

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal D-147-DB of 2010

Date of Decision : September 05, 2016

Satpal

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Balkar Singh, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

Instant appeal has been filed by Satpal son of Tilak Raj, resident of House No. 204, Rampura Colony, Yamuna Nagar for challenging the judgment and order dated 3.11.2009 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri.

Vide impugned judgment and order, the learned trial Court convicted the appellant under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for two years.

According to the prosecution, Puja deceased was married to the appellant about three years prior to the incident. On 20.3.2008 at about noon time, the deceased was set ablaze by the appellant after pouring kerosene on her. She was taken to R.K. Hospital, Yamuna Nagar but the doctor referred her to some other hospital for better treatment. She was then taken by the appellant to J.P. Hospital, Yamuna Nagar and got admitted there. On receipt of information on telephone from J.P. Hospital, Yamuna Nagar that Puja was admitted in the hospital due to burn injuries, ASI Ishwar Singh, Police Post Rampura reached the said hospital and after collecting ruqa Ex. PN, submitted application Ex. PO to the doctor seeking opinion about the fitness of the deceased to give statement. Dr. Amit Goel gave his opinion Ex. PO/1 that she had 90% burns and fit to make statement. ASI Ishwar Singh then submitted application Ex. PS to Ms. Kumud Gugnani, Duty Magistrate at her residence requesting her to record the statement of the deceased. Pursuant thereto, the Magistrate reached J.P. Hospital and recorded statement Ex. PL of the deceased which is re-produced here-below:-

“Statement of Smt. Pooja w/o Sat Pal, age 26 years r/o Rampura Colony, H.No.204, Yamuna Nagar. On S.A.

Q. What happened with you. How you received

burns?

Ans. My jethani Anjali instigates the family members. I got married three years back. My husband Satpal acts on the directions of my jethani. She instigates him and for the last three years, I am getting beaten. He says that I should go to the house of my mother. I have one son. I am 8th pass. My father suffered heart attack. My mother-in-law started saying that it would be better if my father died. I asked her not to say like that. When my husband returned, I apprised him about all the facts and started crying. He slapped me. On this, I felt enraged and stated that I did not want to live with him. He asked me as to where I would go. I replied that I would end my life. He started saying that he would himself kill me. Saying so, he poured kerosene upon me and set me on fire.

Q. Where did the episode with your husband take place?

Ans. We have two rooms. I was in the other room. Kerosene was lying in the other room.

Q. Who are the members of your in-laws' family?

Ans. I have mother-in-law, who treats me badly. Jeth and Jethani are living separately but they also harass me. My husband does what my Jethani tells him to do. He treats me with cruelty.

Q. Do you want to say anything else?

Ans. I have got nothing more to say.

RO&AC

Sd/ (in English)
20/3/2008"

After recording the aforementioned statement, the Duty Magistrate gave her certificate Ex. PQ/1 that the statement contained true account of the version rendered by the victim which was read over and explained to her. Further, every one else except the attending doctor was asked to go out and the patient remained fit throughout. The statement had been voluntarily made and signed by the patient. The doctor also certified about the patient remaining fit throughout.

Further case of the prosecution is that ASI Ishwar Singh obtained copy of the statement of the victim by submitting application Ex. PS/1 to the Duty Magistrate so that further proceedings may be done. After collecting the copy of the statement, ASI Ishwar Singh forwarded it to the Police Station through HC Balraj Singh for registration of the case. Accordingly, FIR Ex. PL/1 was registered at Police Station City, Yamuna Nagar on 20.3.2008 at 7.30 p.m. by ASI Lal Singh under Sections 307/34 IPC against the appellant, his brother Mittar Sen, brother's wife Anjali and mother Kamlesh

