

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 684-DB of 2011 (O&M)

Date of decision : 18.03.2015

Balbir Chand and others

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Ms. Manjri Nehru Kaul, Addl. AG, Punjab

LISA GILL, J.

Aggrieved by judgment dated 06.06.2011 passed by learned Additional Sessions Judge, Sangrur, appellants have preferred the present appeal.

Balbir Chand, father-in-law and Sukhwinder Kumar, brother-in-law of the deceased have been sentenced to undergo rigorous imprisonment for life besides pay a fine of ₹10,000/- each and further imprisonment of one year in default for the offence punishable under Section 302 IPC. Parminder Kumar, husband of the deceased has been sentenced to undergo rigorous imprisonment for life besides pay a fine of ₹10,000/- and further imprisonment of one year in default for the offence punishable under Section 302/120B IPC. All the accused have been sentenced to undergo rigorous

imprisonment for life besides pay a fine of ₹10,000/- each for the offence punishable under Section 120-B IPC with all sentences to run concurrently.

FIR No. 86 dated 19.05.2008 (Ex.PK) was registered under Sections 307, 498A, 34 IPC at Police Station Dhuri on the statement of Kiranjit Kaur, who was admitted in Rajindera Hospital, Patiala with burn injuries. SI Harminder Singh on receipt of information reached Rajindera Hospital, Patiala on 18.05.2008 but it transpired that Kiranjit Kaur had been shifted to PGI, Chandigarh. SI Harminder Singh proceeded to PGI, Chandigarh and after reaching PGI, Chandigarh he obtained fitness certificate of Kiranjit Kaur. On realizing the precarious medical condition of Kiranjit Kaur, Chief Judicial Magistrate, Chandigarh was approached who directed Balwant Singh, Judicial Magistrate First Class, Chandigarh, to visit PGI, Chandigarh and do the needful.

Kiranjit Kaur's statement was recorded by Balwant Singh, Judicial Magistrate First Class, Chandigarh, to the effect that she was married with appellant Parminder Kumar on 14.10.2007. Parminder Kumar told her that he was forcibly married of with her. Adequate and sufficient dowry had been given to Parminder Kumar and other family members but they kept finding fault therewith. A motorcycle was given in dowry but Parminder Kumar wanted to change the same and wanted her parents to pay the difference in the amount. When she refused to ask her parents there was bickering in the house. Parminder Kumar kept nagging her to get out of his house. She

returned to her parental house. After some time, her mother-in-law died of a heart attack but she was blamed for the same. Fifteen days prior to the occurrence, Kiranjit Kaur was brought back to the matrimonial home by Parminder Kumar on intervention of Panchayat. Her parents were to visit her matrimonial home on 20.05.2008. When she rang them up, appellant-Balbir Chand, father-in-law of the deceased, snatched the phone from her. Parminder Kumar while going for his work on 18.05.2008 told his father that the job should be finished on that very day. After Parminder Kumar left for work, Kaka @ Sukhwinder Kumar (appellant No. 3) younger brother of Parminder Kumar and brother-in-law of the deceased, poured kerosene oil on her and Balbir Chand her father-in-law set her ablaze. She raised hue and cry and came running out of the house and fell in the water canal/khal. She kept crying for being taken to the hospital but Balbir Chand her father-in-law told her to wait for her parents and said that they would not remove her to the hospital till their arrival. Balbir Chand rang up at her parental home and two hours thereafter her bother Amrik Pal and uncle Sewak Ram came there and took her to Dhuri from where she was brought to Rajindera Hospital, Patiala and finally to PGI, Chandigarh. Her in-laws accompanied her up to Patiala but not to PGI, Chandigarh. Said statement of Kiranjit Kaur was also recorded by SI Harminder Singh and forwarded to Police Station Dhuri where the above said FIR was registered under Sections 307, 498A, 34 IPC. Statement recorded by Balwant Singh, Judicial Magistrate First Class, Chandigarh bears her right thumb

impression.

Kiranjit Kaur succumbed to her injuries on 24.05.2008 and offence punishable under Section 302 IPC was added.

Dr. Sukhraj Singh Gill, PW2, Medical Officer at Rajindera Hospital, Patiala, who had attended Kiranjit Kaur, disclosed that she had been brought to the hospital at 6.50 p.m. on 18.05.2008 by Amrik Pal (PW4). She was conscious at that time and smell of kerosene oil was present, burns were noticed on right upper limb, front and back, left upper limb, on frontal aspect, discrete burn over neck covering the right side of neck, partial burns over chest with normal intervening region, superficial burn injuries on back covering thorax and lower abdomen, burn injuries over right thigh, front and back both and upper third of left thigh and burn injuries over face. These injuries were suffered by her within 12 hours from medico legal examination. Dr. Sukhraj Singh Gill, PW2, did not prepare a regular medico legal report but had noted these injuries in the police information register. Copy thereof is Ex. PW2/A. He had informed the police vide Ex. PW2/B. He prepared formal medico legal report on 19.05.2008 Ex. PW2/C on police request.

