

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-881-DB of 2003

DATE OF DECISION: SEPTEMBER 5, 2017

SHINGARA SINGH AND OTHERS

...APPELLANTS

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN.
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.**

PRESENT: MR.DEEPENDER SINGH, ADVOCATE
FOR THE APPELLANTS.

MR. PRAVEEN BHADU, AAG, HARYANA.

MAHABIR SINGH SINDHU, J.

1. Four convicts (hereinafter referred to as “appellants”) have filed the present appeal against the judgement of conviction dated 26.9.2013 and order of sentence dated 27.9.2013 vide which they were convicted and sentenced by learned Sessions Judge, Karnal under Section 302 read with Section 34 IPC for life imprisonment for committing the murder of Smt. Raj Kaur (hereinafter referred to as “deceased”).

2. As per the report of ASI Ajaib Singh, Police Station Sadar, Karnal, appellant No.1 Shingara Singh has died during the pendency of the appeal and therefore, the appeal qua him would abate.

3. The brief facts of the case are that FIR No.226 dated 8.7.2001 under Sections 307/34 IPC was registered at Police Station Sadar Karnal on the basis the statement (Ex.PD/3) made by Smt. Raj Kaur (deceased) with burn injuries on dated 8.7.2001 at 10.00 a.m., recorded by PW3 learned

Duty Magistrate/JMIC, Karnal at General Hospital, Karnal and the translated version of same reads as under:-

“Stated that I was married about eight years ago. I am illiterate. I have three children, one son and two daughters. My husband has gone to Portugal (abroad) about two years ago for earning. Our family is joint. My husband does not send money to me; but wastes the same by taking liquor etc. Yesterday i.e. on 07.07.2001 at about 04.00 p.m. a telephone call was received from my husband from Portugal, which was not attended by me and my father-in-law Shingara Singh, Jeth Jaswant Singh & Jethani Gurmeet Kaur attended the same. Thereafter, they all asked me that your husband sends money from abroad, but you have concealed this from them. Thereafter, they all misbehaved and harassed me.

Today morning i.e. on 08.07.2001 at 03.00 o'clock my father-in-law Shingara Singh, mother-in-law Harbans Kaur, Jeth Jaswant Singh, Jethani Gurmeet Kaur and Lovepreet Kaur alias Lovely, daughter of my Jeth pulled me from my room and took to another room. My mother-in-law sat outside the room and my father-in-law, Jeth, Jethani and Lovepreet started pouring kerosene upon me. I continued raising alarm, but none heard and I lost my balance. Then, I don't know who sprinkled kerosene. When kerosene was poured on my body then Lovepreet gave a match box to my Jethani and she set me on fire.

When all the persons went outside from the room after setting me on fire then I ran out from the room crying whereupon our neighbourers came there and out of them I know the name of girl Goldi. Neighbours and my mother-in-law, father-in-law, Jeth and Jethani etc. extinguished fire from my body with pillows. Thereafter my mother-in-law, father-in-law and other persons of the village brought me to Karnal hospital. I have got recorded my above statement while in senses with my free will without any pressure or tutoring. I don't know whether anybody has informed my husband in Portugal about this incident or not. Presently my children are living with my in-laws.”

4. The record reveals that Raj Kaur died on 9.7.2001 and consequently offence under Section 302 IPC was added by the police. Thereafter, investigation was carried out. Lovepreet Kaur @ Lovely (daughter of appellants No.3 and 4) was declared innocent by the police and consequently, report under Section 173 Cr.P.C. was submitted against the present four convict-appellants. Thereafter, the case was committed for trial in the Court of learned Sessions Judge, Karnal and ultimately charges under Section 302 read with Section 34 IPC was framed against the accused-appellants for causing the death of Smt. Raj Kaur, but all the appellants pleaded not guilty and claimed trial.

5. The prosecution examined as many as 14 witnesses and placed on record documentary evidence to prove its case.

6. While making their statement under Section 313 Cr.P.C., the

accused-appellants admitted their presence at the scene of occurrence, but claimed innocence. The accused-appellants also led evidence by way of 6 witnesses in their defence.

