

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-926-SB-2014 (O&M)
Date of Decision: 09.11.2016

Mahabir and others

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
- 2. To be referred to the Reporters or not? Yes/No
- 3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. Ajay Jain, Advocate
for appellants no.1 & 2.

Mr. Akshdeep Singh, Advocate
for appellant no.3.

Mr. Kuldip Sharma, DAG, Haryana,
counsel for the respondent no.4 - State.

ANITA CHAUDHRY, J.

The appellants were convicted in FIR No.147 dated 18.06.2011, registered at Police Station Rai, District Sonapat and were sentenced to the following imprisonment:-

Section 498-A/34 IPC	3 years	5000/-	In default 06 months
Section 304-B/34 IPC	10 years	-	-

It would be apposite to give the factual aspects first. A telephone call was received by the police from PGI, Rohtak regarding admission of Roshni wife of Manoj. She was admitted in the hospital with 90/95% burns. The police reached the hospital and took the

opinion of the doctor and asked the injured to make a statement but the injured had stated that she wanted to make a statement before the Magistrate. The police then approached the Duty Magistrate. No FIR had been registered by then. The police contacted the doctor and requested him to be present at the time of recording the statement which was refused. The Investigating Officer then recorded the statement of the victim and FIR under Section 498-A, 307 IPC read with Section 34 and 120-B IPC was registered. On the same day the police approached the Duty Magistrate for recording the statement under Section 164 Cr.P.C. which was recorded.

Roshni in her statement Ex.PW16/B had deposed that on 17.06.2011 at about 7:00/7:15 PM she was bathing her children, when her father-in-law Mahabir, mother-in-law Ram Chandri and Dewar Manjit came to her house and started quarreling with her and demanded money. At that time her husband was at the shop. She claimed that a demand of Rs.50,000/- was made from her and then accused Mahabir and Ram Chandri caught hold of her and while Manjit brought oil from inside and sprinkled it on her and the brother of her father-in-law namely Nahar Singh exhorted them to set her ablaze and he threw a burning match stick on her and she was engulfed in flames and then all of them fled away. She raised alarm on which the neighbours and her husband reached the spot and she was taken to the hospital. Roshni died six days later and Section 304-B IPC was added.

The police filed the challan against the mother-in-law and father-in-law. Nahar Singh and Manjit were found to be innocent.

Charge was framed under Section 304-B and Section 302 IPC. The statement of the complainant was recorded and an application under Section 319 Cr.P.C. was moved for summoning Nahar Singh and Manjit, which was allowed. Manjit was declared a juvenile and was referred to the Juvenile Justice Board. Charge was framed under Section 304-B and 498-A IPC and in the alternative under Section 302 IPC read with Section 34 IPC.

The prosecution examined the police officials, the Medical Officer, Daya Kishan, father of the deceased and his two sons besides the Sub-Divisional Judicial Magistrate. The in-laws took the plea in their defence that they were living separately from their son for the last 4 – 5 years and were unaware of the family dispute and they had been falsely implicated. Nahar Singh took the plea that he was living at Sonapat for the last 35 years and he had no concern with the Roshni who was living in village Jatheri.

Three defence witnesses were examined to prove that Nahar Singh was living at Sonapat. The electricity bills, the identity card and the ration card were produced by the Election Office, the Depot Holder and the Electricity Board.

Manoj, husband of the deceased was cited as a prosecution witnesses but was given up. He was examined as a defence witness. He supported the accused and made the same statement as made to the police. He stated that he along with his wife and two daughters were living separately from his parents for the last 4 – 5 years. He disclosed that Savita, his sister was married to Bijender and sister of Bijender was

married to the real brother of Roshni who had been murdered by the brother and other family members of his wife and a case under Section 304-B IPC was registered against Roshni's father, brother and other family members and his family were witnesses against the brother and father of Roshni in that case, due to which his wife was putting pressure upon him to get the matter compromised so that her parents and other family members could be saved from punishment. He stated that the deceased used to give threats of suicide and on 17.06.2011 at about 6:30 PM when he was taking rest, his wife poured turpentine oil upon herself and threatened to set herself ablaze and then lit the flame which caught up with her accidentally and he tried to save her and took her to Sehrawat Hospital and then to Rawal Hospital but her condition was serious, thereafter, she was referred to PGI, Rohtak. He proved his statement Ex.DW4/A and affidavit Mark-A.

