

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-652-DB of 2010

Date of Decision : July 14, 2016

Amritpal and others

....Appellants

VERSUS

State of Punjab

...Respondent

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

Present : Mr. S.P. Soi, Advocate
for the appellants.

Mr. S.S. Dhaliwal, Additional Advocate General, Punjab.

T.P.S. MANN, J.

Judgment and order dated 3.5.2010 passed by learned Additional Sessions Judge (Fast Track Court), Bathinda stood challenged by the appellants, namely, Amritpal s/o Lekh Raj, Asha Rani w/o Lekh Raj and Sunita Rani d/o Lekh Raj, rs/o House No. 5982, Mata Rani Street, backside Bahia Fort, Bathinda, by filing the present appeal.

Vide impugned judgment and order, learned trial Court convicted the appellants under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. They were also convicted under Section 315 IPC and sentenced to undergo rigorous imprisonment for five years each. The

period of detention already undergone by them during investigation and trial of the case was ordered to be set off against their substantive sentences of imprisonment, as provided under Section 428 Cr.P.C.

The case of the prosecution is that on 26.12.2006 Sub Inspector Gurcharan Singh, Police Station, Kotwali, Bathinda received wireless query from Incharge, Police Post Civil Lines, Bathinda that Rekha w/o Amritpal, r/o Mata Rani Wali Gali, Bathinda was lying admitted in Civil Hospital, Bathinda due to burns. Accordingly, he, alongwith Head Constable Nachhattar Singh, PHG Manu and SPO Inderjit Singh and after collecting ruqa from Police Post Civil Lines sought opinion from the doctor with regard to recording statement of Rekha. The doctor declared Rekha to be unfit to make statement. Sub Inspector Gurcharan Singh tried to find an eye-witness but did not come across one. He, once again, sought opinion from the doctor. This time, the doctor declared Rekha to be fit to make statement. Accordingly, the Sub Inspector requested Sh. A.L. Khichy, Additional Chief Judicial Magistrate (Duty) to record the statement of Rekha after visiting the hospital. Shri A.L. Khichy reached Civil Hospital, Bathinda and recorded statement Ex.PF of Rekha, which reads as under :-

“Stated that my marriage was solemnized with Amritpal on 12.9.2005, which was Monday. I am pregnant. There used to remain quarrel in my house. My husband had liking for another lady due to which he used to maltreat me. My three sisters-in-law (husband's sisters) did not talk to me, whereas my mother-in-law used to maltreat me. My father-in-law

also maltreated me. I did not talk with anyone in this regard. My mother-in-law was present in the house who left the house for going to the bus stand in order to make my sister-in-law board the bus. I was in the house. When my mother-in-law returned, she caught hold of my hands whereas my sister-in-law Sunita poured kerosene on me and when my husband came back from the shop, he lighted a match stick and set me on fire. Then he started pouring water on me in order to extinguish the fire, besides proclaiming in a loud voice as to what I had done when I knew I was pregnant and I had done this intentionally. My mother-in-law started saying that she had only one son and I had been maltreating him. She then started saying that she would perform second marriage of my husband. They have ruined my life. I was brought to the hospital in an ambulance. I do not want to say anything more.

Sd/-
Amin Lal Khichy
Additional Chief Judicial Magistrate (Duty)
Bathinda
26.12.2006/7.15 p.m.

RO & AC
Rekha
RTI

Certified that patient Rekha remained fit to make the statement. The same has been recorded in the presence of Dr. Gurmail Singh, Medical Officer on duty.

Sd/-
Amin Lal Khichy
ACJM (Duty), Bathinda
26.12.2006

Sd/-
Dr. Gurpal Singh
26.12.2006

Certified that before recording the statement of Rekha, I have disclosed my identity and the statement recorded by me contains full disclosure leading to incident. The patient also remained conscious throughout.

Sd/-
Amin Lal Khichy
ACJM(Duty), Bathinda
26.12.2006"

Subsequent to the recording of the statement of Rekha by Shri Amin Lal Khichy, Additional Chief Judicial Magistrate (Duty), SI Gurcharan Singh also recorded the statement Ex.PW4/C of Rekha which reads as under :-

"Statement of Rekha w/o Amritpal r/o Mata Rani Wali Gali, Bathinda, d/o Om Parkash, caste Dhanak, r/o Ward No.4, Bhucho Mandi, aged 22 years.

