

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

CRA-D-367-DB of 2003

Date of decision :- 14.3.2017

Ishwar and ors.

....Appellants

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Deepender Singh, Advocate with
Mr.R.K. Rana, Advocate
for the appellants.

Mr.Ashok S. Chaudhary, Additional A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 31.3.2003 passed by the Court of learned Sessions Judge, Bhiwani vide which accused Ishwar, Har Gian, Ombir and Virender Singh were convicted for the offence under Section 302 IPC read with Section 34 IPC and order dated 3.4.2003 vide which they were sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of six months each.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it came out during the trial is that complainant – Dharampal Singh son of Bani Singh, resident of village Manheru had submitted a written complaint Ex.PE addressed to SHO, Police Station Sadar, Bhiwani for registration of FIR. *Inter alia*, he had contended that on 17.9.2000 at about 3:00 p.m., he accompanied by his sister Sheela had reached her matrimonial home at village Tigrana from his native village Manheru. At that time, Ishwar son of Sukhpal Singh, husband of Sheela was present at home. On seeing them, he went to call his uncle Har Gian son of Kishan Singh and his sons Virender Singh and Ombir. According to the complainant, he thought that Ishwar might have gone for compromise etc. However, after about one hour, Ishwar was seen coming along with Har Gian and his sons Virender Singh and Ombir. At that time, all four of them were in angry mood. On entering the matrimonial home, Virender Singh and Ombir caught hold of Sheela from her hands, Ishwar ran towards inside and brought jerrycan of kerosene oil, Har Gian took jerrycan of kerosene oil from the hands of Ishwar and started pouring the same on the head of Sheela, at which Sheela started crying. Ishwar lit the fire with a match stick and set Sheela ablaze. According to the complainant, such incident happened so suddenly, that his mind stopped working and he ran to save his sister but Ishwar, Har Gian, Virender Singh and Ombir started beating him, therefore, he fled from that place to save his life. That his sister was burning rapidly but he was helpless. He left that place and went to his village Manheru, where he narrated the entire incident to his family members. In the complaint, the complainant had contended that on 6.9.2000, Ishwar had beaten Sheela with *lathies*, resulting in Sheela

suffering bleeding from nose and mouth. On the next day i.e. on 7.9.2000, Sheela had come to her parental house at village Manheru reaching there at about 8:00 A.M.; that her family members had observed marks of injuries on her body and then Sheela disclosing to them that Ishwar, Har Gian and his sons Virender Singh and Ombir were planning to kill her. Sheela remained at her parental house for 10 days. In the meanwhile, Sheela filed an application against Ishwar at Police Station Sadar, Bhiwani, however, no action was taken. Then Ishwar and Har Gian had gone to parental house of Sheela and gave assurance that they would not beat Sheela in future, however, Sheela was not sent with them. On 17.9.2000, complainant - Dharampal Singh had accompanied his sister Sheela to her matrimonial home at village Tigrana for settlement but all the accused killed his sister Sheela in his presence. According to complainant, Ishwar used to take liquor and beat up his sister raising demand of dowry also. Sheela had come to her parental family several times to take money, which used to be given. About six years back, she took Rs.10,000/-, about two years earlier she took Rs.25,000/- and just after the marriage, accused used to send Sheela to her parental home for bringing money. One year back, she took Rs.15,000/- and a buffalo. Thereafter, Ishwar again sent Sheela to bring money, but since parental family of Sheela was facing financial crises, they could not give any money. As such all the four accused killed Sheela and action be taken against them.

On 17.9.2000, on receipt of a telephonic message from Incharge, Police Post, General Hospital, Bhiwani regarding arrival of Sheela in emergency ward in dead condition, a police party led by ASI

Mahavir Singh (hereinafter referred to as the Investigating Officer/IO) went to General Hospital, Bhiwani. Dead body of Sheela was lying on a sleeper in the gallery of emergency ward. No family member was present nearby the dead body. Incharge, Police Post, General Hospital, Bhiwani had handed over a ruqa regarding dead body of deceased Sheela to ASI Mahavir Singh.