The defence also examined the Sarpanch of village Jatheri, Chandro and Sat Narain who were living in the neighbourhood. All of them had deposed that there was a pressure upon the husband to get the compromise effected and Roshni was extending threats to her husband and his parents that in case the compromise was not effected, she would commit suicide.

Randhir Singh – DW6 had conducted an inquiry which revealed that Nahar Singh was residing in Sonapat and accused Manjit was a minor and was residing at some other place.

The trial Court accepted the statement of the prosecution witnesses and accepted the dying declaration and convicted the accused to the punishment mentioned here-in-before.

The submission made on behalf of the appellants was that the provisions of the Indian Penal Code have been misused and a false case had been foisted not only against the in-laws but the maternal uncle who was living away. It was urged that in the first history recorded by the Medical Officer it was said to be an accidental case and the family had been informed and they had reached the hospital and the statement was given by the girl who completely exonerated the husband but later at the trial Roshni's father also named the husband. It was urged that the incident had taken place in the courtyard and had the in-laws set her on fire, the incident could not have taken out in the open but it would have been inside the house. It was urged that the neighbours had come out in support of the in-laws and Roshni had stated that the neighbours had reached and had helped the husband in extinguishing the fire. It was urged that it was a case of suicide and Bimla the real aunt had also been named and the statement given by the girl was a result of tutoring. It was urged that Usha had died a unnatural death regarding which an FIR had been registered against Daya Kishan, father of Roshni and Suresh, brother of Roshni in 2009 and Roshni was pressurizing her husband to tell his parents i.e. the appellants and the sister Savita whose name was mentioned in column no.2 to tell Bijender to get the compromise effected and there was a constant dispute regarding this and Roshni's in-laws had separated their son Manoj in June, 2009 and this fact has been admitted by PW-1 Shiv Kumar when he had stated that the father-in-law and Manoj were not on visiting terms which proves that the relations were not good. It was urged that

the husband had taken her to the hospital as he was home and had helped Roshni in dousing the flames and the parents had also reached the hospital and there is a delay of 20 hours in lodging the FIR. It was urged that the brother-in-law who was separately challaned by the police was acquitted by the Juvenile Justice Board. It was urged that the conduct of Roshni in not naming the husband and naming the other members of the family would show that the sole motive was to get the other case settled. It was urged that Manoj was not named by Roshni and his statement was recorded by the police but he was given up by the prosecution and he appeared as a defence witness and made the same statement that was made under Section 161 Cr.P.C. It was urged that the statement given by the victim cannot be said to be a dying declaration as death had come after six days and therefore, the presumption that the person will not meet his maker with lies on his lips will not be attracted as Roshni was fully conscious and was aware at the time of her statement which was recorded a day after the occurrence. It was urged that parents had reached 14 hours prior to the recording of FIR and it was a tutored statement and it was an accidental suicide which went horribly wrong and was merely done to put pressure on the husband. It was urged that Roshni had stated that it was the husband who had saved her along with the neighbours and the neighbours have come out in support of the in-laws. It was urged that Suresh PW14, brother of Roshni did not support the prosecution version. It was urged that his statement was recorded in July, 2013 much after his own conviction in January, 2013 and there was no pressure upon him and he

