

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-723-DB of 2010

Date of Decision : December 12, 2016

Wazir

.....Appellant

Versus

State of Haryana

..... Respondent

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

Present : Mr. Ashok Arora, Advocate
for the appellant.

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

T.P.S.MANN, J.

Appellant Wazir, his mother Tara Devi and brothers Sanjay and Satpal were tried for committing offences punishable under Section 302 read with Section 34 IPC and Section 498-A read with Section 34 IPC. Vide judgment and order dated 13/15.2.2010, learned Additional Sessions Judge, Hisar, acquitted Tara Devi, Sanjay and Satpal, the co-accused of the appellant, of the charges against them. The appellant was also acquitted under Section 498-A IPC. He was, however, convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months. The period of custody already undergone by him during the investigation, inquiry and trial was ordered to be set off against the substantive sentence awarded.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted and notice issued to the State of Haryana. The trial Court record was also requisitioned.

According to the prosecution, in the late hours of night of 21.5.2007, a telephonic message regarding admission of Sushila, wife of the appellant in burnt condition in Soni Burn Hospital, Hisar, was received at Police Station Sadar, Hansi from Police Station Civil Lines, Hisar, that some Investigating Officer be sent. Upon this, ASI Ishwar Singh alongwith EHC Joginder Singh reached Police Station Civil Lines, Hisar and collected the ruqa. ASI Ishwar Singh then reached Soni Burn Hospital, Hisar and sought opinion from the doctor regarding the fitness of Sushila to make a statement. The doctor declared her fit to make the statement. However, as there were 90% burns on the body of the victim, ASI Ishwar Singh submitted application before Sh. Rajinder Pal Singh, Duty Magistrate, Hisar, requesting him to record the statement of the injured. The Duty Magistrate reached hospital on 22.5.2007 at 1.55 a.m. and recorded statement Ex.P2/A of Sushila. In the said statement, Sushila, after mentioning her name as Sushila and that she was married about eight years ago, stated that there remained a dispute in the house from the very beginning regarding partition of the land. On the 14th of February, when she returned from Tosham after attending a marriage party, she learnt that the plot stood sold. There arose a

dispute regarding the proceeds of the sale of plot. Her mother-in-law Tara Devi used to say that as to what she had brought from her parents house. On 21.5.2007, she asked her husband as to where was her share of plot. He picked up a wooden log and gave beatings to her with the same. He then poured kerosene over her and set her on fire. He was saying that earlier his family members were harassing him but now even she had started harassing him. She was fed up from the behaviour of his family members, i.e. his mother Tara Devi and brothers Sanjay, Satpal and Rajesh, who had also associated themselves in the incident. Her husband Wazir had set her on fire. All of them used to harass her. She also stated that all that had happened was due to wrangle *inter-se* in the house and it was her husband, who had set her on fire. Accordingly, she sought taking of legal action against the accused.

After recording statement Ex.P2/A of Sushila, the Duty Magistrate obtained impression of her left big toe underneath in token of correctness of the statement as both her hands were having bandages over them. He also obtained the signatures of ASI Ishwar Singh by way of identification. Besides, he certified that the statement of Sushila recorded by him contained a full and true account of what she had stated.

It is also the case of the prosecution that on 22.5.2007, ASI Ishwar Singh reached the Court and obtained the certified copy of the aforesaid statement Ex. P2 of Sushila. As the

statement and the medico-legal report disclosed the commission of offences under Sections 307/498-A/34 IPC, ASI Ishwar Singh forwarded the said statement through Constable Som Nath to Police Station Sadar Hansi where on its basis FIR Ex.P4 came to be registered on 22.5.2007 on 11.20 a.m. Special report was sent through EASI Randhir Singh to the Sub-Divisional Judicial Magistrate, Hansi, which was received by him on the same day at 1.25 p.m.

