

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

**CRA-S-2530-SB of 2004
Date of Decision: 05.12.2018**

Sunita Rani..... Appellant

VERSUS

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. M.S.Sidhu, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. A.G. Punjab.

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MANJARI NEHRU KAUL, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 07.12.2004 passed by the Additional Sessions Judge, Fatehgarh Sahib, whereby appellant-Sunita Rani has been convicted for offences punishable under Sections 306 and 411 IPC. The learned trial Court vide impugned judgment sentenced the appellant to undergo rigorous imprisonment for a period of three years under Section 306 IPC and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for fifteen days. The appellant was also sentenced to nine months rigorous imprisonment under Section 411 IPC. Both the sentences were ordered to run concurrently.

Briefly stated the facts of the case as emerging from the

evidence on record are that the deceased-Darshan Singh son of appellant-Sunita Rani was referred to Government Medical College and Hospital, Sector 32, Chandigarh (hereinafter referred to as 'GMCH, Chandigarh') from Civil Hospital, Fatehgarh Sahib on 13.02.2002. PW5 ASI Jaspal Singh thereafter reached the GMCH, Chandigarh, to record the statement of injured Darshan Singh. PW13 Dr. Manmohan Singh Bedi declared injured Darshan Singh fit to make a statement vide Ex.P22 whereupon the statement of said Darshan Singh Ex.P23 was recorded by ASI Jaspal Singh PW5. Injured Darshan Singh stated that there had been a dispute between him and his mother for the last couple of days over some articles which had not been given to his sister. He further stated that he had kept an amount of ₹10,000/- along with some gold ornaments inside a steel box in his house but the same had been stolen by his mother and sister. This led to a quarrel between injured Darshan Singh and his mother i.e. appellant Sunita Rani. Soon thereafter the appellant-Sunita Rani poured kerosene oil over Darshan Singh and dared him to set himself ablaze if he had any self respect. Darshan Singh then put himself on fire. His wife PW1 Sonia, who was also in the house at that time, was attracted by the commotion caused due to the quarrel between the appellant and injured Darshan Singh. Seeing her husband on fire, PW1 Sonia rushed to the rescue of her husband-Darshan Singh and tried to put off the flames. The injured Darshan Singh further stated that the appellant-Sunita Rani then removed him to the hospital at Fatehgarh Sahib from where he was referred to GMCH, Chandigarh.

PW5 ASI Jaspal Singh thereafter moved an application before the Duty Magistrate Sanjay Sandhir PW4 for recording the statement of Darshan Singh at GMCH, Chandigarh. PW4 Sanjay Sandhir JMIC,

Chandigarh, after obtaining opinion of the attending Doctor qua the fitness of Darshan Singh vide endorsement Ex.P9 recorded his statement Ex.P11. However, Darshan Singh expired on 15.02.2002. Thereafter, on the basis of his statement Ex.P11, FIR No.32 under Sections 306/380 IPC was registered at Police Station, Sirhind.

During investigation, a match box and a can smelling of kerosene oil were recovered and taken into possession from the place of occurrence vide recovery memo Ex.P1. The appellant-Sunita Rani while in police custody also suffered a disclosure statement Ex.P2 in pursuance to which recovery of cash amounting to ₹1,000/- and gold earrings were effected vide recovery memo Ex.P3 which had been concealed by her inside her house in an iron box beneath the quilts.

The prosecution in support of its case, examined as many as 13 witnesses.

All the incriminating circumstances appearing against the accused/appellant were put to her under Section 313 Cr.P.C. wherein she denied the allegations and stated as follows:-

“The present case is a false one. On the previous day of the occurrence Sonia had left the house in the morning after Darshan Singh had gone for his work. She returned in the evening at 4 P.M. When Darshan Singh came to the house in the evening he enquired as to where Sonia had gone during day time. Sonia replied that who was he to ask her about it as she was free to move any where. She was of immoral character. Somehow Darshan Sinigh came to know about it and then quarrel had taken place between them, which continued the

whole night. On 13.2.2002 they quarrelled again. In the meantime, I left the house for casting my vote and when I was in the queue for casting my vote there one Driver Nand Singh came to me and he told me that Darshan Singh had burnt himself. I then rushed to the house and took him to hospital at Fatehgarh Sahib wherefrom he was referred to Sector 32 Hospital at Chandigarh and I took him to the hospital at Chandigarh. My daughter never demanded any dowry from me. My son has died due to the quarrel between him and his wife. Witnesses are deposing falsely. I have committed no offence. I am innocent and have been falsely implicated in this case.”