Stated that my marriage was solemnised in the month of September, 2005 with Amritpal s/o Lekh Raj, caste Dhanak, r/o Mata Rani Wali Gali, Bathinda. I am pregnant. At the time of my marriage, I was studying in B.A. in Maha Vidyalia School, Bhucho. After marriage, I had passed B.A. while residing at my parental house and often used to come to my in-laws house. My family had spent about Rs.three lacs on my marriage and Rs.1,80,000/- were given in cash, separately for making me do computer course after B.A. About 4/5 months after marriage, I went to my in-laws house after passing B.A. but my in-laws family did not deposit admission fee for computer course, rather my mother-in-law Asha Rani, sister-in-law Sunita and husband Amritpal started maltreating me for bringing more furniture articles and money from

my parents. I told them that my parents have already spent more than their resources but they kept on repeating their demands, again and again. In this connection, many gatherings were held. I have been living in my in-laws house continuously for about two months only, but due to maltreatment, I used to go to my parental house. Now, for the last about 20/25 days, I had come to my in-laws house. Again, my in-laws, i.e. mother-in-law, sister-in-law, husband started maltreating me. Today at about 1 o'clock in the day, I and my mother in-law Asha Rani, sister-in-law Sunita and husband Amritpal were present in the house. Then, all the three with their common intention attacked me. My mother-in-law Asha Rani caught my hairs and all the three dragged me into the room. My sister-in-law Sunita Rani poured kerosene on me and my husband Amritpal set me on fire with match stick. Then I started crying, and on gathering of the people from the neighbourhood, all these three ran away from the house. Thereafter, I was brought on the vehicle of Sahara Club and got admitted in the hospital, where I am under treatment. Having not fulfilled their demand of dowry by us, my mother-in-law Asha Rani, my sister-in-law Sunita and my husband Amritpal, with their common intention, have set me on fire after pouring kerosene on me and burned me with an intention to kill me. Statement has been got recorded which has been heard. It is correct.

RTI-Rekha, above.

Attested
Sd/-

Gurcharan Singh, SI, Police Station Kotwali,
Bathinda/26.12.2006

Q.S.T. was received from I/c PP Civil Lines, that
Rekha w/o Amritpal, r/o Mata Rani Wali Gali,

Bathinda, is lying admitted in Civil Hospital, Bathinda due to burning and I/O be sent for investigation and arrangement of a Duty Magistrate be made for recording statement. Then I, SI alongwith HC Nachhattar Singh 1157, PHG Manu 22331 and SPO Inderjit Singh 276, after obtaining ruqa from PP Civil Lines, sought written opinion from the doctor with regard to recording statement of Rekha and doctor declared Rekha to be unfit to make statement. Then, due to non-finding of any other eye-witness, I again sought opinion from the doctor. The doctor declared injured Rekha to be fit to make statement. For recording her statement, Duty Magistrate Shri A.L. Khichy, ACJM was requested through a written request. Then ACJM recorded the statement of injured Rekha after visiting the hospital. Then I recorded the above statement of injured Rekha which was read out to her who, admitted the same to be correct and affixed her right thumb impression underneath the statement. She could not put signature due to burns on her entire body. I attest the same. From the above statement, prima facie the offences u/ss 307, 498-A, 34 IPC is made made out. The original statement is being sent to you through PHG Manu, for registering case against mother-in-law Asha Rani, sister-in-law Sunita and husband Amritpal for the above offences. After registering the case, number of FIR be intimated. Special reports be issued and PCR be informed separately. I alongwith my companions, am proceeding for investigation.

CH Bathinda
at 10.00 p.m.

Sd/-
Gurcharan Singh, SI
Police Station Kotwali,
Bathinda/26.12.2006"

On the basis of the aforementioned statement of Rekha recorded by Sub Inspector Gurcharan Singh, FIR No.617 dated 26.12.2006 under Sections 307, 498-A and 34 IPC was registered against the appellants at Police Station Kotwali, Bathinda.