As per Post Mortem Report (Ex. PA) cause of death of Kiranjit Kaur was septicemia due to thermal burns which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable time of 7 days had elapsed between receipt of injury and death and Kiranjit Kaur had died within 24 hours of her post mortem. Post mortem was conducted by Board of three doctors

– Dr. Arvinder Joshi, Dr. Neeru Batra and Dr. Sanjay Singla (PW1).

On completion of investigation, challan/final report under Section 173 Cr.P.C. was submitted and the case was committed on 18.09.2008. Accused were initially charged for the offences punishable under Section 302 read with Section 34 IPC as well as Section 498A IPC. Charge was altered on 03.06.2011 in terms of Section 216 Cr.P.C. Appellant - Parminder Kumar was charged for the offence punishable under Section 302 IPC read with Section 120B IPC. Appellants - Balbir Chand and Sukhwinder Kumar were charged for the offence punishable under Sections 302 IPC. All of them were charged for the offence punishable under Section 120B IPC. All the appellants pleaded innocence and claimed trial.

Prosecution examined as many as 13 witnesses to prove its case. All the accused in their statements under Section 313 Cr.P.C. denied incriminating evidence/circumstances appearing against them while pleading innocence and false implication. Three witnesses were examined in their defence.

Learned trial Court on considering the facts and circumstances and the evidence on record convicted and sentenced the appellants as mentioned above. Hence aggrieved, appellants have preferred the present appeal.

Learned counsel for the appellants submits that the statement of the deceased Kiranjit Kaur cannot be relied upon for convicting the accused in the present case. It is submitted that as far as the appellant - Parminder Kumar, husband of the deceased is

concerned, only allegation against him is that he did not like the deceased. He was not even present at the time of the alleged occurrence. There is no evidence to prove his complicity in the commission of the offence, if any. It is further urged that demand of dowry soon before the death has not been proved on record and furthermore it is admitted by the deceased herself that her in-laws had accompanied her to the hospital at Patiala. Therefore, it is quite possible that she might have committed suicide or caught fire while working in the kitchen on the stove. It is also urged that the entire prosecution case rests upon two dying declarations - one recorded by the Judicial Magistrate and the other by the Investigating Officer. Both are exact reproductions of each other. There was no necessity of the investigating officer to have recorded the statement additionally. Veracity of these dying declarations is suspect. Furthermore, condition of the deceased was such that she could not have got her statement recorded either before the Judicial Magistrate First Class or the Investigating Officer. It is vehemently argued that the prosecution has failed to prove its case beyond reasonable doubt and the appellants have been convicted and sentenced on the basis of conjectures, presumptions and surmises. Therefore, they deserve to be acquitted of the charges against them.

Learned counsel for the State while refuting the said arguments submits that the evidence on record clearly points to the guilt of the accused, who have been rightly convicted and sentenced by the learned trial Court. It is, thus, prayed that the impugned

judgment and order be upheld.

We have heard learned counsel for the parties and gone through the record with their assistance.

It is an admitted fact that Kiranjit Kaur was married with the appellant - Parminder Kumar on 14.10.2007. She has clearly stated in her statement recorded by the Judicial Magistrate as well as Investigating Officer that her in-laws were not happy with the dowry articles given at the time of her marriage. Furthermore, her husband was additionally unhappy with marriage as he professed to have been forced into the marriage. Deceased was also blamed for the death of her mother-in-law, who had passed away due to a heart attack. It is not denied that deceased had been brought back to her matrimonial home only about 10 days prior to the alleged occurrence after intervention of a Panchayat.

Kiranjit Kaur has clearly stated that her husband before going for work on 18.05.2008 had told his father that the job should be done on that day itself. In execution of their plan, brother-in-law of the deceased, Sukhwinder Singh @ Kaka, poured kerosene oil upon her and her father-in-law Balbir Chand set her ablaze. She raised hue and cry, fell in water canal/khal outside the house. Callousness of the accused is further revealed by not taking her to the hospital immediately but saying that she should await the arrival of her parents. It is only on arrival of her brother Amrik Pal and uncle Sewak Ram that she was taken to the hospital at Dhuri, thereafter referred to Rajindera Hospital, Patiala and then to PGI, Chandigarh where

she ultimately succumbed to her injuries on 24.05.2008. In case, there had been any truth in defence version, as urged by learned counsel for the appellants that she might have either committed suicide or accidentally caught fire while working in the kitchen, she would in all probability have been rushed to the hospital immediately by her in-laws. There was no question of waiting for nearly two hours for her relatives to first arrive and then proceed to the hospital. Earlier strained relations cannot be a justification or explanation for this abnormal and cruel conduct on the part of the appellants, as is sought to be urged by the learned counsel for the appellants. Therefore, their accompanying the deceased till Rajindera Hospital, Patiala does not in any manner improve their case.