On 18.9.2000 Dharampal Singh – complainant accompanied by his brother Rajbir Singh and one Aproch Singh appeared before ASI Mahavir Singh. Dharampal Singh submitted written complaint Ex.PE before ASI Mahavir Singh. The contents thereof disclosed commission of offence under Section 302/34 IPC, therefore, ASI Mahavir Singh appended his endorsement Ex.PE/1 below that complaint and sent ruqa to Police Station Sadar, Bhiwani through Constable Suresh Kumar, on the basis of which formal FIR Ex.PF was registered by ASI Bhim Singh. The Investigating Officer carried out inquest proceedings with respect to unnatural death of Sheela, preparing a report ExPD in that regard. He got post-mortem examination conducted on the dead body of Sheela moving application Ex.PB in that regard. Thereafter, the investigation of the case was handed over to SI Ram Bilas, who was present there. SI Ram Bilas made inquiries from the persons present in the hospital. Thereafter, HC Jai Chand handed over to him the parcels which had been given to him by the doctor. Those parcels were taken into possession vide recovery memo Ex.PK attested by witnesses. The Investigating Officer recorded statement of HC Jai Chand. Thereafter, the police party led by SI Ram Bilas went to the place of occurrence. The Investigating Officer carried out inspection

of the spot and prepared rough site-plan as Ex.PL. Some burnt articles carpet (*dari*), blouse, one jerrycan of plastic, match sticks and match box and one gunny bag were taken into possession vide recovery memo Ex.PJ. Before that, the articles had been converted into the sealed parcel sealed with the seal of Investigating Officer having impression 'RB'. The seal after use was handed over to ASI Mahavir Singh. Thereafter, the police launched a manhunt for the accused but they could not be arrested. On return to the police station, the Investigating Officer deposited the case property with MHC. The search for accused continued but they could not found. Accused Ishwar was arrested by Inspector Dunger Singh on 23.9.2000. He was interrogated by ASI Ram Bilas on 24/25.9.2000. On 29.9.2000, the Investigating Officer again made inquiries from the residents of village Tigrana as regards the incident. During the course of investigation, the Investigating Officer got prepared scaled site plan of the place of incident, recorded statements of witnesses and after completion of investigation and other formalities, challan against accused Ishwar only was prepared and filed in the Court of Additional Chief Judicial Magistrate, Bhiwani.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Bhiwani, she supplied copies of documents relied upon in the challan to the accused Ishwar free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Additional Chief Judicial Magistrate, Bhiwani vide her order dated 3.1.2001 committed the case to the Court of learned Sessions Judge, Bhiwani.

When the case was received in the Court of Sessions by

way of commitment, after making consideration charge for offence under Section 302 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

The prosecution examined one PW namely Dharampal, thereafter, the Public Prosecutor moved an application under Section 319 Cr.P.C. for summoning of Har Gian, Virender Singh and Ombir as additional accused to face trial along with Ishwar. That application was allowed by the trial Court vide order dated 16.5.2001 and accused Har Gian, Virender Singh and Ombir were summoned. They put in appearance and taken into custody. Thereafter, formal charge for the offence under Section 302 read with Section 34 IPC was framed against all the four accused, to which, they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as ten witnesses as per details below:

PW1 Dr.O.P. Yadav, Medical Officer, General Hospital, Bhiwani who along with Dr.S.K.Anand was member of board of doctors which had performed post-mortem examination on the dead body of Sheela on 18.9.2000 deposed that eyes of the dead body were closed whereas mouth was semi open. Rigor mortis was present in all four limbs and body was in pugilistic attitude position. Body hair were singed and red line area was present. Smell of kerosene was present. Skin was black and charred. Whole body was burnt from superficial to deep. Walls, ribs and cartilages chest wall burnt from superficial to deep. Larynx, trachea, right lung, left lung were congested. Pericardium,

heart large vessels were healthy. Right chamber was full of blood and left chamber was congested and large vessel was congested. Abdominal wall was burnt. Peritonium, pharynx, oesophagus, stomach, small intestine, large intestine, liver, spleen, kidneys were healthy. Bladder was healthy and empty. Organs of genetalia were healthy and uterus was empty.

In their opinion, the death in this case was due to shock due to 100% burns, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

The witness stated that they had handed over to the police:

1. Well sutured dead body after conducting post-mortem with belongings and clothings.
2. A copy of PMR No.OPY/SKA/1/2000 dated 18.9.2000.
3. Police papers one to ten in numbers duly signed by them.
4. A sample of seal.
5. A sealed packet bearing 5 seals containing ornaments and glass bangles of deceased.

Probable time that elapsed between injuries and death was within few minutes and between death and post-mortem within 24 hours. He proved copy of the post-mortem report as Ex.PA.