It is also the case of the prosecution that after being medico-legally examined at Civil Hospital, Bathinda, Rekha was referred to higher centre for further management on 27.12.2006. Accordingly, she was admitted in Adesh Institute of Medical Sciences and Research, Bathinda, where she delivered dead female foetus on 29.12.2006 at 4.30 p.m. The foetus was subjected to post-mortem by Dr. Gurmail Singh, Emergency Medical Officer, Civil Hospital, Bathinda and Dr. Avtar Singh Dhillon, Medical Officer, Children Hospital, Bathinda on 30.12.2006 and in their opinion the cause of death was asphyxia, which was sufficient to cause death in ordinary course of nature. Even Rekha also expired on 1.1.2007 at 8.50 a.m. and her dead body subjected to post-mortem by Dr. Shekhar Mangal, Medical Officer, Civil Hospital, Bathinda, who observed as under :-

“On dissection internal vital organs were found congested and lungs were also found to contain pus points. Body was 5 feet and 4 inches long. She was moderately built and nourished, wearing nothing. Rigor mortis was present except in lower limbs and post mortem staining was present. Eyes were closed and mouth was semi open. Mouth, pharynx, oesophagus, larynx and trachea were congested.

On examination, I found following injuries on the dead body:-

Superficial to deep burns present all over the body with presence of pus at some places. Marbling of skin present over right forearm and arm.

Skull and vertebrae were healthy, scalp has already been described and meninges alongwith brain found to be congested. That the walls, ribs and cartilages were already described as healthy. Pleural cavities were found to contain fluid. Lungs were congested. On cut section pus points present. Heart was containing blood. Peritoneum was containing fluid, stomach was healthy containing 30 ml of fluid. Small intestines were healthy, containing chyme and gases. Large intestine was healthy containing faecolith and gases. Liver was congested. On cut section pus points present. Spleen and kidneys were congested, bladder was empty. Uterus was bulky with small blood clots.”

In the opinion of the doctor, the cause of death was septicaemia as a result of burns which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between death and post-mortem was about 12 hours.

During the investigation of the case, Sub Inspector Gurcharan Singh arrested the appellants, recorded the statements of the witnesses and prepared rough site plan of the place of occurrence. On completion of necessary investigation, challan was presented against Amritpal and Asha Rani, appellants only whereas Sunita Rani appellant

was found innocent and her name kept in column No.2 of the challan. Subsequently, on the application moved by the learned Additional Public Prosecutor, even Sunita Rani was summoned to face trial as an additional accused.

The trial Court charged the appellants for committing offence punishable under Section 304-B IPC, or, in the alternative, under Section 302 IPC and also for the offence under Section 315 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Dr. Gurmail Singh as PW1, who testified about conducting post-mortem on the dead body of daughter of Rekha.

Shri A.L. Khichy, PCS, Ex-Additional Chief Judicial Magistrate, Bathinda was examined as PW2, who testified that on 26.12.2006, SI Gurcharan Singh moved application Ex.PD for recording statement of Rekha, who was admitted in Civil Hospital, Bathinda and sought opinion from concerned doctor regarding fitness of injured Rekha. The doctor declared her fit to make statement vide endorsement Ex.PE. Accordingly, he recorded the statement of Rekha Rani as narrated by her in his own handwriting. The statement was recorded in the presence of Dr. Gurpal Singh, whereas he himself certified that Rekha remained fit to make statement vide endorsement Ex.PF/1. He also certified that before recording the statement of Rekha, he disclosed his identity and the statement recorded by him contained full disclosure relating to incident and the patient remained conscious throughout vide his endorsement

Ex.PF/2.

PW3 Rajinder Kumar Gupta, Draftsman deposed that on 14.3.2007, he went to the place of occurrence and prepared scaled site plan Ex.PW3/A.

