IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-28647-2013 (O&M)
Date of decision: 9.7.2015

Balwinder Singh ...Petitioner

Versus

State of Punjab & others ...Respondent

CORAM: **HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. R.S. Bains, Amicus Curiae.
Mr. Maninder Arora, Advocate for the petitioner.
Mr. Shilesh Gupta, Addl. Advocate General, Punjab.

Rajan Gupta, J. (oral)

On the intervening night of 21/22.7.2013 an incident occurred, in which Balbir Kaur was set on fire by pouring kerosene oil. Her husband (petitioner herein) took her to Civil Hospital, Tarn Taran. She was thereafter shifted to Amandeep Hospital, Amritsar where she succumbed to her injuries on 25.7.2013. However, while in Amandeep Hospital her statement was recorded by the Duty Magistrate, which is reproduced below:-

> "My name is Balbir Kaur and I am a resident of village Malia. My marriage took place 20-22 years ago and I am childless. My brother-in-law (Devar) and sister-in-law (Devrani) named Sukhwinder Singh and Surjit Kaur used to taunt me, because of reason that I am issueless. We have an agricultural land which is in the name of my mother-in-law, as my father-in-law is dead. My

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> brother-in-law and sister-in-law is not willing to give us the share in the property due to the reason that I have no children. Yesterday around 12 midnight, my husband Balwinder Singh was watching TV inside the room. In the meantime my Devar, Devrani and their son Manmohan Singh alias Sonu caught hold of me from my arms. Devrani Surjit Kaur put the kerosene oil on me and their son Manmohan Singh alias Sonu ran away after lightning fire. When I raised the hue-cry, then my husband came running to me and tried to extinguish the fire. Thereafter, I became unconscious. My husband took me to Civil Hospital, Tarn Taran from where I was referred to Amandeep Hospital, Amritsar. My Devar Sukhwinder Singh, Devrani Surjit Kaur and their son Manmohan Singh alias Sonu are responsible for my this condition. They set me on fire in order to kill me."

On the basis of the aforesaid statement, FIR No.171 dated 22.7.2013 was registered under section 307/34 IPC. This FIR was later converted to Section 302 IPC as Balbir Kaur expired. Despite registration of FIR and no interim protection to any of the accused, investigating agency never sought to arrest them. On the other hand, the police officials, who investigated the matter, prepared a cancellation report. The Superintendent of Police, Head Quarter Tarn Taran namely, Dilbagh Singh also conducted an enquiry and came to the conclusion that deceased used to remain physically sick and under mental tension. She may, therefore, have set herself ablaze. Before final report could be presented before the competent court, Inspector General of Police, Border Zone, Amritsar sought legal opinion and came to the conclusion that matter was required to be submitted for judicial verdict. Thereafter, further investigation was undertaken by the investigating agency. A

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status report has been produced in sealed cover, which has been opened today. Learned State counsel has referred to same and submits that conclusion of the investigating agency is almost the same as earlier. On a query being put to him regarding the clear cut statement made by the deceased in the dying declaration, he submits that two of the accused who are government servants and were found to be attending duty at their respective offices. The third accused namely, Surjit Kaur was found to be visiting a relative.

Mr. Bains, learned Amicus Curiae has pointed out that the police officials as well as Superintendent of Police (D) Head Quarter, Tarn Taran had arrived at their conclusions without assigning any cogent reason. Police report is based on a lop-sided enquiry. According to him, there is a serious doubt about the whole investigative procedure. The occurrence took place at 12.00 O'clock on the intervening night of 21/22.7.2013. Accused could not have been attending duty at that time. Besides, there is no forensic evidence on record to show that deceased could sustain 96% burns by pouring the kerosene on herself. Recovery of a plastic can would prove that she was set on fire by other persons.

Apart from the submissions made above, it is clear that the investigating agency not only conducted investigation but embarked upon a exercise to sift the evidence, which role had to be left to the trial court. It was not upto the police officials whether of the rank of Superintendent of Police or above, to accept alibis set up by the accused and give a clean chit to them. It is pertinent to mention that during the pendency of this petition, husband of the deceased (petitioner) sought to withdraw the

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petition. This court, thus, had to request Mr. R.S. Bains, Advocate to assist as amicus curiae after examining the reports and record. Needless to observe, investigation has not only been shoddy but serious doubts can be raised in the manner it has been conducted. It is borne on record that there has been a consistent effort on the part of the police to avoid the case being sent up for trial despite the dying declaration of prosecutrix recorded by a Magistrate.

Admittedly, till now final report under section 173 Cr.P.C. has not been submitted and none of the accused has been subjected to custodial interrogation though incident relates to 21/22.7.2013. Under the circumstances, this court is left with no option but to hand over the investigation of the case to Central Bureau of Investigation. State of Punjab shall forward the entire record of the case to the office of Central Bureau of Investigation, Sector 30, Chandigarh within two weeks from today. The CBI shall thereafter conduct the investigation expeditiously and complete the same within a period of four months. A status report be, however, submitted within one month hereafter.

Allowed in these terms.

(RAJAN GUPTA)
JUDGE

9.7.2015
'Rajpal'

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