It is also the prosecution case that Puja remained under treatment at J.P. Hospital Yamuna Nagar but could not survive for long and ultimately on 27.3.2008 at 8.00 p.m. she was declared dead. Accordingly, offence under Section 302 IPC was added. During the investigation of the case, ASI Ishwar Singh

went to the place of occurrence and inspected the same. He prepared rough site-plan Ex. PT and got the place of occurrence photographed. Near the door of the house, he took into possession salwar Ex. P1, shirt Ex. P2 and bra Ex. P3. He also took into possession one towel Ex. P4; one torn piece of cloth Ex. P5; one plastic can Ex. P6 of 5 litre containing 1 litre of kerosene; two jute bags Exs. P6 and P7; and match box Ex. P8 containing 34 match sticks. Statements of the witnesses were recorded. The case property was then deposited with ASI Jai Pal in Police Station City, Yamuna Nagar. He also recorded the statement of Constable Naresh Kumar, who had delivered the special report to the concerned authorities. On 24.3.2008, the appellant was arrested from Fountain Chowk, Yamuna Nagar. His brother Mittar Sen was arrested on 8.4.2008 whereas his mother and brother's wife were arrested on 23.4.2008. Offence under Section 120-B IPC was also added on 18.4.2008.

Upon completion of the investigation, the police presented the final report under Section 173 Cr.P.C.

The case was, thereafter, committed to the Court of Sessions. Vide order dated 12.8.2008, the trial Court found prima facie case only against the appellant and material being not there against other three accused, namely, Mittar Sen, Anjali and Kamlesh Rani, discharged them. The appellant was then

charged for committing the offence under Section 302 IPC to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined sixteen witnesses.

PW1 Constable Narinder Kumar testified that on 20.3.2008, he had delivered the special report to the Ilqa Magistrate and senior police officers.

PW2 Constable Ram Kumar proved the scaled site-plan Ex. PA, which he had prepared on 31.3.2008 at the instance of Ankit, brother of the deceased.

PW3 ASI Jai Singh and PW4 EHC Prem Singh tendered in evidence their respective affidavits Exs. PB and PC.

PW5 Versha Rani, mother of the deceased testified that her daughter was married with the appellant on 21.5.2005. The appellant and his brother Mittar Sen were jointly running a shop of repairing tyres and tubes on Workshop Road, Yamuna Nagar. The appellant was under the influence of his brother Mittar Sen, brother's wife Anjali and mother Kamlesh Rani, who had been harassing her daughter from the beginning. The appellant also used to give beatings to her daughter. Since the appellant was having illicit relations with his sister-in-law Anjali that was why her daughter was turned out by him from his house on 2/3 occasions but after persuading by the Panchayat, relatives

and respectables, they have been settling her daughter at her in-laws' house. The appellant used to ask her daughter to leave his house and go to her parental house. She had come to know all those facts from her daughter when she would visit her house and on telephone also. Due to the problems faced by Puja, her father had suffered heart attack. Puja had given birth to a male child, namely, Manthan. She also deposed that on 20.3.2008 at about 3.00 p.m. she received a telephone from Rampura and was informed that her daughter had been burnt and was being taken to R.K. Hospital, Yamuna Nagar where she alongwith her husband, son, brothers and other relatives as well as neighbours reached there. The doctor there refused to admit Puja and advised to take her to some hospital for better treatment. Accordingly, she was taken to J.P. Hospital by the appellant and she alongwith her family members also accompanied him. The doctor of J.P. Hospital admitted Puja there. However, the doctor had told them that she had about 90% burns. The statement of Puja was recorded by the Magistrate. Puja had also told her and others that on that day her mother-in-law was stating that it would be better if her father died. When Puja told this fact to her husband, he slapped her. She became angry and stated that she would not live with him and would rather die. The appellant stated that she need not take the trouble of doing so as he would

himself kill her. He poured kerosene on her and set her on fire. This he did in connivance with his mother Kamlesh Rani, brother Mittar Sen and sister-in-law Anjali. Puja succumbed to her injuries on 27.3.2008. All the accused had run away from the hospital when Puja had stated the above mentioned facts to her and when Puja had made statement before the Magistrate in the hospital.

PW6 Kashmiri Lal, maternal uncle of deceased-Puja also deposed on the same and similar lines as his sister Versha Rani.

PW7 Inspector Pyara Singh testified about preparing report under Section 173 Cr.P.C. on completion of investigation of the case.

