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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2368-SB-2003 (O&M)

Date of decision : 01.09.2017

Vipan Kumar

... Appellant(s)

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. H.S.Randhawa, Advocate/Amicus Curiae
for the appellant(s).

Mr. N.K.Banka, DAG, Punjab

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 18.11.2003 passed by learned Additional Sessions Judge, Fast Track Court, Ludhiana vide which the appellant was convicted under Sections 304-B and 498-A of the Indian Penal Code (for short "IPC") and sentenced to undergo RI for 10 years (under Section 304-B) and RI for 02 years and fine of Rupees one thousand with default stipulation (under Section 498-A). Both the sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

"The prosecution case stands registered on the basis of statement of Poonam wife of accused Vipan Kumar, which was recorded on 9-7-2000 at about 2 A.M. However, Smt. Poonam who was admitted in the hospital due to burn injuries later on succumbed to her injuries on 9-7-2000 at about 4.45 A.M. The prosecution case in brief as it emerges from the statement of Smt. Poonam is that she was married to Vipan Kumar accused on 23-4-

97 according to Hindu Rites and at the time of her marriage, her parents gave sufficient dowry as per their financial status to accused Vipin Kumar. However, after the marriage accused started subjecting Poonam to mal-treatment and harassment for not bringing sufficient dowry. He further used to beat her and ask her to bring a scooter from her parents. However, Poonam informed the accused that her parents being poor were unable to fulfill his demand, as a result of which accused continued her mal-treatment. In the year 1999 she was turned out of the matrimonial home with a threat not to come again till his demand of scooter was fulfilled. Her parents and other family members then persuaded the accused, who then felt sorry for his mistake and Poonam came back to the house of her husband. Accused Vipin Kumar after sometime then again started beating her and mal-treating her for not fulfilling his demand. On 8-7-2000 at aboutn 9-30 P.M. Vipin Kumar again gave severe beatings to Poonam for not bring scooter and felling dejected and dismayed, she poured kerosene oil on herself and further set her ablaze. She was removed to C.M.C. and Hospital, Ludhiana, where unfortunately she expired on 9-7-2000 at 4-45 A.M. On the basis of this statement, present case was registered, investigated and after completion of all formalities, final report u/s. 173 Cr.P.C. Was submitted before Area Magistrate, who committed the case to the court of Sessions and ultimately the case was sent to this Court for trial.”

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

Charge under Sections 304-B and 498-A of the IPC was framed against the accused to which he pleaded not guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-ASI Manjit Singh, PW2-Dr. Rahul Tandon, PW3-Narinder Kumar, PW4-Ranjit Kumar, PW5-Dr. R.K.Sharma, PW6-HC Hari Singh, PW7-ASI Ramji Dass, PW8-Harinder Singh, draftsman PW9-HC Rachhpal Singh, PW10-Nirbhajit Singh and thereafter, closed its evidence.

The statement of accused was recorded under Section 313

Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded false implication. It was averred that on 08.07.2000, he found a letter written by Poonam to one boy, namely, Ajay and that he then went to the house of his in-laws to lodge a complaint about the conduct of Poonam. Upon this, his mother-in-law talked to her daughter, the deceased on telephone and enquired about the matter. When the appellant reached back home, he came to know that Poonam had set herself ablaze after pouring kerosene oil. He specifically denied any maltreatment or demand of any dowry by him from the deceased. In defence, he examined Mukesh Kumar Walia as DW1; Krishan Lal, father of the appellant as DW2; and Stephen M., Assistant Medical Record Officer, CMC and Hospital, Ludhiana.

After hearing the rival contentions and appraisal of the evidence on record, the trial Court vide impugned judgment and order dated 18.11.2003, convicted and sentenced the accused as narrated above.

Feeling aggrieved against the judgment and order dated 18.11.2003, passed by the trial Court, the appellant has filed the instant appeal.

Learned amicus curiae contends that the conviction against the appellant has been recorded by the trial Court after relying heavily on the alleged dying declaration, Ex.PW2/G recorded by PW10, SI Nirbhajit Singh. The dying declaration in question has been shown to be thumb-marked (with clear impression) by the complainant-deceased. On the contrary, Dr. R.K. Sharma, who conducted the post-mortem examination of

the deceased has specifically recorded that both the hands of the deceased as well as the fingers including thumbs had been totally burnt. The dying declaration was recorded without complying with the legal requirements. No Magistrate was called by the Investigating Officer despite having ample time with him.

It is further contended that the complainant in her statement has alleged that she was subjected to maltreatment on account of demand of dowry and was turned out of the matrimonial home by her husband. Panchayat was convened on several occasions and the matter was sorted out. However, no member of Panchayat was examined by the prosecution to prove the allegations.

Further submission is that the trial Court fell into error in ignoring the evidence produced by the appellant in the form of a letter written by the deceased in her own hand to prove that she was having an extra-marital affair and when this fact was brought to the notice of her parents, she committed suicide.

On the other hand, learned State counsel supports the judgment passed by learned trial Court. It is averred that specific allegations have been levelled in the dying declaration, Ex.PW2/G and there is no rule, which necessitates that the dying declaration be recorded by the Magistrate alone. The deceased died an unnatural death at her matrimonial home, within three and a half years of marriage.