During the investigation, ASI Ishwar Singh visited place of occurrence, prepared site plan Ex.P25; and took into possession one plastic can (container) from the place of occurrence vide memo Ex.P11. He also recorded the statements of witnesses under Section 161 Cr.P.C. On 27.5.2007, the appellant was arrested, who on interrogation, suffered disclosure statement Ex.P7 regarding concealing a lathi, which was subsequently taken into possession vide memo Ex.P9. On 31.5.2007 ASI Ishwar Singh received ruqa Ex.P23 regarding the death of Sushila and, accordingly, added Section 304-B IPC. He then visited Soni Burn Hospital, Hisar, and moved application Ex.P24. On the same day, he conducted inquest proceedings Ex.P14 and sent the dead body to General Hospital, Hisar, for post-mortem by moving application Ex.P13. The investigation of the case was, thereafter, handed over to Krishan Lal, Incharge, Police Post Cantonment, Hisar, who arrested Tara Devi, Sanjay and Satpal in this case on 6.6.2007 and, on completion of

investigation, prepared final report under Section 173 Cr.P.C. Upon commitment, the appellant, namely, Wazir and his co-accused were charged for offences punishable under Section 302 read with Section 34 IPC and Section 498-A read with Section 34 IPC, to which, they pleaded not guilty and claimed trial.

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

PW1 Subhash Chander, Draftsman, proved scaled site plan Ex.P1, which he had prepared on 13.6.2007 by visiting the place of occurrence.

PW2 Head Constable Suresh Kumar deposed that on 22.5.2007, he was posted as MHC in Police Station Sadar Hansi. On that day, on receipt of certified copy of statement Ex.P2 of Sushila, he recorded formal FIR Ex.P4 without any addition or omission and sent the special report through EASI Randhir Singh. He also tendered in evidence his affidavit Ex.P6.

PW3 EHC Rajbir Singh testified that on 27.5.2007, he joined the investigation of this case with ASI Ishwar Singh, who interrogated the appellant regarding the place of occurrence and lathi used in the offence. He recorded his disclosure statement Ex.P7 and pursuant to the same, the appellant got recovered lathi from the disclosed place, which was taken into possession vide memo Ex.P9.

PW4 EASI Randhir Singh deposed that on 22.5.2007, he had handed over special report of the case to the Ilaqa

Magistrate on that very day at 1.25 p.m.

PW5 Krishan Lal, Incharge, Police Post Cantt. Hisar testified that on 6.6.2007, when he was conducting the investigation, he arrested Tara Devi, Sanjay and Satpal in this case and after completion of the investigation prepared report under Section 173 Cr.P.C.

PW6 Rajesh son of Mange Ram deposed that his sister Sushila was married with the appellant about 9 ½ years ago. She had two children, namely, Sachin aged about 7 years and Sarika aged about 4 years. On 21.5.2007, when he was present at his shop situated at Azad Nagar, Hisar, he received a telephonic message that the appellant had beaten his sister with lathi and, thereafter, set her on fire by sprinkling kerosene on her. He closed the shop and had taken his sister Nirmala with him but received an information that his sister Sushila was being brought to Jindal Hospital, Hisar. Accordingly, he alongwith his sister reached Jindal Hospital, where they found his sister lying in a Tata Sumo and the appellant and his mother Tara Devi were sitting beside his sister. Then he alongwith his sister Nirmala took his sister Sushila to Soni Burn Hospital, Hisar. On the way, Sushila disclosed to them that there was a dispute regarding the plot and partition of land. She also disclosed that when she had come from Tosham on 14th February, she had asked her mother-in-law about the share of the plot but she taunted her by saying as to what she had brought from her parents house. She further

disclosed that in the evening when her husband Wazir returned home, she asked him about the share of his shop. He became furious on this and brought a lathi from the other room and started beating her. After the beatings, she laid down on a cot. Her husband Wazir brought a plastic can of kerosene and after sprinkling the kerosene on her, set her on fire. She also told that her husband was saying that all the family members were teasing him and she had also started teasing him. She also disclosed that at that time Tara Devi, Rajesh, Sanjay and Satpal were also present there but they did not try to rescue her from being burnt and, thereafter, she became unconscious. All the accused used to harass his sister from the very beginning of her marriage. His father Mange Ram had visited the matrimonial home of his sister 15 days prior to the present occurrence and settled the dispute of the accused. He went on to state that statement of Sushila was recorded by the Magistrate. Thereafter, he accompanied the police to village Sultanpur, where the police took into possession one plastic can and one lathi.

