

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No.1192-DB of 2013
Date of Decision:- September 13, 2017

Lakhwinder Kumar and another

.....Appellants

Versus

State of Punjab

....Respondent

CORAM: Hon’ble Mr. Justice Rajesh Bindal
Hon’ble Mr. Justice Gurvinder Singh Gill

Present : Mr. G.S.Sandhu, Advocate for the appellants.

Ms. Anju Arora, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Lakhwinder Kumar and Asha Rani have filed the present appeal challenging judgment dated 13.6.2013 passed by learned Additional Sessions Judge, Gurdaspur vide which they have been convicted for offences punishable under Sections 304-B and 498-A of Indian Penal Code, 1860 (for short “IPC”) and have been sentenced as follows:-

Name of convict	Convicted u/s	Sentence Imposed	In default of payment of fine
Lakhwinder Kumar	304-B of IPC	R.I. for life and fine of ₹ 1,00,000/-.	Further R.I. for one year
	498-A of IPC	R.I. for three years and fine of ₹ 10,000/-.	Further R.I. for six months
Asha Rani	304-B of IPC	R.I. for 10 years and fine of ₹ 50,000/-.	Further R.I. for six months
	498-A of IPC	R.I. for three years and fine of ₹ 10,000/-.	Further R.I. for six months

2. The FIR (Ex.PW-9/C) was lodged on the basis of statement (Ex.PW-10/E) of Smt. Usha Rani recorded by Sh. Amit Kumar Garg, JMIC, Gurdaspur in Civil Hospital, Gurdaspur on 11.4.2011. Upon admission of Smt. Usha Rani with burn injuries in Civil Hospital, Gurdaspur, the hospital authorities sent intimation to the police regarding her admission. S.I. Jaswinder Singh (PW/9) reached Civil Hospital, Gurdaspur and after ascertaining fitness of Usha Rani to make statement, he moved an application to Chief Judicial Magistrate, Gurdaspur for recording statement of Smt. Usha Rani who deputed Sh. Amit Garg, JMIC, Gurdaspur to do the needful. Sh. Amit Garg reached hospital and after ascertaining fitness of Smt. Usha Rani, recorded her statement (Ex.PW-10/E). The translated gist of the statement is reproduced below:

“I was beaten by my father-in-law, mother-in-law and by my husband. Today in the morning at 8 A.M my father-in-law, mother-in-law and my husband set me on fire by pouring kerosene oil on me. I was married 6 years back. They used to beat me saying that I would not be allowed to stay without dowry. I do not have any child and had two mis-carriages and due to which they used to taunt me. Thereafter, I was thrown in water and was got admitted in hospital. I am not under any pressure and I am making my statement out of my will. This occurrence had taken place in the house of my in-laws.”

3. Pursuant to recording of the aforesaid statement, FIR No.18 dated 11.4.2011, under Sections 304-B and 498-A/34 of IPC was lodged at Police Station

Purana Shalla. Usha Rani, however, succumbed to her injuries on 16.4.2011. The police conducted investigation in the matter. Inquest proceedings were conducted. Statements of witnesses were recorded in terms of Section 161 Cr.P.C. A site-plan of the place of occurrence was prepared. Post-mortem examination was got conducted on the dead-body of Smt. Usha Rani. After conclusion of investigation, challan was presented in the Court of JMIC, Gurdaspur against the three accused namely Lakhwinder Kumar, Ram Parshad and Usha Rani on 24.5.2011, who committed the case to the Court of Sessions vide order dated 30.7.2011. The case was assigned to the Court of learned Additional Sessions Judge, Gurdaspur who framed charges against the accused for offences punishable under Sections 304-B and 498-A read with Section 34 of IPC. An alternate charge for offence under Section 302 IPC was also framed. The accused, however, pleaded not guilty and claimed trial.

4. The prosecution in order to establish charges framed against the accused examined as many as ten witnesses. PW-1 Amir Chand, father of deceased, deposed that his daughter Usha Rani was married to Lakhwinder Kumar on 26.2.2005. He stated that despite sufficient dowry having been given at the time of marriage, the accused started demanding motor cycle and used to beat and maltreat his daughter. His daughter had been turned out of her matrimonial home on 2-3 occasions. PW-2 Rupan Kumar deposed that Usha Rani was his cousin who was married in the year 2005 and her parents had given dowry at the time of marriage as per their capacity but her husband and members of his family were not happy on account of less dowry and used to quarrel with Usha Rani. He deposed that on 11.04.2011 he received an

intimation that Usha Rani had been set on fire by her in-laws and later on he came to know that she died in the hospital on 16.04.2011. He also stated that the Judicial Magistrate had recorded statement of Usha Rani in the hospital.

