

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-276-DB of 2004 (O&M)

Date of decision : 22.11.2018

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Sarabjit Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice H.S. Madaan

Present: Mr. O.P. Kamboj, Advocate for the appellant

Mr. H.S. Grewal, Additional Advocate General, Punjab.

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H.S. Madaan, J.

This appeal is directed against judgment dated 19.1.2004, passed by Sessions Judge, Ferozepur, vide which he had convicted accused Sarabjit Singh, for offence under Section 302 IPC and vide order of even date sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- and in default of payment of fine to undergo further rigorous imprisonment for a period of six months.

Accused-convict, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of conviction and order of sentence passed against him be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case, as per the

prosecution story are that on 12.3.2000, on receipt of a written intimation from Civil Hospital, Fazilka, regarding admission of Rani w/o Sarabjit Singh (present accused) there, having suffered 100% burn injuries and in a serious condition. SI Balwant Singh, (hereinafter to be referred to as 'the Investigating Officer'), alongwith other police officials from Police Station Sadar, Fazilka, went there. He moved an application enquiring about fitness of injured Rani to make a statement. However, the opinion was given in negative. Thereafter SI Balwant Singh went to the office of Sub Divisional Magistrate, Fazilka and moved an application, on which Sub Divisional Magistrate, Fazilka, deputed Tehsildar-cum-Executive Magistrate, Fazilka, to record statement of the injured. Accordingly, Tehsildar-cum-Executive Magistrate, Fazilka, went to Civil Hospital, Fazilka and after obtaining opinion of the doctor regarding fitness of injured to make a statement, which was given in affirmative, at 8.35 A.M. Mr. Kanwaljit Singh, Tehsildar-cum-Executive Magistrate, Fazilka, recorded statement of injured Rani to the following effect:-

“Stated that I was sleeping on the cot taking a quilt at about 9/9-15 P.M. On 11.3.2000 when my husband Sarabjit Singh alias Pappu removed the quilt from my face and poured the kerosene oil on me and on the quilt and while I was stopping him from doing so he set me on fire. No one from the family came forward to help me. My sister who lives in my village in the farm house near my house came and

extinguished the fire. I have been set on fire by my husband and I have seen him setting me on fire.”

A copy of the statement was given to SI Balwant Singh, who put his endorsement below the said statement and sent *ruqa* to the Police Station, on the basis of which formal FIR was recorded.

The investigation in the case began. The Police party went to the spot and carried out its inspection. The Investigating Officer prepared rough site plan of the place of incident, got the spot photographed from a photographer, took into possession half burnt bed, half burnt TV, half burnt cotton mattress, half burnt black colour sweater, half burnt bra, half burnt pink colour cloth, half burnt jumper, half burnt quilt and *talai*.

The accused was arrested in this case on 17.3.2000. He was interrogated, during the course of which he suffered a disclosure statement that he had kept concealed a plastic can in the wheat fields, which was within his exclusive knowledge and he could get the same recovered. Then in pursuance of the said disclosure statement, the accused in police custody, got the plastic can recovered from the disclosed place, which was taken into police possession vide recovery memo. The Investigating Officer prepared rough site plan of the place of recovery. He recorded statements of the witnesses. Rani succumbed to the burn injuries. The Investigating Officer carried out inquest proceedings. He got the post mortem examination conducted on the dead body of deceased Rani on 14.3.2000.

After completion of investigation and other formalities,

challan against the accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Fazilka, who supplied copies of documents relied upon therein to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, he vide order dated 3.8.2000, committed the case to the Court of Sessions. When the case file was received by way of commitment in the Court of learned Sessions Judge, Ferozepur, he observing that prima facie offence under Section 302 IPC was disclosed against the accused, charge sheeted him accordingly, to which he pleaded not guilty and claimed trial.

The case was fixed for evidence of the prosecution. The prosecution examined nine PWs of them PW-1 Dr I.M. Challana, Senior Medical Officer, Civil Hospital, Fazilka, had conducted the post mortem examination on dead body of Rani on 14.3.2000 at 2.15 P.M., preparing post mortem report Exhibit P-1, pictorial diagram Exhibit P1/A. He had proved various other connected documents.

PW-2 Charanjit Singh Patwari, Halqa Karni Khera, proved the scaled site plan of the place of incident prepared by him.

PW-3 Hans Raj Photographer, stated that he had taken snaps of the place of incident and after developing the photographs had handed over the said photographs alongwith negatives to the Investigating Officer.

PW-4 Sukhjit Kaur, real sister of deceased Rani, stated that she alongwith her husband Baldev Singh, PW-5, on hearing cries of the Rani deceased from her matrimonial home, had rushed there

and saw her sister lying on the bed on fire alongwith bed and quilt and extinguished the fire. On being enquired, Rani told that Sarabjit Singh had put kerosene oil on her and set her ablaze. The witness further stated that she alongwith her husband Baldev Singh had arranged a vehicle and removed Rani to Civil Hospital, Fazilka.

