

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:14.1.2015

CRA-S-619-SB of 2003

Gurbachan Singh

---Appellant

versus

State of Punjab

---Respondents

CRR-1529 of 2003

Lakhbir Singh

---Petitioner

versus

Gurbachan Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Sant Pal Singh Sidhu, Advocate
for the appellant**

**Mr. S.C.Chhabra, Advocate
for the revision petitioner**

**Mr. Sandeep Kumar Bansal, AAG, Punjab
for the respondent-State**

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

REKHA MITTAL, J.

By way of this order, I shall dispose of CRA-S-619-SB of 2013
titled “Gurbachan Singh vs. State of Punjab” and CRR No.1539 of 2003
titled “Lakhbir Singh vs. Gurbachan Singh and another”, as these have

emerged out of judgment of conviction and order of sentence dated 21.3.2003 passed by the Additional Sessions Judge, Fast Track Court, Ferozepur whereby Gurcharan Singh has been convicted and sentenced for commission of offence punishable under Section 306 of the Indian Penal Code (in short "IPC") pertaining to FIR No. 253 dated 4.7.2000 registered at Police Station, Sadar Ferozepur, extracted hereinbelow:-

“To undergo rigorous imprisonment for a period of six years and to pay a fine of Rs. 2000/-. In default of payment of fine, to further undergo rigorous imprisonment for six months.”

The facts noticed from the judgment of the trial court are that Harjinder Kaur (deceased) was resident of village Sher Khan. Gurbachan Singh accused/appellant was practicing as a doctor in a shop opposite to the house of Harjinder Kaur. Harjinder Kaur had been getting treatment of her child namely Rabir Singh from the accused long before 1.7.2000. One day she became sick and went to the accused for medicine. He told her to get an injection by addressing her as “Bharjai”. The accused administered intoxicating injection to her and later got her photograph by making her to sit on her knees and said that if she raised any objection, he would show the photograph to the entire village. He started black mailing her and also quarreled with father-in-law and mother-in-law of Harjinder Kaur. Harjinder Kaur requested him not to black mail her and return the photograph. When he used to pass by the side of house of Harjinder Kaur, he was joking and asking her to have sexual intercourse with him. He was further asking her to meet at the places wherever she was called by him.

On 1.7.2000, she was preparing tea in her house. Gurbachan Singh was joking from opposite side at about 2.00 p.m. She took out kerosene oil in a pot from a big plastic cane, poured kerosene oil on her body and set herself ablaze. Ruldu Ram, her father-in-law and Surinder Kaur, sister-in-law tried to extinguish fire and received burn injuries on their hands. Harjinder Kaur committed suicide due to instigation and abetment at the instance of the accused.

Harjinder Kaur was shifted to Forensic Newton Hospital, Ferozepur Cantt. Intimation was sent to the police by the concerned doctor. The injured was opined to be unfit to make statement from 1.7.2000 onwards till she was declared fit on 4.7.2000. Earlier to that, Ruldu Ram and Harjinder Kaur made statements to ASI Harinder Singh that she accidentally caught fire while preparing tea in the kitchen on the basis whereof, report was lodged in the police station on 1.7.2000. On 4.7.2000, when Harjinder Kaur was declared fit to make statement, on request made by the investigating officer to the Sub Divisional Magistrate, Sh. Narinder Kumar, Naib Tehsildar-cum-Executive Magistrate was deputed and he recorded statement of the victim after obtaining opinion of the doctor regarding fitness of the injured. Thereafter, ASI Harinder Singh recorded statement Ex. P 31 of Harjinder Kaur on 4.7.2000 on the basis whereof, formal FIR was registered.

Site plan of the place of occurrence was prepared. One stove, one bottle of kerosene oil, one water pot (steel), one plastic cane containing kerosene oil and one match box were taken taken into possession from the place of occurrence, vide recovery memo Ex. P17. One half burnt piece of

shirt of the injured was also taken into possession vide seizure memo Ex. P18. Harjinder Kaur succumbed to burn injuries on 22.7.2000. Inquest report Ex. P19 was prepared and post mortem examination on dead body was got conducted. On completion of necessary investigation formalities, challan was presented in the Court of Illaqa Magistrate for commencement of trial.

After due compliance with the provisions of Section 207 of the Code of Criminal Procedure (in short 'Cr.P.C.'), the case was committed to the Court of Sessions as offence under Section 306 IPC is exclusively triable by the said court.

The accused was charged for committing offence punishable under Section 306 IPC to which he pleaded not guilty and claimed trial.

To establish the charge, the prosecution examined as many as 09 witnesses namely, Dr. Vikas Azad PW1, Dr. Mahesh Chander Markan PW2, Lakhbir Singh PW3, Jarnail Singh PW4, Dr. Narinder Kumar PW5, Constable Jaljit Singh PW6, ASI Mukhtiar Singh PW7, ASI Sukhminder Singh PW8 and SI Harinder Singh PW9.