PW7 Mange Ram, father of deceased Sushila deposed on the same and similar lines as was stated by PW6 Rajesh before the learned trial Court.

PW8 Dr. Devender Sindhu tendered in evidence his affidavit Ex.PW8/A. In the said affidavit, he had mentioned that on 1.6.2007, he conducted postmortem on the dead body of Sushila and found as follows:-

“Length of body was 5' 8”. Dead body of female moderately built and nourished. Dressing present all over body. On removing the dressing, superficial to deep burns present all over body except scalp, sole of foot, left axilla, perineum, middle ½ of both breast. Pus discharge present at different places, slough was present all over body. P.M. rigidity was present in all four limbs. Red line of demarcation was present between burnt and healthy area.

Internal organ of thorax and abdomen were congested. Stomach was empty. Organs of generation were healthy. Non gravid uterus was present.”

The cause of death, in his opinion, was sequel of burns, which were ante mortem in nature and sufficient to cause death in natural course of life. Probable time that elapsed between injury and death was variable and between death and postmortem, it was within 24 hours.

PW9 Sh. Rajinder Pal Singh, Sub-Divisional Judicial Magistrate, Pehwa, testified that on 22.5.2007, he was posted as Judicial Magistrate 1st Class, Hisar. On that day, ASI Ishwar Singh moved an application Ex.P15 before him as Duty Magistrate for recording the dying declaration of Smt. Sushila. He passed order Ex.P16 on the said application and proceeded to Soni Burn Hospital, Hisar, at 1.45 a.m. during night. After reaching the hospital, he passed order Ex.P16/A asking the doctor to give his opinion regarding the fitness of the patient. Dr. Rajat Soni

declared the patient fit for statement vide his opinion Ex.P16/B and, thereafter, he recorded the statement Ex.P2/A of Sushila. After admitting its contents to be correct, Sushila put the impression of her left big toe as both her hands were having bandages over them. He then gave certificate Ex.P17 to the effect that the statement contained the full and true accounts as given by Sushila. He ordered for sending the papers to the Ilaqa Magistrate in an envelope Ex.P17/A, which bore his signatures on the forwarding endorsement.

PW10 Dr. Rajat Soni testified that on 21.5.2007 at 9.05 p.m., he medically examined Sushila Devi, who was brought by Wazir Singh. The patient was conscious. Pulse was 120 per minute. Temperature 98°F. R/R 20 per minute. B.P. not recordable. There were burns all over the body from superficial to deep. Smell of kerosene was present. Skin peeled off at places. He proved correct carbon copy Ex.P18 of medico-legal report, which bore his signatures. Patient Sushila was having 90% burn injuries and those injuries were dangerous to life. The probable duration of injuries was within six hours. He sent ruqa Ex.P19 to the police. On 22.5.2007 on police request Ex.P20, he gave opinion Ex.P21 that patient Sushila was fit to make the statement. On 22.5.2007, the Duty Magistrate, Hisar, asked him to give the opinion vide his order Ex.P16/A. At 1.55 a.m., he declared the patient fit to make statement vide Ex.P16/B. Patient Sushila was treated by him from 21.5.2007 to 31.5.2007 till her death. She

expired on 31.5.2007 at 5.15 p.m., and, accordingly, he sent ruqa Ex.P23 regarding her death to the police.

