

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

Crl. Appeal D-792-DB of 2012
Date of Decision : July 18, 2017

Pankaj and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. B.S.Saroha, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

T.P.S. MANN, J.

The appellants, namely, Pankaj son of Sarju Mandal and Sunita wife of Raj Kumar were charged under Section 302 read with Section 34 IPC for committing the murder by intentionally or knowingly causing the death of Raj Kumar son of Jalebi Dass, husband of appellant-Smt. Sunita. Vide impugned judgment and order dated 5/8.6.2012, learned Sessions Judge, Faridabad convicted them for the aforementioned offence and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each.

The period already undergone by them in jail during the

investigation, enquiry and trial was ordered to be set off against the sentence awarded to them.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which stands admitted and notice issued to the State. Besides, trial Court record was requisitioned.

According to the prosecution, Smt. Meenu wife of Kirpal Singh resident of D-2 Patel Nagar, Jhuggian, Sector-4, Faridabad made statement Ex, PI before SI Jagdish Chand, Incharge, Police Post Sector-8, Faridabad on 28.11.2010 at 1.30 a.m. at Patel Nagar, Faridabad on the basis of which FIR Ex.PI/2 came to be registered against the appellants at Police Station Sector-7, Faridabad on 28.11.2010 at 2.05 a.m. The said statement of Smt. Meenu is reproduced here-below:-

“Stated that I am residing at the aforesaid address. Raj Kumar is residing with his family on rent at the house of my Jethani at Patel Nagar. Sunita wife of Raj Kumar used to work in Kothies and one boy named Pankaj used to come to meet Sunita. Raj Kumar objected by saying that he should not come to my house. On this, Sunita, wife of Raj Kumar son of Jalebi Dass started giving beatings to her husband. However, the danda struck Sunita and I provided dressing to her. This incident occurred yesterday i.e. 26.11.2010. Today we were sleeping in house that at about 11.30 PM in the night, I and my daughter woke up on hearing

the commotion and saw that Sunita had sprinkled kerosene on her husband Raj Kumar and Pankaj had ignited the match stick and set Raj Kumar on fire in order to kill him. While on flames Raj Kumar was crying. I alongwith Jyoti extinguished the fire by pouring water on him and he was brought to BKH Faridabad for treatment. Victim Raj Kumar was set on fire intentionally by his wife Sunita and Pankaj to kill him by pouring kerosene and ignited with match. The legal action be taken against them. The statement has been got recorded which is admitted to be correct.

Sd/-
Meenu

Attested
Sd/-
I/C PP Sec. 8 FBD.”

During the investigation of the case, SI Jagdish Chand inspected the spot and prepared rough site-plan of the place of occurrence. He took into possession one plastic can containing kerosene, chappal and ashes. He got the scene of crime photographed. On receipt of intimation regarding the death of Raj Kumar in Safdarjang Hospital, Delhi due to burn injuries, Section 302 IPC was added. After conducting the inquest proceedings, SI Jagdish Chand got conducted autopsy on the dead body of Raj Kumar. He arrested the appellants on 28.11.2010. Statements of witnesses were recorded and after completion of investigation, report under Section 173 Cr.P.C. was prepared by Inspector

Rampal and presented in the Court.

After commitment of the case, learned Sessions Judge, Faridabad charged the appellants under Section 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twelve witnesses.

PW1 Dr. Ajender Kumar Yadav deposed that on 27.11.2010, he had medico-legally examined a person brought by his neighbour Jaikam Khan with alleged history of burn. He tendered in evidence his affidavit Ex.PA and proved copy of MLR Ex.PA/1 and rukka Ex. PA/2.

PW2 Inspector Rampal deposed that on 16.12.2010, on completion of investigation of this case, he had prepared report under Section 173 Cr.P.C.

PW3 SI Munshi Ram deposed that on 28.11.2010 he had received a telephonic message regarding death of Raj Kumar who was referred from B.K. Hospital, Faridabad to Safdarjang Hospital upon which Section 302 IPC was added and special reports of this case were delivered to learned Ilaqa Magistrate and senior police officers. He had informed the Investigating Officer and the SHO who was on patrolling. He proved the copy of DDR No.23 dated 28.11.2010, EX.PB.

PW4 HC Sarwan Kumar, Draughtsman deposed that

on 1.12.2010, he had prepared the scaled site plan Ex.PC of the place of occurrence.

PW5 ASI Jasbir Singh deposed that on 28.11.2010 on receipt of intimation regarding the death of Raj Kumar in Safdarjang Hospital, Delhi, he went to Safdarjang Hospital where Parkash and Dharampal met him and they had identified the deed body. He conducted the inquest proceedings Ex.PD and recorded the statements of both the witnesses under Section 175 Cr.P.C. He got the postmortem examination conducted on the dead body of Raj Kumar by moving application Ex.PE.

PW6 HC Suresh Kumar deposed that on 28.11.2010 he was posted as moharar malkhana. He tendered in evidence his affidavit Ex.PF deposing that the Investigating Officer had deposited the case property with him and later on he had sent the same to FSL Madhuban.

PW7 Constable Sarwar Kumar tendered in evidence his affidavit Ex. PG deposing that he had deposited the case property with FSL Madhuban.

PW8 Constable Manjeet Singh deposed that on 28.11.2010 he had delivered the special reports of this case to learned Ilaqa Magistrate and senior police officers.

PW9 Shyam Singh, Photographer deposed that on 28.11.2010 he had taken the photographs. He proved photos EX.PH/1 to EX.PH/5.

PW10 Smt Meenu deposed that she is the complainant and eye witness of the occurrence. She deposed about the sprinkling of kerosene oil by Sunita and setting on fire Raj Kumar with a match stick by Pankaj accused.

PW11 Dr. M.K. Wahi deposed that on 29.11.2010 he had conducted postmortem examination on the dead body of Raj Kumar. He tendered in evidence his affidavit Ex. PM and proved postmortem report EX.PM/1.

PW12 SI Jagdish Chand deposed that he is the Investigating Officer of this case and has deposed about the manner and details of the investigation conducted by him.

After tendering report of FSL Ex.PL in evidence, the prosecution evidence was closed by the learned Public Prosecutor.

When examined under Section 313 Cr.P.C., both the accused while claiming innocence pleaded false implication. They further stated that deceased Raj Kumar was a daily drunkard. Accused Pankaj has further stated that deceased was not earning anything and co-accused Sunita was doing the work as maid in kothies. Therefore, the quarrel between husband and wife took place and in this quarrel due to frustration the deceased poured kerosene on himself and set himself on fire. He has nothing to do with this offence. Accused Sunita further stated that deceased was not doing any job any where. She was doing the

work of maid in kothies and earning some money to look after her family and her husband always snatched her earnings from her and also sold her ornaments and utensils. Therefore, due to frustration he himself poured kerosene on himself and set himself on fire. She has nothing to do with this offence.

When called upon to lead evidence in their defence, the appellants examined DW1 Parduman and DW2 Shamsher, who deposed that they were residents of Patel Nagar and on 27.11.2010 at about 10.30/11.00 p.m., they were present in their house. On hearing the noise of quarrel, they reached the spot and saw that Raj Kumar and Smt. Sunita were quarelling with each other. In the meanwhile, Raj Kumar poured kerosene and then set himself on fire. The deceased was drunkard and unemployed. Sunita used to work as maid in the kothies. Meenu, neighbour of the deceased had come after 15/20 minutes of the occurrence. People had assembled at the spot. The police did not record their statements although they told the police that it was Raj Kumar deceased, who had set himself on fire after pouring kerosene.

After hearing learned counsel for the parties and on going through the file, learned trial Court accepted the prosecution case and convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has submitted that

Jaikam Khan and Jyoti, who had witnessed the occurrence besides Jaikam Khan taking the victim to the hospital were not examined by the prosecution in support of its case. It is also submitted that though according to the prosecution, the appellants were having illicit relations which was objected to by Raj Kumar deceased, no material has been brought on record by the prosecution in this regard. Meenu-complainant had made improvements while testifying before the trial Court which creates doubt about her version narrated to the police as well as before the trial Court. Her presence at the spot at the time of the occurrence was highly doubtful. It is also submitted that the family of the deceased had not stated anything against the appellants. Though the deceased used to reside with his brother, yet his statement was nether recorded during the investigation nor he was produced before the trial Court. On the other hand, only Meenu was projected as an eye-witness of the occurrence. Further, the prosecution witnesses have made discrepant and contradictory statements. Moreover, their statements do not inspire confidence. It is also submitted that the prosecution could not lead any evidence to show that the appellants were intimate with each other. On the other hand, the deceased had committed suicide and was not murdered, as claimed by the prosecution. It is further submitted that though the appellants had examined

DW1 Parduman and DW2 Samsher yet learned trial Court did not take into consideration their testimonies. Accordingly, prayer has been made for setting aside the conviction of the appellants.

Learned State counsel has submitted that the prosecution has led cogent and convincing evidence to prove its case.

Having heard learned counsel for the parties, this Court finds that Raj Kumar deceased and his wife Sunita-appellant used to live alongwith their children as tenant in the house of sister-in-law of the complainant. Pankaj-appellant was on visiting terms to their house which was objected to by Raj Kumar-appellant. This led to a dispute between the deceased and his wife on 26.11.2010. As the occurrence which took place on 27.11.2010 at about 11.30 p.m. was witnessed by Smt. Meenu and her daughter Jyoti, it was on the statement of Smt. Meenu that FIR came to be registered against the appellants with the allegations that it was Sunita-appellant, who had poured kerosene upon the deceased whereafter, Pankaj-appellant set him ablaze. Merely because Jyoti, the daughter of Smt. Meenu-complainant was not examined is no ground to reject the prosecution case in its entirety. Said Jyoti was given up by the learned Public Prosecutor as having been won over by the appellants.

Coming to the non-examination of Jaikam Khan, who

is said to have removed the victim to the hospital as was mentioned in the medico-legal report, he was not a witness of the occurrence as Meenu-complainant did not state that Jaikam Khan had also witnessed the occurrence. The prosecution case rests entirely upon the testimony of PW10 Meenu whose house adjoined the house of Sunita-appellant. The occurrence had taken place in the street by the side of the house of complainant-Meenu. The occurrence had taken place at around 11.30 p.m. when PW10 Meenu had gone outside her house to urinate. She testified in unequivocal terms that street light was on in front of her house and she was able to identify the persons, who had poured kerosene upon the deceased and set him ablaze.

As regards certain improvements made by PW10-Meenu while deposing before the trial Court, suffice it to state that the improvements were only trivial in nature and did not go to the root of the case. Therefore, her statement made in the Court cannot be considered to be an improvement which could make her testimony unworthy of credence. The defence did not bring any material on record from which it could be said that she had deposed falsely. No suggestion was put to her that she was inimical towards the appellants or had reasons to falsely implicate them. Only bald suggestion was given to her that the deceased while under the influence of liquor had set himself ablaze which

suggestion was denied by her. At the same time, it has been the case of the defence that there was a quarrel between Raj Kumar and his wife Meenu and, accordingly, Raj Kumar set himself ablaze. For such a petty reason, none would have taken the extreme step of committing suicide. At the same time, one thing is clear that there was a quarrel between the deceased and his wife. This also lend supports to the statement of Smt. Meenu that earlier to the occurrence i.e. on 26.11.2010, she had come to know about a quarrel taking place between the deceased and his wife. She went on to state that the quarrel had taken place because of visiting of Pankaj-appellant to their house.

From the testimony of PW1 Dr. Ajender Kumar Yadav, it is made out that there were superficial to deep burns present on all over the body of the deceased. Besides, singeing of hairs was present. Meaning thereby that there were no burn injuries on the head of the victim. Only singeing of hairs was present. In such a situation, the possibility of Raj Kumar committing suicide stands ruled out. Rather, it was a case of pouring of kerosene by one of the appellants on the victim followed by the other appellant setting the deceased ablaze making it a case of murder pure and simple.

Coming to the defence evidence, both DW1 Parduman and DW2 Shamsheer testified that on hearing the commotion on 27.11.2010 at 10.30/11.00 p.m., they had reached

the spot and saw the deceased and Sunita-appellant quarelling with each other. This was followed by the deceased pouring kerosene upon himself and setting himself ablaze. In their cross-examination, both of them testified that they were not summoned witnesses and their houses were situated 5/6 houses as according to DW1 Parduman and 10/11 houses away as per DW2 Shamsher from the house of the deceased. Both of them admitted that the police never recorded their statements. If the police had not recorded their statements, they could very well approach the higher authorities which they did not do and as such it cannot be said that they were deposing truthfully. Therefore, the defence witnesses appeared to be procured so as to project an afterthought version.

On going through the statement of PW10 Meenu, it can safely be held that she had witnessed the occurrence in which Sunita had sprinkled kerosene on her husband Raj Kumar followed by Pankaj lighting a match stick and setting Raj Kumar on fire and the burns received by Raj Kumar subsequently resulted in his death. There is a ring of truth in her version which makes her testimony trustworthy and worth relying upon.

In view of the above, it cannot be said that the learned trial Court was not justified in convicting and sentencing the appellants. The conviction of the appellants is based upon proper

appreciation of the evidence available on the record. As such, no case is made out for any interference in the impugned judgment of conviction and sentence passed by the learned trial Court.

The appeal being devoid of any merit is, resultantly, dismissed.

(T.P.S. MANN)
JUDGE

July 18, 2017
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No