

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1490-MA-2015 (O&M)

Date of decision: 03.02.2016

Om Sagar

..... Applicant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Ritesh Pandey, Advocate
for the applicant.

RAMENDRA JAIN, J.

By way of present application under Section 378(4) Cr.P.C., the applicant-complainant has sought permission to file the accompanying appeal against acquittal of respondents No. 2 to 7 vide impugned judgment dated 17.04.2014, passed by the learned Additional Sessions Judge, Pathankot.

2. Briefly stated, the applicant-complainant filed a complaint under Section 302/148/149 of the Indian Penal Code (IPC) against respondents No. 2 to 7 by alleging that marriage of his daughter Renu Bala (since deceased) with respondent No. 2-Sukhdev Parkash was solemnized on 18.11.1996. The marriage turned into a rough weather as

respondent No. 2 was having illicit relations with respondent No. 6- Sudesh Kumari. Consequently, their relations became strained. In the month of November, 1997, Renu Bala (deceased), daughter of the applicant-complainant found respondent No. 2 in compromising position with respondent No. 6 and thus, on the next day she left her matrimonial home. After reaching her parental home, she narrated the entire story to the applicant-complainant. The matter was amicably settled with the intervention of respectables and respondent No. 2 assured to treat Renu Bala nicely in future and not to indulge in extra marital relations. Hence, Renu Bala had returned to her matrimonial home with a new hope. However, respondent No. 2 kept on nursing a grudge against his wife Renu Bala on account of her having disclosing his illicit relations with respondent No. 6. On 07.04.1998, respondents No. 3 to 7 raised a lalkara that Renu Bala be done to death for spoiling the reputation of their family. Respondent No. 6 caught hold of her from arms and hairs and then she along with respondent No. 2 poured a bottle of kerosene over Renu Bala. Thereafter, respondent No. 2 set her on fire. Renu Bala was removed to Medical College and Hospital, Jammu, where she remained admitted for one day and on 10.04.1998, on refusal by CMC, Ludhiana to admit her, she was shifted to Civil Hospital, Pathankot, where she died on 11.05.1998. The autopsy on the dead body of Renu Bala, was conducted by Dr. Avinash Kumar. On asking by the applicant-complainant to respondents No. 2 to 7 about the reason of sustaining burn injuries by his daughter Renu Bala, all of them showed their ignorance. They also extended threats of dire consequences to the applicant-complainant.

Deceased-Renu Bala told the applicant-complainant that respondents No. 2 and 6 were having illicit relations and when she came to know about the same, all the respondents No. 2 to 7 with a common intention attempted to kill her. The applicant-complainant in the above compliant further mentioned that he approached the police, but it did not register any case. After the death of his daughter Renu Bala on 11.05.1998, he ran from pillar to post to seek justice, but the police did not take any action. Hence, the present compliant.

3. After recording the preliminary evidence and on finding a *prima facie* case, respondents No. 2 to 7 were summoned under Section 302 read with Section 34 IPC by the learned Illaqa Magistrate. Since, the offence under Section 302 was exclusively triable by the Court of Session, so, the case was committed to the Court of Session, for trial by the learned Illaqa Magistrate, vide order dated 12.12.2006.

4. On finding a *prima facie* case under Sections 302/148/149 IPC, the learned trial Court charge-sheeted respondents No. 2 to 7 accordingly, to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 5 witnesses, namely; PW-1 Om Sagar (applicant-complainant), PW-2 Dr. Nancy Verma, PW-3 HC Janak Raj, PW-4 ASI Kashmiri Lal and PW-5 Dr. Avinash Kumar.

6. After closure of the prosecution evidence, the statements of respondents No. 2 to 7 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which, they denied and pleaded their innocence. In defence, they examined DW-

1 SI Chajju Singh (retd.), DW-2 Balwant Raj and tendered documents Ex. DY and DZ.

7. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 2 to 7 of the charges framed against them by giving the benefit of doubt vide the impugned judgment.

8. Learned counsel for the applicant-complainant argued that the impugned judgment is based on surmises and conjectures. The learned trial Court has erred in giving much emphasis to the statement of DW-2 Balwant Raj, Tehsildar-cum-Executive Magistrate, RS Pura, District Jammu, who had recorded the statement of deceased Renu Bala, because the alleged statement of deceased was in Urdu language which she was not knowing. The alleged statement of the deceased was not admissible in the eyes of law, in view of the second statement recorded by PW-4 ASI Kashmiri Lal in the presence of PW-2 Dr. Nancy Verma. The learned trial Court has also erred in not appreciating the evidence of the applicant-complainant brought on record in acquitting respondents No. 2 to 7.

9. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find the present application completely devoid of any merit for the reasons to follow:-

- (i) The applicant-complainant is not the eye-witness to the occurrence. His statement is completely hypothetical being based in hear say or as per his own imagination. The applicant-complainant as PW-1 had

deposed that villagers had told him that respondents No. 2 to 7 had poured kerosene oil over his daughter Renu Bala (deceased) and set her on fire, but none of the villager was examined during trial. Moreover, he also deposed that his daughter had not disclosed anything to him.

