

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No. 513-DB of 2013

Date of Decision:- October 6, 2017

Jasmer Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present : Mr. Preetinder S.Ahluwalia, Advocate, for the appellant.

Ms. Ruchika Sabharwal, Assistant Advocate General, Punjab.

Rajesh Bindal, J.

1. Jasmer Singh has filed the present appeal challenging judgment dated 16.4.2013 passed by the Court of learned Additional Sessions Judge, Hoshiarpur vide which he has been convicted for offence punishable under section 302 IPC and has been sentenced to undergo imprisonment for life and also to pay fine of ₹50,000/-. In default of payment of fine, he has been ordered to undergo further rigorous imprisonment for one year.
2. The proceedings arise out of FIR No.2 dated 6.1.2011 registered initially for offences under Sections 498-A and 406 IPC at police Station Talwara, District Hoshiarpur wherein Section 302 IPC was added lateron. The FIR was registered in pursuance of a written complaint (Ex.PC) made by Sandhya Dass resident of village Jharera, District Hoshiarpur, father of Babita Rani

(deceased) against Jasmer Singh s/o Kuldeep Singh; Bandna d/o Kuldeep Singh, Attu d/o Kuldeep Singh and Mohinder Singh s/o Kuldeep Singh, all residents of village Kukanet, Police Station Haryana, District Hoshiarpur wherein he alleged that his daughter Babita Rani was married to Jasmer Singh on 11.12.2005 and he had given sufficient dowry and gold ornaments as per his status but after about 5-6 months of the marriage, the accused started demanding cash and dowry and gave severe beatings to Babita Rani in order to pressurize her to bring more dowry from her parents. It is alleged that on 24.11.2010, Jasmer Singh visited the house of the complainant in village Jharerha along with Babita Rani and demanded ₹10,000/- in cash and when the complainant expressed his inability, the accused Jasmer Singh threatened that he would not take Babita Rani along with him and will solemnize second marriage. The complainant thereafter paid an amount of ₹10,000/- to Jasmer Singh in the presence of complainant's brother Malkiat Singh. It is alleged that a few days back Babita Rani informed the complainant over telephone that she was scared that the accused would kill her on account of dowry. On 31.12.2010, at about 5:30 A.M. the complainant received a telephonic call from Jasmer Singh that Babita Rani had caught fire due to bursting of stove. The complainant came to know that she had been admitted in P.G.I and thereafter he along with other respectables reached P.G.I. Chandigarh where they saw Babita Rani had sustained serious burn injuries and thereafter they took Babita Rani from P.G.I and got her admitted in Civil Hospital, Dasuya. The complainant further alleged therein that he had noticed that there was impression of ink of stamp pad on the thumb of foot of his daughter and he suspected that the accused had got recorded some incorrect statement from his

daughter. It is also alleged that the three years old son of Babita Rani had also told the complainant that his father had poured oil on Babita Rani and had set her on fire with the help of a matchstick.

3. Pursuant to the aforesaid written complaint (Ex.PC) submitted by Sandhya Dass, the police recorded FIR (Ex.PW6/B) on 6.1.2011 for offences under Section 498-A/406 of IPC at Police Station Talwara, District Hoshiarpur (Punjab).
4. On the next day i.e. on 7.1.2011, S.I. Baldev Singh moved a written application (Ex.PW-7/A) to Judicial Magistrate First Class, Mukerian requesting for recording statement of Babita Rani. Sh. Madan Lal, Judicial Magistrate First Class, Mukerian accordingly proceeded to Civil Hospital, Dasuya and recorded statement (Ex.PW7/D) of Babita Rani. Babita Rani succumbed to her injuries on 12.1.2011. The police conducted the inquest proceedings (Ex.PE). The post-mortem examination was got conducted. Section 302 IPC was added in the FIR. The accused Jasmer Singh was arrested 2.2.2011.
5. After conclusion of investigation, challan was presented against Jasmer Singh only in the Court of JMIC, Mukerian on 2.4.2011 while the remaining accused were found innocent. The learned JMIC, Mukerian committed the case to the Court of Sessions vide order dated 8.8.2011. The case was entrusted to the Court of Additional Sessions Judge, Hoshiarpur who upon finding sufficient grounds to presume that the accused had committed offence punishable under Section 302 IPC framed charges against the accused on 7.9.2011. An alternate charge for an offence under Section 304-B IPC was also framed. The accused, however, pleaded not guilty to the charges framed against him and claimed

trial.