7. Learned trial Court after consideration of the material available on record convicted the present appellants under Section 302 read with Section 34 IPC and sentenced them to undergo life imprisonment.

8. Hence the present appeal.

9. Learned counsel for the appellants has contended that learned trial Court has convicted the appellants primarily on the basis of statement dated 8.7.2001 made by the deceased before learned Duty Magistrate/JMIC, Karnal which was converted into dying declaration. But that is not legally sustainable in view of the fact that as per the medical report (Ex.PA), the deceased was having 95% burn injuries and she had been administered excessive sedatives and thus, she was not fit to make such a statement as claimed by the prosecution. It is further argued that as a matter of fact the deceased committed suicide due to her frustration, as is clear from the so-called dying declaration itself because she was not having cordial relationship with her husband who was living in Portugal and he was not sending any money to her. Therefore, she was fed-up from her life. It has further been argued that there are material contradictions amongst the prosecution witnesses and there is no sufficient evidence to prove the charge under Section 302 read with Section 34 IPC levelled against the appellants by the prosecution beyond reasonable doubt.

10. Learned State counsel has argued that the statement of deceased was recorded by PW3 learned Duty Magistrate, Karnal after his full

satisfaction and the dying declaration is further corroborated by the statement of father of the deceased (PW9). He has also argued that the prosecution has fully proved the charge against the present convicts-appellants and the appeal deserves to be dismissed.

11. Heard learned counsel for both the parties and perused the record carefully.

12. The present case is mainly based on the statement of Raj Kaur (since deceased) dated 8.7.2001 which was later on treated as dying declaration by learned trial Court, in view of the fact that she was admitted in the hospital with 90% burn injuries on 8.7.2001 at 4.40 a.m. and she died on 9.7.2001 at 2.30 a.m. as a result of injuries suffered by her. Before proceeding with the matter further, it is necessary to have a look upon the medical report in the present case.

13. As per medico-legal report dated 8.7.2001 (Ex.PB), issued by PW2 Dr.Balwan Singh, Medical Officer, General Hospital, Karnal, Raj Kaur (since deceased) was brought to the hospital at 4.40 a.m. and she was examined immediately and the following injuries were reported:-

“Superficial to deep burns all over the body except bilateral soles. Blistering and peeling of skin was present at places and underlying tissues were red. At places there was blackening of skin present. Kerosene oil smell was present.

App. 90% Burns”

14. PW1 Dr. Vikas Kumar, Apna Hospital, Kurukshetra made a statement that deceased Raj Kaur was brought to Apna Hospital on 8.7.2001 at 5.00 p.m. from General Hospital, Karnal with 95% burn injuries and she

expired on 9.7.2001 at 2.30 a.m.

15. PW4 Dr. Shailender Kumar, Medical Officer, LNJP Hospital, Kurukshetra alongwith Dr. S.C. Grover and Dr. Madhu Sharma, conducted post mortem examination on the dead body of Raj Kaur on 9.7.2001 at 1.30 p.m. and opined that death was due to shock as a result of burn injuries which were ante mortem in nature and were sufficient to cause death in ordinary course of events.

16. PW3 Dr. Abdul Majid, SDJM, Meham had recorded the statement of Raj Kaur (since deceased) on 8.7.2001 and he has specifically stated during his cross-examination that *"I made my satisfaction firstly by taking the opinion of the MO and thereafter I myself put a few questions to Smt. Raj Kaur and after having their answer I was satisfied that she was fit to make statement"*.