PW2 Dharampal Singh – complainant provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW3 ASI (Retired) Bhim Singh stated that on 18.9.2000

while he was posted as ASI at Police Station Sadar, Bhiwani, on receipt of ruqa Ex.PE, he had recorded formal FIR Ex.PF and sent special report to Illaqa Magistrate and other higher police officers through Constable Om Parkash.

PW4 Constable Mahabir and PW5 ASI Dharam Chand, both formal witnesses tendered in evidence their affidavits Ex.PG and Ex.PH, respectively, submitting that the same be read as a part of their statement.

PW6 Constable Om Parkash stated that on 18.9.2000, while he was posted at Police Station Sadar, Bhiwani on general duty, a special report was handed over to him by ASI Bhim Singh to deliver it to Illaqa Magistrate and senior police officers, such report being Ex.PF and he had delivered the same to Illaqa Magistrate at 5:45 A.M. vide endorsement Mark-A.

PW7 ASI Mahavir Singh, who had carried out the investigation in this case initially on 18.9.2000 till it was handed over to SI Ram Bilas and was however associated with the investigation even then, deposed in that regard.

PW8 SI/SHO Ram Bilas, who had investigated the matter taking over investigation from ASI Mahavir Singh on 18.9.2000 testified regarding what he had done with respect to investigation of this case.

PW9 Kanwarpal Parmar, Draughtsman, Court Compound, Bhiwani, who on 24.11.2000 after visiting the spot had prepared scaled site-plan of place of incident using the scale 1"=16 feet, on demarcation of Dharampal deposed in that regard proving the site-plan Ex.PM.

PW10 Inspector Doongar Singh stated that on 23.9.2000, he was posted as Welfare Inspector at S.P. Office, Bhiwani. On that day, he arrested accused Ishwar in this case.

With that the evidence of prosecution stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Further, accused Ishwar took up a plea that Har Gian, his uncle and his two sons, Virender Singh and Ombir are living at Bhiwani since long. On the day of incident, his wife Sheela was all alone at his house and she got accidental fire in the kitchen and after fire, she ran out in the compound of his house where her fire was extinguished by his neighbour who covered her with a *dari* and *katta*; that she was brought to the hospital but could not survive; that complainant Dharampal had made false complaint against him and his relatives to grab the money.

Accused Ombir took up a plea that he, his father Har Gian and real brother Virender are living at Bhiwani since long. On the day of incident, Sheela deceased was all alone at her house and she got accidental fire in the kitchen and the fire was extinguished by her neighbours; that she was brought to the hospital but she could not survive; that complainant Dharampal had made false complaint against them and his co-accused Ishwar to grab money.

Similar plea as taken by accused Ombir has been adopted by accused Virender and Har Gian.

During their defence, accused examined Sh.Chhater Singh Chauhan, Ex-Speaker of Haryana, Vidhan Sabha, Haryana as DW1. He stated that Har Gian accused is in his relations as he is married in village Tigrana; that Narender Singh Chauhan who was his son had expired in an accident on the night of 16/17.9.2000 at Kalka and his dead body was brought at village Baund Kalan on 17.9.2000 at about 6:00 p.m.; that he was at Bhiwani on the night of 16/17.9.2000 and after getting information about death of his son, he went to village Baund Kalan as his another son had left for Chandigarh to bring the dead body of his son Narender to Baund Kalan; that on 17.9.2000, Har Gian accused had met him in his village Baund Kalan at about 10:00 A.M.; that he remained present there up to 5:00 p.m. The witness concluded his examination-in-chief by stating that Har Gian accused is uncle of his wife and because of that his presence was particularly noticed by him.

DW2 Hukam Singh, a resident of village Tigrana stated that he knew Ishwar accused. Accused Har Gian and his two sons resided in the fields situated near HUDA Colony, Bhiwani. That Ishwar was residing with his father in village Tigrana; that his house is in front of the house of Ishwar; that there is a barber shop adjacent to his house; that villagers always sit in his *baithak* and used to play cards. Going further, the witness stated that about $1\frac{1}{2} - 1\frac{3}{4}$ years back (statement of this witness was recorded on 31.5.2002), they were playing cards in his *baithak* and when they heard cries of being burnt, they came out in the *baithak* and saw there was smoke coming out from the house of accused Ishwar and they entered in the house of Ishwar and saw that Sheela Devi was engulfed in fire in the *chowk* of the house; that they extinguished

the fire by putting *dari* and bed sheet on Sheela which were brought from his *baithak*; that only one old lady was present in the house of Ishwar accused at that time; that no male member was present in the house at that time; that Jagbir son of Sukhbir was deputed to summon Ishwar accused from the fields, where he was doing irrigation; that one person was sent to village Baund; that many persons were also summoned; that Har Gian accused came to village Tigrana at 6:00 p.m. and that they inquired from the deceased as to how she caught fire and she replied that she caught fire from a *CHULHA*.