PW-5 Baldev Singh, husband of PW-4 Sukhjit Kaur, also deposed on those very lines, as his wife PW-4 Sukhjit Kaur had.

PW-6 Constable Hardial Chand, a formal witness tendered his affidavit Exhibit P.31.

PW-7 Kanwaljit Singh, Tehsildar-cum-Executive Magistrate, who had recorded statement of injured Rani, deposed in that regard.

PW-8 SI Balwant Singh, who had carried out investigation in this case deposed about the same.

PW-9 HC Balbir Singh, a formal witness, tendered his affidavit Exhibit P.37.

Thereafter the prosecution evidence stood closed.

On closure of prosecution evidence statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to him, but he denied the same contending that he is innocent and has been involved in a false case; that after death of his son Bhola, aged about 4-½ years, he became a patient of tuberculoses and used to get treatment from doctor of Fazilka; fearing that she might suffer from the said disease his wife Rani deceased, did not allow him to have sexual intercourse with her; that Rani had conceived a child and

when he enquired from her as to how she had come in the family way, then Rani committed suicide due to frustration of her shameful and immoral act. The accused further pleaded that he was in the fields to irrigate the land and his parents were in the house at the time of occurrence; that Baldev Singh s/o Harbans Singh, husband of sister of his wife wanted to grab their land by sending him to jail, since younger brother of accused was also suffering from tuberculoses, who has since expired and father of the accused is an old man of about 75 years. The accused took up the plea that Baldev Singh alongwith his wife has involved him in this case with the help of the police. procuring a statement from his wife against him. He further added, that he was arrested by the police and out of fear his family has shifted to village Azamwala, Police Station Khui Khera.

The accused also led evidence in defence. The first witness examined by him happen to be his father Babu Singh as DW-1, who supported the defence version of the accused, adding that PW-4 Sukhjit Kaur and PW-5 Baldev Singh had come in the morning at 8.00 A.M. and accused has been falsely involved.

DW-2 Ranjit Singh stated that he had taken Rani injured to the hospital in his jeep and Baldev Singh had not accompanied them.

After hearing the arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant-accused, learned State counsel, besides going through the record.

In this case, the prosecution has successfully established that accused had poured kerosene oil upon his wife Rani and set her ablaze, with the result she suffered 100% burn injuries, that though she was removed to Civil Hospital, Fazilka, but she succumbed to those injuries.

The most important piece of evidence in that regard is dying declaration by Rani in the form of statement made to PW-7 Kanwaljit Singh Tehsildar-cum-Executive Magistrate on 12.3.2000, which is duly proved on the record. It comes out that Rani had made the statement voluntarily without any pressure or undue influence and such statement giving the cause of her death is her dying declaration, which has rightly been accepted and relied upon by the trial Court. Rani has squarely blamed her husband Sarabjit Singh for the entire incident. Corroboration to such dying declaration of deceased came in the form of deposition of her sister Sukhjit Kaur PW-4 and her husband Baldev Singh PW-5. We do not see any reason to reject their depositions. The medical evidence also corroborates the prosecution story. The investigation has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly or to challan him falsely. The remaining evidence corroborates the prosecution story. Therefore, the prosecution had successfully established that on 11.3.2000 at 9.15 P.M. in the area of village Chananwali Dhani, in the matrimonial home, accused Sarabjit Singh being husband of Rani deceased, poured kerosene oil upon her, while she was lying on bed and set her on fire, resulting in her suffering serious burn injuries, to which she

succumbed.

The trial Court has convicted and sentence the accused for offence under Section 302 IPC. However we find that from the facts and circumstances of the case, it comes out to be a case of culpable homicide, not amounting to murder covered by Section 304 (1) IPC. While saying so, we have considered the aspect that the act seems to have been done by the accused without any pre-planning or pre-meditation, just at the spur of the moment. Further more the defence plea that Rani was having illicit relations with her brother-in-law Baldev Singh, to which accused objected, cannot be brushed aside totally. The accused has examined his father Babu Singh, in that regard but he has not been thoroughly cross examined, as regards these allegations. It appears that the accused felt perturbed over his wife Rani having illicit relations with her brother-in-law Baldev Singh and in a fit of anger poured kerosene oil upon her, while she was lying on the bed and set her on fire. Therefore, we set aside the conviction and sentence of the accused for offence under Section 302 IPC and order his conviction for offence under Section 304 (1) IPC.

As per the custody certificate filed by the State counsel, the accused has undergone total sentence of 12 years, 4 months and 18 days, including remissions, with actual sentence of 6 years, 8 months and 12 days. We are of the view that ends of justice would be adequately met if the appellant-accused convict is sentenced to the imprisonment already undergone by him in this case and to pay fine of Rs.500/-, in default of payment of fine to undergo further rigorous imprisonment for a period of six months. It is ordered accordingly.

With such modification in the impugned judgment and order, the appeal is allowed partly. The trial Court/Chief Judicial Magistrate, Ferozepur, be informed accordingly for further necessary action.

(A.B. CHAUDHARI) (H.S. MADAN)
JUDGE JUDGE

22.11.2018
chugh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No