PW8 ASI Jai Kishan testified that on 20.3.2008, he joined the investigation of the case with ASI Ishwar Singh and other police officials and the Investigating Officer took into possession salwar Ex. P1, shirt Ex. P2, bra Ex. P3, towel Ex. P4, piece of cloth Ex. P5, two jute bags Exs. P6 and P7, match box Ex. P8 and can Ex. P9.

PW9 Dr. Manisha Singh, Medical Officer, MLGH, Yamuna Nagar deposed that on 28.3.2008 she conducted post mortem on the dead body of Puja Rani wife of Satpal and observed as follows:-

“The body was 5'-6” in length. No ligature mark was present. Eyes were closed. Mouth was semi open. Rigor mortis was present in all the four limbs. There were superficial to deep burns all over the body except the scalp and some portion of both the feet. The body was approximately 90-95% burnt. Walls, ribs, cartilages, pleuras, larynx and tracheas were healthy. Both the lungs, pericardium and heart were congested. Stomach, small intestine, spleen, liver and kidneys were congested. The abdominal wall, peritoneum and the large intestines were healthy.”

In her opinion, the cause of death was due to massive burns (i.e. more than 90%) leading to septicaemia and resulting into death. The burns were sufficient to cause death in normal course of life.

PW10 EHC Satwinder Singh proved photographs Exs.P10 to P16 and their negatives Exs. P17 to P23.

PW11 SI Raj Kumar testified that on 27.3.2008 after receiving a telephone call from Dr. Amit Goel of J.P. Hospital that Puja, who was declared as a case of burn injuries, had died, made entry Ex. PG in the Roznamcha vide DDR No. 18 and added the offence under Section 302 IPC. He also deposed that after going to J.P. Hospital and collecting ruqa Ex. PH from the doctor and case summary of deceased Puja, he prepared inquest report Ex. PJ of the dead body. The dead body was then taken to

General Hospital, Yamuna Nagar for post mortem for which purpose he submitted application Ex. PE.

PW12 ASI Lal Singh proved the formal FIR Ex. PL/1 which he had recorded on 20.3.2008 after receiving carbon copy of the statement Ex. PL through HC Balraj Singh.

PW13 Dr. Amit Goel, J.P. Hospital, Yamuna Nagar deposed that on 20.3.2008, patient Puja was admitted with alleged history of burns. At the time of admission, she was conscious and oriented and was complaining of burning sensation over body and breathlessness. On examination, the patient was found burnt over whole of body except both feet and scalp and the burns were around 90%. He also deposed that he had given opinion Ex. PO/1 declaring the patient fit to make statement. He further deposed that when the Duty Magistrate visited the hospital and sought opinion regarding the fitness of Puja, he gave opinion Ex. PQ that she was fit to make statement. After the statement had been recorded, he again checked Puja and declared her fit throughout. He proved Ex. PQ/1 in this regard. He further deposed that Puja was declared dead by him on 27.3.2008 at 8.00 p.m.

PW14 ASI Balraj Singh deposed that on 20.3.2008, he joined ASI Ishwar Singh in the investigation of the case. They were present at J.P. Hospital, Yamuna Nagar. The statement of

Puja, who was admitted in the hospital, was got recorded by the Magistrate. Thereafter, they went to the spot and effected various recoveries. He further deposed that when Puja died on 27.3.2008, he alongwith SI Raj Kumar went to J.P. Hospital. Offence under Section 302 IPC was added and special report was handed over to him and he delivered the same to the Ilaqa Magistrate. He also deposed about the arrest of Mittar Sen on 8.4.2008 and of Anjali and Kamlesh on 23.4.2008.