took the same stand as taken by the husband. It was urged that the FIR was a tool for compromising the case registered against the parents of Roshni and strangely Daya Kishan and Baljit did not name Savita or Bimla in their deposition which goes to show that the initial version of the girl was tutored and only to put pressure. It was urged that there was no evidence that any Panchayat was convened or any demand was raised and the one demand referred to by the witness was four years earlier and there is no evidence of any cruelty soon before death. Reliance was placed upon *Devinder @ Kala Ram and others Vs. State of Haryana 2012(4) RCR (Criminal) 979*, *Mohan Lal and others Vs. State of Haryana 2007(2) RCR (Criminal) 88*, *Rangaiah Vs. State of Karnataka 2009 (1) RCR (Criminal) 923*, *Sham Shankar Kankaria Vs. State of Maharashtra 2006(4) RCR (Criminal) 239*, *Anil Kumar Gupta Vs. State of U.P. 2011(2) RCR (Criminal) 292*, *P. Mani Vs. State of Tamil Nadu 2006(2) RCR (Criminal) 159*, *Muneer Khan Vs. State of M.P. 2002(2) RCR (Criminal) 458* and *Balbir Vs. Vazir and others 2014(3) RCR (Criminal) 560*.

The State counsel had supported the judgment and had urged that there was a dying declaration and the last statement cannot be said to be suspicious and no corroboration was required and the trial Court had rightly accepted it and it was absolutely safe to act upon it.

Before proceeding further it is necessary to refer to the pedigree table which is complex and would help in understanding the facts better. Appellant no.1 Mahabir and his wife Ram Chandri have a son namely Manoj who is married to Roshni (since deceased). Roshni's father Daya Kishan and brother Suresh are witnesses in this case.

Manoj has a sister namely Savita who is married to Bijender son of Om Parkash. Bijender's daughter Usha was married to Suresh brother of Roshni. Usha sister-in-law of Roshni deceased, died an unnatural death on 15.04.2009 and a case was registered at Police Station Beri under Section 304-B IPC. As per the witnesses, the trial ended in conviction of the brother of the deceased some time in January, 2013. The present incident occurred on 17.06.2011.

It would be necessary at this stage to refer to the statement made by Roshni. Her statement was recorded by the police on 18.06.2011, though she was admitted the previous night. She was shifted to PGI, Rohtak and the police was informed. The parents and the family had arrived in the hospital by then. No complaint was lodged by the family. Roshni in her statement Ex.PW11/B had given a detailed statement starting from her date of marriage, about the birth of her two children. She had stated that she was married in 2006 and her father-in-law, mother-in-law and sister-in-law (Nanad) Savita were not happy with the dowry and used to throw taunts at her and demand dowry and her Chachi (aunt) Bimla used to instigate her in-laws. She named Nahar Singh of instigating them. She had also deposed that at the time of the birth of her first daughter, the in laws had demanded Rs.50,000/- and had threatened to mistreat her till the payment was made. She had stated that her father had paid Rs.25,000/- in cash and had sent her back to the matrimonial home saying that he would make arrangement for the remaining amount. Roshni had also stated that two years prior to the incident she was beaten up.

The above statement was recorded on 18.06.2011 at about 2:30 PM. The incident had taken place the previous evening about 7:00 PM. The prosecution in order to prove its case had examined Shiv Kumar PW-1 who deposed that Manoj had given his affidavit, his certificate and electricity bills to the police in his presence. In the cross-examination he stated that he used to live in the neighbourhood and parents of Manoj were living separately in a house which was two acres away. He admitted the fact that an FIR had been registered earlier and Daya Kishan, his wife and son were facing trial and the girl who had died, was expecting and had a child in her womb and the family was pressurizing for abortion. He stated that Daya Kishan and his family members had been sentenced and convicted in the case of bride burning. He stated that Roshni had poured turpentine oil on herself and committed suicide and she had been putting pressure on Manoj to get the matter compromised.

Manoj was given up as won over by the accused.

Dr. Kuldeep Panchal PW-3 had proved the postmortem report. He had noted the following:-

“INJURY:- Superficial to deep burns were present all over the body except top of the head, palm of right hand, intermediary region, portion of front of right elbow, perineum and soles of both feet. Total body surface area covered under burn was about 85-90% of total surface area. Some white ointment had been applied over the burnt area at places. The burns showed varying degree of healing in form of crusts as well as unhealthy granulation tissue. Line of redness was present between the burnt and healthy areas. Singeing of scalp, eyebrows, eyelashes and axillary and pubic hairs was present.”

ASI Urmila PW-6 was part of the team which had investigated the case. She had admitted that recovery of the articles had been effected from the house of Manoj and Roshni. She also admitted that Mahabir, Ram Chandri and Ranjit were residing in a separate house in a different street.