PW4 Sub Inspector Gurcharan Singh testified that on receiving wireless message regarding admission of Rekha in Civil Hospital, Bathinda with burn injuries, he, alongwith police party, went there and moved application Ex.PW4/A on which the doctor vide his opinion Ex.PW4/A/1, declared the injured unfit to make statement. On his further request PW4/B, the doctor gave opinion Ex.PW4/B/1 that injured Rekha was fit to make statement. Accordingly, he went to the Duty Magistrate and moved application Ex.PD. Shri A.L. Khichy, Duty Magistrate recorded the statement of Rekha after obtaining her fitness from the doctor. Then he also recorded statement EX.PW4/C of Rekha which was read over and explained by him to her, who appended her right thumb-impression on the same which he attested. After making endorsement EX.PW4/D on the said statement, he sent it through PHG Manu to the Police Station and on its basis, FIR EX.PW4/E was recorded by SI Harpal Singh. He further deposed that he reached the place of occurrence on the night of 26/27.12.2006 and in the morning he inspected the spot and prepared rough site plan Ex.PW4/F. He also got the place of occurrence photographed and videographed by calling the photographer at the spot. He also took into possession the dowry articles, which were Sofa, Mattresses, bed sheet, besides plastic bottles,

vide memo Ex.PW4/G. Those articles, other than the plastic bottles, were partly burnt. He arrested Amritpal and Asha Rani appellants on 27.12.2006 and recorded the statements of the PWs. On 2.1.2007, he also arrested Sunita appellant. He further deposed that on 30.12.2006, he received information regarding the death of newly born baby of Rekha in Adesh Hospital and prepared inquest report Ex.PW4/M regarding the dead child and got the post-mortem done. On 2.1.2007, he took into possession the photographs alongwith its negatives, besides movie film from Naib Singh, photographer of Mehboob Digital Studio. After the completion of the investigation, the challan was presented by Inspector Ram Parkash.

PW5 Lachho, mother of deceased Rekha Rani testified that the marriage of Rekha was performed in the year 2005 with Amritpal. Her daughter was a student of B.A. Rs.three lacs were spent on her marriage. Rs.1,80,000/- was given in cash and the rest amount was spent on clothes and gold ornaments. Rekha wanted to do computer course for which they had paid the admission fee. She was residing in her in-laws house where her mother-in-law Asha Rani, sister-in-law Sunita and husband Amritpal used to maltreat her and asked her to bring more dowry. She used to state that her parents had already spent more from their ability. Her husband did not do anything and Rekha had gone to her in-laws house about 25 days before the incident. All the appellants poured kerosene on Rekha and set her ablaze. She was pregnant at that time. They took Rekha to Civil Hospital, Bathinda, from where she was referred to Adesh Hospital where she delivered a dead

female child. She also expired thereafter.

PW6 Dr. Shekhar Mangal testified that on 1.1.2007, he, alongwith Dr. S.K. Kataria conducted postmortem on the dead body of Rekha.

PW7 Harcharan Singh, Record-keeper, Adesh Hospital, Bhucho Kalan produced the summoned record.

PW8 Rajwinder Singh, Record Clerk, Adesh Hospital, Bhucho Road, Bathinda identified the signatures of Dr. Tayal on bed-head ticket Ex.PW8/A of patient Rekha.

Before closing the evidence of the prosecution, the learned Additional Public Prosecutor gave up Pal Singh, Head Constable Nachhattar Singh, SPO Inderjit Singh, Inspector Ram Parkash, SI Harpal Singh, Smt. Krishna Rani, Mohinder Pal and Suresh Kumar Jain as unnecessary and Naib Singh, Photographer given up as won over by the accused.

When examined under Section 313 Cr.P.C., Amritpal appellant pleaded that he was innocent and falsely implicated in the case. He and his wife Rekha were living happily in his house. She used to write a diary out of love. His marriage was performed in January, 1996 with Rekha. His mother Asha Rani and unmarried sister Sunita were residing in separate house in the same locality with his father Lekh Raj as he had two houses. He and his co-accused never demanded any dowry from Rekha as they were financially better off than her parents.

He had a gas-stove in his house. His wife caught fire accidentally while

working on the gas-stove kept on the floor of kitchen and she was in the habit of wearing loose garments. He was on job when he came to know that his wife Rekha had accidentally caught fire and she was got admitted by volunteers of Sahara Jan Sewa, Bathinda. Lachho PW was step mother of his wife and she alongwith about 100 persons gathered in the hospital and demanded Rs.five lacs as negotiations, otherwise threatened to implicate all the members of his family. He was not in a position to arrange such a heavy amount. As a result, Lachho tutored his wife to make statement against him. He was not allowed by the mob gathered at the instance of Lachho to talk to his wife Rekha. His sister was found innocent and, accordingly, she was not arrested. She was placed in column No.2 of the challan.