PW11 ASI Ishwar Singh testified about receiving intimation regarding the admission of Sushila in burnt condition in Soni Hospital, Hisar and after collecting ruqa Ex.P19, he went to Soni Hospital, Hisar. He moved application Ex.P20 regarding the fitness of Sushila to make the statement. The Medical Officer declared Sushila fit to make statement vide Ex.P21. Thereafter, he moved application Ex.P15 before the Duty Magistrate for recording the dying declaration of Sushila. The Duty Magistrate recorded the statement Ex.P2/A of Sushila. ASI Ishwar Singh then obtained certified copy of the statement Ex. P2 of Sushila and after making endorsement Ex.P3 thereon, he prepared the ruqa and, thereafter, forwarded it to Police Station Sadar, Hansi for registration of the case. On 22.5.2007, he went to village Sultanpur and inspected the place of occurrence. He prepared site plan Ex.P25 with correct marginal notes. He took into possession a plastic can from the place of occurrence vide memo Ex.P11. On returning to police station, the case property was deposited with the MHC. On 27.5.2007, he arrested the appellant who, during interrogation suffered disclosure statement Ex.P7 regarding a lathi, which was kept concealed by him in his residential house. Pursuant to his disclosure statement, the appellant led the police party to his residential house and got recovered lathi from the disclosed place, which was taken into

possession vide memo Ex.P9. On 31.5.2007, he received ruqa Ex.P23 regarding the death of Sushila. Offence under Section 304-B IPC was added. Thereafter, he went to Soni Burn Hospital, Hisar and moved application Ex.P24 regarding the nature of injury. He conducted inquest proceedings Ex.P14 on 31.5.2007 and sent the dead body to General Hospital Hisar for postmortem alongwith application Ex.P13. On 4.6.2007, he recorded the statement of PW Nirmala, sister of the deceased under Section 161 Cr.P.C. He identified lathi Ex.P26, which was recovered at the instance of the appellant and can Ex.P27, which was recovered from the place of occurrence.

When examined under Section 313 Cr.P.C., the appellant denied the incriminating circumstances and material collected by the prosecution and pleaded that he was innocent and falsely implicated in the case. He was living at Tosham with his wife and children and running a medicine shop alongwith his brother-in-law Rajesh near Tosham. He was separate from his father, mother and brothers, who were residing at Sultanpur. In February 2007, he returned alongwith his wife from Tosham and started living separately from other family members. On the day of occurrence, he was getting construction of the diggy in his portion of the house for storing of water and during that construction his wife picked up a quarrel with him. He reprimanded her. He then left for showing water to the buffalo. In the meanwhile, his wife set herself on fire in a rage. He did not

cause any injury to her nor set her on fire. He alongwith the labourers and other family members extinguished the fire and removed her to Hisar for treatment in order to save her life. He also received some burns while extinguishing the fire. Both of them were treated in Soni Burn Hospital, Hisar. He had informed his in-laws on telephone and they came to Hisar and after turning him out, tutored her to make a false statement against him before the Magistrate. The remaining accused stated that they had been falsely implicated in the case and had no concern with the alleged offence. They were living separately from the appellant and his wife.

In defence, the accused examined two witnesses.

DW1 Satish testified that he knew the accused. He was constructing water diggy outside the houses of the appellant and others in village Sultanpur, which were situated in the outskirts of the village in the fields. There were four houses constructed in a row, which belonged to the appellant and his brothers, namely, Sanjay, Satpal and Rajesh. The diggy was being constructed in front of the house of Satpal. At about 6.00 p.m., when the work of that day was over, he saw the appellant's wife coming out of the house. She was in flames. The appellant had gone to the pond for showing water to the buffalo. All of them extinguished the fire. The appellant also came there after about 15 minutes. None of the accused was seen by him at the house of the appellant at that time. They were busy in their own affairs.