Dr. Jyoti Nara PW-10 had stated that she had examined Roshni on 17.06.2011 and the patient came with the history of accidental burns at 7:00 PM at her home and at the time of admission she was conscious and the vitals were stable.

Balbir Singh PW-11 the Investigating Officer deposed that he received information that Roshni was admitted with burn injuries and he went to the hospital to seek opinion of the doctor and when she was declared fit, he had recorded the statement PW11/B and then he went to the spot and found the bottle containing turpentine oil and recovered the burnt clothes lying on the spot i.e. the Dupatta and the 'Jumper'. In the cross-examination he revealed that he had received information on 17.06.2011 at 11:30 AM and he reached PGI, Rohtak at 6:00-7:00 PM. The time given by him are incorrect as the incident had taken place on 17.06.2011 at 7:00 PM.

The Investigating Officer had stated that he had wanted to record the statement of Roshni but she refused to make a statement and demanded that her statement be taken before the Magistrate. He stated that he went to the injured three times. He stated that family members of Roshni, her brother, maternal uncle and her father were present when

he recorded the statement Ex.PW11/B. He stated that they were adding information but he recorded whatever was stated by Roshni. He stated that as per his investigation, Manoj was staying separately with deceased and the children and Manoj was not present at the time of occurrence. He stated that he did not record his statement under Section 161 Cr.P.C. He could not say whether the statement of Manoj was recorded by Inspector Sultan Singh or DSP Randhir Singh.

Daya Kishan PW-13 stated that there were demands of dowry and the entire family including the husband used to harass her for bringing insufficient dowry. He stated that two girls were born to his daughter and when the first child was born, his daughter was harassed and they had taken a Panchayat to the matrimonial house of his daughter and a compromise was effected. He stated that they had demanded Rs.50,000/- in cash for installing a hand pump and he had paid Rs.25,000/- and sent his daughter along with Manoj. He stated that he received a message on 17.06.2011 that Roshni had been burnt and she was admitted in PGI, Rohtak and he and his son Suresh reached PGI, Rohtak. He stated that his daughter made a statement and disclosed the incident. He stated that his statement was not recorded by the police in this case and he had not made any statement to the police on 18.06.2011. He denied that in his statement made on 18.06.2011 he had not spoken about any harassment or torture or demand by Manoj. The witness was confronted with Ex.DA where it was not so recorded. He admitted that Usha, sister-in-law of Savita was married to his son Suresh. He admitted that in turn, his daughter Roshni was married to

Manoj, a day prior to the marriage of his son. He admitted that Savita, daughter of Mahabir was married to the brother-in-law of his son Suresh, namely Bijender. He admitted that Usha, his daughter-in-law had died due to burn injuries in 2009. He admitted that they had faced a trial and were convicted and sentenced. He denied that Roshni and their family (his own) were pressurizing Manoj to persuade his parents not to pursue the case and compromise the matter. He denied that the accused had disowned their son Manoj in June, 2009.

Suresh s/o Daya Kishan PW14 chose not to support the prosecution story. He stated that his sister was treated well in the matrimonial home and he did not know how she had died. He was confronted with the statement Ex.PW14/A but he denied having made the statement. He admitted that Nahar Singh was living in Sonapat. He admitted that their family was not on speaking terms with the family of Mahabir. He stated that he used to visit his sister frequently. He admitted that the elder child was born to Roshni in November, 2007 and Manoj and Roshni used to live in a separate house in another street. He admitted that his wife had died in 2009. He admitted that Roshni was pressurizing Mahabir, Ram Chandri and Manoj to press the matter and not depose against them.

Baljeet PW-15 made similar statement as made by Daya Kishan. He admitted that he was facing trial under Section 399, 402 IPC. He stated that he had been acquitted in the case registered under Section 304-B IPC but his parents and brother had been convicted. He stated that he used to have frequent conversation with his sister prior to

her death. He stated that Panchayat was convened when the accused turned out his sister.

Rahul Bishnoi PW-16 proved the statement given by Roshni.