PW15 ASI Ishwar Singh testified about receiving of information at Police Post Rampura and, accordingly, he alongwith HC Jai Kishan and HC Balraj reached the hospital and moved an application Ex. PO before the doctor for obtaining opinion about the fitness of the patient for making statement. On being told by the doctor that Puja was burnt to the extent of 90%, he approached Ms. Kumud Gugnani, Duty Magistrate at Jagadhri and moved application Ex. PS requesting her to record the statement of Puja. The application was allowed and the Duty Magistrate proceeded to J.P. Hospital where she recorded the statement of Puja. He also deposed that after carbon copy of the statement was supplied to him by the Duty Magistrate, he made endorsement Ex. PS/2 on the statement Ex. PL and forwarded the same through HC Balraj Singh to Police Station City, Yamuna Nagar for registration of the case. He also recorded the

statements of the witnesses under Section 161 Cr.P.C. He further deposed about visiting the place of occurrence in the company of Ankit, brother of the deceased; inspecting the place of occurrence; preparing rough site-plan; getting the place of occurrence photographed and effecting various recoveries, as mentioned above. He also testified that he arrested the appellant on 24.3.2008 and added the offence under Section 120-B IPC on 18.4.2008.

PW16 Ms. Kumud Gugnani, who stood posted as Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri on 20.3.2008 deposed regarding going to the hospital on the request Ex. PS of the police; obtaining the opinion of Dr. Amit Goel who made endorsement Ex. PQ/2 declaring the patient to be fit to make statement; and recorded the statement Ex. PQ/3 of Puja, which was in her hand writing. At the foot of the statement, she appended her certificate Ex. PQ/4 that the statement contained true account of the version given by the victim and it had been read over and explained to her and all the persons besides the doctor were sent out. She also proved certificate Ex. PQ/5 of the doctor that the patient remained fit throughout the time she was making statement.

Before closing its evidence, the prosecution tendered report Ex. PU of the FSL.

When examined under Section 313 Cr.P.C., the appellant admitted that he was married with Puja on 21.5.2005. However, according to him, he never harassed her at any point of time. Rather, she was quarrelsome and stubborn type of lady. She had misconception that he had illicit relations with his brother's wife and for that reason she used to pick up quarrel with him. She also used to pressurize him to separate the business from his elder brother but due to non-availability of shop, it was not possible for him. On 20.3.2008 at about 2.00/2.30 p.m., he went to his house for taking lunch. When he started taking the lunch, the deceased asked him about the separation of shop whereupon altercation took place between him and Puja. She slapped her two years' old son without any reason. He also slapped her upon which she became more furious and started using unparliamentary language. He came out from the room leaving the food in the plate. Puja proclaimed in loud voice that she would show by doing what she used to say. She went inside the house and herself poured kerosene on her clothes and set her on fire. He returned and tried to extinguish the fire with the help of gunny bags after making them wet with water and also putting water on her body. Meanwhile, some neighbours came there and helped him in extinguishing the fire. He informed the parents of Puja and took her to R.K. Hospital where the parents

and other relatives of Puja came. The doctor from R.K. Hospital advised to take her to some other hospital. Accordingly, he took her to J.P. Hospital. He also stated that he had deposited Rs.10,000/- in advance in J.P. Hospital at the time of admission of Puja where her parents and relatives were present. Though he remained busy in bringing medicines but the parents and the relatives of Puja remained present in the room of Puja. They were sent out by the Magistrate. They, however, did not allow him to enter the room. He also stated that when the parents of Puja had come at R.K. Hospital, they had asked her in his presence as well as in the presence of driver of the vehicle in which she was taken to hospital as to how she had sustained burn injuries. She had disclosed that she herself poured kerosene on her body and set herself on fire. Later on, she was duly tutored by her parents in J.P. Hospital and, accordingly, she made statement before the Magistrate as directed by her parents. He again stated that it was Puja, who had poured kerosene on her body and clothes and set herself on fire. He had remained busy in the process of extinguishing the fire and also sustained burn injuries on his hands and face. He was also medically examined at Civil Hospital, Yamuna Nagar from where he was arrested by the police.

In his defence, the appellant examined DW1 Dr. Sunil

Kumar, Senior Medical Officer, MLGH, Yamuna Nagar, who deposed that on 25.3.2008, ASI Ishwar Singh produced the appellant in custody for his medical examination. During such examination, it was found that the appellant was having semi healed burn mark on face and his left hand was bandaged. As he needed treatment, medicines and ASD locally were prescribed. He was referred to Surgeon for further management of injuries. He also stated that the burn injuries on the face and hand of the appellant could be caused during the process while extinguishing the fire of other person.

