

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-767-DB of 2010
Date of decision : 22.3.2017

Dalip Singh

...

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vivek Gupta, Advocate as
Legal Aid Counsel for the appellant

Mr. Praveen Bhadu, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

This appeal has been preferred against judgment dated 4.2.2010, passed by the Court of Additional Sessions Judge, Kaithal, vide which accused Dalip Singh was convicted for offence under Section 302 IPC and order dated 5.2.2010, vide which he was sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine to undergo further rigorous imprisonment for one year.

The accused – convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story, as it unfolded

during the trial is that on 28.8.2008, complainant – Babu Ram went to Police Station, Siwan and informed the police that his daughter Saroj, married with accused – Dalip Singh, was admitted in Shah Hospital, Kaithal, in a burnt condition. On that, a police party headed by SI/SHO Gurmail Singh, (hereinafter referred to as 'the Investigating Officer/IO'), went to Shah Hospital, Kaithal, where the attending doctor informed that Saroj had suffered 100% burns. Accordingly, the Investigating Officer/IO approached Judicial Magistrate Ist Class, Kaithal, by way of moving an application Exhibit PJ, for the purpose of recording statement of injured – Saroj. Acceding to that request Judicial Magistrate Ist Class, Kaithal, proceeded to Shah Hospital, Kaithal, and on reaching there, he sought opinion of the attending doctor regarding fitness of the injured to make statement by way of moving application Exhibit PK. The attending doctor vide his endorsement Exhibit PK/1, opined that patient was fit to make the statement. Thereafter, Sh. Ashu Kumar Jain, learned Judicial Magistrate Ist Class, Kaithal, recorded statement of injured – Saroj, which was recorded in Hindi, at about 9.56 A.M. on that very day. In the said statement, Saroj wife of Dalip Singh, aged 30 years, resident of Siwan, had stated that her husband had set her ablaze the previous day at about 8.00-9.00 P.M., after quarreling with her; that her husband had poured kerosene upon her and set her on fire; that her husband had quarreled with her since he was not doing any work. She further stated that when she was set on fire by her husband, at that time, none else besides her and her husband, was present at home. The Magistrate obtained right thumb impression of the injured on

said statement Exhibit PK/2. He again sought opinion of the attending doctor who vide his endorsement Exhibit PK/3, gave a certificate that patient remained fit during the recording of statement. Learned Judicial Magistrate Ist Class, Kaithal, appended his signatures under the certificate Exhibit PK/4, to the effect that statement of patient was recorded correctly as per her version and without making any addition or omission; that statement was made by the patient without any pressure or influence and she had thumb marked it after admitting the contents to be correct. Learned Judicial Magistrate Ist Class, Kaithal, then directed that statement be sealed. However, copy of the statement was supplied to SI/SHO Gurmail Singh.

From statement of the injured, prima facie commission of a cognizable offence was disclosed, as such the Investigating Officer/IO appended his endorsement Exhibit PC/3 on certified copy of statement Exhibit PC and sent it to Police Station, Siwan, through EHC Bhagirath, on the basis of which formal FIR for offence under Section 307 IPC Exhibit PC/1, was recorded there by HC Dharampal, who had made endorsement Exhibit PC/2, on the foot of the statement. HC Dharampal dispatched special reports to Illaqa Magistrate and other senior officers of the police through Constable Joginder Singh. The Investigating Officer/IO took into possession half burnt clothes of injured Saroj by converting those into a parcel sealing it with his seal having impression 'GS' and said parcel was taken into possession vide recovery memo Exhibit PM.

Since condition of injured was deteriorating, as such she was referred to PGI, Rohtak on 28.8.2008 itself. However, she

succumbed to the injuries on the way, as such her dead body was brought back to General Hospital, Kaithal. The Investigating Officer/IO had taken snaps of dead body with the help of digital camera, which being Exhibits P-1 to P5.