6. Before proceedings further to refer to the evidence led by the prosecution, it is apposite to refer to some of the facts which had taken place prior to lodging of the FIR (Ex.PW6/B). It is the case of the prosecution that Babita Rani had sustained burn injuries regarding which the accused Jasmer Singh informed the complainant on 31.12.2010 at 5:30 A.M. In fact from the evidence brought on record, it transpires that Babita Rani had sustained burn injuries on the evening on 30.12.2010 in her matrimonial home in Village Cheeka, District Kaithal. She was initially taken to the hospital at Kaithal and then she was taken to Rajendra Hospital, Patiala from where she was referred to P.G.I, Chandigarh. The P.G.I. authorities sent an intimation to police at Kaithal regarding admission of Babita Rani with burn injuries and in pursuance thereof, SI Atma Ram (DW-1) reached P.G.I, Chandigarh and after taking opinion regarding fitness of Babita Rani made a request to Sh. Hem Raj Mittal, JMIC, Chandigarh for recording statement of Babita Rani. Sh. Hem Raj Mittal, JMIC, Chandigarh (DW-2) thereafter proceeded to P.G.I and after ascertaining about fitness of Babita Rani recorded statement (Ex.DE) of Babita Rani on 31.12.2010. Babita Rani remained admitted in P.G.I till 4.1.2011 when she was got discharged from PGI and was taken to Civil Hospital, Dasuya where she was admitted on 5.1.2011. As already stated above, another statement of Babita Rani was recorded by a Magistrate at Dasuya on 7.1.2011. Babita Rani, however, expired on 12.1.2011.
7. The prosecution in order to establish charges framed against the accused examined as many as nine witnesses. PW-1 Dr. Rajesh Kumar who had conducted post-mortem examination on the dead body of Babita Rani proved

the post-mortem report as Ex.PA. PW-2 Sandhya Dass (complainant) father of deceased stated in tune with the allegations made by him in his complaint (Ex.PC) on the basis of which the FIR was lodged. PW-3 Malkiat Singh brother of complainant stated in corroboration to the statement made by complainant Sandhya Dass. PW-4 Hari Krishan Singh, Member Panchayat of Village Jharerha stated that the accused had demanded cash and dowry articles from Babita Rani and used to maltreat her on account of insufficient dowry. PW-5 Sushil Kumar, who had performed the marriage ceremony of Babita Rani with Jasmer Singh stated specifically about the same. PW-6 SI Baldev Singh, Investigating Officer stated in respect of the entire proceedings conducted in the case right from lodging of FIR on the basis of written complaint made by Sandhya Dass upto filing of challan. PW-7 Madan Lal, JMIC who had recorded the dying declaration of Babita Rani at Mukerian on 7.1.2011 stated about the same and proved the same as Ex.PW7/D. PW-8 Dr. Balwant Singh, Medical Officer produced the bed head ticket of Babita Rani as Ex.PW-8/A. PW-9 Dr. J.S.Dhami, Medical Officer stated that on 7.1.2011 he had declared Babita Rani fit to make statement vide report Ex.PW-10/A.

8. After closure of evidence of the prosecution, entire incriminating evidence appearing against the accused was put to him to enable him to explain the same. The accused, however, denied the prosecution allegations in toto and pleaded false implication. The accused has taken a stand that Babita Rani had caught fire accidentally when the stove on which she was preparing meals burst suddenly.
9. The accused in his defence examined DW-1 SI Atma Ram who stated that on 31.12.2010 he was posted at Police Station Cheeka (Kaithal) and upon receipt

of a wireless message from P.G.I, Chandigarh, he went to P.G.I and after obtaining opinion of the doctor regarding fitness of Babita Rani requested the Duty Magistrate to record statement of Babita Rani and that the Magistrate accordingly recorded the statement of Babita Rani. DW-2 Hem Raj Mittal, JMIC who was posted at Chandigarh at the relevant time and had recorded statement of Babita Rani in P.G.I, Chandigarh proved the same as Ex.DE. Another witness examined by the defence is Sukhjit Singh, Medical Record Technician, P.G.I. Chandigarh who produced summoned record in the Court.

10. The learned trial Court upon appraisal of the evidence on record found the accused guilty for an offence punishable under Section 302 IPC and accordingly convicted him vide impugned judgment dated 16.4.2013. Aggrieved against the same, the accused has filed the present appeal.
11. The learned counsel for the appellant in order to assail the impugned judgment has made the following submissions:-

- (i) that the trial Court fell in error in relying upon the second dying declaration when in fact the same is surrounded with various suspicious circumstances whereas the first dying declaration recorded immediately after the deceased was taken to P.G.I inspires more confidence and is trustworthy wherein the accused had been given a clean chit. The learned counsel has further submitted that as per settled law the dying declaration made earlier in point of time should be given a preference. The learned counsel in order to hammer forth his aforesaid submission has placed reliance upon judgment of Hon'ble Supreme Court rendered in Panneerselvam V. State of Tamil Nadu 2008(3) RCR (Crl.) 54.

- (ii) that the very fact that the accused himself made earnest efforts to save the deceased and took her to various hospitals for her treatment

itself shows that it is a case of accidental fire and the accused had every intention to save his wife rather than to eliminate her.

- (iii) that not only the deceased in her dying declaration recorded in P.G.I, Chandigarh gave a clean-chit to the accused but the fact that the complainant who was also present there did not choose to make any complaint at that point of time shows that even they had accepted the version of Babita Rani as recorded in the dying declaration to be correct and consequently, it was in view of the said fact that Sub-Inspector from Police Station Cheeka did not register any FIR.
- (iv) that the manner in which Babita Rani was got discharged by her brother and taken to Dasuya against the advise of the doctor at P.G.I. and thereafter got the FIR lodged at Dasuya on the basis of a written complaint made by father of deceased clearly shows that the deceased was tutored to make her second dying declaration in which she had raised allegations against the accused.
- (v) that the complainant has taken a different stand in his complaint (Ex.PC) as against the statement (Ex.PW-7/D) made by the deceased. While the complainant alleges demand of dowry, the deceased alleges day-to-day fights as the reason for setting her on fire.
- (vi) that there is improper investigation in the present case inasmuch as the Investigating Officer never visited the place of occurrence i.e. the matrimonial village of deceased in District Kaithal (Haryana).
- (vii) that the charge framed against the accused is defective inasmuch as the place of occurrence is incorrectly mentioned as village Kukanet, District Hoshiarpur whereas the occurrence had in fact taken place at village Cheeka, District Kaithal.

12. The learned counsel for the appellant in order to support his arguments has relied upon judgments of Hon'ble Supreme Court reported as 2014(3)

RCR(Crl.) 674, Uma Kant and another v. State of Chhattisgarh and 2016(3) RCR (Crl.) 918 State of Gujarat v. Jayrajibhai Punjabhai Varu. The learned counsel has, thus, submitted that impugned judgment cannot sustain and has prayed for acquittal of the accused.

13. On the other hand the learned counsel representing the State has submitted that the present case, from the very nature and extent of injuries, is a case of homicidal death as the deceased had sustained injuries to the extent of 80-85% on her body and had injuries both on front and back of her body and that in case it had been a case of accidental fire then the injuries would have been only on one side of the body facing the stove and not on the entire body. The learned State counsel has further submitted that in fact at the time of recording of first dying declaration of Babita Rani in P.G.I., she was under the influence of her husband who was there all along while she was taken from her matrimonial village to P.G.I and had ample time to tutor her. The learned counsel for the State has submitted that once the deceased was away from influence of her husband, she made an independent dying declaration inculcating her husband. The learned State counsel has further submitted that besides the dying declaration, the prosecution, in any case has led ample evidence to show that the deceased was subjected to harassment on account of demand of dowry by the accused soon before her death so as to establish that the present case is a case of "dowry death". The learned State counsel has submitted that the impugned judgment is well reasoned and has been passed by duly appreciating the evidence brought on record. There is no misreading of evidence and the appeal deserves to be dismissed.

14. We have considered the rival submissions addressed before this Court and with

the able assistance of learned counsel have also perused the record of the case. We have also gone through the judgements cited by the learned counsel for appellant. We find that in the cases (supra), broad principles laid down in Panneerselvam's case, have been followed. There is certainly no dispute as regards the proposition of law spelt forth in Panneerselvam's case as regards acceptability of dying declaration. The Hon'ble Apex Court in the said case, while referring to various judgements on the issue of dying declaration, enumerated the principles governing dying declaration as under :-

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- (iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
- (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.
- (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself

guarantees truth.

- (ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.
- (xi) Where there is more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declarations could be held to be trustworthy and reliable, it has to be accepted.

15. Needless to mention, the aforesaid guidelines are not exhaustive and the ultimate test is that the dying declaration should inspire confidence and any such circumstance which is pointing towards voluntary nature of the statement would be relevant. At the same time, any circumstance which tends to show that the dying declaration was not made in a fit state of mind or was made under any kind of pressure would seriously affect its reliability. A dying declaration, in order to be made the basis of conviction has to meet with the aforestated conditions. The present case is a case of multiple dying declarations which are contradictory in nature. Both the dying declaration have been recorded by Judicial Magistrates at different points of time. While the first dying declaration was recorded in P.G.I on 31.12.2010, the second dying declaration was recorded at Civil Hospital, Dasuya on 7.1.2011. In the first dying declaration (Ex.DE) the deceased has given clean-chit to her husband but in the second dying declaration the deceased has stated that she had been

set on fire by her husband Jasmer Singh.

- 16 The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. As such, the Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination.
17. A Five Judges Bench of the Hon'ble Apex Court in a case reported as (2002) 6 SCC 710 Laxman vs. State of Maharashtra, while stating broad principles regarding acceptability of dying declaration held as follows:

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may effect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-

examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant."

18. The dying declaration relied upon by the prosecution is the second dying declaration i.e. Ex.PW7/D recorded by PW-7 Madan Lal, Judicial Magistrate on 7.1.2011. The same, when translated to English reads as follows:-

Q. On which date the occurrence had taken place and how did you catch fire?

A. My husband is serving at Cheeka and I reside with him with my son. On 30.12.2010 at about 9-9:30 P.M. I, my husband Jasmer Singh and my son who is three years old were present at home. I had a quarrel with my husband and he used to quarrel with me on petty issues. During the quarrel, my husband Jasmer Singh poured kerosene oil from a bottle and set me on fire with match box. I came out of the room and raised alarm which attracted the neighbours who poured water on me. Thereafter, my neighbours arranged for a conveyance and I was taken to Government Hospital at Cheeka (Haryana). Thereafter, I was taken to hospital at Patiala and from there I was taken to PGI,

Chandigarh. Thereafter, I was brought to Civil Hospital, Dasuya. I was set on fire by my husband Jasmer Singh. Action be taken against him. I have heard my statement in Punjabi and the same is correct.

19. The prosecution has examined PW-7 Madan Lal, JMIC to prove the aforesaid dying declaration who deposed that on 7.1.2011 when he was posted at Mukerian, S.I. Baldev Singh moved an application before him for recording statement of Babita Rani d/o Sandhya. He further deposed that Babita Rani was declared fit to make a statement by the doctor on duty at about 10:30 A.M. and that thereafter he recorded her statement.
20. A perusal of the entire statement of PW-7 shows that though PW-7 has stated that opinion of the doctor was obtained at 10:30 A.M. but the time of recording of the statement of Babita Rani is nowhere recorded. It is not known as to after how much time after ascertaining fitness of victim, the statement was recorded and as to whether Babita Rani remained fit during the course of recording of her statement. There is no such endorsement of the doctor anywhere or any certificate of the doctor to certify that Babita Rani remained fit during the course of recording of her statement. The cross-examination of PW-9 which reveals material facts is reproduced below in entirety:-

"It is correct that no query regarding fitness of injured by the learned Magistrate was put to me. I cannot say as to what time, the Magistrate came to the hospital. On the one application Ex.PW7/B was moved by the police. I remained in my office when the Id. Magistrate recorded the statement of Babita. Even after recording the statement, the Id. Magistrate did not make any request to me to check up the

patient and give certificate. I do not remember as to whether any entry was made by me in the bed head ticket regarding declaring the patient fit to make statement. I have seen the bed head ticket placed on the file. No such entry is made by me in the bed head ticket regarding declaring injured fit to make statement. It is wrong to suggest that I have deposed falsely."

21. In fact, it is not even borne out from the record that any doctor was present while the statement of Babita Rani was recorded by the Magistrate. The proceedings (Ex.PW-7/C) recorded by the Magistrate (PW-7) underneath the dying declaration do not indicate that any such certificate had been issued by any doctor. So much so, even PW-7 has neither specifically recorded in the said proceedings (Ex.PW-7/C) nor has stated while in the witness box that Babita Rani remained fit during the course of recording of her statement.
22. Though, it is well settled that a certificate of the doctor may not be necessary in every case to prove the fitness of the declarant and that if the Magistrate has recorded about the same, it would be sufficient, but in the present case, even the Magistrate is silent regarding the aspect of fitness of Babita Rani during the course of recording of her statement. In the absence of fitness to this effect, it cannot be said with certainty that the dying declaration (Ex.PW-7/D) was made by Babita Rani in a fit state of mind. Additionally, circumstances under which the dying declaration was made i.e. after she had been got discharged from P.G.I, Chandigarh against the advise of the doctor and had been taken to her paternal home in Dasuya (District Hoshiarpur) and where FIR was got lodged after about a week of the occurrence instead of reporting the matter to the police in the P.G.I itself shows that that aforesaid statement cannot be said to

be a statement made independently without any pressure. Rather the facts suggest that she had been tutored. In view of the aforesaid discussion, it is certainly not safe to rely upon the second dying declaration (Ex.PW-7/D).

23. The learned counsel for the appellant tried to convince this Court that it is the first dying declaration (Ex.DE) recorded in PGI, Chandigarh on 31.12.2010, which is trustworthy and should be relied upon. The first dying declaration (Ex.DE), when translated to English, reads as follows :-

Q. What is your name? What is your husband's name? Where do you live?

A. My name is Babita Rani. My husband's name is Jasmer Singh. I am resident of Cheeka.

Q. Do you wish to get your statement recorded out of your free will ?

A. Yes.

Q. How did you catch fire?

A. Yesterday i.e. on 30.12.2010, in the evening, I was preparing meals on stove. The stove burst and I caught fire. My husband brought me here.

Q. Whether anybody sets you on fire intentionally?

A. No.

Q. Whether you are making statement under pressure of anybody?

A. No.

Q. Do you wish to say anything?

A. No.

24. The accused in order to prove the aforesaid dying declaration (Ex.DE) has examined DW-2 Hem Raj Mittal, JMIC who stated that on 31.12.2010, he was posted as Duty Magistrate at Chandigarh and on the said day, the police moved

an application for recording statement of Babita Rani who was admitted in PGI. He deposed that the police had moved an application to the doctor seeking fitness of Babita Rani and the doctor vide his opinion Ex.DC/1 had declared Babita Rani fit for making statement. He further stated that he also sought opinion of the doctor and the doctor declared Babita Rani fit for making statement. After the statement of Babita Rani had been recorded, the doctor gave certificate to the effect that the patient remained fit throughout the recording of her statement vide endorsement Ex.DE/6.

25. The learned counsel for the appellant while referring to the aforesaid statement has submitted that the said statement having been recorded by the Magistrate and being the first dying declaration should be preferred in view of law laid down by the Hon'ble Apex Court in a case reported as 2017 (5) SCC 673 State of Maharashtra v. Nisar Ramzan Sayyed while following an earlier decision rendered in Mohanlal Gangaram Gehani v. State of Maharashtra, (1982) 1 SCC 700. The learned counsel has further submitted that since father and brother of deceased were also present in PGI and they never made any complaint to the police shows that Babita Rani had come out with the correct version regarding innocence of the accused who had taken all the pains to take the deceased initially to hospital at Kaithal and then to hospital at Patiala and then to P.G.I. Chandigarh.

26. We have considered the aforesaid submissions in the light of evidence on record. It is no doubt correct that the dying declaration Ex.DE was recorded by the Magistrate after adhering to the safeguards especially as regards ascertaining the fitness of the declarant and had sought the opinion of the doctor before and after recording the statement of Babita Rani and the doctor

had certified that Babita Rani remained fit during the course of recording of her statement. However, it also needs to be borne in mind that while Babita Rani had caught fire on the evening of 30.12.2010, her statement was recorded in the afternoon of 31.12.2010 and by that time, the accused had ample time to prevail upon Babita Rani. It is the case of prosecution itself that it was only on 31.12.2010 at 5.30 A.M. that Jasmer Singh informed father of Babita Rani about the injuries sustained by Babita Rani. It would take about 3-4 hours from a village in District Hoshiarpur to reach P.G.I, Chandigarh. The fact that the accused did not choose to inform the parents of Babita Rani on the day of occurrence itself i.e. on 30.12.2010 shows that he wanted to keep the family of Babita Rani away from her so as to be able to prevail upon her not to make a statement against him.

27. Another important aspect of the case that needs to be borne in mind is as to whether the nature and extent of burn injuries are suggestive of an accidental burning. A perusal of bed head ticket of Babita Rani (Ex.DJ) wherein the entire record pertaining to treatment of Babita Rani at P.G.I is recorded, shows that Babita Rani had sustained burn injuries almost on her entire body including front and back. In case of an accidental fire due to bursting of stove, the side of the body facing the stove would be largely affected and not both the sides. Further while recording the history of the patient, there is an overwriting as regards the cause of burn injuries which again shows that some attempt had been made by the person, who narrated the history. It may be added here that it was husband of Babita Rani who had taken her to P.G.I. The relevant extract from the said history recorded on bed-head ticket (Ex.DJ) is reproduced below :-

"Alleged H/o accidental thermal burns on 30.12.2010 @ 7 PM while she was cooking the food ~~stove got burst~~ when "*pallu*" caught fire."

28. The above referred extract shows that the words "*stove got burst*" have been scored off. No doubt the aforesaid bed head ticket must have been recorded by the doctor on duty but the cause of injury is always disclosed by the attendant with the patient and at that time it was only the husband of Babita Rani who was present. The aforesaid cutting shows that the husband had made desperate attempts to project the case to be a case of accidental fire. Further the fact that the second statement has been rendered doubtful and apparently is a result of tutoring would make this Court cautious before accepting the first statement as well as it is evident that Babita Rani is prone to being tutored. The mere fact that the accused had taken the deceased to the hospital would not entitle the accused to clean chit if there is other evidence on record to connect him with the offence. Similarly, the contention of the appellant that the father of the deceased did not make any report to the Police Officer in PGI is not sufficient to throw out the case of prosecution. In any case DW-1 SI Atma Ram, who had come from police station Cheeka (District Kaithal) to P.G.I in his examination-in-chief stated that since no cognizable offence was made out, therefore, no case was registered at police station Cheeka but a perusal of his cross-examination shows that he had made no sincere effort to record the statement of any member of family of Babita Rani. He has simply stated that nobody had approached him. Once commission of an offence is reported, it is duty of the Investigating Officer to investigate and not just wait for the family who may be busy in getting treatment to the victim. The present case was a serious case of burn injuries to a lady in her matrimonial home and the conduct

of the police officer was rather too casual, as is evident from the cross-examination of DW-1 S.I. Atma Ram which is reproduced below in entirety :-

"I reached in PGI Chandigarh at about 11.00/11.30 am. I did not record the statement of Babita. I had seen the husband of Babita at that time. (Volt. But he was outside the room). I cannot say who has brought her in the hospital. As per record none has identified that lady as Babita Rani. I waited for the arrival of the parents of Babita but none came to me. I had visited the place of occurrence and I inquired the matter. I had verbally interrogated certain persons but no writing work was done. I did not prepare any site plan, nor anything was taken into possession from the spot. The room was locked. It is wrong to suggest that I did not visit the spot and after obtaining the copy of dying declaration from the Reader of JMIC, I filed the papers arbitrarily."

29. It was incumbent upon DW-1 to have thoroughly satisfied himself before taking a decision not to proceed further in the case. From his cross-examination, it is evident that no effort whatsoever was made by him to seek the version of parents or any other family member of the deceased. As such the contention of learned counsel for the appellant that the complainant did not approach the police in PGI, Chandigarh does not hold much water. In fact the dying declaration Ex.PW-7/D is in a way contradictory to the version of the complainant inasmuch as while the complainant states that Babita Rani used

to be harassed and used to be given beatings by the accused in order to press upon demand of dowry but Babita Rani in her dying declaration Ex.PW7/D is absolutely silent regarding any demand of dowry and has simply stated that there used to be quarrel over petty issues.

30. We, thus, proceed to examine the evidence led by the prosecution. The dying declaration relied upon by prosecution was in the nature of evidence regarding offence under Section 302 of IPC. However, an alternate charge for offence under Section 304-B of IPC has also been framed. By virtue of provisions of Section 113-B of Indian Evidence Act, a presumption of guilt may be drawn against an accused and onus to establish innocence shifts upon the accused, therefore the necessary ingredients of Section 304-B IPC need to be borne in mind before proceeding any further. The necessary ingredients of Section 304-B IPC may be spelt out as follows:-

- (i) that deceased died due to burning or bodily injury or any other un-natural death;
- (ii) that the deceased died within seven years of her marriage;
- (iii) that the deceased was subjected to cruelty or harassment by her husband or his relatives;
- (iv) that such cruelty or harassment was in connection with demand of dowry;
- (vi) that such cruelty or harassment was soon before her death.

31. In the present case, the factum of unnatural death is not in dispute. In fact the accused in his statement under Section 313 Cr.PC. admits the fact that the deceased had caught fire though he has given a different version to the

incident. In any case, a perusal of the post-mortem report (Ex.PA) which has duly been proved by PW-1 Dr. Rajesh Kumar shows that Babita Rani had sustained superficial to deep burns all over her body to the extent of 85%. PW-1 has opined the cause of death to be septicemia due to burn injuries. Nothing substantial could be elicited during the cross-examination of the doctor so as to doubt the veracity of his statement or his opinion. As such, it is duly established that it is a case of unnatural death.

32. The incident had taken place on 30.12.2010 and death took place a week thereafter i.e. on 7.1.2011. It is the case of prosecution that the marriage of Babita Rani was solemnized with accused Jasmer Singh on 11.12.2005. The complainant PW-2 Sandhya Dass while in the witness box specifically disclosed the date of marriage as 11.12.2005. PW-5 Sushil Kumar has specifically stated that he had performed the religious marriage ceremony of Babita Rani with Jasmer Singh on 11.12.2005. Though an opportunity of cross-examination was offered to the accused but not even a single question was put to him during cross-examination. As such, the date of marriage of Babita Rani and Jasmer Singh stands duly proved to be 11.12.2005. In other words, Babita Rani died within a period of seven years of her marriage with accused Jasmer Singh.

33. Another ingredient that is required to be established is as to whether the deceased was subjected to cruelty by the accused in connection with demand of dowry. The complainant, in the FIR, has specifically alleged that his daughter Babita Rani was married to Jasmer Singh on 11.12.2005 and he had given sufficient dowry and gold ornaments as per his status but after about 5-6 months of the marriage, the accused started demanding cash and dowry and

gave severe beatings to Babita Rani in order to pressurize her to bring more dowry from her parents. It is alleged that on 24.11.2010, Jasmer Singh visited the house of complainant in Village Jharerha along with Babita Rani and demanded ₹10,000/- in cash and when the complainant expressed his inability, the accused Jasmer Singh threatened that he would not take Babita Rani along with him and will solemnize second marriage. The complainant thereafter paid an amount of ₹10,000/- to Jasmer Singh in the presence of complainant's brother Malkiat Singh. It is alleged that a few days back, Babita Rani informed the complainant over telephone that she was scared that the accused would kill her on account of demand of dowry. While in the witness box the complainant PW-2 Sandhya Dass specifically stated regarding his daughter having been harassed by the accused. The relevant extract from his statement is reproduced below :-

"The marriage of my daughter Babita was performed with Jasmer Singh on 11.12.05 and sufficient dowry was given according to my financial status. Gold ornaments were also given. After about 5/6 months of marriage accused Jasmer Singh, alongwith his sisters Bandana and Attu sisters in law and Mohinder Singh started harassing my daughter. They used to beat my daughter. Jasmer Singh used to take liquor and used to subject her to cruelty for bringing less dowry. On 24.11.2010, Jasmer Singh came to my house alongwith my daughter and he demanded Rs.10000/- and stated that he would only take my daughter back if money is given. I made the payment of Rs.10000/- to my son in law Jasmer Singh. Thereafter, he took my daughter to his house and they went to village Cheeka in Haryana State. There he also used to

maltreat and beat her."

34. PW-3 Malkiat Singh brother of the complainant has lent corroboration to the statement of complainant by stating as follows :-

"Said Jasmer Singh maltreated Babita on account of insufficient dowry brought by her and also compelled her to bring more dowry articles and cash amount from her parents. On 24.11.2010 I was present at my house at village Jharerha where Jasmer and Babita came to house of Sandhya Dass. Jasmer demanded cash amount from Sandhya Dass and Sandhya Dass gave Rs.10,000/- to him in my presence. Said Jasmer maltreated Babita on account of insufficient dowry brought by her and also compelled her to bring more dowry and cash amount from her parents."

35. Both the aforesaid witnesses were cross-examined at length on behalf of the accused but the witnesses remained firm on the material aspect of the case. Their statements as regards the allegations pertaining to demand of dowry could not be dislodged on any count. In fact, their statements also find corroboration from statement of PW-4 Hari Krishan, Member Panchayat who has stated that Babita Rani was married to Jasmer Singh in the year 2005 and that Jasmer Singh demanded cash amount and dowry articles from Babita Rani and used to maltreat her on account of insufficient dowry brought by her.
36. In view of the above referred statement of PW-2 and PW-3, it stands duly established that the accused had been harassing the deceased in order to press upon his demand of dowry and in fact a week before the incident i.e. on 24.11.2010, he along with deceased went to the house of the complainant and demanded ₹10,000/- and threatened them that in case the said amount is not

given to him, he would not take the deceased to his matrimonial home and thus forced the complainant to give ₹10,000/- to the accused. The aforesaid ingredients having been proved, the presumption as to dowry death in terms of Section 113-B of Evidence Act, 1872 comes into play and it would be for the accused to establish his innocence.

37. The accused in his defence had set up a case of accidental burning. However, the only evidence in this regard was the first dying declaration which has been discarded by this Court. The learned counsel for the accused has submitted that the accused had himself sustained burn injuries while trying to save the deceased but there is no medical evidence to establish the existence of any burn injuries on the person of the accused. In the absence of any medical evidence, it cannot be accepted that the accused had also sustained burn injuries while attempting to save the deceased. As such, it is held that all the necessary ingredients of Section 304-B IPC are made out.
38. During the course of arguments, the learned counsel for the appellant submitted that the Investigating Officer admittedly had neither visited the place of occurrence nor had recorded statement of any of the witnesses of that locality, which had seriously prejudiced the accused inasmuch as the witnesses from the locality would have come out with the truth.
39. We have considered the aforesaid submission. It is no doubt correct that the Investigating Officer had neither visited the place of occurrence and had not prepared any site plan of the place of occurrence nor examined any witness of the locality but in view of the fact that there is no dispute about the place of occurrence the said omission cannot be said to be fatal to the case of the prosecution. Further, there was no bar for the accused to examine witnesses

from the locality and he could have examined any person or anybody in his defence. As such, the accused could not have said to be prejudiced by the omission to examine the witness from the locality. Though, initially, it was pointed out that there is a slight error in the chargesheet inasmuch as the place of occurrence is incorrectly mentioned as Village Kukanet, District Hoshiarpur though the occurrence had taken place in village Jhinkan, District Kaithal and it was also submitted that the Court at Hoshiarpur may not have jurisdiction, but the learned counsel fairly conceded that the aforesaid mistake in the chargesheet would not be fatal to the case of the prosecution especially since the entire evidence has been led by the prosecution on the premise that the occurrence had taken place in village Jhinkan, District Kaithal and the accused had also cross-examined bearing the said fact in mind. In any case, Section 465 of Cr.PC. would take care of a minor defect of this nature which for the sake ready reference is reproduced below :-

"465. Finding or sentence when reversible by reason of error, omission irregularity.-

- (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
- (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in

any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

40. As regards the jurisdiction of the courts at Hoshiarpur is concerned, a perusal of Section 179 Cr.PC. would show that an offence can be tried where act is done and also at the place where the consequences ensue. Section 179 of Cr.PC reads as follows:-

"179. Offence triable where act is done or consequence ensues. --

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. "

41. It was also argued on behalf of the appellant that even if all the allegations are taken to be correct, still at best, offence under Section 304 Part-I would be attracted and not an offence under Section 304-B IPC. However, we are unable to accept the said contention as the manner in which the death had been caused would leave no room to doubt. It is a case of intentional causing of death.
42. No other argument has been raised or urged before this Court.
43. As a sequel to the discussions made above, while setting aside the conviction under Section 302 IPC, the accused is held guilty of having committed an offence under Section 304-B IPC. The sentence of imprisonment is reduced from imprisonment for life to rigorous imprisonment for 10 years. The

imposition of fine of ₹50,000/- is set aside. The appeal stands disposed of with the aforesaid modification in conviction and sentence.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

October 6, 2017

kamal

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