DW3 Parveen Chandna, Draughtsman, Court Compound, Bhiwani stated that on 18.3.2002, he had visited the spot and prepared scaled site-plan Ex.DA on pointing of Satyapal of Tigrana and handed over the same to him on 24.3.2002.

DW4 Dharampal Singh, aged about 75 years, Pensioner, resident of village Manheru stated that his daughters Kamal Bai and Mangan Bai are married at village Tigrana; that he has no son and whenever he fell ill, he would stay with his daughters; that Sheela deceased was married with Ishwar of Tigrana village; that Sheela belonged to village Manheru; that he was not on visiting terms at Sheela house in village Tigrana; that he knew that she belonged to his village and was married in village Tigrana; that about one year and 10 months ago (statement of this witness was recorded on 20.7.2002), he heard cries and saw that one female was on fire and some people were putting off the fire by wrapping that female with *dari* and jute bag (*bori*). Going further, the witness stated that he knows all the accused present in the Court at that time but none of them was present at that time; that Har

Gian and Ishwar were not present in the village and Har Gian had gone to village Baund and he was summoned from there; that he advised the accused persons to summon the relatives of Sheela and that Har Gian used to reside in the revenue area of Bhiwani.

DW5 HC Subhash Chand had brought summoned record containing FIR No.30 dated 9.1.1992, copy of which is Ex.DB, FIR No.395 dated 14.6.1997, copy of which is Ex.DC, FIR No.98 dated 15.3.1996, copy of which is Ex.DD and FIR No.468 dated 7.12.2000, copy of which is Ex.DE.

DW6 Vijay Singh also supported the defence version stating that at the time of occurrence, the parents of Ishwar were present home; that father of Ishwar is an aged person, who cannot move or walk and he is on bed; that father and mother of Ishwar were sitting in the nearby room at the time of occurrence and that Ishwar was not home at that time.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record and we find that the appeal does not have merit as far as appellant – accused – convict Ishwar is concerned whereas it is otherwise with respect to remaining appellants – accused – convicts.

The star witness for the prosecution in this case happened to

be PW2 – Dharampal Singh (complainant), a real brother of deceased Sheela. It was he, who had set criminal machinery into motion by reporting the matter to the police by way of submitting written complaint Ex.PE at Police Station Sadar, Bhiwani on the day of incident itself in which he has given detailed version of the occurrence. He repeated such version while appearing as PW2. We find his presence at the spot at the relevant time to be natural and probable. However, his account of the incident seems convincing and plausible as far as appellant – accused Ishwar is concerned but not as regards remaining appellants – accused.

The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood. Merely because a witness has deposed wrongly regarding certain aspects of the case does not mean that his statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects. The fact which needs consideration is that the incident had taken place in the matrimonial home of the deceased and accused Ishwar, the presence at the spot of Ishwar there comes out to be natural and probable, keeping in view the evidence adduced by the prosecution by way of examining PW2 to the effect that there was marital discord between deceased Sheela and her husband Ishwar accused inasmuch as he used to harass and beat her up, forcing her to bring cash and other items from her parents and one such incident had taken place on 6.9.2000, in which Ishwar had given beatings to Sheela, leaving her injured and Sheela had come to her

parental house on 7.9.2000 and the matter is said to have been reported at Police Station Sadar, Bhiwani without any action being taken, it comes out that there was a motive on the part of Ishwar to get-rid of his wife Sheela and to set her ablaze by pouring kerosene oil upon her resulting in her death. There was little possibility of his procuring help from his uncle Har Gian and his sons Virender Singh and Ombir in committing that criminal act, going to their place located at a considerable distance from his residential house, calling them then handing over a jerrycan of kerosene oil to Har Gian and he pouring the same on Sheela and then Ishwar lighting the fire with a match stick, all this happening while Virender and Ombir had caught hold of Sheela by hands. Story so given seems somewhat unnatural and it was found to be so during investigation and for the said reason the police has sent up only Ishwar to face trial whereas it was not so as regards remaining accused who were found to be innocent. It was only during trial that after recording statement of complainant – Dharampal Singh when the prosecution moved an application under Section 319 Cr.P.C., the said application was allowed and then Har Gian and his sons Ombir and Virender Singh were summoned to face trial along with accused Ishwar.

