

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

Crl. Appeal No. S-644-SB of 2003

Date of decision : 22.11.2016

Malkiat Singh & Ors.

..... Appellants

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. B.S. Jaswal, Advocate
for the appellants.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

Appellants Malkiat Singh, Joginder Kaur and Kulwinder Kaur have laid challenge to the judgment of conviction and sentence dated 24.12.2002 vide which they were held guilty under Sections 304-B, 342 and 498-A IPC. The appellants were sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1000/- each under Section 304-B IPC. They were awarded rigorous imprisonment for four months and to pay a fine of Rs.200/- each under Section 342 IPC. In default of payment of fine, they were required to undergo further rigorous imprisonment for one month. The appellants were sentenced to undergo rigorous imprisonment for two years with a fine of Rs.1000/- under Section 498-A IPC, in default whereof they were directed to undergo further rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

The facts as culled out from the records are being noticed first.

Rajbir Kaur (since deceased) was married to appellant Malkiat Singh somewhere in October, 1998. Joginder Kaur was the mother-in-law while Kulwinder Kaur was her sister-in-law. On 30.05.1999 an intimation was received about her admission in Guru Nanak Dev Hospital in burnt condition. ASI Preetinder Singh reached the hospital and doctor declared her unfit to make the statement. Next day i.e. 31.05.1999 doctor declared Rajbir Kaur fit to make the statement and on police request, Mrs. Manjot Kaur, Judicial Magistrate recorded the statement of Rajbir Kaur. In her statement, she disclosed that on 30.05.1999 her mother-in-law had sprinkled kerosene oil and her sister-in-law had set her ablaze. She tried to run away, then her husband restrained her and she was thrown in the water tank and her husband shifted her to the hospital. She had further stated that her mother-in-law and sister-in-law picked up a quarrel with her for bringing insufficient dowry and her husband demanded a scooter. She had further stated that 4/5 days ago, her mother-in-law, sister-in-law and husband had beaten her and confined her in the room and she was not given meals and on 30.05.1999 she was set on fire and prior to that all the three tried to strangle her but failed.

The statement was sent to the police station and on the basis whereof, a case was registered under Sections 307, 342 and 498-A IPC read with Section 34 IPC and investigated. The site was inspected and photographs were taken and the rough plan was prepared. The plastic container of kerosene oil were taken into possession. Joginder Kaur suffered disclosure statement and pursuant thereto got the jewellery recovered. On 10.06.1999 Rajbir Kaur succumbed to the injuries and Section 307 IPC was converted to Section 304-B IPC. Autopsy on the body was done. On

completion of investigation, final report was filed against the appellants.

Charge under Sections 304-B, 342 and 498-A IPC was framed against the appellants, to which they pleaded not guilty.

At the trial, the prosecution examined thirteen witnesses, including the medical expert, Judicial Officer, the investigating officer and Jagir Kaur, the mother of the deceased.

In statements recorded under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded false implication. According to Malkiat Singh, the deceased was short tempered and they tried to extinguish the fire and brought the deceased to Saini Hospital for treatment and on the incitement of villagers of his in-laws, the deceased had implicated them.

On appreciation of evidence, the trial Court convicted and sentenced the appellants under Sections 304-B, 342 and 498-A IPC in the manner indicated above.

I have heard the learned counsel for the appellants and learned State counsel and have gone through the record carefully.

Learned counsel for the appellants had urged that the case of the prosecution rested solely on the dying declaration which was not voluntary and was a result of tutoring. According to him, the deceased was firstly taken to Saini Hospital and in the history, it was mentioned to be a case of accidental burns. But when the relatives of Rajbir took her to Guru Nanak Dev Hospital she was prompted to make a statement against the appellants, whereas she had burns upto 90% and due to sedatives she was not in a position to make any statement. He had further urged that PW5 Jagir Kaur had executed affidavit Ex.DA on 03.11.1999 wherein she

exonerated Malkiat Singh and she admitted the execution of the affidavit in her cross-examination and thus her statement in the Court cannot be relied upon. He had pointed out that Ajaib Singh, the maternal grandfather of the deceased was not examined, which was fatal to the prosecution case. He had further urged that appellant Joginder Kaur had a separate kitchen from the couple and appellant Kulwinder Kaur was living separately and had nothing to do with the married life of couple.

Learned State counsel supported the judgment of the trial Court. He had submitted that the trial Court had correctly appraised and analyzed the evidence on record.