All the accused abjured the trial and took up different defences. Nahar Singh had stated that he was living in Sonapat for the last 35 years and had no connection with the other accused. The in-laws had taken a plea that they were living separately from their son for the last 4 – 5 years.

In defence three witnesses were examined who proved that Nahar Singh had a separate Ration Card, electricity meter and he was residing in Sonapat.

Manoj DW-4 who was cited as a prosecution witness but was given up, took the same stand as taken by him in his statement under Section 161 Cr.P.C. He deposed that his wife was pressurizing him to make a favourable statement in the trial initiated against her brother and father and it was a case of accident and she had taken the step to scare him. He stated that he tried to save her and the neighbours also rushed in to save her and he took her to Sehrawat Hospital but there was no doctor and he called up his uncle Nahar Singh and then Roshni was taken to Rawal Hospital, Sonapat where she was given first aid and was further referred to PGIMS, Rohtak and the police had recorded his statement Ex.DW4/A and they had also taken affidavit from him. He stated that his wife had made a statement against his family members under the pressure of her family and even after

recording the statement, she had been pressurizing him to get the matter compromised and that she would change her statement even at that stage.

Chandro DW-5, Sat Narain DW-6, Pardeep DW-7, Rajesh DW-8 are neighbours of the accused. They had stated that they were present in the street when they heard Roshni scream and they rushed inside and saw that Roshni had set herself on fire and she was crying and they tried to extinguish the fire. They stated that some of them were in the nearby fields and all of them ran home and Manoj had taken his wife to the hospital. They had also deposed that Roshni used to threaten Manoj that she would commit suicide in order to fix her in-laws.

Randhir Singh DW-9 stated that he had verified the investigation and had found Nahar Singh and Manjit innocent and he had recorded this fact in the zimni. He also stated that parents of Manoj were living separately and their house was not within the same vicinity.

Documents Mark-B, copy of the FIR of 2009 and document Mark-C & Mark-D were tendered in defence evidence.

The scene of occurrence has been firmly established. The incident had taken place in the courtyard of the house occupied by Manoj and Roshni. It is clear from the evidence as well that the in-laws of Roshni did not stay in that house. Indisputably an FIR had been registered in 2009 against the brothers and father of Roshni on account of death of Usha who was married to Suresh, brother of Roshni. The time of incident is also not in dispute. The incident took place some time in the evening around 7:00 PM on 17.06.2011. The husband took

Roshni to the hospital. Manoj was cited as a prosecution witness but the State failed to examine him. Roshni was taken to two hospitals before she was admitted in PGI, Rohtak. The police did not collect any information from those two hospitals. The parents were informed the same night and they also reached the hospital. No FIR was registered that night. No complaint was given to the police. Roshni also refused to make a statement to the police. The Investigating Officer had stated that she was insisting on making the statement only before the Magistrate. The police without registering any case, approached the Magistrate for taking the statement which was declined. The Investigating Officer went back to the hospital and recorded the statement of Roshni. It is clear from the statement made by the Investigating Officer that the entire family was in the hospital at that time. The statement given by Roshni was recorded after 17 hours of the incident. The statement Ex.PW11/B also contains the signatures of Roshni at point A. Roshni died on 23.06.2011. She had suffered burns to the extent of 90/95% as recorded in MLR Ex.PW10/B. The MLR does not refer to the time of admission in the hospital. In the light of the above background, it is to be seen whether the dying declaration was true and voluntary and whether a conviction could be based upon it without corroboration.

The main ground of attack is that the trial Court was not justified in believing the dying declaration as it was clear that the parents were around Roshni when the statement was recorded. The submission was that the trial Court committed serious error in disbelieving the statement of Suresh a member of Roshni's family and

the Court had wrongly disbelieved the statement of the neighbours who had entered the house at the time of the incident.

Though a dying declaration is entitled to great weight but it is worthwhile to note that the accused has no power of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason why the Court insists that the dying declaration should be of such nature as to inspire full confidence. The Court has to be on guard that the statement of the deceased was not a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

In *K. Ramachandra Reddy Vs. Public Prosecutor, (1976)3 SCC 618*, the Apex Court has held that the Court had to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.