Though an attempt has been made to project as if she caught fire while preparing tea on kerosene oil stove while referring to the testimony of Kulwant Rai, DW1, no such stand of the deceased having committed suicide or having accidentally caught fire while working in the kitchen has been taken by the accused in their statement under Section 313 Cr.P.C. Kulwant Rai, DW1, states that the deceased caught fire while preparing tea on a kerosene oil stove. He took her to a tank of water and on the fire being extinguished he himself came back into the house on which Balbir Chand telephonically informed at her parental village. It is noted that this witness has admitted that Kiranjit Kaur was taken to hospital only on arrival of her relatives. Surprisingly, it is mentioned that the beds and sofa sets were lying in the room in which she caught fire. No benefit

can be derived by the appellants from the testimony of this witness.

Submission of learned counsel for the appellants that dying declaration cannot be relied upon to convict the accused is rejected being untenable. Balwant Singh, PW12, Judicial Magistrate First Class has specifically deposed that he was posted as Judicial Magistrate First Class (Duty), Chandigarh on 19.05.2008. He visited PGI, Chandigarh where Kiranjit Kaur was hospitalized. Attending doctor declared her fit to make a statement vide Ex. PS/A on his inquiry (Ex. PS). He introduced himself to Kiranjit Kaur and recorded her statement (Ex.PT). This statement carried right thumb impression of Kiranjit Kaur. It was recorded in the presence of attending doctor. Opinion of the attending doctor was again asked for vide Ex. PU and the attending doctor declared Kiranjit Kaur to have remained fit through out the period her statement was recorded vide Ex. PU/A. No relation of Kiranjit Kaur was noticed by him near her during the time her statement was recorded. There is no reason to disbelieve the testimony of the judicial officer who had no ill-will against the accused.

Dr. Mahesh Kumar, PW13, Senior Resident Department of General Surgery PGI, Chandigarh has testified having given the opinion regarding fitness of Kiranjit Kaur at the time of recording of her statement. Recording of another statement (Ex.PJ) by the investigating officer by itself does not impinge upon the credibility of the dying declaration. Both the statements are consistent with each other and there is no discrepancy therein. This cannot be a ground

for disbelieving the dying declaration.

Paramjit Kaur, PW3, mother of the deceased as well as Amrik Pal, PW4, brother of the deceased clearly corroborate the facts as mentioned in the dying declaration. Both of them have clearly stated that after marriage of Kiranjit Kaur with accused Parminder Kumar, her in-laws found fault with the dowry articles given. Parminder Kumar declared that he did not like her as she had been selected by her brother-in-law. He wanted to change the motorcycle given at the time of marriage and wished that the difference in the amount be paid by Kiranjit Kaur's parental side. Kiranjit Kaur was blamed for the death of her mother-in-law, who passed away due to heart attack. At the time of Bhog ceremony of Kiranjit Kaur's mother-in-law, they all abused her and refused to keep Kiranjit Kaur in the matrimonial home. About 10-15 days prior to the occurrence, Kiranjit Kaur was left at her matrimonial home on the intervention of the Panchayat of which Parminder Kumar, Balbir Chand and Sukhwinder Kumar were a part.

Amar Nath, PW8, who had acted as go between in the marriage of Kiranjit Kaur with the accused Parminder Kumar has also corroborated the facts.

Argument of learned counsel for the appellants that there is no evidence to prove the commission of offence punishable under Sections 302 and 120 B IPC qua appellant Parminder Kumar is rejected being devoid of any merit. As narrated above, there is overwhelming, clear and cogent evidence on record to show the

complicity of Parminder Kumar in the commission of offence. Deceased herself has revealed the involvement of her husband in the commission of the offence in her dying declaration. To say that Parminder Kumar should be absolved as he never played any active role in setting Kiranjit Kaur ablaze is untenable and unjustified.

Keeping in view the facts and circumstances of the case as discussed above, all the appellants have been rightly convicted and sentenced vide the impugned judgment and order dated 06.06.2011.

Consequently, we find no merit in this appeal, which is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 18, 2015
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