I have heard learned counsel for the parties and have gone through the case file.

As per the case of the prosecution, the deceased was admitted in the CMCH, Ludhiana on 08.07.2000, with 95% burn injuries. Her statement, Ex.PW2/G (treated as dying declaration) was recorded by PW10, SI Nirbhajit Singh, after the doctor had declared her fit to make statement vide his endorsement Ex.PW2/B. As per record, the said statement was thumb marked by the deceased. At the time of recording of the statement, Dr. Rahul Tandon, PW2 and her brother, PW4-Ranjit Kumar were present throughout. It is to be seen that the thumb impression purported to be of the deceased showed clear ridges and curves. As per the medical case diary, the deceased suffered 100% burn injuries, whereas, as per the statement of PW2, Dr. Rahul Tandon, the deceased was admitted in the hospital with 95% burns. Dr. R.K. Sharma, PW5, who conducted the post-mortem examination of the dead body of deceased-Poonam, found the following injuries:-

1. Superficial to deep burns all over the body except the planter surface of both feet and upper part of the head.
2. Signing of hair was present.
3. Vense section wound was present on the left leg.

From the perusal of the medical evidence on record, it emerges that the deceased suffered burn injuries all over her body except the feet and upper part of the head. Meaning thereby, her hands including the fingers and the thumbs were also burnt. In such circumstances, it is difficult to believe the thumb impression, Ex.PW2/C was put by the deceased herself

admitting the contents of the statement as correct. Reliance in this regard is placed on the judgment rendered by Hon'ble the Supreme Court in ***State of Punjab Vs. Gian Kaur, 1998(2) R.C.R. (Criminal) 142***, wherein, it has been held as under:-

“4. The High Court disbelieved the dying declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration had clear ridges and curves. The High Court found the evidence of Dr. Ajay Sahni – PW-1 not reliable as he failed to satisfactorily explain how such a thumb mark could appear on the dying declaration when Rita had 100% burns over her body. The High Court relied upon the deposition of Dr. Aneja, who had performed the post-mortem and who has categorically stated that there were 100% burns over her body and both the thumbs of Rita were burnt. In view of such inconsistent evidence, the High Court was right in giving benefit of doubt to the respondents. It cannot be said in this case that the High Court has taken an unreasonable view.”

In the instant case, on the application, Ex.PW2/A, by PW10, SI Nirbhaijit Singh, Dr. Rahul Tandon, PW2, vide his endorsement, Ex.PW2/B, declared that Poonam was fit to make statement. This witness has categorically stated that at the time of making the statement, the injured was fully conscious and capable of understanding and making the statement. However, he did not mention that the injured was fully conscious and was in sound disposing mind at the time of making statement. It has come on

record that she was admitted in the hospital with 95% burn injuries and died within two hours of making statement, Ex.PW2/G. It has also come on record that she was administered sedatives at 3.00 a.m. and the effect thereof remains for three hours. Therefore, it is highly probable that at the time of making the statement, the deceased was not in a sound disposing mind, especially, when the doctor has not specifically mentioned that the deceased was in a fit state of mind to record her statement. The statement was also not recorded in the presence of a Magistrate though there was sufficient opportunity with the investigating officer to call a Magistrate. It is an admitted fact that recording of the statement came to an end at about 2.00 a.m. on 09.07.2000. Death occurred at about 4.45 a.m. on 09.07.2000 i.e. after more than two and a half hours. It is not the case of the prosecution that the deceased had gone in coma and further that no Magistrate was available at the relevant time. In the circumstances, the authenticity of the dying declaration has become doubtful.

In the instant case, the defence version appears more probable than the prosecution story. In his statement recorded under Section 313 Cr.P.C., the accused has specifically stated that he was able to lay his hand on a handwritten letter of the deceased to one boy, namely Ajay, who had been residing in their neighbourhood. The appellant went to his in-laws to lodge a complaint about the conduct of the deceased, whereupon, the mother of the deceased spoke to her over telephone. When he reached back home, he came to know that the deceased had set herself ablaze by pouring kerosene on her. This fact is corroborated by the statement of DW2, Kishan

Lal, the father of the appellant, who was present in the house at the time of the incident. He has specifically stated that the deceased had gone to the house of a neighbour for attending a telephone call and came back home. Soon, thereafter, this witness heard screams from the room of the deceased. When he broke open the door, the deceased was found ablaze. He also removed her to the hospital.

Furthermore, there is nothing on record to establish the fact that the deceased was being harassed on account of demand of dowry. The allegations lack specificity.

In view of the above discussion, this Court has no hesitation to hold that the quality of evidence led by the prosecution is insufficient to bring home guilt against the accused-appellant beyond shadow of reasonable doubt. Consequently, the present appeal is allowed; the impugned judgment and order passed by the trial Court are set aside; and the appellant is acquitted of the charges framed against him. He is stated to be on bail. His bail bonds and surety bonds stand discharged.

September 01, 2017*atulsethi***(JITENDRA CHAUHAN)
JUDGE**

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