The appellant examined two witnesses in her defence and thereafter the defence evidence was closed.

I have heard learned counsel for the appellant and the learned State counsel. I have also gone through the entire evidence on record.

The learned counsel for the appellant has challenged the impugned judgment primarily on two counts:-

- i) The ingredients of Section 107 IPC were not made out; and
- ii) The deceased Darshan Singh having suffered 90-95% burn injuries could not have been in a state to make a statement to the police much less to PW4 Shri Sanjay Sandhi, JMIC, Chandigarh.

I have given my anxious consideration to the submissions made by the learned counsel for the appellant.

As far as his submission qua the deceased not being medically

fit to make a statement is concerned, it is devoid of any merit as Dr. Manmohan Singh Bedi PW13 had declared Darshan Singh fit to make the statement vide Ex.P24 and it was only thereafter that the said statement was recorded by PW5 ASI Jaspal Singh. So much so the Doctor certified that the deceased remained fit during the time of making the aforementioned statement (Ex.P23). Not only this, PW5 ASI Jaspal Singh deposed that after the said statement of deceased Darshan Singh had been recorded by him the same was read over and explained to Darshan Singh and the toe impressions of both the feet were taken on the said statement.

In fact, the star witness is PW4 Shri Sanjay Sandhir JMIC, Chandigarh, who recorded the dying declaration of Darshan Singh i.e. Ex.P11 only after the attending doctor had declared injured Darshan Singh fit to make the statement. There is nothing to doubt the testimony of both these witnesses who recorded the statement of deceased Darshan Singh. A perusal of both the statements, the first one recorded by ASI Jaspal Singh and the subsequent recorded by JMIC, Chandigarh, reveal that they are identical to each other and the deceased has clearly spelt out the role of appellant Sunita Rani in the entire occurrence.

The second submission of the learned counsel for the appellant that the ingredients of Section 107 IPC are missing, is also bereft of any merit.

The word “abetment” as defined in Section 107 IPC not only includes instigation but would also involve active complexity on the part of the abettor at a point of time just prior to the actual commission of the offence. Question of the abettor's guilt would therefore depend on the nature of the act abetted and the manner in which the abetment was made.

Abetment could be committed:-

- i) By instigating a person to commit an offence; or
- ii) by engaging in a conspiracy to commit the offence; or
- iii) by intentionally aiding a person to commit an offence.

Thus, abetment would involve a mental process of instigating or intentionally aiding a person to do some drastic or inadvisable act.

In the case in hand the deceased Darshan Singh stated that his mother i.e. appellant-Sunita Rani during the course of quarrel not only poured kerosene oil over him but also actively instigated him by her utterances to set himself ablaze if he had any self respect. Hence, there was a positive act done by appellant Sunita Rani just before the deceased set himself ablaze to constitute abetment in the case in hand. It cannot be believed that appellant-Sunita Rani would not have known about the repurcussions which would have followed after dousing the deceased with kerosene oil.

In light of the aforementioned discussion, I do not find any infirmity or illegality in the impugned order dated 07.12.2004 passed by the Additional Sessions Judge, Fatehgarh Sahib. Accordingly, the conviction of appellant under Sections 306 and 411 IPC is affirmed.

However, learned counsel for the appellant has prayed for reduction in the sentence of appellant-Sunita Rani. It has been submitted that the appellant is mentioned to be 50 years of age in the impugned judgment and therefore she is now aged 66 years. It has further been submitted that the occurrence took place in the year 2002 i.e. almost 16 years ago. Prayer for reduction in sentence has been opposed by the learned State counsel.

I have carefully considered the matter. As per Custody Certificate filed by the State counsel, the appellant has undergone 05 months out of total sentence of three years. In my considered opinion, keeping in view all the circumstances of the case, ends of justice will be met if sentence of imprisonment of appellant is reduced to the period already undergone by her in custody.

Resultantly, the sentence of imprisonment of appellant-Sunita Rani is reduced to the period already undergone by her in custody. The sentence of fine is however enhanced from ₹500/- to ₹25,000/- which would be paid to the legal heirs of the deceased Darshan Singh within a period of two months from the date of receipt of certified copy of this order. In default of payment of fine, the appellant shall undergo rigorous imprisonment for three months.

With the aforementioned modifications in the impugned order dated 07.12.2004 passed by the Additional Sessions Judge, Fatehgarh Sahib, the instant criminal appeal is disposed of.

05.12.2018

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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No