In *Rasheed Beg Vs. State of Madhya Pradesh, (1974)4 SCC 264*, the Apex Court had held that where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

In *Ram Manorath Vs. State of U.P., (1981)2 SCC 654*, the Apex Court has held that a dying declaration which suffers from infirmity, cannot form the basis of conviction.

From the above decisions it is clear that the dying declaration can be acted upon only when the Court considers that the declaration is not a result of tutoring, prompting and is the unalloyed truth and when it is absolutely safe to act upon it. When the dying declaration is suspicious, it should not be acted upon.

In the present case, the parties are related by marriage. There was an earlier incident of dowry death in which the brothers and father of the deceased were facing trial at the time of the present incident. The members of the accused family were witnesses. The defence set up is that Roshni was exerting pressure upon Manoj to convince his parents to make a favourable statement so that her father and brothers could be let off. It is not in dispute that the earlier incident took place in 2009 and the trial ended in conviction in January, 2013. Suresh brother of Roshni was also convicted along with his father (Daya Kishan PW-13). Suresh did not support the prosecution version and supported the statement given by Manoj. The witness have spoken that Roshni was under too much stress because of the case registered against her father and brothers, which was normal.

In the MLR Ex.PW10/B the first history given was accidental burns. The doctor had noted that the patient was conscious and oriented. It is to be noted that Roshni did not want to make any statement to the police. There had to be some reason why she was

avoiding her statement. She did not allege that her husband had demanded any dowry or had harassed her. The Investigating Officer had mentioned the fact that the parents were living separately. Roshni's brother Suresh was convicted in 2013 relating to the incident of 2009. The present incident is of 2011. The trial against Daya Kishan, Suresh etc. was then pending.

The witnesses have spoken about the demand which relates back to the birth of their first child. Roshni was married in 2006. Their first born was in 2007. None of the witnesses have spoken of any demand post 2009. It is evident that Manoj's parents had separated his son after the incident. The reasons are obvious. Roshni's father and brothers were named as accused. The relations on that count were not normal. It was not because of the dowry demand but because of the case registered under Section 304-B IPC.

It is indeed strange that Roshni delayed making a statement to the police. The reasons are obvious that she was still exerting pressure upon her husband and his family. She ultimately did not name her husband and spared him but named the family and even the extended family. The reasons are obvious. She was tutored by her family who got enough time to tutor her, coax her but Roshni's brother fully supported his brother-in-law (Manoj) and went against his family's dictate. Suresh did not support the prosecution case as his conscious did not allow it.

The Investigating Officer had stated that he went thrice to record Roshni's statement. He had stated that her family was around

her. The dying declaration cannot form the basis of conviction as it suffers from infirmities. The dying declaration is suspicious and cannot be acted upon. It was not voluntary and was made under the influence of the family. The implication of the accused is at the behest of the family and it was to press the pedal and make the in-laws bend and succumb and give in. Roshni was concerned about her family (parents side) and their fate lay in the hands of her in-laws who were to depose in the trial.

The incident has been given the colour of dowry death when it was not. In the first narration to the doctor it was stated to be an accident. The allegation came after 17 hours of the incident. The family of Roshni was also in the hospital. They did not make any statement to the police. Had there been any dowry demand, the family would not have deserted from making a statement. It was not a case of dowry death. Even otherwise, there is no evidence that there was any demand soon before the death. The essential ingredients of Section 304-B IPC require that soon before her death, she was subjected to cruelty or harassment. It is imperative for the prosecution to prove the necessary elements to invoke the legal presumption. In the absence of such evidence, it is not permissible to take recourse to the presumption envisaged in Section 113-B of the Evidence Act. It is not a case of homicide but a case of suicide because the death was by accident. Considering the broad circumstances of the case, the accused could not be fastened with the penal liability of Section 304-B IPC. Therefore, the orders of conviction and sentence passed against the appellants are

set aside and all of them are acquitted.

The appeal is allowed.

(ANITA CHAUDHRY)
JUDGE

09.11.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No