Both Asha Rani and Sunita Rani appellants adopted the plea of Amritpal appellant.

In their defence, the appellants examined DW1 Raj Kumar, DW2 Shashi Kant and DW3 DSP Ram Parkash, besides tendering into evidence certified copy of bed-head ticket of patient Rekha as Ex.D2.

After hearing learned counsel for the parties and going through the record, the trial Court convicted and sentenced the appellants, as mentioned above.

This Court has heard Mr. S.P. Soi, Advocate for the appellants and Mr. S.S. Dhaliwal, Additional Advocate General, Punjab, besides scanning the evidence with their able assistance.

It is the case of the prosecution that after being requested by SI Gurcharan Singh, Shri A.L. Khichy, the then Additional Chief Judicial Magistrate, Bathinda proceeded for Civil Hospital, Bathinda for recording the statement of Rekha, who was declared fit to make the statement, which opinion was already sought by SI Gurcharan Singh. On reaching the hospital, Shri A.L. Khichy, once again, sought opinion from the doctor about the fitness of Rekha to make the statement. Opinion in affirmative was given by the attending doctor. Shri A.L. Khichy then proceeded to record the statement of Rekha, who stated that her marriage was solemnized with Amritpal on 12.9.2005. There remained dispute in their house. Her husband had developed liking for someone else and for that reason he used to maltreat her. Her three sisters-in-law never talked to her. Her mother-in-law Asha Rani used to maltreat her and so did her father-in-law Lekh Raj. However, she did not disclose about the said fact to anyone else. At the time of the incident she was pregnant. Her mother-in-law was present in the house but went to the bus stand for seeing off one of her daughters. After coming back, her mother-in-law Asha Rani caught hold of her from her hand, whereas her sister-in-law Sunita Rani poured kerosene upon her. Her husband returned from the shop in the meantime and with the help of a match-stick put her on fire. Apparently realizing his fault, her husband poured water on her so as to extinguish the fire. He also started proclaiming as to what she had done, especially when she knew that she was pregnant. Her mother-in-law also stated that she had only one son who used to maltreat by her (declaration). Her mother-in-law also stated that she

would solemnize the marriage of her son again and all the accused had ruined her life.

Shri A.L. Khichy, the then Additional Chief Judicial Magistrate, Bathinda while stepping into the witness box as PW2 testified about obtaining opinion regarding fitness of Rekha to make the statement and then recording her statement. He also stated that Rekha remained conscious throughout while getting her statement recorded.

Apart from the aforementioned statement Ex.PF made by Rekha, since deceased, before the Additional Chief Judicial Magistrate, the prosecution had also examined PW4 SI Gurcharan Singh, who deposed that he had sought opinion from the attending doctor regarding fitness of Rekha to make the statement. The doctor declared her unfit to make the statement. However, later on, when SI Gurcharan Singh again sought opinion, the attending doctor declared her fit to make statement. SI Gurcharan Singh further deposed that after the Duty Magistrate recording the statement of Rekha, he also recorded statement Ex.PW4/C of Rekha wherein she stated that her mother-in-law Asha Rani had caught hold her from her hair and her sister-in-law Sunita Rani poured kerosene on her and her husband Amritpal set her on fire. She also stated about her maltreatment at the hands of her in-laws. On the basis of statement Ex.PW4/C, FIR Ex.PW4/E was recorded at Police Station Kotwali, Bathinda on 26.12.2006 under Sections 307/498-A/34 IPC. Subsequent to Rekha, since deceased, delivering a dead female foetus on 29.12.2006, offences under Sections 316/315 IPC were added

to the FIR. The foetus was subjected to post-mortem by Dr. Gurmail Singh and Dr. Avtar Singh Dhillon on 30.12.2006 and in their opinion, the cause of death was asphyxia which was sufficient to cause death in ordinary course of nature. Rekha also expired on 1.1.2007 at 8.50 a.m., and her dead body subjected to post-mortem by Dr. Shekhar Mangal, Medical Officer, Civil Hospital, Batinda, who had found superficial to deep burns present all over her body with presence of puss at some places. In the opinion of the doctor, the cause of death was asphyxia as a result of burns which were ante-mortem and sufficient to cause death in ordinary course of nature. Probable time that elapsed between death and post-mortem was about 12 hours.