17. Still further, the deceased made an oral dying declaration before her father PW9 Gurmukh Singh and he also deposed to the effect that he met his daughter Raj Kaur in the hospital and she told that on previous day one telephone call was received from her husband (Kulwant Singh) from Portugal which was heard by accused Shingara Singh, Harbans Kaur and Gurmeet Kaur and after that the accused started quarreling with her by alleging that Kulwant Singh had sent ₹10,000/- to her, but she did not disclose. She further told that she was beaten by accused and they left her in a separate room and they went in other room. It was further told that in the night, 5 persons brought her in another room and out of five, her mother-in-law kept standing at the door of the room and the other four accused sprinkled kerosene on her and Gurmeet Kaur set her on fire with the help of

matchstick which was handed over by Lovepreet to her.

18. PW13 Dr. S.P. Singhal, Medical Officer, General Hospital, Karnal also made a statement that on an application moved by Police on 8.7.2001, he declared Raj Kaur fit to make statement vide endorsement Ex.PL/1. Thereafter, on the same day, on asking of the Duty Magistrate, he again declared Raj Kaur fit to make statement vide his endorsement Ex.PD/2. PW13 further stated that he again gave his observations vide endorsement Ex.PD/4 and PD/5 that Raj Kumar remained fit throughout while making statement.

19. The statement of PW3 Dr. Abdul Majid, Duty Magistrate was further corroborated by the statement of PW14 ASI Vijender Pal to the effect that twice the opinion of PW13 Dr. S.P. Singhal was obtained and PW13 declared Raj Kaur fit to make statement.

20. PW14 stated that he visited the place of occurrence and from the room of appellant No.1 Shingara Singh he collected burnt skin stuck to the clothes, three half burnt matchsticks lying on the floor, one plastic can smelling kerosene oil took which were taken possession vide recovery memo Ex.PJ.

21. In view of the opinion of the Doctor which was taken twice by the Duty Magistrate and after his own satisfaction that Raj Kaur (deceased) was fit to make statement, the Duty Magistrate recorded her statement under Section 164 Cr.P.C., this Court is in full agreement with the learned trial Court that the deceased was fit to make statement and the dying declaration has rightly been recorded.

22. The prosecution has also been able to prove the motive behind

the incident. Deceased Raj Kaur had specifically stated in her dying declaration that there was a dispute regarding sending/non-sending of money by her husband from Portugal between her and the appellants, as the appellants were alleging concealment of receiving amounts sent by her husband from them, which further finds corroboration in the statement made by PW9 Gurmukh Singh, father of the deceased. Even in their statement under Section 313 Cr.P.C. the accused-appellants made a mention that Kulwant Singh used to send money to Raj Kaur (since deceased), but Raj Kaur was not disclosing the same to them.

23. Keeping in view the opinion of the Doctor read with the satisfaction of Duty Magistrate as well as further corroboration by the statement of father of the deceased and recovery of material evidence and the admission of the accused-appellants that they were present at the spot at the time of incident and there existed dispute between the accused-appellants and the deceased.

24. Coming to the role attributed to appellant No.3 Harbans Kaur, deceased Raj Kaur had specifically stated in her statement/dying declaration that appellant No.3 Harbans Kaur sat outside the room and it was only accused-appellants No.1, 2 and 4 who sprinkled kerosene oil on her and set her on fire. PW9 also deposed that as per the statement made to him by Raj Kaur while in hospital, appellant No.3 Harbans Kaur kept standing at the door and the other accused sprinkled kerosene oil on her and set her on fire. Therefore, we are of the considered opinion that reliance has to be placed on the dying declaration made by Raj Kaur (since deceased) and the deposition made by PW9 and in view thereof, benefit of doubt has to be given to

appellant No.3 Smt. Harbans Kaur.

25. In view of the above, appellant No.3 Smt. Harbans Kaur is acquitted of the charges levelled against her and the appeal qua appellant No.3 is allowed, whereas the appeal qua appellants No.2 and 4 is dismissed and that of appellant No.1 Shingara Singh is disposed of as having abated.

26. Bail bond furnished by appellant No.3 stands discharged.

27. The accused-appellants Jaswant Singh and Gurmit Kaur are on bail. Their bail bonds stand cancelled. They shall surrender forthwith before the Chief Judicial Magistrate, Karnal who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Karnal shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

September 5, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes