chose to live at village Sangatpura Sodhian so that he can look-after his old parents and can run flour mill business. Jagdeep's father is partially handicapped from his hands. After the birth of children, Harwinder Kaur used to live at Mohali. Even 2/3 days prior to 02.04.2008, their parents separated them in a mess. In the morning of 02.04.2008, Jagdeep's brother-in-law Kulwinder Singh called him on telephone and pressurized him to live in Mohali. He also offered him the first floor of their house by telling that the same was lying vacant and they can live there. However, Jagdeep declined the aforesaid

offer. Thereafter, Kulwinder Singh talked to Harwinder Kaur on telephone. Jagdeep had gone out side the house at that time. Suddenly, after sometime, he heard a noise and found that Harwinder Kaur had committed suicide by pouring kerosene oil upon herself because she was depressed and was not happy to lead village life. Jagdeep immediately along with parents and chacha-chachi, took Harwinder Kaur to civil Hospital by a private car. Harwinder Kaur was unable to speak. Doctor then referred Harwinder Kaur to PGI. He along with his family members took her to PGI. However, at PGI, the complainant party started beating them and took Harwinder Kaur to emergency ward. As per accused, the cause of death of Harwinder Kaur is suicide. No homicidal attacks were made by the accused on Harwinder Kaur. They did not put any kerosene oil on Harwinder Kaur. Deceased Harwinder Kaur did not suffer any statement in PGI, on 02.04.2008 at her own. The prosecution/police agency recorded her statement of their own and according to their suitability at the instance of parents and relatives of Harwinder Kaur. They have been falsely implicated in this case. Dying declaration dated 02.04.2008 is not voluntary and true and has been engineered by the police and does not belong to Harwinder Kaur. Even the alleged dying declaration and medical record is fabricated. Accused in their defence has examined Navdeep Gupta, hand writing and finger print expert as DW1, who examined Ex.PD to find out whether or not there is an alteration in the digit marked as Q1 written in the time and also examined the digit marked as Q2 on page No. 39 of out patient record dated 02.04.2008 to find out whether or not there is any alteration.

After hearing both the sides and appraising the entire material

and evidence coming on record, the learned trial Court recorded the judgment of conviction and order on sentence as mentioned in the earlier part of this judgment.

We have heard Ms. Aditi Girdhar, Advocate as amicus curiae for the appellants and learned State counsel, besides appraising the entire material and evidence coming on record.

It is a case in which there is no eye witness to the effect as to if it is the accused alone who had set Harwinder Kaur ablaze by pouring kerosene oil on her and by lighting the match box. Prosecution witnesses are Harnek Singh (father of deceased) and Harbhajan Singh son of Lekh Singh, who attended the marriage of deceased and had gone to village Sangatpura Sodhian, to make the in-laws of deceased understand whereafter on reaching there, he came to know that her in-laws has set her on fire. He was examined as PW9. After the incident in question, the deceased was taken to Civil Hospital, Fatehgarh Sahib and from there she was referred to PGI Chandigarh where her statement Ex.PD was recorded by Hans Raj, Investigating Officer of the case. Of course, doctor made his endorsement on this statement to the effect that patient remained fit during statement, this statement was treated by the learned trial Court as dying declaration of the deceased and was also made the basis of conviction.

It was contended by learned counsel for the appellants-accused that accused have been falsely implicated in this case. They did not commit any crime. The prosecution has tried to convert the case of suicide into one under Section 302 IPC. The complainant party with the help of police has prepared a false dying declaration. Harnek Singh, father of deceased (PW3) and Harbhajan Singh, relative of the deceased (PW9) have given different

reasons behind this occurrence. Harnek Singh (PW3) deposed that the in-laws of deceased used to harass her on account of trivial issues and for domestic work whereas as per Harbhajan Singh (PW9) she was being harassed on account of bringing insufficient dowry. Not only this, even both the aforesaid witnesses have given the improved versions when they appeared in the Court in order to falsely implicate the accused.

It was next argued by learned counsel for the appellants-accused that in case Surinder Kaur-accused had poured kerosene oil on Harwinder Kaur, it must have splashed in the surrounding area but Devinder Singh, Photographer (PW4) did not notice the spots of sprinkled kerosene oil on the articles lying in the room. Had Harwinder Kaur being set ablaze by the accused forcibly, there would have been kerosene oil on the other articles lying in the room like double bed, sofa, cupboard, dressing table, television, fridge etc. ASI Hans Raj (PW11) also stated so. Hans Raj is the Investigating Officer of this case. He deposed that no marks of sprinkled kerosene oil were detected except on the burnt curtains. This fact shows that the accused did not set Harwinder Kaur on fire, rather it is Harwinder Kaur who committed suicide as she was not able to cope with the village life and she wanted to live at Mohali, where she was born and brought up and had also been insisting Jagdeep Singh to live with her on the first floor of their house, regarding which her brother Kulwinder gave a telephonic call to Jagdeep Singh and Jagdeep Singh refused the proposal and only, thereafter, the incident in question had taken place.

It was further argued by learned counsel for the appellants-accused that had accused burnt Harwinder Kaur, they would have

committed this crime in the courtyard of the house but at least not in the front room of the house which is adjoining the main gate of the house. The front room of the house is the place of occurrence which further goes to show that it is a case of suicide and not murder. Deceased had committed suicide in the room as otherwise she would not have been able to do so.

Learned counsel for the appellants-accused also raised the argument that the endorsement allegedly made by doctor P. Vamasi Krishna on the statement of Harwinder Kaur which is Ex.PD remains unproved. Doctor was not examined as witness. In the absence of doctor, this endorsement Ex.PW12/A cannot be said to be duly proved. Though, Sh. Sukhjit Singh, Medical Record Technician PGI, Chandigarh was examined as PW12 and identified the signatures of aforesaid doctor at point 'A' (objected to) yet during the course of his cross-examination, he categorically stated that he did not see Dr. P. Vamasi Krishna signing or preparing document in this case. He deposed that Dr. P. Vamasi Krishna never signed before him besides this he deposed that the department of aforesaid doctor is different from his department. Thus, when Sukhjit Singh (PW12) was not having an opportunity to see the aforesaid doctor writing and signing the document in his presence, he cannot be said to be conversant with the signatures of doctor and in that eventuality, even it cannot be said that Ex.PW12/A stands formally proved. In the absence of doctor, the contents of the aforesaid endorsement cannot be said to be duly proved. As such, it cannot be said to be proved on record that the deceased actually gave statement Ex.PD to the police or that she remained mentally fit when her statement was allegedly recorded. In the bed head ticket, there

is no mention about the recording of dying declaration in the presence of Senior Medical Officer. Even Dr. Sukhwinder Kaur (PW6) deposed that the deceased had suffered 95% burn injuries and further that when she was brought, her condition was serious and she was in intense pain due to burns and further that she was not in a position to speak at that time. Thus, when she was not in a position to speak in the first instance i.e. when she was brought to the hospital, it is not understandable as to how the condition of deceased improved later on or as to how she became fit to give statement to the police. All these circumstances point towards the fact that the deceased did not suffer any dying declaration and further that the same might have been prepared later on. Not only this, even Harnek Singh (PW3) admitted during the course of his cross-examination that parents of the deceased were present at the time of recording of dying declaration. Even on the dying declaration, initially Investigating Officer mentioned the time as 2:00 P.M. and later on it was changed to 3:00 P.M. This change occurred on account of the fact that the deceased had reached PGI at 1:55 P.M. As such, it was not possible for the police to record statement of deceased at 2:00 P.M. Thus, to make the prosecution case consistent with the time of arrival of deceased in PGI, the timing was changed. Even Navdeep Gupta (DW1) also reported in his report Ex. DD that there was change in digit 2 on Ex.PD at point 'D' in the timing and digit 2 was changed into digit 3. He also reported that the change was made with different ball pen. This goes to show that in fact no such dying declaration was given by the deceased and the prosecution case is highly doubtful and the accused are entitled to acquittal.

Accused have taken the specific defence that in fact it is a case

of suicide which has been converted into a case of murder. Both the accused have nothing to do with this crime. They did not set deceased ablaze. Surinder Kaur did not pour kerosene oil on the body of deceased nor set her on fire. It is specifically pleaded by way of defence by the accused that in the year 2008, Jagdeep Singh was working in a Hotel in Calcutta. He came back in March 2008 from Calcutta on account of marriage of his sister. Harnek Singh, father of deceased as (PW3), during the course of his cross-examination deposed that the sister of Jagdeep Singh was married 15 days prior to the death of Harwinder Kaur. Brother of Jagdeep Singh had already died. He further admitted that his brother and his brother-in-law have been running a Hotel in Calcutta. He further admitted that Jagdeep Singh got a job there in the hotel. Voluntarily he deposed that he worked there only for one month. He came back from Calcutta on account of marriage of his sister. He further admitted that his daughter was born and brought up in Chandigarh and was 10+2 pass. He further admitted as correct that Bahadur Singh is running a flour mill in village Sangatpura Sodhian. He further admitted as correct that his daughter was fed up from routine domestic distress. He gave the cause for distress of his daughter like this; that his daughter was asking her husband to do some work at any place as he has two children. He further voluntarily stated that her husband was not giving her maintenance expenses for her care and for her children. He further made it clear by stating that his daughter was under depression on account of non-working of her husband. His daughter has been asking her mother-in-law to advise her son to do some work. With this admitted statement of Harnek Singh (PW3), the probability of defence version that since the brother of