After hearing learned counsel for the parties and on going through the record, the trial Court after holding that the prosecution had been able to bring the guilt home to the appellant, convicted and sentenced him, as mentioned above.

This Court has heard Mr. Balkar Singh, Advocate for the appellant and Mr. Praveen Bhadu, Asstt. A.G., Haryana, besides perusing the record with their able assistance.

Learned counsel for the appellant has submitted that the appellant had no role to play in the incident. Rather, it was the deceased, who had set herself on fire as she was insisting upon the appellant to separate his business from his brother and when the appellant told her that it was not possible due to non-availability of shop that an altercation took place between the

appellant and the deceased. The deceased slapped her two years' old son without any reason. The appellant retaliated by slapping the deceased, who became furious and after proclaiming that she would show as to what she meant, she went inside the house, poured kerosene upon her clothes and set herself on fire. The appellant, who had come out of the house, in the meantime, tried to extinguish the fire with the help of wet gunny bags. The neighbours were attracted who helped him in extinguishing the fire. Puja was, thereafter, taken by the appellant to R.K. Hospital where her parents and other relatives came after being informed by the appellant. When the victim was not admitted on account of serious burns, she was got admitted in J.P. Hospital. When her parents enquired from her about the burns, she had disclosed about pouring kerosene on her body and setting herself on fire. However, she was duly tutored by her parents in J.P. Hospital and, accordingly, she made a false statement before the Duty Magistrate by implicating the appellant and his immediate family.

It is the admitted case of the parties that the marriage of Puja with the appellant was solemnized on 21.5.2005. Infact, it was the second marriage of Puja. She was earlier married with one Vicky son of Tilak Raj of Bathinda which marriage subsisted only for one month. At the intervention of the Panchayat, the marriage of Puja with Vicky was dissolved and subsequently Puja

was married to the appellant. From her marriage with the appellant, one son was born, who was about two years of age at the time of the incident. The appellant and his brother Mittar Sen were having joint business of repairing tyres and tubes. According to the prosecution, the appellant had illicit relations with Anjali, wife of his brother and for that reason, the appellant had turned out the deceased 2/3 times but the matter came to be patched up at the intervention of the Panchayat. Even, thereafter, the appellant used to insist upon the deceased to leave his house and go to her parents. In her statement Ex. PL which was recorded by PW16 Ms. Kumud Gugnani, Duty Magistrate, the deceased had stated that her husband was under the influence of her Jethani, who had been instigating him against her. Besides giving beatings, the appellant had been asking her to go to her mother's house. Her father suffered heart attack but had survived. However, on the fateful day, her mother-in-law stated that it would be better if her father died. When her husband returned, she apprised him about all the facts and started weeping. He slapped her on which she became angry. She stated that she did not want to live with him. When the appellant asked as to where she would go, she replied that she would prefer to die. On this, the appellant stated that he would himself kill her and, accordingly, after pouring kerosene on her set her

ablaze.

It is true that in the statement Ex. PL, the deceased had not specifically mentioned about her husband having illicit relations with her Jethani. However, going by the tone and tenor of statement Ex. PL, it is clear that there was some closeness between the appellant and his sister-in-law and for that reason the appellant was under her influence. She would even instigate the appellant against the deceased. He had also been asking her to go to the house of her mother. When her mother-in-law stated that it would be better if her father, who had suffered heart attack, had died, the deceased objected to the same. When she apprised her husband about all the facts, he instead of coming to her rescue, slapped her. Out of anguish, she stated that she did not want to live with the appellant, who wanted to know as to where she would go. When she stated that she would prefer to die, he proclaimed that he would himself kill her. Saying this, he poured kerosene on her and set her ablaze.