Statement of the accused under Section 313 Cr.P.C. was recorded through which he denied incriminating circumstances appearing in evidence against him and pleaded his innocence and false implication due to fight between him and father-in-law of the deceased namely Ruldu Ram. It was pleaded that the deceased accidentally caught fire while preparing tea in kitchen. The dying declaration was forged and fabricated to indict him in the crime. However, he examined Dr.B.R.Arora, Civil Hospital, Ferozepur DW1 in defence.

The learned trial court bestowed its consideration to the evidence on record and rival submissions made by respective counsels for the parties and eventually concluded that the prosecution has successfully proved culpability of the accused for the charged offence beyond shadow of reasonable doubt and accordingly he was convicted and sentenced, noticed hereinbefore.

Feeling aggrieved by the verdict of the learned trial court, the appeal was preferred by the convict in the year 2003 which has now matured for final hearing.

Counsel for the appellant would submit that statement of the victim, taken as dying declaration (Ex, P11), has been made the basis for holding the accused guilty of committing the offence. To assail authenticity and evidentiary value of statement Ex. P11, counsel has made submissions on few counts:-

- (1)The statement has not been recorded in question-answer form.
- (2)The statement was recorded on 4.7.2000, three days after the occurrence and is the result of tutoring by family members of the deceased.
- (3)Statement made by Ruldu Ram (father -in-law) and Surinder Kaur (sister-in-law) that the deceased caught fire accidentally creates serious doubt in the version of the deceased.
- (4)Harjinder Kaur died 18 days after the alleged statement, therefore, the statement dated 4.7.2000 cannot be treated as a dying declaration.

Counsel has submitted that as per allegations against the accused, he clicked a photograph by making the deceased to sit on his knees and had been exploiting her by extending threats to malign her reputation on the basis of said photograph. During investigation, no such photograph has been recovered nor identity of the person who clicked that photograph has been established. It is argued that the story that the accused had been harassing the deceased on the pretext of making that photograph public has no foundation and liable to be rejected.

Counsel representing the State and counsel for the revision petitioner (Lakhbir Singh, husband of the deceased) have supported the judgment passed by the trial court with the submissions that the court has appreciated evidence in right perspective and, therefore, there is no reason to discard the statement made by the deceased. It is further argued that as the deceased did not disclose to her family about her exploitation by the accused and kept her agony a guarded secret, Ruldu Ram and Surinder Kaur were under a bona fide belief that the deceased caught accidental fire but the true story was revealed by the victim when she became fit to make statement on 4.7.2000. No such fact has been elicited during cross examination of the witnesses that family members of the deceased had an occasion to talk to her or tutor her for imputing allegations against the accused.

I have heard counsel for the parties and perused the records.

Before advertng to the rival submissions made by counsel for the parties, it is necessary to recount legal position in regard to the statement made by a victim qua the circumstances leading to her death (in common

parlance known as dying declaration).

There is no gainsaying that statement made by the victim as to cause of death can become basis for conviction even if the said statement is not made on oath and the accused does not get opportunity to cross examine the maker of the statement. The principle on which the dying declaration is admitted in evidence, is based on the legal maxim “nemo moriturus proesumitur mentiri- a man will not meet his maker with a lie in his mouth”. It is for this reason that the requirements of oath and cross examination are dispensed with.

Counsel for the appellant has sought to assail correctness and authenticity of the statement purported to be made by the deceased on 4.7.2000. There is no requirement in law that the statement should be in the question-answer form. The statement was recorded by the Naib Tehsildar-cum- Executive Magistrate, deputed for the purpose by the Sub Divisional Magistrate. Narinder Kumar, Naib Tehsildar, Dharamkot was examined by the prosecution. Statement of the deceased was marked as Ex. P11. During his cross examination, no explanation was sought as to why he did not record the statement in question-answer form or it was recorded in narrative form. Possibility is not ruled out that Narinder Kumar may not be aware that statement in question-answer form may be preferred over the statement in narrative form. However, it is pertinent to mention that Narinder Kumar was cross examined at length but nothing tangible and fruitful has been elicited during his cross examination which can be used by the accused to his advantage. This apart, Narinder Kumar recorded

statement of the deceased in his official capacity and there is nothing on record to suggest that he had any reason to depose falsely against the accused.

The occurrence in question took place on 1.7.2000 but the statement of the deceased was recorded on 4.7.2000. It has been proved on record by Dr. Vikas Azad, Medical Officer, Nowton Mission Hospital, Ferozepur treating doctor of the victim that Harjinder Kaur was declared unfit to make statement on the applications made by ASI Harinder Singh to seek opinion from 1.7.2000 to 3.7.2000 in view of documents exhibited in his statement. It has further been established that the injured was declared fit to make statement on 4.7.2000, vide endorsement Ex P9 on police request Ex. P8 and on that date, statement of the deceased was recorded by the Naib Tehsildar after seeking opinion of the doctor regarding her fitness. Under these circumstances, failure to record version of the deceased till 4.7.2000 is justified.