After the fire was extinguished, the appellant and his mother took the injured in a vehicle to Hisar for treatment. He also deposed that the children of the appellant were playing there at the time of occurrence. On the next day, he had disclosed all the facts to the police.

DW2 Sachin, the nine years' old child of the appellant and deceased testified that he was living with his uncle Rajesh in the house constructed in the fields about two killas from the village abadi. There were four houses constructed there out of which his father was having one house whereas his three uncles were living there in separate houses. Earlier, he alongwith his father, mother and sister used to reside at Tosham. His father used to work as a doctor in a village near Tosham. On the day of occurrence at about 6.30 p.m., he was studying outside his house whereas his father after untying the buffalo, went towards the pond for showing water to the buffalo. After some time, his mother set herself on fire in the veranda of the house. The fire was put off by his uncles and the mason, who was constructing the diggy at that time. His uncles Sanjay and Satpal were helping the mason in construction of the diggy. His grand-mother was attending the buffalo, which had given birth to a calf at the house of Satpal. His mother was removed to a hospital in Hisar by his father, grand-mother and uncles. His father had not given any blow with a lathi to his mother. He had also not set her on fire. The police came to their house on the next day. He disclosed the facts of the case to

the police at Hansi.

After hearing learned counsel for the parties and on going through the record, the trial Court convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-. His co-accused were, however, acquitted of the charges against them. At the same time, the appellant was also acquitted of the charge under Section 498-A IPC.

This Court has heard Mr. Ashok Arora, learned counsel for the appellant and Mr. Praveen Bhadu, learned Assistant Advocate General, Haryana, besides going through the record with their able assistance.

Learned counsel for the appellant has submitted that the dying declaration said to have been made by the deceased before the Judicial Magistrate was not made by her voluntarily. Rather, she had been tutored by her family members to come up with a false version so as to implicate the accused in the case. It is also submitted that the death of Sushila had taken place after 11 days of the incident. Though, according to the prosecution, the appellant had given beatings with a wooden log to the deceased but no such injury was noticed by PW10 Dr. Rajat Soni while conducting her medico-legal examination on 21.5.2007 at 9.05 p.m.

Learned State counsel has submitted that the

prosecution had led cogent and convincing evidence in the shape of the dying declaration Ex.P2/A made by Sushila before the Duty Magistrate as well as her oral dying declaration made to her father PW7 Mange Ram and brother PW6 Rajesh. In all those statements, she had mentioned that she was set on fire by the appellant after pouring kerosene over her. As a result thereof, Sushila had died.

It is the prosecution case that Sushila, wife of the appellant, had suffered burns and was, accordingly, taken to Jindal Hospital, Hisar from where she was further taken to Soni Burn Hospital, Hisar. On receiving a telephonic message from Police Station, Civil Lines, Hisar, ASI Ishwar Singh of Police Station Sadar, Hansi first collected ruqa from Police Station, Civil Lines, Hisar and, thereafter, reached Soni Burn Hospital, Hisar. He sought opinion from the doctor regarding the fitness of Sushila to make a statement. Though she was found to have 90% burns on her body, she was declared fit to make a statement. ASI Ishwar Singh then sought the services of the Duty Magistrate, who reached Soni Burn Hospital on 22.5.2007 at 1.55 a.m. He also independently obtained opinion regarding fitness of Sushila and after being satisfied that she was fit to make statement, recorded her statement Ex.P2/A wherein she stated about the circumstances in which she had received burns on her body. As the statement of Sushila revealed commission of offences under Sections 307/498-A/34 IPC, FIR Ex.P4 came to be registered on

its basis at Police Station Sadar, Hansi on 22.5.2007 at 11.20 a.m.

