

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

**CRA-D-365-DB-2011(O&M)
Date of decision:-29.11.2018**

Jaswinder Singh

....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr.Rakesh Kumar, Advocate
for the appellant.

Ms.Diya Sodhi, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 17.1.2011 passed by the Court of learned Additional Sessions Judge, Kapurthala vide which accused Jaswinder Singh had been convicted for offence under Section 302 IPC and order dated 18.1.2011 vide which he was sentenced as follows:

Under Section	Sentence Awarded
302 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for a period of two months.

The accused-convict – Jaswinder Singh, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution version are that on 24.5.2008 an information was received from Medicity Hospital, Jalandhar at Police Station Bholath, District Kapurthala that Paramjit Kaur (since deceased) wife of Jaswinder Singh, resident of village Surkhan was admitted there having burn injuries; that a police party led by SI Ajit Singh (hereinafter referred to as the Investigating Officer/I.O.) went there; the Investigating Officer sought opinion of the attending doctor regarding fitness of the injured to make statement and after getting the same in affirmative, he (I.O.) by approaching Chief Judicial Magistrate, Jalandhar got Judicial Magistrate Ist Class, Jalandhar deputed to record statement of Paramjit Kaur – deceased. Statement of deceased Paramjit Kaur was recorded by JMIC, Jalandhar in which she stated that on 23.5.2008 at about 4:15, a quarrel had taken place between her and her husband, since her husband was not giving money to her and on 24.5.2008 at about 9:00 a.m. , her husband poured kerosene oil upon her and set her ablaze.

The victim succumbed to the burn injuries. The Investigating Officer obtained copy of statement of Paramjit Kaur from Smt.Manjinder Kaur, Judicial Magistrate Ist Class, Jalandhar, who had recorded that statement and then sent ruqa to police station on the basis of which formal FIR was recorded at Police Station Bholath, District Kapurthala. The Investigating Officer carried out the inquest proceedings and got post mortem examination conducted on the dead body of Paramjit Kaur from Civil Hospital, Kapurthala. The Investigating Officer went to the spot and carried out spot inspection. He took into possession pieces of burnt clothes of the deceased, one empty plastic bottle smelling kerosene oil and a match-box from kitchen of the matrimonial house. He prepared rough site-plan of the place of occurrence. Accused was arrested in this case on 4.6.2008. Statements of various witnesses were recorded and several documents were taken into possession.

On completion of investigation, challan was prepared and filed in the Court of Additional Chief Judicial Magistrate, Kapurthala for the offence under Section 302 IPC. However, supplementary challan was filed vide which offence under Section 302 IPC was deleted and offence under Section 306 IPC was added.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Kapurthala, she supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 306 IPC is exclusively triable by the Court of Sessions, learned Additional Chief Judicial Magistrate, Kapurthala vide her order dated

13.1.2009 committed the case to the Court of learned Sessions Judge, Kapurthala from where it was entrusted to the Court of learned Additional Sessions Judge, Kapurthala.

On receipt of case in the Court, learned Additional Sessions Judge, Kapurthala, observing that prima facie charge for offence under Section 302 IPC was made out against accused directed that the accused be charge-sheeted accordingly. Charge was framed, to which, accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as 11 witnesses i.e. PW1 Dr.Ravjit Singh, PW2 Santokh Singh, PW3 Smt.Manjinder Kaur, PW4 ASI Mohinder Singh, PW5 Kuldeep Singh, PW6 Parveen Kumar, PW7 HC Balbir Singh, PW8 Dr.B.S. Mann, PW9 Inspector Gurwinder Singh, PW10 HC Jasbir Singh and PW11 Ajit Singh.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to the accused, but he denied the allegations contending that he is innocent and had been falsely involved in this case. Further in defence, accused took the plea that he got married to Paramjit Kaur of village Mussa Khel in the month of December; that he went to Saudi Arabia after his marriage; that his wife was living with his parents but she always quarreled with them; that his wife compelled him to live separately from his parents; that he built his own house in village Surkha and started living there with his wife; that when he went back to Saudi

Arabia, his wife used to ask for money regularly and he thereby sent her money through Western Union; that his wife never visited the house of his parents and always maltreated them and insisted to shift to her parental house with his son; that during his absence, she always stayed with her parents at village Mussa Khel along with his son without his consent; that he got a bolt from the blue when on 24.5.2008 Paramjit Kaur committed suicide by pouring kerosene oil and died at the house in village Surkha after climbing the stairs and going to the upper floor; that many people from village including Balwinder Singh @ Babbu of Surkha, who brought her down in a dead condition; that at the time when his wife committed suicide, he was not at home but later on he had been falsely involved in this case at the behest of Paramjit Kaur, her parents and police officials; that on his application for re-investigation of the case, he was found innocent and the police gave detailed report that he had not killed his wife and he was not present in the house when his wife committed suicide.

