

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

Crl. Appeal S-1841-SB of 2003
Date of Decision : March 17, 2016

Swinder Kaur

.....Appellant

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. Tarundeep Kumar, Advocate
as legal aid counsel
for the appellant.

Dr. Deipa Singh, Addl. A.G., Punjab.

T.P.S. MANN, J. (Oral)

The appellant was tried for committing an offence punishable under Section 302 IPC and, in the alternative, under Section 304-B IPC on the allegations that on 18.10.2001 at about 6.30 a.m., she had put her daughter-in-law Jaswinder Kaur on fire after throwing a piece of cloth which was burning and soaked with kerosene. Said Jaswinder Kaur was later on rushed to the hospital but after about 8 days i.e. 26.10.2001 she succumbed to the burn injuries. Vide judgment and order dated 8.9.2003, learned Additional Sessions Judge (Adhoc), Amritsar acquitted the appellant under Section 302 IPC. She was, however, convicted under Section 304 (1) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay an amount of Rs.2,000/- as fine and in default thereof, to further undergo rigorous imprisonment for two months.

According to the prosecution, on 18.10.2001, information was received by ASI Avtar Singh on telephone that Jaswinder Kaur with burn injuries was lying admitted in the hospital. Accordingly, he submitted application Ex. PG before the Chief Judicial Magistrate for deputing some Magistrate for recording statement of Jaswinder Kaur. Pursuant thereto, Sh.R.K.Singla, Magistrate, who was on duty at that time, accompanied ASI Avtar Singh to the hospital. After obtaining opinion from the attending doctor that Jaswinder Kaur was fit to make statement, the Magistrate recorded her statement Ex. PG/5 wherein she stated that on that day at about 6.30 a.m., she was serving milk to her child whereas her husband had gone to milch buffaloes. Her mother-in-law Swinder Kaur threw on her piece of cloth which was burning and soaked with kerosene. Consequently, she caught fire and raised hue and cry which attracted a number of persons to the spot. After dousing the fire, she was rushed to the hospital. She also stated that earlier also appellant-Swinder Kaur had cut the pipe of cooking gas hoping that the victim would receive burn injuries but luckily she woke up and switched off the regulator of the cylinder.

Further case of the prosecution is that the relations of Jaswinder Kaur with her husband were cordial but it was her mother-in-law Swinder Kaur, who used to harass her and also compelling her to bring a motor cycle. About half month before the

occurrence, Harbans Singh, father of Jaswinder Kaur had given an amount of Rs. 10,000/- to the appellant through his son Balwinder Singh but despite the same, the appellant did not stop harassing and torturing the deceased as she wanted to have more money to purchase motor cycle.

During the investigation of the case, the appellant was arrested on 23.10.2001. Pursuant to the disclosure statement Ex.PN suffered by the appellant, the police recovered half burnt shawl which was lying concealed underneath a trunk. On 26.10.2001, Jaswinder Kaur succumbed to the burn injuries and, accordingly, offence under Section 302 IPC was added to the FIR.

At the trial of the case, the prosecution examined PW1 Dr. Guriqbal Singh, who testified about conducting post-mortem on the dead body of the deceased during which he found ante-mortem burn injuries on the dead body and extent thereof was about 70%. The cause of death was shock (Septicaemic) due to ante-mortem burns which were sufficient to cause death in the ordinary course of nature.

PW2 Constable Nishan Singh and PW3 Constable Aroor Singh tendered into evidence their affidavits Exs. PE and PF, respectively.

PW4 Rishi Ram, Draftsman testified that he prepared scaled site-plan Ex. PF/1 of the place of occurrence.

PW5 Ram Kumar Singla, learned Judicial Magistrate 1st Class, Amritsar deposed about the recording of statement Ex.PG/5 of the deceased on 18.10.2001 after the doctor declared her fit to make statement.

PW6 Harbans Singh, father of the deceased, deposed about the appellant compelling his daughter to bring cash for purchasing motor cycle. He also stated that earlier to the occurrence, the appellant had attempted to burn the deceased by cutting gas pipe of the cylinder used in the kitchen and when after the occurrence he met his daughter in the hospital, she told him that she had been burnt by the appellant.

PW7/PW9 Dr. Baljit Basra testified that Jaswinder Kaur was admitted in the hospital on 18.10.2001 at about 8.30 a.m., with burn injuries suffered by her and she died on 26.10.2001 at 7.00 a.m. He also testified that he had given opinion Ex. PG/2 after examining Jaswinder Kaur that she was fit to make statement. The statement was recorded by Sh.Ram Kumar Singla, Judicial Magistrate 1st Class, Amritsar in his presence and upon completion of the statement, he gave another certificate Ex. PG/3 to the effect that the injured remained fit throughout.