It has also come in the testimony of PW6 Rajesh that when he, alongwith his other sister Nirmla, was taking Sushila to Soni Burn Hospital, Hisar, she had narrated the incident. Similarly, PW7 Mange Ram, father of Sushila had deposed that when he reached Soni Burn Hospital his daughter Sushila told him about the manner in which the occurrence had taken place. These statements made by Sushila, first to her brother Rajesh and, thereafter, to her father Mange Ram can safely be described as oral dying declaration as the victim had narrated about the circumstances which finally led to her death. Merely because Rajesh and Mange Ram were in touch with the victim before the Duty Magistrate came to record her statement is not sufficient to hold that they had tutored her in a manner so as to falsely implicate the accused. After being informed it would have natural anxiety on the part of her father and brother to enquire from her as to under what circumstances she had received the burns. In response thereto, she had stated, first to her brother Rajesh and then to her father Mange Ram, about having been set on fire by her husband after pouring kerosene on her. On the other hand, it is amply established by the prosecution that the oral dying declaration made by the victim to her brother and father and then the written dying declaration recorded by the Judicial Magistrate had been voluntarily made by the victim and not on account of

any goading on the part of her family members so as to falsely implicate the accused.

The incident in question had taken place on the evening of 21.5.2007. Immediately thereafter, Sushila was removed to Jindal Hospital in burnt condition from where she was further shifted to Soni Burn Hospital, Hisar where she remained under treatment. She was initially medico-legally examined by PW10 Dr. Rajat Soni on 25.5.2007 at 9.05 p.m. During such examination, he had noticed 90% burn injuries which were dangerous to her life. The probable duration of injury was within six hours. He also deposed that Sushila was treated by him from 21.5.2007 to 31.5.2007 till her death. He proved bed head ticket P22 which contained the details of the treatment given to her from time to time. Thus, merely because the death of Sushila had taken place after about 11 days of the incident is not sufficient to disbelieve the prosecution case.

As regards the stand of the defence that though the appellant was said to have given beatings with a lathi to Sushila but no such injury was noticed on her person which could be the result of beatings with a lathi is concerned, it may be noticed that Sushila had suffered 90% burns. Practically, her entire body had received burn injuries. In such a situation any injury which could be the result of giving of beatings with a lathi would not show, rather the burns would have overlapped any such injury which could be on account of giving of beating with a lathi.

According to the defence, Sushila had not been burnt by the appellant, rather it was she who had tried to commit suicide by setting herself on fire. In this regard, the defence placed reliance upon the testimony of DW2 Sachin, nine years' old son of deceased Sushila and appellant Wazir. Besides, the defence place reliance upon the testimony of DW1 Satish, who was a mason by profession and allegedly constructing a diggy in front of the house of the brother of the appellant. Said Satish deposed that on the day of the incident at about 6.00 p.m. he had seen Sushila coming out of the house and at that time she was in flames. The appellant was not present in the house as he had gone to the pond for showing water to the buffalos. However, DW2 Sachin admitted in his cross-examination that he did not see his mother pouring kerosene upon herself. He also deposed that neither he raised any alarm nor he informed his uncles or his father. He admitted that he had seen quarrel between his mother and father on the same day at about 5/6.00 p.m. He also admitted that the police visited his house on the next day at about 3.00/4.00 p.m. but he did not disclose those facts to the police. Similarly, DW1 Satish testified that he did not notice as to how Sushila caught fire as he only saw her when she was coming out of the house while in flames, nor he could say if she had set herself her on fire. Under these circumstances, it cannot be said that Sushila had tried to commit suicide by setting herself ablaze or that the appellant had no role in committing the crime, i.e. of

first quarrelling with Sushila and, thereafter, pouring kerosene on her and setting her ablaze.

The learned trial Court has already appreciated the entire evidence brought on the record in its proper perspective and coming to the conclusion that it was the appellant alone who was responsible for committing the murder of his wife Sushila after pouring kerosene on her and setting her ablaze.

No case is made out for any interference in the impugned judgment of conviction and sentence passed by the learned trial Court.

The appeal, being devoid of any merit is, accordingly, dismissed.

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

December 12, 2016
amit rana

**(GURMIT RAM)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No