The appellant has tried to draw mileage from the statements got recorded by Ruldu Ram and Surinder Kaur on 1.7.2000 by contending that the deceased caught accidental fire but it has been projected as suicide. The statements made by aforesaid persons lost their relevance in the context of statement made by the victim. The various grounds on which the appellant has attacked the dying declaration of the deceased are devoid of merit in view of discussion made hereinabove, and, therefore, untenable. The version put forth by the victim that she poured kerosene oil on her body and set herself ablaze gets substantiated from medical evidence. Dr. Vikas Azad (PW) was the treating doctor of the victim. A relevant extract from his

testimony in this regard is quoted thus:-

“Kind of weapon was flame burns with kerosene oil.”

During course of examination, there is no challenge to the aforesaid medical opinion/observation. In this view of the matter, I am of the considered opinion that the statement Ex. P11 (dying declaration) is worthy of credence and reliance. Once the statement of the victim invites primacy over the statement made by aforesaid persons, the appellant cannot use these statements to his advantage. In addition, we cannot rule out the possibility that they made such statements with an intent to pre-empt any action by the police against in laws family members of the victim. This apart, as they were not aware of turmoil created due to exploitation of the victim at the behest of accused, they might not have genuinely believed that the deceased intentionally set herself ablaze. Analysed from any angle, the statements made by Ruldu Ram and Surinder Kaur can not run counter to the statement made by the victim narrating her tale of woe and explaining the circumstances under which she set herself on fire.

The occurrence in question took place on 1.7.2000 and the victim was admitted in the hospital on that day. Her statement was recorded on 4.7.2000 but she died on 22.7.2000. It has been proved that she sustained burn injuries to the extent of 63%. Dr. Mahesh Chander Markan conducted autopsy on dead body of the victim. During cross examination, he deposed that 63% burn injuries are fatal to a person. Keeping in view condition of the victim who sustained serious burn injuries it is difficult to believe that she made statement on 4.7.2000 not knowing that she was going to die soon. In this view of the matter, I do not find merit in the

contention that statement Ex. P11 cannot be treated as a dying declaration as the deceased remained alive for a period of 17-18 days after recording of the statement.

The deceased was married to Lakhbir Singh 11-12 years prior to the occurrence. Out of their wedlock, three sons and one daughter was born and it is understandable that the children would be very small and the youngest child may be 2-3 years old. There is no material on record that the deceased had any differences with her husband or his family members. Similarly, there is nothing on record to suggest that she was suffering from any medical condition. It is difficult to believe that a mother would like to put her life to an end leaving her four minor children at the mercy of others if she had no serious problem. In view of the facts elicited during examination of the deceased on 4.7.2000, there is no escape from conclusion that the deceased committed suicide due to persistent harassment at the hands of the accused who had been black mailing her under threat to expose her honour and dignity by showing her photograph to public including her family members.

Counsel for the appellant has submitted that neither the photograph has been recovered during investigation nor identity of the person who clicked the photograph has been established. The photograph was stated to be in possession of the accused. The accused can not be directed to produce that photograph, an evidence to be used against him in view of provisions of Section 91 of the Evidence Act. Similarly, the person who clicked that photograph was also known to the accused. If the investigating officer during interrogation of the accused was unable to

divulge this information from him, the accused cannot derive any benefit thereof.

No other point has been raised.

This brings the court to the sentence awarded by the trial court. Counsel for the appellant submits that as the accused has suffered trauma due to pendency of criminal proceedings for the past about 15 years and has undergone actual custody for a period of about 03 years, substantive sentence awarded by the trial court may be reduced to the period already undergone.

On the contrary, counsel for the petitioner has submitted that substantive sentence is liable to be enhanced as the accused exploited a woman, mother of four minor children and compelled her to put her life at stake by setting herself on fire. It is further submitted that compensation may be awarded to the victims i.e. husband and children of the deceased who have suffered grave loss due to untimely death of Harjinder Kaur.

There are serious allegations against the accused that he had been exploiting the deceased by taking advantage of her reposing confidence in him for getting medical treatment. It is not very clear as to since when the accused had been exploiting, threatening and putting pressure upon the deceased but it can safely be inferred that it must be quite some time prior to the occurrence. Misconduct on part of the accused compelled a young victim to eliminate herself leaving her minor children at the mercy of others. Keeping in view gravity of allegations, I do not think it to be a fit case wherein the appellant deserves any leniency for reduction of sentence. At the same time, I do not find any reason to enhance the

sentence as the accused has suffered trauma of criminal proceedings for the past about 15 years.

For the reasons aforesaid, the appeal and revision petition are hereby dismissed. The judgment of conviction and order of sentence are affirmed. The appellant, if on bail, be taken in custody to suffer the remaining sentence.

(REKHA MITTAL)
JUDGE

14.1.2015
PARAMJIT