Jagdeep had died and his sister was married about 15 days prior to the present incidence and further that he came to village Sangatpura Sodhian on account of marriage of his sister from Calcutta and, thereafter, stayed back and started doing flour mill business of his father, is there. From the above statement of Harnek Singh, it is evident that deceased was not satisfied with taking up of flour mill business by her husband at his parents' place.

It is settled proposition of law that burden of proof of defence on the accused is not that strict as on the prosecution. If the accused succeeds in showing the probability of defence version, it is sufficient to create dent in the prosecution case.

Now, if we revert to the dying declaration Ex.PD, it becomes clear that she gave the bone of contention between parties like this; that her father-in-law Bahadur Singh, mother-in-law Surinder Kaur and husband Jagdeep Singh used to tease and harass her while she does household work. Beyond that she did not state anything against accused. She did not state as to how and in what manner the accused used to harass and tease her. She did not give even a single instance of her harassment at the hands of accused. Of course, the deceased was in distress at the time of making of statement Ex.PD yet the crux of the matter does not inspire confidence in the mind of the Court regarding guilt of the accused and even do not point towards the guilt of the accused. Apart from it, the statement of her father Harnek Singh (PW3) and that of her relative Harbhajan Singh (PW9) are not consistent with the dying declaration Ex.PD and even contradictory to each other. Harnek Singh (PW3) deposed that in-laws of his daughter used to harass her on account of trivial issues and for domestic work. Again he fails to give

any instance of her harassment at the hands of accused. The dispute between the parties on trivial matters or on domestic issues go on which is normal wear and tear of life. Bahadur Singh, father of Jagdeep, had also lost his son. He also celebrated the marriage of his daughter 15 days prior to the present occurrence. As the parents of Jagdeep were alone, therefore, they asked Jagdeep to stay with them. Under those circumstances, no parents would take steps of eliminating their own daughter-in-law particularly when there is no serious dispute between the parties. In order to overcome the trivial issues and domestic dispute, the parents of deceased had separated them in a mess but that also did not satisfy the deceased. Jagdeep had taken the defence that on the day of the occurrence Kulwinder brother-in-law of Jagdeep called him on telephone and pressurized him to live in Mohali to which he did not agree. As such, under the given circumstances, this defence of the accused also seems probable and sufficient to create doubt in the prosecution case. Above all, even Harbhajan Singh (PW9) deposed that the parents-in-law of the deceased and Jagdeep started harassing her on account of insufficient dowry whereas it is not the case of Harnek Singh nor said so by the deceased. So Harbhajan Singh has given different story. Not only this, even PW9 went on stating that he along with the parents of Harwinder Kaur and some other persons had gone to village Sangatpura Sodhian to make them understand for not harassing Harwinder Kaur on account of insufficient dowry. On 02.04.2008, they got information that prior to 02.04.2008 Jagdeep had a quarrel with Harwinder Kaur and in order to make them understand, he had gone to village Sangatpura Sodhian to make them understand. On reaching there, he came to know that her in-laws

had set her on fire whereas Harnek Singh (PW3) did not state so. He did not state that on 02.04.2008, he along with Harbhajan Singh (PW9) had gone to the matrimonial house of deceased in order to make her in-laws understand. As per Harnek Singh (PW3), 5-6 days prior to the present occurrence he received a telephonic call from his daughter that her in-laws were quarreling with her and harassing her to which he told that he alongwith his wife will come to her and talk to her in-laws. He further stated that on 02.04.2008, he came to know that his daughter has been burnt by accused. As such, the statement of Harbhajan Singh (PW9) is not free from doubt regarding sequence of events as stated by him respecting prosecution story. With the statement of Harnek Singh (PW3), the presence of Harnek Singh and his wife in PGI on the day of occurrence stands established. Harnek Singh (PW3) during the course of his cross-examination deposed that they reached PGI at about 12:30/1:00 P.M. They took the deceased in the emergency department. This shows that prior to the reaching of deceased in PGI, they were present there. He further deposed that at that time his daughter was having lot of pain due to burn injuries. Immediately on reaching, emergency doctor started treating her. His wife remained present with his daughter at the time of her treatment by the doctor who remained present throughout till her death. The whole of the body of his daughter was burnt. Police had reached there at about 4:00 P.M. to record her statement. When the statement of his daughter was recorded, his friend Harbhajan Singh was present there. He further deposed that the police of Police Station Mulepur reached there 2-3 hours after admission of deceased in the PGI. He also deposed that doctor had declared her fit to make statement. Further that in