5. PW-3 Dr. Rajesh Lakhanpal who had conducted post-mortem examination on dead body of Usha Rani, proved post mortem report as Ex.PW-3/A. PW-4 Dr. Ajay Mahajan deposed that on 11.04.2011 while he was posted at Civil Hospital, Gurdaspur, an application was moved by the Investigating Officer regarding condition of Usha Rani and he declared her fit to make statement vide endorsement Ex.PW-4/A. PW-5 PHC Mewa Singh is a formal official witness who stated regarding delivery of special reports to Ilaqa Magistrate and to higher police officers on 11.04.2011. PW-6 Jagir Singh stated that on 23.05.2011 he visited the place of occurrence at Village Pandori and prepared the scaled site plan (Ex.PW-6/A). PW-7 HC Parvesh Kumar stated that on 11.04.2011 he was posted as MHC at Police Station Purana Shalla and that on 12.04.2011, SI Jaswinder Singh deposited the case property with him and that as long as the same remained in his custody the same was not tampered with. PW-8 ASI Major Singh who remained associated with SI Jaswinder Singh for investigation of this case deposed regarding arrest of accused Lakhwinder Kumar and Asha Rani. He further stated regarding disclosure statement made by Lakhwinder Kumar and regarding recovery of empty bottle of kerosene oil and matchbox at his instance in pursuance to the aforesaid disclosure statement.
6. PW-9 Inspector Jaswinder Singh who is Investigating Officer in the present case stated in detail regarding entire proceedings conducted in the matter right

from receipt of intimation from Civil Hospital, Gurdaspur regarding admission of Usha Rani with burn injuries upto the filing of challan. PW-10 Sh. Amit Kumar Garg, Judicial Magistrate Ist Class, Jalandhar who had recorded statement of Usha Rani on 11.04.2011 stated in detail regarding the procedure adopted by him for recording the aforesaid statement. He has specifically stated that he had inquired about the fitness of Smt. Usha Rani before her statement was recorded and that after the statement was recorded the certificate Ex.PW-9/F was given by the Doctor that Smt. Usha Rani remained fit and conscious during recording of her statement.

7. After conclusion of prosecution evidence, entire incriminating evidence appearing against accused was put to them to enable them to explain the same but the accused denied the entire prosecution case in toto and pleaded false implication. Both the accused pleaded *alibi*, stating that they were not present at the spot and that it was only father of accused Lakhwinder Kumar who was present at home when Usha Rani caught fire accidentally and who had tried to save Usha Rani and in the process sustained injuries himself. He died lateron. It may here be mentioned that the accused Ram Parshad, father of Lakhwinder Kumar died during the course of trial and proceedings against him stood abated.
8. The learned trial Court while appreciating the evidence on record held that the prosecution has been able to substantiate the charges framed against the accused Lakhwinder Kumar and Asha Rani under Sections 304-B and 498-A IPC and accordingly convicted the accused vide impugned judgment dated 13.06.2013. Aggrieved with the same, appellants have filed the present

appeal.

9. The learned counsel for the appellants while assailing the impugned judgment has submitted that both the accused have been falsely implicated in the present case and that infact there is no eye witness to the occurrence and the case is based solely on the dying declaration which is not trustworthy at all inasmuch as it is not established that the Doctor had certified Usha Rani to be fit for making her statement and she had remained fully fit during the course of recording of her statement. The learned counsel has further submitted that infact in the present case none of the appellants were present at home when Usha Rani caught fire accidentally and only Ram Parshad, father of accused Lakhwinder Kumar was present, who had tried to save Usha Rani and in the process had himself sustained injuries. He has submitted that prosecution had not come out with the said evidence and had thus suppressed the genises of occurrence. The learned counsel for the appellants thus submitted that the impugned judgment cannot sustain and is liable to be set aside and has prayed for acquittal of the appellants.
10. On the other hand, learned counsel representing the State has submitted that the impugned judgment is well reasoned and based on convincing evidence led by the prosecution. It has been submitted that the Judicial Magistrate who recorded the statement of Usha Rani adhered to all the safeguards and fully satisfied himself regarding the physical and mental condition of Usha Rani before recording her statement. It has further been submitted that the statement of Usha Rani was recorded promptly and there is nothing to suggest that she was ever tutored so as to doubt the voluntary nature of her statement.