PW8 ASI Avtar Singh and PW10 SI Kuldeep Kumar deposed about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C., the appellant denied the circumstances put to her. According to her, a day before the occurrence, father and mother of Jaswinder Kaur had come to her house and on the day of the occurrence at about 5.00 a.m. both of them had gone to Golden Temple and thereafter she heard shrieks and found Jaswinder Kaur burning and she put a chaddar on her to extinguish fire and in the meanwhile Gurmit Kaur who was to fetch milk from her house, happened to come there. She applied tooth paste on the body of Jaswinder Kaur and also called her husband Sitara Singh and then they all took her to hospital. Parents of Jaswinder Kaur later on came to the hospital. Gurmit Kaur had enquired from Jaswinder Kaur about the cause of her being burnt and it was told by her that she was unaware. She too had questioned her immediately and same reply was given by her. Later on, her parents came there and A.S.I. had some consultation with them and then they brought there some officer who recorded the statement of Jaswinder Kaur, when she was semi-conscious as she was under sedative.

In defence, the appellant had examined Sitara Singh and Gurmit Kaur. DW1 Sitara Singh, husband of the deceased has stated that after his wife suffered burn injuries, he was called to his house. His mother was already there and she was applying tooth paste on the burns of Gurmit Kaur and some neighbours were also

there and on the enquiry made by him, his wife told him that she got fire accidentally when she was boiling milk in the kitchen. They took her to the hospital and after about ½ an hour police came. Statement of Jaswinder Kaur was recorded by the police. He was taken to P.S. and detained there for three days. Later on, he was released as he was to be made prosecution witness against his mother. He denied if Balwinder Singh brother of Jaswinder Kaur, had given her money. His mother had become separate from him, before the occurrence. DW2 Gurmit Kaur has stated that on the day of the occurrence, when she had gone to the house of Sitara Singh to fetch milk, she came to know that the deceased had accidentally suffered burn injuries while she was boiling milk in the kitchen and the accused was seen by her applying paste on the burns and Sitara Singh was also present there and in his presence, she told him that she had caught fire while boiling milk and they took her to the hospital and accused followed them after making arrangement of Rs. 5,000/- for the treatment of the deceased. She has further stated that after 2/3 months she was told by Sitara Singh, about the arrest of the accused and at that time she got attested her affidavit and she handed over the same to the police. Police retained copy of the affidavit and returned her original which is Ex. DA.

After going through the evidence brought on the record and hearing learned counsel for the parties, the trial Court believed

the prosecution case to the effect that it was the appellant, who had set her daughter-in-law on fire after throwing the burning piece of cloth on her. However, keeping in view the fact that the death was the result of Septicaemic shock due to ante-mortem burns which were sufficient to cause death in the ordinary course of nature, learned trial Court exonerated the appellant of the charge under Section 302 IPC. Instead, the appellant was convicted under Section 304 (1) IPC and sentenced to undergo imprisonment and to pay fine, as mentioned above.

Having heard learned counsel for the parties and on going through the impugned judgment as well as the record of the trial Court with their able assistance, this Court finds that the prosecution has been successful in proving its case against the appellant beyond reasonable doubt. To begin with, the Court can refer to the dying declaration made by the deceased in the presence of PW5 Sh. Ram Kumar Singla, Magistrate. Before her statement was recorded, Dr. Baljit Basra had declared her fit to make statement. After her statement was completed, Dr. Baljit Basra gave another certificate that victim remained conscious throughout while her statement was being recorded. In her said statement, which has now assumed the nature of a dying declaration after the death of its declarant, it was the appellant, who had thrown a piece of cloth upon her. The said piece of cloth was burning and soaked

with kerosene. As a result the victim caught fire. She raised hue and cry which attracted a number of people to the spot, who doused the fire. She was rushed to the hospital where she was medically attended. In addition to the dying declaration Ex. PG/5, it has also come on the record that PW6 Harbans Singh, father of the deceased, testified before the trial Court that earlier to the occurrence, the appellant had tried to put the deceased on fire by cutting the gas pipe. He also deposed that after receiving information about the victim having suffered burn injuries, he rushed to the hospital and at that time the victim was conscious and she made oral dying declaration before him to the effect that it was the appellant, who had set her on fire. The prosecution case is duly corroborated by the medical evidence by way of the testimony of PW1 Dr. Guriqbal Singh, who had found 70% burns on the victim and in his opinion the cause of death was shock (Septicaemic) due to ante-mortem burns which were sufficient to cause death in the ordinary course of nature.

In view of the above, no case is made out for any interference in the impugned judgment to the extent of convicting the appellant under Section 304 (1) IPC.

As regards the quantum of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than 14 years. At the time of framing of the charges by

the trial Court on 6.3.2002, her age was noticed as 70 years. As per the custody certificate already brought on record by the learned State counsel, the appellant had undergone an actual period of three years, five months and twenty one days besides earning remissions of one year, one month and six days. In all, the custody period is four years, six months and twenty seven days. Keeping in view the aforementioned facts and also the fact that the appellant is on bail since July 2004, this Court is of the considered view that no useful purpose will be served by sending the appellant behind the bars to undergo the remaining sentence of imprisonment imposed upon her. Ends of justice would be best met if the sentence of imprisonment imposed upon her is reduced to the one already undergone by her.

Resultantly, the conviction of the appellant under Section 304 (1) IPC is upheld. Her substantive sentence of imprisonment is, however, reduced to the one already undergone by her. The sentence of fine, alongwith its default clause, is maintained.

The appeal is, accordingly, disposed of.

March 17, 2016
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(T.P.S. MANN)
JUDGE