PW5 Versha Rani, mother of the deceased, had deposed in unequivocal terms that the appellant was having illicit relations with his sister-in-law Anjali. This fact was brought to her notice by the deceased personally whenever she would visit her house and also on telephone. Even on the fateful day after receiving a telephone call that her daughter had been burnt and

was being taken to R.K. Hospital, Yamuna Nagar, she alongwith her husband, son, brothers and other relatives went to R.K. Hospital. Thereafter, when Puja was not admitted there, she was taken to J.P. Hospital. The parents and other relatives of the deceased had also accompanied her to the said hospital where the statement of Puja was recorded by the Magistrate. Puja had also apprised her about the circumstances leading to the incident and her husband after pouring kerosene upon her, setting her on fire. To the same effect is the testimony of PW6 Kashmiri Lal, maternal uncle of the deceased. The statement made by Puja before her mother Versha Rani and maternal uncle Kashmiri Lal assume the character of oral dying declaration. The statement was in line with the statement Ex. PL of Puja which was recorded by PW16 Ms. Kumud Gugnani, Judicial Magistrate 1st Class. It may also be worthwhile to notice here that when Ms. Kumud Gugnani had deposed before the trial Court as PW16 and stated about the recording of dying declaration Ex. PL of Puja, the defence did not cross-examine her at all.

From the evidence, it is made out that after receiving information from J.P. Hospital, Yamuna Nagar, ASI Ishwar Singh had reached there and sought opinion from Dr. Amit Goel about the fitness of the deceased to make statement. Dr. Amit Goel gave his opinion Ex. PQ that Smt. Puja was fit to make statement.

Accordingly, ASI Ishwar Singh approached Ms. Kumud Gugnani, who was the Duty Magistrate on that day and requested her to record the statement of the deceased. Ms. Kumud Gugnani then reached J.P. Hospital, Yamuna Nagar and after obtaining fresh opinion from the attending doctor regarding the fitness of the victim to make statement, recorded her statement Ex. PL. Before doing so, she had turned out every one else other than the doctor from the room in which Puja was lying admitted. After recording statement Ex. PL, Ms. Kumud Gugnani appended her certificate Ex. PQ/1 that she had recorded the statement of Puja which contained true account of the version rendered by her and the same had been read over and explained to her. She had remained fit throughout the time her statement was being recorded. Dr. Amit Goel then also appended his certificate that the patient remained fit throughout.

Merely because the parents and other relatives of Puja were present with her in J.P. Hospital and before recording her statement, Ms. Kumud Gugnani had asked them to go out will not be sufficient to hold that their presence at that point of time was only for the purpose of tutoring Puja to make statement against the appellant and his family members. As admittedly they had reached R.K. Hospital and, thereafter, accompanied Puja to J.P. Hospital where she was admitted, they would have been

around Puja in order to provide her comfort and medical treatment and not for any other purpose. In case they were to stay outside the room where Puja was lying admitted, their visit was not to serve any purpose. Rather, they would have remained close to the place where Puja was lying admitted and ensuring that whatever was required by the attending doctors, was being provided to her. Admittedly, PW5 Versha Rani and PW6 Kashmiri Lal belonged to Jagadhri and not far away from the place where Puja resided with the appellant i.e. in Rampura Colony, Yamuna Nagar. Within no time, after receiving the information about Puja having sustained burns, they would have rushed and it was at R.K. hospital where they were able to join the appellant, who had brought Puja in burnt condition to the said place. They had also accompanied Puja and the appellant to J.P. Hospital where Puja was duly admitted. All the relatives would be at their tenterhooks to render whatever assistance was to be required by the doctor in order to provide proper treatment to Puja. Accordingly, it is held that statement Ex. PL made by Puja was true account of the version of the incident and not on account of any tutoring by her close family and relatives.

When the dying declaration Ex. PL made by Puja and recorded by PW16 Ms. Kumud Gugnani, Judicial Magistrate 1st Class on the one hand and oral dying declaration made by Puja

before PW5 Versha Rani and PW6 Kashmiri Lal besides the testimonies of PW5 Versha Rani and PW6 Kashmiri Lal are read together, held to be reliable, cogent and convincing, and no fault can be found with the impugned judgment passed by the trial Court while convicting the appellant for the charge under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 10,000/-.

The appeal is without any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

September 05, 2016
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**(GURMIT RAM)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No