The learned counsel has thus submitted that there is no infirmity in the impugned judgment and that the appeal deserves dismissal.

11. We have considered the rival submissions addressed before this Court and have also perused the record of the case.
12. The first and foremost question before this Court would be as to whether it is a case of un-natural death due to burn injuries as is alleged by the prosecution. The medical evidence led by prosecution is in the shape of post mortem report Ex.PW-3/A which has been duly proved by PW-3 Dr. Rajesh Lakhanpal. PW-3 Dr. Rajesh Lakhanpal deposed that on 17.04.2011 he had conducted post mortem examination on the dead body of Usha Rani. The relevant extract from his statement reads as follows:

“On examination of the body Superficial to deep burns present all over the body except right foot and small patch on the upper back line of demarcation present epidermis and dermis showing sign of burns.

In my opinion the final cause of death in above said case was due to shock because of burn injury which was sufficient to cause death in ordinary course of nature all injuries were antemortem in nature.

Probable time between death and postmortem within 24 hours.”

13. The witness was briefly cross-examined on behalf of the accused but nothing substantial could be elicited during cross-examination so as to doubt the

veracity or opinion of the doctor. In these circumstances the fact that Usha Rani died as a result of burn injuries cannot be doubted.

14. The next question before this Court is as to whether it was a case of accidental fire as pleaded by the accused in their statements under Section 313 Cr.P.C. or as to whether it is the accused who had set her on fire by pouring kerosene oil on her. Since there is no eye witness to the occurrence, therefore, the prosecution relies mainly on the dying declaration (Ex.PW-10/E) of Usha Rani recorded by PW-10 Sh. Amit Kumar Garg, Judicial Magistrate Ist Class on 11.04.2011. PW-10 had recorded the statement of deceased after ascertaining about her fitness to make statement from doctor. The relevant extract from the statement of PW-10 reads as follows:

“On reaching the Civil Hospital, I enquired about the fitness of the patient and passed the orders accordingly which are Ex.PW-10/C and Ex.PW-10/D. Thereafter, I recorded the statement of the victim Usha Rani after explaining her fully that she was not to give the statement under any undue influence or pressure and that she had to suffer the statement voluntarily with her free will. I recorded the statement of victim which is Ex.PW-10/E which she suffered voluntarily. After recording the statement the certificate of the doctor was obtained which is Ex.PW-9/F and also observed vide this order that the victim remained fit and conscious while recording her statement. I passed order regarding this which is Ex.PW10/F.”

15. Learned counsel for the appellants has however, attempted to assail the sanctity of the dying declaration on the following grounds:

- i) That the promptness with which the police acted as per the timings recorded on various documents for ascertaining the fitness of Usha Rani clearly shows that all these documents are fabricated
- ii) That the omission to examine the doctor who had declared Usha Rani fit is fatal to the case of prosecution.

16. The learned counsel in order to hammer forth his aforesaid submissions has referred to the proceedings recorded by Sh. Amit Kumar Garg wherein the timings have been recorded. The said proceedings i.e. Ex.PW10/B, PW-10/C and PW-10/D are reproduced below for the sake of ready reference:

“Application for recording the Dying Declaration.

Present: Sub Inspector Jaswinder Singh, Police Station Purana Shalla.

SI Jaswinder Singh has moved this application before me being Duty Magistrate for recording the statement of Usha Rani wife of Lakhwinder Singh, resident of Village Pandori Mahantan, Tehsil and District Gurdaspur, who is admitted in the Civil Hospital, Gurdaspur in burn condition. Application is presented before me at 2.48 PM. I proceed to record her statement at 2.50 PM.

(Amit Kumar Garg)
JMIC Gurdaspur
Dt.11.04.2011 at 2.50 PM

I have reached at Civil Hospital, Gurdaspur at 2.54 PM. Let the opinion of Doctor on duty be obtained regarding fitness of Usha

Rani wife of Lakhwinder resident of Village Pandori, Mohantan
whether she is fit to make statement or not.

(Amit Kumar Garg)
JMIC Gurdaspur
Dt.11.04.2011 at 2.55 PM

Doctor on duty Sh. Ajay Mahajan has opined that she is fit to make the statement. I have directed that all persons to go out except Doctor on duty. I have introduced the patient that I am Amit Kumar Garg, Judicial Magistrate Ist Class, Gurdaspur. I am satisfied that she is free from undue influence and pressure. Hence I proceed to record the statement of Usha Rani wife of Lakhwinder resident of Village Pandori Mohantan, Tehsil and District Gurdaspur at 2.57 PM. Thereafter I recorded the statement of Usha Rani separately.