In defence evidence, the accused examined two witnesses i.e. Narpinder Singh, Assistant Jail Superintendent, Kapurthala as DW1 and Ramesh Kumar from Allahabad Bank as DW2.

With that defence evidence of accused was closed.

After hearing 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 – convict, learned Assistant Advocate General for the State of Punjab besides going through the record and we are of the view that conviction

of the accused under Section 302 IPC for offence of murder is not sustainable. Rather from the facts and circumstances of the case, the offence, which is disclosed against the accused is under Section 304 Part I IPC. The reasons for arriving at such conclusion are as follows:

The vital piece of evidence in this case is the statement made by deceased to Judicial Magistrate Ist Class, Jalandhar. The English translation of her statement recorded in Punjabi is as follows:

Statement of Paramjit Kaur wife of Jaswinder Singh, aged 28 years, resident of village Surkha, Police Station Bholath, District Kapurthala

On S.A.

Q. What is your name?

Ans. My name is Paramjit Kaur.

Q. What is name of your husband?

Ans. The name of husband is Jaswinder Singh.

Q. How many children you have?

Ans. We have one son only.

Stated that a quarrel took place between me and my husband at night on 23.5.2008 and hot words were exchanged between us. He was not giving money to me. Today at 9:00 a.m. my husband poured kerosene oil upon me and set me ablaze.

At this stage the condition of Paramjit Kaur deteriorated.

*Sd/- Manjinder Kaur
JMIC(D) Jalandhar/24.5.2008
4:15 p.m.*

This statement carries an endorsement by the Magistrate that the statement was recorded by her in presence of Dr.B.S. Mann and

at that time Paramjit Kaur was in fit state of mind. It further carries an endorsement of doctor that Paramjit Kaur had expired in presence of Judicial Magistrate. Further, before recording the statement, the Magistrate had obtained medical opinion from Dr.B.S. Mann on duty, who had reported that patient was fit to make statement. This statement has been duly proved by the prosecution by examining Smt.Manjinder Kaur, Judicial Magistrate, then posted at Nabha as PW3. For ready reference her examination-in-chief is reproduced as under:

Stated that in the month of May, 2008 (24.5.2008) I was posted as Judicial Magistrate, Jalandhar. I received police request Ex.PW3/A from the Police Station, P.S. Bholath for recording the statement of Paramjit Kaur who was reported to be admitted Maan Medicity Hospital, Jalandhar. I was deputed to record statement by ACJM, Jalandhar vide order Ex.PW3/B. On reaching the hospital, I met to the Duty Doctor Sh.B.S. Mann/Dr.Jatinder, who gave report Ex.PW3/C regarding fitness of Paramjit Kaur for recording her statement on my asking Ex.PW3/D. When Doctor declared fit then I alongwith doctor Sh.B.S. Maan went to the Bed of Paramjit Kaur. Then I put certain questions to her and I felt satisfied that Paramjit Kaur is fit for recording her statement. Then I recorded statement of Paramjit Kaur which is Ex.PW3/E i.e. at about 4:15 p.m. During recording her statement she remained fit. When the statement of Paramjit Kaur (dying declaration) completed then her condition became deteriorated and Doctor reported that she died vide endorsement Ex.PW3/F. Before recording the statement of Paramjit Kaur, I explained her that she is not bound to give her statement and also explained if her statement recorded

and the same can be read/used against her. The statement Ex.PW3/E was made by Paramjit Kaur voluntarily. My certificate is Ex.PW3/G. After that I came to my office and sealed the statement recorded by me and sent to the office of ACJM, Jalandhar.

Dr.B.S. Mann, Medical Officer, Mann Medicity Hospital, Jalandhar got his statement recorded as PW8. His examination-in-chief for ready reference and convenience of discussion is reproduced as under:

On 24.5.2008, I was posted Mann Medicity Centre, Jalandhar and patient/deceased Paramjit Kaur wife of Jaswinder Singh was admitted in that hospital in the morning at about 4:20 a.m. and on that day at about 4:05 p.m. Duty Magistrate made a request to check and report whether Paramjit Kaur is fit to make a statement. After that in my presence Dr.Jatinder, Medical Officer declared patient fit to make statement vide his report Ex.PW3/C. I identify his signatures as he signed in my presence. After that the statement of Paramjit Kaur was recorded by Duty Magistrate as she was declared fit to make a statement. Immediately after making the statement, the condition of Paramjit Kaur was deteriorated and she died there and then in my presence. Regarding declaration of her death, I gave certificate signed by me which is Ex.PW3/F. I also identify the signatures of Dr.Jatinder on Ex.PW8/A. The information sent to Police Station Bholath. The information regarding her death is Ex.PW8/B signed by me.