On receipt of intimation that Saroj had expired, offence under Section 302 IPC was added in the FIR. The police party accordingly, went to the said hospital. SI/SHO Gurmail Singh carried out inquest proceedings with regard to the unnatural death of Saroj, preparing a report in that regard, he deputed HC Subh Karan to get post mortem examination conducted on the dead body. Thereafter the police party led by SI/SHO Gurmail Singh, went to the spot and carried out spot inspection. The Investigating Officer/IO prepared rough site plan of the place of incident as Exhibit PN, with correct marginal notes. He had lifted a plastic bottle of Pepsi emitting smell of kerosene alongwith a match box and some burnt match sticks, which were converted into different parcels and taken into possession vide recovery memo Exhibit PA, signed by the witnesses. The Investigating Officer/IO had taken two photographs of the spot Exhibits P6 and P-7. The accused was arrested in this case on 28.8.2008.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, Kaithal.

On presentation of challan in the Court of Illaqa Magistrate, Kaithal, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207

Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Illaqa Magistrate, Kaithal, committed the case to the Court of Sessions, from where it was entrusted to the Court of Additional Sessions Judge, Kaithal.

When the case was received in the Court of Additional Sessions Judge, Kaithal, he observed that offence under Section 302 IPC, was disclosed against the accused, as such the accused was charge sheeted accordingly, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, it examined as many as 12 PWs, as per following details.

PW-1 Babu Ram, son of Rulia Ram, aged 60 years, a labourer, resident of Village Sampal, District Rohtak, father of Saroj – deceased, deposed that Saroj was married with Dalip accused about 7½ years earlier at Village Siwan (statement of this witness was recorded in the Court on 2.12.2008); that the couple was blessed with two children i.e. a daughter namely, Savina and a son; that the accused used to take liquor and he alongwith his mother Rani Devi and younger brother Daya Nand, used to torture and harass Saroj; that during the night on 27.8.2008, he had received a telephonic message that Saroj had sustained burn injuries and they should reach immediately, as such he alongwith Naresh and five other persons reached Shah Hospital, Kaithal and found that Saroj had burn injuries and was crying due to those injuries; that Saroj had told him that Dalip Singh, Rani Devi and Daya Nand had set her on fire; that she

was referred to PGI, Rohtak and on the way near Village Julana, she breathed her last. Thereafter they made a telephonic call to Police Station, Siwan, who asked them to bring dead body to Civil Hospital, Kaithal and they accordingly did so; that he had moved an application before the police, but no action was taken thereon by the police against the remaining accused.

PW-2 Naresh Kumar son of Babu Ram – complainant, aged about 32 years and a labourer by avocation, who happened to be brother of deceased – Saroj, deposed on the similar lines as that of his father Babu Ram PW-1. He further deposed that he had accompanied the police party to the spot on 28.8.2008 and had witnessed recovery memo vide which the police had taken into possession various articles from the spot.

PW-3 Constable Joginder Singh stated that on 28.8.2008 he was posted at Police Station, Siwan. On that day MHC Dharam Pal had handed over the special reports of this case to him, which he promptly delivered to the learned Illaqa Magistrate and senior officers of the police.

PW-4 Baby Savina, daughter of deceased – Saroj and accused – Dalip Singh, was not found to be a competent witness by the Court. The Additional Sessions Judge, as such held that her testimony could not be recorded.

PW-5 Lachman Singh, Draughtsman, from the office of SP, Kaithal, stated that on 11.9.2008 he had gone to the spot in Village Siwan and had prepared a scaled site plan Exhibit PB, with correct marginal notes, on demarcation of Naresh.

PW-6 EHC Bhagirath, deposed that on 28.8.2008, while he was posted at Police Station Siwan, on that date SI/SHO Gurmail Singh had handed over to him *ruqa* Exhibit PC, which he carried to the police station, on the basis of which FIR Exhibit PC/1 was recorded by MHC Dharam Pal.

PW 7 Dr. R.D. Chawla, Medical Officer, Civil Hospital, Kaithal, deposed that on 28.8.2008 at 5.00 P.M. he had conducted post mortem examination on the dead body of Saroj wife of Dalip Singh, resident of Village Siwan, aged 30 years, on an application moved by police Exhibit PD; that the dead body was brought by the police and was identified by Piara Lal son of Manohar Lal, resident of Naurand Dera, District Hanumangarh, Rajasthan and Basau Ram son of Rulia Ram, resident of Sampal, Tehsil Kalanaur, District Rohtak. This witness further stated that length of dead body was 5' and it was moderately built and nourished; that dead body was covered with a *chuni* and ointment was applied all over the body; that whole of the body was burnt having deep to superficial burns except small part of face and feet; that there were approximately 90-95 percent burns. He further stated that floor of the burnt area was reddish at places and charred at places; that eyes were congested and soot particles were present in the mouth and nostrils; rigors mortis was present throughout the body; all the organs were congested; soot particles were also present in the larynx and trachea; stomach contained liquid material. In his opinion, the cause of death in this case was due to shock due to excessive burns which were sufficient to cause death in normal course of life. He further stated that injuries

were ante mortem in nature and the probable duration between the injuries and death was within a day and duration between death and post mortem was 6-24 hours. This witness further stated that he had handed over the dead body to the police after post mortem, alongwith police papers 22 in number and post mortem report, duly signed by him. He proved carbon copy of the post mortem report Exhibit PE and inquest papers Exhibit PF.

PW-8 HC Dharam Pal deposed that on 28.8.2008, while he was posted as MHC at Police Station Siwan, on that day on receipt of writing Exhibit PC through EHC Bhagirath duly endorsed by Gurmail Singh SI/SHO, a certified copy of dying declaration, he recorded FIR Exhibit PC/1, in this case and also sent the special reports of this case through Constable Joginder Singh to the learned Illaqa Magistrate and senior officers of the police; that he also made endorsement on the ruqa as Exhibit PC/2; that he also produced his duly sworn, signed and attested affidavit Exhibit PG requesting that it be read as part of his testimony.

PW-9 EHC Vikram Singh from Police Station Siwan, a formal witness, tendered in evidence his affidavit Exhibit PH.

PW-10 Sh. Ashu Kumar Jain, learned Judicial Magistrate Ist Class, Kaithal, deposed that on 28.8.2008, the police moved an application Exhibit PJ before him for recording statement of Saroj wife of Dalip Singh. He accordingly went to Shah Hospital, Kaithal, at about 9.48 A.M. and passed an order Exhibit PK, on which doctor gave his opinion Exhibit PK/1, declaring the patient fit to make statement. Thereafter he recorded statement of injured

patient Saroj, wife of Dalip Singh, Exhibit PK/2 and the same was read over and explained to Saroj and she thumb marked the statement Exhibit PK/2 in token of its correctness. Thereafter, the doctor made endorsement Exhibit PK/3 and this witness passed order Exhibit PK/4.

PW-11 Dr. Danial Johnson, Medical Officer, Narain Hospital, Patiala, deposed that on 28.8.2008, while he was posted as Medical Officer at Shah Hospital, Kaithal, on that day the police had moved an application Exhibit PL, seeking opinion regarding fitness of patient Saroj to make statement. On that he vide his opinion Exhibit PL/1 declared the patient fit to make statement; that on the same day on the asking of Judicial Magistrate Ist Class at about 9.55 A.M., he had declared the patient Saroj fit to make statement vide Exhibit PK/1. Then after recording the statement of the patient by the Magistrate, he had also given an opinion Exhibit PK/3 to the effect that Saroj remained fit while giving her statement. He stated that both the opinions are in his hand, bearing his signatures.

PW-12 ASI Subhash Chand, who on 28.8.2008 was member of the police party headed by SI/SHO Gurmail Singh, deposed regarding the proceedings which had taken place in his presence. It may be mentioned here that since SI/SHO Gurmail Singh had expired, as such his statement could not be recorded.

Learned Public Prosecutor tendered in evidence report of FSL, Madhuban, Exhibit PO and then closed the prosecution evidence.

Statement of the accused was recorded under Section 313

Cr.P.C. in which all the incriminating evidence and circumstances appearing against the accused were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case. The accused did not lead any evidence in defence inspite availing of opportunities.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant – accused convict, learned Assistant Advocate General for the State of Haryana, besides going through the record and we are of the considered view that there is no merit in the appeal.