Rajbir Kaur died of burn injuries within few months of her marriage and this fact is not disputed. It is also not in dispute that she sustained burns at her matrimonial home. PW9 Dr. Ashok Chanana had conducted the postmortem examination on 11.06.1999 at 9:50 a.m. and as per his report, there were 95% burns and death was due to shock as a result of burns. Though, the defence has not come up with a specific stand as to how she had sustained burns, but appellant Malkiat Singh had impliedly taken a stand that the deceased was a short tempered. The case of the prosecution was that it was dowry death and she had been set on fire and soon before her death, she was subjected to cruelty in relation to demand of dowry.

The foundation of the prosecution case rests on the dying declaration (Ex.PS) given by the deceased before her death to PW13 Mrs. Manjot Kaur, Judicial Magistrate. The other incriminating evidence is the testimony of PW5 Jagir Kaur, the mother of the deceased.

It is true that a dying declaration is not a deposition in Court

and is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The Courts always insist that dying declaration should be of such a nature as to inspire confidence in its truthfulness and correctness. A dying declaration stands on the same footing as other piece of evidence. Great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to connect a case as to implicate an innocent person, yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. If the Court is satisfied that dying declaration was without influence or rancor and is coherent and consistent, there is no legal impediment in founding the conviction, even if there is no corroboration.

Let us first examine the dying declaration suffered by the deceased. The relevant portion thereof, if translated, reads as under:-

“Stated that on 30.05.1999 at 8/8:30 a.m. my husband Malkiat Singh, mother-in-law Joginder Kaur and sister-in-law Kulwinder Kaur set me on fire. My mother-in-law poured oil on me and sister-in-law set me ablazed. I tried to run outside, then my husband stopped me inside and threw me into water tank after setting me on fire. My mother-in-law made my husband to run from there. My mother-in-law and sister-in-law raised hue and cry that their daughter-in-law had set herself on fire. Then my husband brought a car and had thrown me in the hospital. Thereafter, no one came. My maternal

grand parents visited on getting the news about me.

My marriage was solemnized 6/7 months ago in the month of October, 1998. My mother-in-law and sister-in-law picked up quarrel with me taunting as to what my parents had given. My husband used to say that scooter was not given to him. My four are yet to be married, but my father is not alive, therefore, I could not bring anything. The quarrel continued to go on for 4/5 days and all the three i.e. my mother-in-law, sister-in-law and husband started beating and stopped me to go out of the house. I was not provided meal, water etc. I was confined in a room. Thereafter, I was set on fire on 30.05.1999. They tried to strangulate me before setting me on fire, but they did not succeed. My mother-in-law, sister-in-law and husband tried to kill me. I do not want to say any more.”

The deceased accused the appellants of harassment as she had brought less dowry. She had spoken about the demand of a scooter by Malkiat Singh. She gave vivid account and manner in which the occurrence took place. She had stated that she was set on fire by the appellants.

It is necessary to mention here that on 30.05.1999 the investigating officer had approached the Medical Officer if she was fit to make a statement and application Ex.PQ was moved and the doctor vide endorsement Ex.PQ/1 declared her unfit to make the statement. It was on the next date i.e. 31.05.1999 the doctor declared her fit to make the statement and consequently the police approached the CJM and the application was marked to Mrs. Manjot Kaur, Judicial Magistrate. Had she been not in a fit state, attending doctor would not have declared her fit.

While reducing the statement of Rajbir Kaur (since deceased),

PW13 Manjot Kaur, Judicial Magistrate took all precautions. After obtaining the fitness from Dr. Kamal Gupta, (PW1) she started recording the statement. The Magistrate analyzed the mental faculty of the deceased and some questions were put to test her and after satisfying herself, she had recorded the statement. Rajbir Kaur admitted the statement to be voluntarily and without any pressure. The statement was recorded in the presence of doctor, who had also certified that the patient remained fit throughout her statement and was oriented in time, space and person. The Magistrate also made endorsement regarding her satisfaction that the statement was voluntary. The girl was pregnant at the time of incident. It could not be expected that at the last stages when she was on the verge of death she would lie.

In the case of **Kundula Bala Subrahmanyam Vs. State of A.P., 1993(2) SCC 684**, the Hon'ble Apex Court while dealing with the sanctity attached to a dying declaration, held as under:-

“A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any

embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.”

In the case of **Laxmi Vs. Om Parkash & Ors., AIR 2001 (SC)**

2383, the Hon'ble Apex Court further held that:-

“The law is well settled: dying declaration is admissible in evidence. The admissibility is founded on principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming safe basis for conviction.”

Adverting to the facts of present case, as noticed above, the

dying declaration was made in a fit mental condition. It was recorded by a Magistrate in presence of the attending doctor, who were independent and disinterested persons. She remained conscious throughout her statement and made the statement voluntarily. She had specifically stated that about the manner in which the appellants Joginder Kaur and Kulwinder put her on fire and Malkiat Singh prevented her from going out of the room. There is no reason to disbelieve it.

The appellants were charged under Section 304-B IPC. Section 113-B of the Evidence Act deals with the presumption of “dowry death” and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to demand of dowry, the court shall presume that such person had caused “dowry death”. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the “dowry death” provided the other requirements mentioned above are satisfied.

Jagir Kaur had specifically stated that some days before the occurrence, the deceased was harassed and maltreated for dowry. The deceased had specifically disclosed that just 4/5 days before the occurrence she was beaten by the accused and was not allowed to go out of the house and she was not provided food and water. She had further stated that when she tried to save herself, appellant Malkiat Singh restrained her. The girl's statement finds support from the statement of PW5 Jagir Kaur. She deposed that in the marriage they had given ornaments, clothes and refrigerator.

After the marriage, accused came to her and demanded a scooter. As the

demand was not fulfilled, the accused started quarreling with her daughter. She further deposed that about 8 days before her death, the deceased came to her house and told that she was being harassed and were compelling her to bring more dowry and she purchased a cooler for the deceased.

The main thrust of the appellants was that after the occurrence Jagir Kaur had executed the affidavit Ex.DA dated 03.11.1999, wherein she had exonerated the appellants and claimed that Malkiat Singh was not present at the spot and Ajaib Singh had not been examined by the prosecution therefore it was a doubtful case. Jagir Kaur PW5 specifically deposed about the harassment by the appellants after the marriage and soon before her death. The statement in the Court cannot be rejected merely because she had executed an affidavit. It appears that the accused had procured the affidavit Ex.DA after exerting pressure but the truth can never be hidden. In the affidavit Ex.DA it was claimed that Malkiat Singh was not present at the spot, whereas Malkiat Singh did not dispute his presence nor led any evidence to show that he was away, rather he claimed that he took the deceased to the hospital. It is not that the case rests solely on the testimony of PW Jagir Kaur or Ajaib Singh(who was given up being won over by the accused). The dying declaration alone is sufficient to record a conviction as it is voluntary, genuine and truthful and made in a fit state of mind and alone is sufficient to base the conviction. The case of the prosecution cannot be disbelieved or thrown only because Ajaib Singh was not examined. The accused may have succeeded in their design to pressurize him and for that reason he was given up as won over. The statement of PW Jagir Kaur and the dying declaration given by the deceased indict the series of incidents which culminated in the death of Rajbir Kaur which was otherwise than under normal circumstances and within seven years of marriage.

Appellant Joginder Kaur had claimed that she had a separate kitchen, but no evidence was produced by her to prove it. There is no reference to the separate kitchen in the site plan. Kulwinder Kaur had not set up any defence nor she had led any evidence to prove that she was living separately from the couple. Rather, it had come on record that she was a widow and was residing with her mother. None of the appellants had disputed their presence at the spot. They did not receive any injury as they did not make any attempt to save Rajbir Kaur. Rajbir Kaur was initially admitted at Saini Hospital by Malkiat Singh and the history mentioned is receipt of burns accidentally, it was on the basis of information provided by Malkiat Singh and not by the victim.

The trial Court had rightly analyzed the evidence. There is no reason to take a different view. The deceased had a married life of just few months. She was pregnant. A life was lost due to greed. The appellants deserve no leniency in the matter of sentence.

Consequently, affirming the judgment and order of conviction and sentence of the appellants, the appeal is dismissed. Their bail bonds and surety bonds stand cancelled. The appellants are directed to surrender before the CJM Amritsar within one month from today to undergo the remaining part of the sentence. In case they fail to surrender before the Court within the stipulated time, the CJM would take appropriate action in the matter. A copy of this order be sent to the CJM, Amritsar for compliance.

November 22, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No