Thus, it comes out that the deceased while in fit state of mind had made statement regarding the incident before Judicial Magistrate Ist Class, Jalandhar. She did so voluntarily without any

prompting or tutoring. We do not observe any illegality or infirmity in recording of that statement. We do not find any reason to disbelieve that statement or discard it. The statement made by the victim-deceased with regard to the incident in which she had suffered burn injuries referring to the circumstance with regard to her death is to be taken as her dying declaration admissible under Section 32 of the Indian Evidence Act. As it is commonly said that truth sits upon lips of a dying person, due solemnity is attached to such type of statement for the said reason and it is accepted as such though the statement could not possibly be tested by way of cross-examination. In this statement the deceased had categorically stated that she had a quarrel with her husband over payment of money by him to her and for that reason, he poured kerosene oil upon her setting her on fire. There is no reason to reject that statement and it has rightly been relied upon by the trial Court. It has to be noticed that PW5 Kuldeep Singh, father of the victim/deceased also corroborated the prosecution story stating that on 24.5.2008 at about 9:00 a.m., he came to know from a resident of village Surkha that his daughter had caught fire, as such he along with Amarjit Singh, Santokh Singh and Manjit Singh reached the matrimonial house of his said daughter; that he was being accompanied by his wife; that they found that his daughter Paramjit was crying and saying that her husband had put kerosene oil upon her setting her ablaze and then ran away and that at the said time Rajinder Singh of village Mehmampur came along with his car, then they took Paramjit Kaur to Mann City Hospital, Jalandhar, where she was admitted; that the police was informed and Paramjit Kaur had died at about 4:45 p.m.

PW2 Santokh Singh, Member Panchayat of village Musa Khel also deposed in that regard. Thus corroboration to the dying declaration comes from the depositions of PW2 Santokh Singh and PW5 Kuldeep Singh.

Another factor to be taken into consideration is that on Paramjit Kaur receiving burn injuries, her husband Jaswinder Singh accused had fled away from home. PW2 Santokh Singh and PW5 Kuldeep Singh have testified in that regard. If Jaswinder Singh was not at fault in happening of incident, there was no occasion for him to run away from his house after receipt of burn injuries by his wife Paramjit Kaur. Rather he should have informed parental family of Paramjit Kaur at the earliest and then taken her to the hospital so as to make efforts to save her life but he did not do so. His conduct and behavior after the incident points out towards his involvement in the incident. In terms of Section 106 of the Evidence Act also, it can safely be taken that it was accused Jaswinder Singh, who had set his wife Paramjit Kaur on fire after pouring kerosene oil upon her. The police as a result of carrying out investigation in the case had earlier challaned the accused for the offence under Section 302 IPC. However, later on supplementary challan was filed adding offence under Section 306 IPC and deleting offence under Section 302 IPC, which seems to have been done without any justifiable reason obviously to help the accused. The conduct of the local police in doing so has been wrong and improper. The medical evidence corroborates the ocular evidence. As a result of investigation carried out, it was found that accused Jaswinder Singh is involved in the incident. However, we feel that facts and circumstances of the case indicate that

there was no pre planning or pre meditation on the part of Jaswinder Singh in setting his wife on fire. It seems that a quarrel between the two spouses proved to be triggering point for Jaswinder Singh prompting him to set his wife on fire out of anger and rage.

It has to be taken note of that as it comes out from the record more particularly the evidence adduced by the accused in defence and plea taken by him in his statement under Section 313 Cr.P.C., he had been residing abroad and had returned to India 25 days prior to the incident. It comes out that he had been sending money to his wife while he was residing abroad. DW2 Ramesh Kumar, Clerk, Allahabad Bank, Maqsudan, Jalandhar, who had brought the relevant record had provided evidence in that respect proving various documents. The marriage being 10 years old and couple having a male child with no prior history of any marital discord between them, it seems that the incident took place at the spur of moment and it was not executed by the accused as a result of earlier planning or pre-meditation. Therefore, we set aside the conviction and order of sentence of accused for the offence under Section 302 IPC and convict the accused for the offence under Section 304 Part I IPC.

It is stated that the appellant/accused has undergone more than 10 years of imprisonment having been arrested on 4.6.2008. Therefore, he is sentenced to the imprisonment already undergone by him and to pay a fine of Rs.5,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for two months under Section 304 Part I IPC.

With such modification, the present appeal stands partly allowed.

The appellant/accused Jaswinder Singh, who is stated to be in custody, is directed to be released forthwith, if not required in any other case.

Necessary information be sent to the quarter concerned.

29.11.2018	(A.B.CHAUDHARI)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

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