Here certain facts are not in dispute i.e. deceased Saroj being legally married wife of accused Dalip Singh and the couple having been blessed with two children i.e. a daughter and a son. It is also not in dispute that Saroj had died an unnatural death as a result of suffering burn injuries and she had suffered such injuries in the matrimonial home. Now, it is to be seen whether it was a homicidal death or suicidal death. As per version of the prosecution, it was former, in as much as, the accused had committed murder of his wife Saroj by pouring kerosene on her and setting her ablaze over a quarrel between the couple for the reason of accused remaining idle and not doing any work.

After going through the file, we are convinced that the prosecution story is believable and there is overwhelming evidence on the file to show that it was the accused, who had committed

murder of his wife Saroj. The most important piece of evidence in this case is dying declaration of Saroj. Her such statement was recorded by a Judicial Officer, while he was acting as Duty Judicial Magistrate. Such Duty Judicial Magistrate, Sh. Ashu Kumar Jain, appearing as PW-10, categorically stated that on receipt of police request on 28.8.2008, he had gone to Shah Hospital, Kaithal, where Saroj was admitted in injured condition and after taking opinion from the attending doctor who had opined that such injured was fit to make statement, he had recorded her statement, reading over the same to her and she had admitted it to be correct and had thumb marked the same in token of its correctness. He had obtained a certificate from the doctor that during the period her statement was being recorded she remained fit. This witness had given his certificate also that the statement had been made by the injured while being free from any pressure or influence and that it had been correctly recorded. PW-11 Dr. Danial Johnson, had deposed regarding fitness of the injured Saroj, to make statement on 28.8.2008 and his issuing a certificate that while statement of Saroj was being recorded, she remained fit to make such statement. PW-10 Sh. Ashu Kumar Jain, Judicial Magistrate Ist Class, Kaithal, was not cross examined on behalf of the accused and rather the wording mentioned is 'cross examination Nil. Opportunity given.' That means such deposition of the witness has gone unchallenged and now the accused cannot find any fault with it. Though at quite a late stage, during the trial, the accused had moved an application under Section 311 Cr.P.C., for summoning of PW-10 Sh. Ashu Kumar Jain, Judicial Magistrate Ist Class, Kaithal,

for the purpose of cross examination, but the trial Court had dismissed that application. The accused did not prefer any revision against that order. Therefore, it has become final and now the accused – appellant cannot find any fault with the same.

Similarly, as far as PW-11 Dr. Danial Johnson, is concerned, the account given by him regarding fitness of injured Saroj to make a statement and her having remained fit throughout during the period when her statement was being recorded, has not been challenged, therefore it is to be accepted as such. Thus it comes out that injured Saroj had made statement Exhibit PK/2, before the Magistrate and it was so done by her voluntarily, without any threat or pressure. In such statement, she had categorically stated that since her husband Dalip Singh had not been doing any work, that gave rise to a quarrel between Dalip Singh and her and for that reason Dalip Singh poured kerosene upon her and set her ablaze. This statement is natural and inspires confidence. The same is admissible under Section 32 of the Indian Evidence Act, 1972, which provides that statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in several eventualities, one of which being that when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. It is

further provided that such statements are relevant whether the person who made them was or was not, at the time when those were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Due sanctity is attached to such type of statement which is relied upon even when the maker of the statement had not been subjected to the test of cross examination. The reason for the same is that a person who is under expectation of death and about to leave this mortal world, would not normally tell a lie and as it is said truth rests upon the lips of a dying man. We find that such statement which is being treated as dying declaration of Saroj, is genuine, true and not tainted with any doubts. There is nothing to show that Saroj had been tutored to make such statement. Even otherwise, PW-1 Babu Ram, father, PW-2 Naresh Kumar, brother of Saroj deceased, have deposed regarding harassment of deceased at the hands of accused. That comes out to be the motive for the incident. The medical evidence in this case corroborated the ocular evidence. The investigation in this case appears to have been carried out in a fair and impartial manner. The Investigating Officer/IO had no reason to involve the accused in this case wrongly and then challan him falsely.

Thus the prosecution had successfully proved its charge against the accused for offence under Section 302 IPC beyond a shadow of reasonable doubt. The trial Court was justified in convicting and sentencing the accused for offence under Section 302 IPC. There is no illegality or infirmity with the impugned judgment of conviction and order of sentence. Those are upheld,

whereas the appeal is found to be without any merit and is dismissed accordingly.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

22.3.2017
chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No