- (ii) DW-1 SI Chajju Singh, had recorded the initial version of deceased Renu Bala in Medical College and Hospital, Jammu on 08.04.1998, wherein she stated that she was burning stove for preparing the meal and then some oil spilled over the stove and when she applied match stick, the stove burst and she caught fire accidentally and her clothes were burnt. She further stated that her husband (respondent No. 2 herein) and others had controlled the fire with great difficulty and thereafter, they admitted her in Medical College, Jammu, for treatment. She had categorically stated in her statement that she had received burn injuries on account of spurting of oil from the stove. Her above statement was read over to her and after admitting the same to be correct, she had signed the same with her own will. She has also stated that she had made the above statement with her own free will. The Medical Officer, who was also present at the time of recording the statement also attested the same. Thereafter, the

statement of Renu Bala (deceased) was entered into the Daily Diary Register (DDR) of Police Station RS Pura, Jammu. Hence, it is evident on record that the initial version of deceased did not allege complicity of any of respondents No. 2 to 7 in her burning.

- (iii) DW-2 Balwant Raj, Tehsildar-cum-Executive Magistrate, RS Pura, Jammu had also recorded the statement of deceased-Renu Bala on 09.04.1998, wherein she stated that she was married with respondent No. 2 around 1-1½ years before. She had good relations with her husband with whom she was living happily. Four brothers of her husband were living separately from them. She was having good relations with her in-laws also. She categorically stated that around 7.30 P.M. on 07.04.1998, she was cooking meals in her house on a stove. The nipple of the stove was defective and the flames were missing. She tried 4-5 times to burn the stove. However, kerosene oil spilled out due to which her clothes caught fire. Her husband and others came to her rescue, on account of which her husband also received some burn injuries on his hands and chest. She specifically deposed that it was an accidental fire and she was making her statement voluntarily. The above statement of deceased-Renu Bala was signed by

the Executive Magistrate and was counter-signed by the complainant also. That apart, the above statement of deceased-Renu Bala was recorded in the presence of Dr. Swarn, Chief Medical Officer, who had declared Renu Bala, fit to make statement. Thus, interpolation or any tutored version of deceased-Renu Bala cannot be expected in the same.

- (iv) The applicant-complainant as PW-1 has also admitted that his daughter's statement was recorded by some Magistrate, whereupon his signatures were also obtained. Hence, on two occasions i.e. in the initial version before DW-1 SI Chajju Singh and then before DW-2 Balwant Raj, Tehsildar-cum-Executive Magistrate, RS Pura, Jammu, deceased-Renu Bala even in the presence of her father (applicant-complainant) did not disclose about the complicity of respondents No. 2 to 7. It has also come on record that at one point of time, the applicant-complainant had made statement in the Court to withdraw the complaint which shows that he was in flickering state of mind and not sure about the complicity of any of the respondents in the commission of crime.
- (v) There is no force in the contention of applicant-complainant that since the subsequent statement of deceased-Renu Bala was recorded in Urdu and she

was not conversant with Urdu Language, therefore, the learned trial Court ought not to have considered the same as her dying declaration, because DW-2 Balwant Raj, Tehsildar-cum-Executive Magistrate, RS Pura, Jammu has categorically deposed that deceased-Renu Bala specifically stated that she had made statement before him voluntarily. It is pertinent to mention here that applicant-complainant did not raise any objection while recording the statement of his deceased daughter by DW-2 in Urdu at that very moment. Even he did not ask DW-2 Balwant Raj, to explain it to him in his own language that what he had written in Urdu which purported to be the statement of his deceased daughter recorded on 09.04.1998.

(vi) In the complaint filed by the applicant-complainant on 21.07.1998, he did not level any allegation of demand of dowry by respondents No. 2 to 7. However, during trial he came out with the story of demand of dowry. The above version of demand of dowry introduced by the applicant-complainant, when he appeared in the witness box as PW-1 falsifies the prosecution story, because had there been any demand of dowry by respondents No. 2 to 7, he would have disclosed the same in its complaint filed on 21.07.1998.

(vii) The deposition of PW-4 ASI Kashmiri Lal, shows that

Renu Bala (deceased) though was declared fit to make statement, but she sought time to make statement after consulting her father. PW-4 deposed that he went to the hospital on 13.04.1998 and 14.04.1998 to record the statement of Renu Bala, but on both these days, she refused to make any statement as her father was not present in the hospital. Finally, she gave her statement on 15.04.1998, on the asking of her father. During this period of 4-5 days i.e. from 11.04.1998 to 15.04.1998 days there was ample opportunity for the applicant-complaint to get recorded the statement of his deceased daughter-Renu Bala by moving an application to the Magistrate, directly or through the police, but he did not adopt any such exercise. Hence, non-recording of the statement of deceased Renu Bala or the applicant-complainant in these 4-5 days has rightly been declared fatal to the prosecution case by the learned trial Court.

(viii) PW-5 Dr. Avinash Kumar, while proving post-mortem report Ex. PW-5/A had deposed that there was no external mark of injury over the body of deceased-Renu Bala. Hence, any maltreatment, beating, dragging, catching hold of hairs and hands of the deceased by respondents No. 2 to 7 is falsified. The applicant-complainant made material improvements in

his statement during the trial. In examination-in-chief as PW-1, he deposed that after one year of marriage, respondent No. 6 had poured kerosene oil on his daughter though this fact was not mentioned in the complaint. In his cross-examination, he deposed that he along with his wife, sister and brother went to the house of respondents No. 2 to 7 and convened a Panchayat, but he did not examine anyone of them for the reasons best known to him. Hence, the bald statement of applicant-complainant contrary to the two statements Ex. PC and Ex. DW-2/A made by Renu Bala (deceased) has rightly been ignored by the learned trial Court in the absence of any independent corroboration or cogent and convincing evidence on record.

11. No other point was urged before us.

12. From the above discussion, it can safely be said that the prosecution has failed to prove its case beyond any shadow of doubt against respondents No. 2 to 7. They have been rightly acquitted by the learned trial Court. The instant application is completely devoid of any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 03, 2016

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