The second factor, which needs to be considered is that during defence evidence, accused had examined Sh.Chhater Singh Chauhan, Ex Speaker of Haryana Vidhan Sabha, Haryana, aged about 69 years, in that way a respectable person, who categorically stated that his son Narender Singh Chauhan had expired in a road side accident on the intervening night of 16/17.9.2000 at Kalka and his dead body was brought at village Baund Kalan on 17.9.2000 at about 6:00 p.m. Har

Gian related to him as uncle of his wife had come to offer his condolences at said village remaining there from 10:00 A.M. to 5:00 p.m. Though he was cross-examined by the Public Prosecutor but his credibility could not be shaken. It has to be kept in mind that he was talking of the day when he had lost his young son. A person in grief and deep shock, for the said reason would not normally tell a lie. We find deposition of DW1 Chhater Singh Chauhan to be believable. As such Har Gian being there at village Baund Kalan from 10:00 A.M. to 5:00 p.m. on 17.9.2000, there is little possibility of his being present at the spot at the relevant time and having participated in the incident. DW1 in his cross-examination had stated that Baund Kalan is at a distance of 30 kms. from Tigrana. One more thing to be noticed is Har Gian having his own family, there was little reason for him to interfere in the domestic affairs of his nephew much less actively participating in committing murder of his nephew's wife, bringing his two young sons into picture in all probability aware of the fact that the punishment for the offence was either death or life imprisonment. Usually no body takes such a risk under such circumstances. PW2 Dharampal Singh in his cross-examination admitted that he is facing trial in a case under Excise Act whereas one of his brothers namely Rajbir is facing trial in a criminal case regarding theft of a *kikar* tree, that shakes his credibility to some extent. He admitted that Har Gian accused had 4-5 brothers and all of them reside separately and that agricultural land of accused Har Gian is situated near City Railway Station, Bhiwani. Here we find conduct of Dharampal Singh to be somewhat unnatural inasmuch as according to him when he tried to save his sister Sheela, who had been set on fire

then accused had given him beatings but then he did not get himself medically examined to show that in fact he had received any such injuries on his person. Then he is not shown to have made any attempt to raise alarm so as to attract the persons nearby to come and help him in dousing fire on his sister Sheela, who was on fire. He is not shown to have made any effort himself in that regard, rather running away from the spot while his real sister was on fire is an act of cowardness showing this witness in somewhat poor light.

A major dent in the prosecution story was caused by PW8 – SI/SHO Ram Bilas, who had carried out investigation in the case when he admitted it as correct that Har Gian, Virender Singh and Ombir reside in the fields somewhere near City Railway Station, Bhiwani. He admitted it as correct that it had come in the investigation that on the day of occurrence, Har Gian had gone to village Baund Kalan and Har Gian and his two sons Virender Singh and Ombir were found innocent in his investigation.

In that way, as far as appellants – accused Har Gian, Virender Singh and Ombir are concerned, we are of the considered view that prosecution had failed in its endeavour to prove its charge against such accused for the offence under Section 302/34 IPC beyond a shadow of reasonable doubt. However, the trial Court by misappraisal of evidence and misinterpretation of law wrongly convicted such accused for the offence under Section 302/34 IPC. The said judgment of their conviction and sentence cannot be sustained and is liable to be set aside. As such, appeal filed by appellants – accused Har Gian, Virender Singh and Ombir is accepted with the result the judgment of their conviction

and sentence is set aside and they are acquitted of the charge framed against them, whereas we find that prosecution had successfully proved its charge against appellant – accused Ishwar since the eye-witness account given by Dharampal Singh – PW is duly corroborated by the medical evidence in the form of statement of PW1 – Dr.O.P. Yadav. The investigation of this case qua such accused has been conducted in a fair manner. The remaining evidence on file duly corroborates the prosecution story. Therefore, appeal filed by appellant – accused – Ishwar is doomed to fail and is dismissed accordingly.

Accused Ishwar be taken into custody by issuing necessary warrants by Chief Judicial Magistrate, Bhiwani and he be made to undergo the remaining sentence.

14.3.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

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