Despite cross-examining Sh. A.L. Khichy, the then Additional Chief Judicial Magistrate and SI Gurcharan Singh, who was the Investigating Officer, the defence could not bring on record any material to show that both the dying declarations were tainted. It is true that Shri A.L. Khichy stated in his cross-examination that when he reached the hospital at 7.00 p.m., Lachho, mother of the deceased was present by her side, but he went on to state that only the doctor was present by her bed side when her statement was being recorded.

In the first statement Ex.PF made before Shri A.L. Khichy, Rekha stated about harassment at the hands of her in-laws but no mention was made about demand of dowry but in the statement before SI Gurcharan Singh she had stated that though her family had spent about Rs.3,00,000/- on her marriage, including Rs.1,80,000/- given in

cash to be spent on her for doing computer course yet her husband, mother-in-law and sister-in-law used to maltreat her for bringing more furniture articles and money from her parents. Merely because no such mention was made in the first statement made before the Judicial Magistrate is no ground to hold that the second statement made before SI Gurcharan Singh cannot be read into evidence. In both the statements, one before the Magistrate and the other before the Investigating Officer, it was consistently stated by Rekha that on the day of the incident, her mother-in-law Asha Rani had caught hold of her, followed by her sister-in-law Sunita Rani pouring kerosene and her husband Amritpal setting her on fire with match-stick. From the consistent statements made by Rekha regarding the manner in which she was set on fire, the commission of offence under Section 302 IPC stands established.

From the two dying declarations made by Rekha before her death, it is made out that apart from the three appellants, her father-in-law Lekh Raj and her two other sisters-in-law used to maltreat her but she did not utter a single word about their involvement in the commission of the crime. This further corroborates the genuineness of the dying declarations made by Rekha. In case she was to falsely implicate the appellants she could attribute some part to the remaining members of her in-laws family but she did not do so and stated consistently qua the involvement of the appellants in the commission of the crime.

During the investigating of the case, the police had initially arrested Sunita Rani, sister-in-law of the deceased. Subsequently, the police declared her innocent and, accordingly, did not present the final report against her. She was, later on, summoned under Section 319 Cr.P.C. as additional accused. The prosecution has led cogent and convincing evidence to establish the guilt of Amritpal, husband of the deceased and Asha Rani, mother-in-law of the deceased, besides Sunita Rani, sister-in-law of the deceased by attributing specific role to them of setting Rekha on fire and as a result of being set on fire, she survived for a couple of days but finally expired due to septicemia resulting on account of the burns. In both the dying declarations specific role was attributed to Sunita Rani of pouring kerosene on Rekha which was followed by Amritpal setting her on fire with a match-stick. Once the Court is satisfied about the genuineness of the dying declarations made by the victim while she was alive, the said dying declarations cannot be dissected so as to hold some of the accused guilty and others to be absolved of the charges against them.

The plea of the appellants that Rekha had received burns on account of working on of the stove is without any basis as no such gas stove was found present at the place of incident. Though in the medical evidence it came out that there was no sooty blackening or smell of kerosene yet keeping in view the fact that the victim was hospitalised after receiving burns and survived for about a week, the smell of kerosene would have disappeared by the time post-mortem was conducted on her dead body.

Lachho, mother of the deceased testified about the maltreatment of Rekha at the hands of her in-laws by impressing upon her to bring more dowry. She also stated that all the accused poured kerosene on her daughter and set her ablaze. In her cross-examination, she stated that her husband Om Parkash was previously married with one Shanti, who had expired after delivering a child. She, however, denied the suggestion that deceased Rekha was from the womb of Shanti. She went on to state that the marriage of Rekha was performed in her house. She also denied the suggestion that marriage of Rekha took place more than seven years prior to her death. She denied about marriage of Raj Kumar son of Mohan Lal, maternal uncle accused Ram Pal being performed on 29.5.2006 and all the accused, including Rekha, attending the marriage and dancing a lot there as well as about her son Ashok Kumar attending the marriage. She denied the suggestion that some months prior to the occurrence there was Jagrata in the house of Krishan Lal and all the accused alongwith Rekha attending the same and danced. She, however, stated that they had invited the accused to attend one function but only Asha Rani attended the same. As regards the separate residence of Asha Rani, Sunita and Lekh Raj in the one house and accused Amritpal residing with the deceased in the other she stated that the accused had given the other house on rent. She also denied the suggestion that Rekha had written certain pages Mark '1' to Mark '15'. She also denied the suggestion that they had demanded money from the accused for entering into a compromise and when the accused showed their inability to pay the same, false FIR was got

