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

**Date of decision: May 17, 2018
CRA-D-1071-DB of 2010**

Amiruddin

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S. WALIA**

Present: Ms. Baljit Mann, Advocate for the appellant.

Mr. Siddharth Sanwaria, DAG Haryana.

A.B. CHAUDHARI, J

Being aggrieved by the judgment/order dated 29.09.2010/05.10.2010 passed by the learned Sessions Judge, Faridabad, in Sessions Case No.95 (RBT) of 30.09.2009, by which the appellant, namely Amiruddin, was convicted for commission of offence punishable under Section 302 and 304-B of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹50,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, the present appeal has been preferred by the appellant-Amiruddin.

FACTS

In brief, the prosecution case is that the deceased Saiyna was re-married to the appellant-Amiruddin, resident of Gulawasti, District Bulandshahar (UP), on 27.04.2008. Saiyna had two daughters from her first

marriage, but her daughters were carried by her to the house of Amiruddin. They started residing at Faridabad and Amiruddin was working in an Industry and used to get good salary also. His mother, Haseena used to taunt Saiyna saying that her mother had not given anything in the marriage and that they were to marry Amiruddin somewhere else in order to get good dowry amount. Saiyna informed her mother about the ill-treatment given to her. On 10.05.2009, when Shamim, mother of Saiyna, went to meet her in Indra Colony, Faridabad, Saiyna told her that Amiruddin was not even providing her food for three days consecutively and was harassing her for bringing motorcycle in dowry. Shamim went back after pacifying Saiyna. She reached her house at around 9:00 P.M., but then she received a telephonic call from her elder daughter Nazreen that Saiyna was set ablaze by her husband Amiruddin after pouring kerosene and was admitted to B.K. Hospital, Faridabad. On getting the said information, the complainant-Shamim and her elder daughter Nazreen rushed to the Hospital, but could reach there only at 3:00 A.M. on 11.05.2009 and saw that Saiyna was having burn injuries around her chest and stomach and was lying unconscious in the Hospital. She was being treated in the Hospital. At 6:00 A.M. on 11.05.2009, she ultimately died. FIR was registered, police started investigation, postmortem was conducted, statements of witnesses were recorded and final report under Section 173 of Code of Criminal Procedure, 1973 was filed before the trial Court. The trial Court convicted the appellant-Amiruddin. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant

vehemently argued that the prosecution has failed in proving its case according to law. She submitted that, at any rate, the appellant was entitled to the benefit of doubt since there was no evidence with the prosecution to record the conviction. She submitted that the prosecution relied on the solitary testimony of PW2-Sachin Khera, the alleged journalist who is said to have recorded the dying-declaration of Saiyna, in a C.D., which was produced before the trial Court. Referring to Section 65-B of the Evidence Act, 1872 (for short 'Evidence Act'), she submitted that not a single condition under Sub-Section-2 of Section 65-B of Evidence Act was at all complied with, and therefore, the exhibition of the document or placing of C.D. on record of the trial Court, does not yield any legal evidence according to law. Therefore, the trial Court could not have looked into the C.D. or exhibited it at all. She prayed for ignoring the said C.D. for consideration. Learned counsel then argued that only testimony that remains on record, is of PW2-Sachin Khera and PW6-Landlady Meena, who eventually turned hostile and did not support the prosecution. She was witness for the fact of appellant running away from the house. Learned counsel then contended that the evidence of PW2-Sachin Khera is required to be rejected as he claimed to have recorded dying-declaration of Saiyna by way of recording in the C.D. and his substantive evidence, in the trial Court also, does not help the prosecution at all as he did not take permission from the doctor to record the dying-declaration in the C.D. nor did he take any certificate from the doctor about the condition of Saiyna, to make any such oral dying-declaration to him or record it in the C.D. Therefore, according to her, there is failure on the part of the prosecution to prove the case according

to law. She thus, prayed for allowing the appeal.

Per contra, learned State counsel had vehemently opposed the appeal and supported the impugned judgment and order of conviction and sentence. He submitted that the evidence of PW2-Sachin Khera is independent and no enmity has been shown against him by the accused. He being an independent witness has rightly been believed by the trial Court in respect of the oral dying-declaration given to him by the deceased. According to him, even if the C.D. is not admissible in evidence, the substantive evidence of PW2-Sachin Khera is good enough to record conviction. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION

We have heard learned counsel for the rival parties at length. We have seen the entire evidence, carefully. We have also seen the reasons recorded in the impugned judgment by the trial Court, in detail.