his presence she had made her statement to the Investigating Officer. Harbhajan Singh (PW9) also deposed that statement of Harwinder Kaur was recorded by Investigating Officer in his presence as well in the presence of doctor. Thus with this evidence on the file, it is evident that as per prosecution story at the time of recording of statement of Harwinder Kaur by the police, parents and relatives of deceased were present in PGI. From the perusal of dying declaration Ex.PD, it becomes clear that Investigating Officer did not mention any time after recording the statement of deceased at one place. This statement was attested by the doctor. At that place also no time found mentioned under the signatures of the doctor though date is there. Further, where the doctor made endorsement that the patient remained fit during the statement, there is time mentioned as 3:00 P.M. As per Navdeep Gupta (DW1), who scientifically examined the change in time from 2:00 P.M. to 3:00 P.M., gave his report to the effect that digit 2 of time was changed into 3 and further that the change was made in different pen and ink. Below this statement, police proceedings have also been recorded by the Investigating Officer that very day. In the police proceedings itself it was mentioned that an application was moved before Chief Judicial Magistrate for deputing a Magistrate to record the statement of injured Harwinder Kaur. Shri Atul Marya, Judicial Magistrate 1<sup>st</sup> Class, Chandigarh was deputed for the purpose. When he came to PGI and sought opinion of the doctor regarding fitness of deceased to make statement, she was reported as unfit for making her statement. These proceedings were recorded by the police at 6:00 P.M. Thus, non-mentioning of time of recording of statement of deceased by the police, shows that the police has intentionally kept back

the time of recording of statement of deceased. In the application Ex. PW11/C moved by police before the Chief Judicial Magistrate for deputing some Magistrate for recording the statement of Harwinder Kaur, there is no mention that the statement of Harwinder Kaur was recorded by the police on account of the fact that there was apprehension that she may die before recording of her statement by a Magistrate. In case, statement of deceased had been recorded earlier in point of time then there was no necessity for the police to get a Magistrate appointed for the purpose. Shri Atul Marya, JMIC (PW2) clearly stated that when he reached PGI, Chandigarh, the patient seems to be in an unconscious condition. On arrival of doctor/SMO Doctor P. Vamasi Krishna, he obtained his opinion, who declared her unfit to make statement. As such, her statement was not recorded by the Magistrate. Dr. Sukhwinder Kaur, Medical Officer, Civil Hospital, Fatehgarh Sahib (PW6), categorically stated during the course of his cross-examination that she had inquired from the patient as to how she sustained burn injuries as she was under intense severe pain due to burn and she was not in a position to speak at that time. With this statement of PW6, it is evident that the deceased was under distress on account of severe pain due to burns. When she was not in a position to speak at that time, it is not understandable that she would be able to speak later on for the period her statement was recorded and, thereafter, again she became unconscious. Harwinder Kaur died on the very next day. In view of the above-discussion recording of statement of Harwinder Kaur Ex.PD by Investigating Officer himself is not free from doubt, particularly when Hans Raj, Investigating Officer of this case as PW11 during the course of his cross-examination categorically admitted that

it is correct that he was facing trial in two Prevention of Corruption Act cases. Hans Raj (PW11) deposed that no marks of sprinkled kerosene oil were detected except on the burnt curtains. Devinder Singh, Photographer (PW4) deposed that he noticed the articles lying in the room i.e. double bed, sofa, cupboard affixed in the wall, one dressing table, one fridge and television etc. Investigating Officer denied that the aforesaid articles were lying in the room. Thus, statement of both the PWs are inconsistent. Under these circumstances, the argument advanced by learned counsel for the appellants-accused that in case accused had sprinkled kerosene oil on the deceased, it must have splashed and the kerosene oil spots must have been found on other articles lying in the room. Since that was not the position, therefore, this cannot be termed as a case of homicide but it is a case of suicide; carries weight.

For the reasons recorded above, as the prosecution has failed to prove its case beyond reasonable doubt, therefore, the impugned judgment of conviction dated 22.07.2010 and order of sentence dated 23.07.2010 are ordered to be set aside and by giving benefit of doubt both the appellants-accused are ordered to be acquitted. Both the accused be released at once, if not wanted in any other case.

**(HEMANT GUPTA)**  
**JUDGE**

21.09.2015  
*smriti*

**(RAJ RAHUL GARG)**  
**JUDGE**