(Amit Kumar Garg)
JMIC Gurdaspur
Dt.11.04.2011 at 3.05 PM”

17. The relevant timing as discerned from the aforesaid documents are as follows:

2.48 P.M.: Application presented by Investigating Officer before Duty Magistrate requesting for recording statement of Usha Rani.

2.50 P.M.: Judicial Magistrate proceeds to hospital to record statement.

2.54 P.M.: Judicial Magistrate arrives at Hospital.

2.55 P.M.: Opinion of Doctor sought regarding fitness of

Usha Rani.

2.57 P.M.: After taking opinion of the Doctor regarding fitness of Usha Rani, Judicial Magistrate proceeds ahead to record statement of Usha Rani.

18. The aforesaid timings show that the police and the Judicial Magistrate Ist Class acted in promptness and did not waste any time. The fact that everything was done efficiently can certainly be not made a reason to doubt the veracity of the statement of the witnesses.
19. The learned counsel for the appellants also pointed out that the signatures of the Judicial Magistrate as existing on the documents Ex.PW-10-B and PW-10/D do not tally and in these circumstances no reliance can be placed upon the same.
20. We have perused the signatures of the Judicial Magistrate Ist Class on both the documents. We find that while on the document Ex.PW-10/B the officer has merely appended short initials but on the document Ex.PW-10/D he has affixed his complete signatures. Though it is expected and desirable that while preparing important documents which can be called in question in Judicial Courts, care should be taken that complete signatures are appended therein but we do not find any reason to doubt the statement of the Judicial Officer merely on the ground that on one of the document he chose to append initials only. The officer might have done so in a hurry and to ensure that valuable time is not lost on such occasion.

21. In any case, when the Magistrate (PW-10) stepped into the witness box, he categorically stated to the effect that he had sought opinion of the doctor regarding fitness of Usha Rani before her statement was recorded and that the doctor also issued a certificate upon completion of the recording that she remained fit during the course of recording of her statement. A perusal of the certificate (Ex.PW-9/F) issued by the doctor shows that he has specifically stated that Smt. Usha Rani remained fit while making statement. In any case, law in this regard is well settled. A five Judges Bench of Hon'ble the Supreme Court, in judgment reported as AIR 2002 SC 2973 Laxman Vs. State of Maharashtra held that where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. It was further held therein that a certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.
22. Learned counsel for the appellants has also attempted to assail the dying declaration on the ground that PW-1 Amir Chand father of deceased during cross-examination stated that his daughter Usha Rani was unconscious when she reached the hospital on 11.04.2011 and that the police reached hospital after one hour. He deposed that his daughter remained unconscious throughout from 11.04.2011 to 16.04.2011. Learned counsel for the appellants has submitted that in case Usha Rani was unconscious throughout her stay in the hospital from 11.04.2011 to 16.04.2011, then there is no question of recording of her statement. Upon perusal of cross-examination of

PW-1 Amir Chand, we do find that he has stated that his daughter remained unconscious from 11.04.2011 to 16.04.2011, but the same cannot have the effect of washing out the statement of the Judicial Magistrate to the contrary. Such like description of condition of deceased by her father PW-1 can only be termed as an exaggerated description of critical condition of his daughter by a rustic man without realising that the same could be exploited by accused during trial. PW-10 categorically stated that he recorded the statement of Usha Rani after ascertaining her fitness from the doctor who had issued certificate in this regard.

23. In view of the discussion made above and in the light of the ratio of the judgment in Laxman's case (supra) we do not find any ground to doubt the authenticity of dying declaration of Usha Rani recorded by PW-10 Sh. Amit Kumar Garg, Judicial Magistrate. The Judicial Magistrate had taken all safeguards before recording her statement. The opinion of the doctor had been sought regarding fitness of Usha Rani. Further it is specifically recorded in his certificate Ex.PW-10/F that at the time of recording her statement only he and Dr. Ajay Mahajan, Medical Officer on duty, were present. After recording of statement of Usha Rani, the doctor certified that Smt. Usha Rani remained fit during the course of recording of her statement. There is nothing to show any kind of tutoring of Smt. Usha Rani. PW-10 Amit Kumar Garg had recorded his statement in discharge of his official duties and he cannot be said to be biased towards anybody. As such, the dying declaration Ex.PW-10/E is held to be trustworthy.