At the outset, we find that the prosecution does not have any evidence except the evidence of PW2-Sachin Khera who claimed to have recorded the oral dying-declaration himself in the C.D.

Section 65-B of the Evidence Act reads thus:-

“65B. Admissibility of electronic records.—

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of

a computer output shall be the following, namely:—

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or*
- (b) by different computers operating in succession over that period; or*
- (c) by different combinations of computers operating in succession over that period; or*
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers*

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic*

record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

In order to test the submission about non-compliance of Section 65-B of the Evidence Act, we have searched from the record, but we find that there is no compliance of condition made in Sub-Section-2 of Section 65-B of the Evidence Act, i.e. rendering of certificate, production of camera, computer etc. and so on and so forth stated in Sub-Section-2 of the Evidence Act. We are therefore, inclined to accept the submission made by the learned counsel for the appellant that there is total non-compliance of Section 65-B of the Evidence Act. The Supreme Court has also taken a view that non-

compliance of Sub-Section-2 of Section 65-B of the Evidence Act would result in inadmissibility of evidence as legal evidence. We thus, keep the evidence by way of C.D. out of consideration as the same is not a legal evidence.

Having disposing of the first contention as above, we then find that there was one witness, i.e. PW6-Landlady-Meena, who had seen Amiruddin running away from the house after the incident of burning. But then Meena has not supported the prosecution and she was cross-examined by the prosecutor and at any rate, she did not support the prosecution at all. Then what remains is substantive evidence of PW2-Sachin Khera. Before, we go to the said evidence of PW2-Sachin Khera, we find that there is substantive evidence of Investigating Officer who has proved the document Exhibit PL. In the document Exhibit PL, it is seen that ASI-Om Parkash had given a requisition to the Medical Officer, B.K. Hospital, Faridabad asking to give opinion as to whether Saiyna was fit to make statement or not. There is endorsement below his signatures as under:-

“.....Patient unfit for statement.....”

It is thus, clear from the above record and the substantive evidence of ASI-Om Parkash that at 7:50 P.M., on 10.05.2009, Saiyna was unfit to make any statement, after the incident that took place at 5:30 P.M. The next question is about PW2-Sachin Khera who claimed to have heard Saiyna and recorded her dying-declaration after he reached the Hospital at 11:00 P.M. Obviously he must have heard her oral dying-declaration and also recorded in the C.D. thereafter. But then it was for the prosecution to prove that when Sachin Khera heard oral dying-declaration and recorded in

the C.D., Saiyna was fit to make statement. This was all the more essential because she was declared unfit at 7:50 P.M. It is an admitted fact that he did not take any certificate from the doctor present there that Saiyna was fit to make statement. He did not ask the doctor to examine her. Nevertheless, his own statement about her fitness could have been accepted, but then the prosecution ought to have proved that she was in a fit state of mind when Sachin Khera heard her oral dying-declaration, at or after 11:00 P.M. There ought to have been corroboration or satisfactory evidence from the prosecution that Saiyna was fit to make statement to Sachin Khera, at the relevant time. There is no evidence at all. On the contrary, the cross-examination of Sachin Khera was made and he stated thus (English translation by office):-

“.....*The patient was not in an unconscious state.....*”

Since we wanted to verify the correctness of the said translation, we have ourselves seen the deposition of Sachin Khera, in vernacular. The said deposition reads thus:-

“.....*mariz behoshi ki halat mein tha.....*” (The patient was in unconscious state)

Thus, the above deposition as recorded in the vernacular in terms shows that Saiyna was unconscious. Obviously then she was not fit to make any statement. This evidence of PW2-Sachin Khera, therefore, is not reliable and it is difficult to fathom that the deceased was in a fit state of mind in the above factual background. We are not prepared to believe the evidence of PW2-Sachin Khera, for the above reasons. We, therefore, find that the benefit of doubt will have to go to the accused.

In the result, we make the following order:-

ORDER

- (i) **CRA-D-1071-DB of 2010** filed by the appellant-Amiruddin is allowed;
- (ii) The impugned judgment/order dated 29.09.2010/05.10.2010 passed by the learned Sessions Judge, Faridabad, in Sessions Case No.95 (RBT) of 30.09.2009 convicting the appellant for commission of offence punishable under Section 302 and 304-B IPC and sentencing him to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹50,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, is set aside;
- (iii) He is acquitted of the charge framed against him;
- (iv) Fine, if paid, be refunded to him.

(A.B. CHAUDHARI)
JUDGE

(B.S. WALIA)
JUDGE

May 17, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No