registered. The FIR stood registered against the accused on the day of the incident itself. The FIR was on the basis of dying declaration made by Rekha before SI Gurcharan Singh. The other dying declaration of Rekha was recorded by the Judicial Magistrate. The two dying declarations by themselves were sufficient to establish the involvement of the three accused in the commission of the crime. Even if Lachho was to enter into a compromise with the accused, that would not have absolved the accused of the charges against her in view of the two dying declarations made by Rekha, one before the Judicial Magistrate and the other before the police officer. Merely because certain good words were written by Rekha for her husband Amritpal it cannot be said that the accused could not have ended her life by setting her on fire. The marriage of Rekha with Amritpal was performed one and a quarter year before and Rekha had become pregnant in the meantime and for that reason she might have stated some kind words for her husband little realizing that she was not getting any response from her husband and members of her in-laws family. It is otherwise come on the record by way of the dying declaration Ex.PF made before the Judicial Magistrate that her husband Amritpal had developed liking for some other lady and for that reason he used to maltreat her.

Coming to the defence evidence, DW1 Raj Kumar testified that deceased Rekha used to reside happily with her husband Amritpal. In cross-examination he stated that Asha Rani appellant was his real maternal aunt. Accordingly, he had reason to depose so as to get his near relatives absolved of the charge. DW2 Shashi Kant deposed that

Amritpal and his wife Rekha used to live separately from his parents. Further, he alongwith his wife had been visiting the house of Amritpal often and both Amritpal and Rekha lived amicably. He further stated that Rekha Rani caught fire accidentally while working on cooking gas stove. In his cross-examination, he stated that his house was situated on the backside of the house of the accused. He also stated that when Rekha caught fire, he was not present but when she came out from her house while shouting that he reached the spot. Apparently, he had not seen Rekha catching fire. DW3 DSP Ram Parkash deposed that on 9.3.2007 when he was posted as SHO, Police Station Kotwali, Bathinda, he had verified the investigation and after going to the place of occurrence, examined 17/18 persons from the neighbourhood and during his investigation, Sunita Rani was found innocent and, accordingly, she was not challaned. In cross-examination, he stated that no gazetted officer attested his case diary despite the fact that if during investigation someone was to be declared innocent then the case diary must be produced before the gazetted officer. In view of the above, no reliance can be placed upon the three witnesses examined by the defence in support of its case.

From the above, it stands established that the three appellants had committed the offence under Section 302 IPC by setting the victim on fire. Dr. Shekhar Mangal, who had conducted post-mortem on the dead body of Rekha had opined that the cause of death was septicaemia as a result of burns which were ante-mortem and sufficient to cause death in ordinary course of nature. Similarly,

PW3 Dr. Gurmail Singh had testified that the female foetus which was delivered by Rekha on 29.12.2006 at 4.30 p.m. had died due to asphyxia which was sufficient to cause death in ordinary course of nature. Thus, the appellants cannot be absolved of the charge under Section 315 IPC.

While sentencing the appellants to undergo life imprisonment for the offence under Section 302 IPC and imprisonment for five years under Section 315 IPC, learned trial Court did not mention as to whether the two sentences would run concurrently or consecutively. As both the sentences arise out of the same incident, they ought to run concurrently.

Resultantly, the conviction and sentences of the appellants under Sections 302 and 315 IPC are upheld. However, both the substantive sentences of imprisonment shall run concurrently.

But for the concurrent running of the sentences of imprisonment, the present appeal fails and is, accordingly, dismissed.

(T.P.S. MANN)
JUDGE

July 14, 2016
satish

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO