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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-779-SB-2004
Date of Decision : December 16, 2017

Bitta alias Bitu Appellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Munish Dev Sharma, Amicus Curiae,
 for the appellant.

 Mr. H.S.Grewal, Addl. A.G., Punjab.
 for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 18.12.2003 passed by learned Additional Sessions Judge (Adhoc), Amritsar whereby the appellant was convicted and sentenced as under:-

Under Section	Sentence	In default
304 Part-II IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.1,000/-	to further undergo Rigorous Imprisonment for a period of One month.

2. Facts relevant for the purpose of decision of the appeal; on 16.3.2000, case under Section 302 IPC was registered against Bitta alias Bitu on the basis of statement of Mrs. Gurmit Kaur (since deceased) wife of the appellant, recorded by Shri Arun Vir Vashist, Judicial Magistrate Ist

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Class. The statement was recorded after obtaining medical opinion that Mrs. Gurmit Kaur was fit to make the statement. As per the complainant, she was preparing vegetable in the kitchen and her husband, namely, Bitta alias Bitu asked her to prepare a cup of tea for him. She took some time and the appellant got enraged because of delay in preparing the tea and gave 4-5 slaps on her face and then poured kerosene oil on her clothes and threw her on the burning stove as a result of which, she caught fire. She raised hue and cries upon which her neighbour, Dharama and his wife reached there who extinguished the fire and Mrs. Gurmit Kaur was shifted to hospital and at that time, her statement was recorded. Initially, case under Section 307 IPC was registered. On 31.3.2000, Mrs. Gurmit Kaur succumbed for the burn injuries and her post-mortem examination was got done. Accused was arrested.

3. After completion of investigation proceedings, challan was presented in the Court for trial under Section 302 IPC.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellant guilty and convicted him for commission of offence punishable under Section 304(2) IPC and sentenced him on 18.12.2003.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. At the time of arguments, learned counsel for the appellant

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contended that in the present case, both the material witnesses, namely PW-3, Dharam Singh and PW-6, Jaswinder Kaur have not supported the prosecution case and they were declared hostile and nothing could be extracted in their cross-examination even.

7. Learned counsel for the appellant further contended that even the statement of Mrs. Gurmit Kaur recorded by Judicial Magistrate Ist Class is not sufficient to convict the present appellant for the offence under Section 304 Part-II IPC.

8. Learned State counsel while arguing this point, contended that though the witnesses, namely PW3-Dharam Singh and PW6-Jaswinder Kaur have not supported the prosecution case, still there is no reason to disbelieve the statement made by deceased under Section 164 Cr.P.C. before learned Judicial Magistrate Ist Class, namely, Shri Arun Vir Vashisth, who proved the same as PW-4 before the trial Court. The Medical officer namely, PW1, Dr. Prem Seth and PW-2 Dr. Ashok Channa have also supported the prosecution case. The investigation proceedings, including statement of Investigating Officer, implicate the present appellant-accused because Gurmit Kaur had sustained 60% burn injuries as kerosine oil was poured on her body and she was set ablaze. The preset appeal is without any merit and the same be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the present case is based upon statement of victim Gurmit Kaur (since deceased), who had made statement before PW-4, Shri Arun Vir Vashisth, Judicial Magistrate Ist Class and her statement Ex. PA/1 was duly recorded

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which was thumb-marked by her. The Medical Officer issued certificate Ex.PA that Gurmit Kaur remained fit during recording of her statement. PW2, Dr. Ashok Channa had conducted the postmortem examination of the dead body and as per postmortem report Ex.PC, Gurmit Kaur had suffered 60% burn injuries and the cause of death was shock as a result of burns which was sufficient for causing death in the ordinary course of nature. Though PW-3, Dharam Singh and P-W6 Jaswinder Kaur have not supported the prosecution case still learned trial Judge had rightly recorded the judgment of conviction on the basis of statement of PW-4 Shri Arun Vir Vashisth, learned Judicial Magistrate Ist Class and the medical evidence available on the file by way of statements of PW1, Dr. Prem Seth and PW-2 Dr. Ashok Channa. In such like cases even if the witnesses turn hostile, such a statement is certainly admissible to use it to the extent which it supports to the prosecution version of the incident and the evidence of such witnesses cannot be treated as washed off the records. Such a law was laid down by Hon'ble Supreme Court in **Bhajju @ Karan Singh vs. State of M.P., 2012 (2) R.C.R. (Criminal) 539** wherein in paragraph 19 Hon'ble Apex Court observed as under:-

“ Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Cr.P.C., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the

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prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party...”

10. In the present case PW-3, Dharam Singh and PW-6 Jawinder Kaur have supported the prosecution case that there was an incident of setting Gurmit Kaur on fire and they had visited the spot and extinguished the fire. That way, both these witnesses established the fact that Gurmit Kaur died because of burn injuries and they had visited the spot and the occurrence had actually taken place. Thus, the statements of these two witnesses PW-3, Dharam Singh and PW-6, Jaswinder Kaur can be relied upon by the prosecution to this extent.

11. The foremost and clinching piece of evidence against the accused is the statement of Gurmit Kaur (since deceased) recorded under Section 164 Cr.P.C. It is believed that a person who is facing imminent death has a special sanctity as at that solemn moment, he or she is most

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unlikely to make any untrue statement. A dying declaration thus, does enjoy a sacrosanct status as a piece of evidence being in the shape of last words coming from the mouth of the deceased. It is the principle of criminal jurisprudence that once the statement of a dying person passes the test of scrutiny of Courts, it turns to be a very important piece of evidence and if it is free from all embellishments, the dying declaration by itself can be considered to be sufficient for recording the conviction. In that eventuality, the Court has not to look for any corroboration. This statement of law is summed up in the judgment of Hon'ble Supreme Court in **Kundula Bala Subrahmanyam V. State of Andhra Pradesh**, JT 1993(2) SC 559. The Hon'ble Supreme Court added that such a statement called 'the dying declaration' is relevant and admissible in evidence, provided it has been made by the deceased while in a fit mental condition. Reliance is also placed on the judgment of Hon'ble Supreme Court in Vikas & Ors. Vs. State of Maharashtra, **2008(1) R.C.R. (Criminal) 805**, wherein it has been held that a man on death bed will not tell lies.

12. Learned trial Judge has already considered all these aspects and no ground is made out to set-aside the judgment of conviction recorded by the trial Court. Learned trial Judge has already taken the most lenient view in the matter of award of sentence and there is no scope for taking a different view.

13. Resultantly, the present appeal against the judgment of conviction and order of sentence dated 18.12.2003 passed by learned Additional Sessions Judge (Adhoc), Amritsar fails and the same stands

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dismissed.

(SHEKHER DHAWAN)
JUDGE

December 16,2017
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Whether speaking/reasoned : Yes
Whether Reportable : Yes