24. A perusal of the statement Ex.PW-10/E shows that Smt. Usha Rani has

specifically stated therein that she was married 6 years back and that her father-in-law, mother-in-law and her husband used to give beatings to her to press upon their demand of dowry. She further specifically stated therein that her father-in-law, mother-in-law and husband had set her on fire at 8 AM by pouring kerosene oil on her. PW-1 father of Usha Rani has disclosed the date of marriage of Usha Rani as 26.02.2005. The said date is not being disputed. As such it is held that Usha Rani died within 7 years of her marriage having died on 16.04.2011.

25. The learned counsel for the appellants assailed the case of the prosecution as regards the demand of dowry by stating that the time and date of demand of dowry and details are not forthcoming in the dying declaration and that even the father has not specified the time and date of such demands. It is correct that the finer details of time and date of demand are not forthcoming in the dying declaration. However, Usha Rani having categorically stated so in her statement Ex.PW-10/E, we do not find it a ground to discard her statement merely on the count that the same does not specify the time and date of demand of dowry as in the critical and painful condition, the deceased could not be expected to make an encyclopedic statement furnishing all the details of time, date and place of demand and of the articles demanded. Her broad statement regarding demand of dowry by naming the persons in her dying declaration can not be called in question unless there is some other evidence to contradict the same.
26. Though the accused have pleaded that Ram Parsad was the only one present in the house, who had infact attempted to save the deceased Usha Rani and had

himself sustained burn injuries but no evidence to show that Ram Parsad sustained any injury has been led. The accused could have very conveniently placed on record the medical treatment record in respect of Ram Parsad but neither any such record nor any doctor has been examined to establish the said plea.

27. In order to prove the plea of *alibi* the accused examined DW-1 Subash Chander who stated that he had visited the house of accused on 11.04.2011 at about 7.30/8 A.M. and at that time only Usha Rani and Ram Parsad were present and Ram Parsad told him that Lakhwinder Kumar had gone for work and Asha Rani had gone to temple as it was *Navratra* on the said day. DW-2 Som Raj has simply stated that Lakhwinder Kumar and Asha Rani were not in their house. Apart from the said oral statement of DW-1 Subash Chander and DW-2 Som Raj, there is no other corroborative evidence to establish the plea of *alibi*. It is well settled that the accused in order to establish their plea of *alibi* must lead very cogent and convincing evidence to establish the same and standard of proof required to establish the same is much higher than what is required to establish any other defence.

28. The Hon'ble Apex Court in a case reported as (2015) 4 SCC 749 Vijay Pal v. State (Government of NCT of Delhi) while discarding the plea of alibi raised by accused, held as under :-

“It is not a case where the accused has proven with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. The evidence adduced by the accused is not of such a quality that the Court would entertain a reasonable doubt. The burden on the accused is rather heavy and he is

required to establish the plea of alibi with certitude. In the instant case, nothing has been brought on record that it was a physical impossibility of the presence of the accused to be at the scene of the offence by reason of his presence at another place.”

29. From the above referred judgement, it can be discerned that to successfully establish a plea of alibi, the accused would be required to lead cogent and convincing evidence to show that his presence at the spot of occurrence was absolutely not possible. A mere oral statement by a witness would not be sufficient to absolutely rule out his presence at the spot.
30. In view of ratio of above cited judgment, the oral evidence led by the accused in the shape of DW-1 and DW-2, in the absence of any other convincing evidence to rule out the presence of accused at the spot is grossly insufficient to establish the plea of *alibi* set up by the accused.
31. From the aforesaid discussion, we find that it is a case of un-natural death where Usha Rani died due to burn injuries within 7 years of marriage and the evidence suggests that the accused had been maltreating the deceased to press upon their demand of dowry. As such the present case would clearly attract an offence under Section 304-B to be termed as a case of 'dowry death'.
32. No other argument has been raised or urged before this Court on behalf of the accused.
33. As a sequel to our discussion made above, we do not find any infirmity in the findings of conviction of the accused as recorded by the trial Court in respect of offences under Section 304-B and 498-A IPC and the same are affirmed.

However, as regards the sentence, we find that the learned trial Court while imposing sentence in respect of Section 304-B IPC, apart from ordering the accused to undergo the substantive sentences of imprisonment has also imposed a fine of ₹1,00,000/- upon Lakhwinder Kumar and of ₹50,000/- upon Asha Rani. Section 304-B of IPC does not provide for imposition of any fine. As such, the sentence of fine in respect of offence under Section 304-B as imposed upon both the accused is set aside while maintaining the substantive sentence of imprisonment as imposed by the trial Court on both the accused. The appeal stands dismissed with the aforesaid modification in sentence.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 13, 2017

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No