

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. S-383-SB of 2004
Date of decision : December 01, 2018

Rajesh Kumar and others

....Appellants

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Ms. Harvind Kalra, Advocate, for the appellants

Mr. Rakesh Inder Singh Sidhu, AAG Punjab for
the respondent/State

Fateh Deep Singh, J. (Oral)

A criminal case by way of FIR No. 69 dated 5.6.2001 under Sections 307, 498-A, 148, 149 IPC was registered with Police Station Division No. 5, Jalandhar on the complaint of Gurmit Kaur complainant. The case was initially registered against accused Amar Nath father-in-law, Rajesh Kumar husband and Santosh Rani mother-in-law (all the appellants before this Court) along with Sudesh Kumar younger brother of the husband and Seema Rani sister of Rajesh Kumar. However, during the course of investigations all

accused were found innocent except Amar Nath and Rajesh Kumar. It was during the course of trial upon recording statement of complainant Gurmit Kaur by virtue of exercise of powers under Section 319 Cr.P.C., Santosh Rani, Sudesh Kumar and Smt. Seema Rani were summoned as additional accused. It is vide impugned judgment order dated 4.2.2004, the court of learned Additional Sessions Judge, Jalandhar acquitted accused Sudesh Kumar, Seema Rani and convicted accused Rajesh Kumar under Sections 307, 498-A IPC and accused Amar Nath and Santosh Rani under Section 498-A IPC. The convicts were sentenced as follows:-

Accused Rajesh U/s 307 IPC	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs 5000/-. In default of payment of fine, to further undergo RI for four months.
Accused Rajesh U/s 498-A IPC	To undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs 1500/-. In default of payment of fine, to further undergo RI for one month.
Accused Amar Nath and Santosh Rani U/s 498-A IPC	To undergo rigorous imprisonment for a period of 2 years each and to pay a fine of Rs 1500/- each. In default of payment of fine, to further undergo RI for one month each.

Aggrieved over these findings, this appeal has come about by the convicts.

Upon hearing Ms. Harvind Kalra, Advocate, for the appellants and Mr. Rakesh Inder Singh Sidhu, AAG Punjab for the

respondent/State and perusal of the records.

The allegations of the prosecution have been levelled by Gurmit Kaur wife of Rajesh Kumar that she was married to this accused on 28.2.2000 and after one month of the marriage, the complainant's husband Rajesh Kumar, father-in-law Amar Nath, mother-in-law Santosh Rani younger brother of the husband (Devar) Sudesh Kumar started taunting her for bringing insufficient dowry on account of which they often abused, harassed and physically assaulted her. She further alleged that the accused used to forcibly send her to her parental house and after she conceived was administered a medicine leading to her abortion. The complainant has alleged that on account of intervention by the respectables and the Panchayat her husband who is posted in Railway Protection Force as a Constable took the complainant and started living separately two months prior to this occurrence. The complainant alleged that during that period the husband demanded Rs 2 lacs from her parents for purchasing a plot and was instigated by accused sister of the husband Seema Rani. The allegations hover around 5.6.2001 about 8.30 AM when it is alleged that Rajesh Kumar brought a medicine and tried to forcibly administer to the complainant which she refused and thereafter the accused is alleged to have taken a bottle of kerosene oil and poured over the complainant and

set her on fire and she raised alarm as a consequence of which her maternal uncle Jodh Singh and her mother-in-law Taro were attracted who extinguished the fire and got her admitted in Batra Hospital, Jalandhar. The complainant made statement Ex. PB before the Investigating Officer leading to the registration of the FIR Ex. PB/2.

Upon completion of investigations challan against accused was presented and after usual formalities and framing of charges to which the accused pleaded not guilty, the prosecution examined the following witnesses:-

The complainant testified as PW1 and sought corroboration from PW2 Jodh Singh whereas PW3 Dr. Vinod Batra from Batra Hospital detailed the factum of admission and his opinion Ex. PD/1, letter Ex. PE and treatment record of accused Rajesh Kumar as Ex. DD.

PW4 Sh. S.K.Goel, Judicial Magistrate, Jalandhar proved the statement of the complainant Ex. PC recorded in the hospital and proceedings Ex. PC/1 and PC/2. Thereafter ASI Sukhwinder Singh PW5, Investigating Officer detailed the investigations carried upon by him proving his endorsement Ex. PD/1, application before the Duty Magistrate Ex. PE and endorsement Ex. PB/1 and Ex. PB/2, proved site plan Ex. PF and taken into police possession articles i.e. Match box Ex. P1, bottle Ex. P2, tin box Ex. P3 through memo Ex. PD/2.

Upon closure of the prosecution evidence the accused were put the incriminating evidence oral as well as documentary in their individual statements recorded under Section 313 Cr.P.C. who denied the allegations.

The accused in their defence examined DW1 Smt. Taro and thereafter DW2 Rakesh Kaushal then DSP, Jalandhar testified regarding holding of inquiry and the defence evidence was closed leading to the passing of the impugned findings.

Appreciating the submissions of the two sides and on perusal of the records, the first and the foremost argument that arises is as to the applicability of Section 307 IPC. The only semblance of medical evidence that has come about is the testimony of PW3 Dr. Vinod Batra, of Batra Hospital, Jalandhar where the complainant is stated to have been got admitted after receiving burn injuries. This witness has proved the fact that the patient Gurmit Kaur was suffering 50% burn injuries and was referred to Baba Kashmira Singh Hospital on 7.6.2001 and proved OPD slip Ex. PD and it is on the basis of the opinion of this doctor that the injuries could be dangerous to life, Section 307 IPC is stated to have been slapped upon the accused. It is the own case as has been argued of the prosecution that there is no medico legal examination report of the injured nor any treatment record of the injured has been

proved and the only semblance of evidence is Ex. PD the OPD slip which shows that the patient was never got admitted being case of out door patient and it is stated that the patient was admitted on 5.6.2001 and on 7.6.2001 was referred to another hospital. The only document brought about by this witness Ex. PD shows that on 5.6.2001 the patient was shown to have been admitted in Batra Hospital and on 7.6.2001 has been stated to be discharged and the very entry thereon shows that it is a case of 50% burn and reflects it to be accidental in nature, thus, undermining the very claim of the prosecution that the victim was put on fire by the accused. Thus OPD slip shows that it was on the own request of the patient she was sent to another hospital. To the specific query of the Court, learned State counsel Mr. Rakesh Inder Singh Sidhu was clearly at loss of words as to subsequent medical record on subsequent treatment given at the other hospital rather the endorsement Ex. PD/1 as per the signatures and date given thereon shows the date as 8.8.2001. How after the discharge of the patient on 7.6.2001 such an opinion could come about is anybody's guess. Rather to the mind of this Court, the entire evidence has been fabricated for a motivated cause and therefore, cannot be legally relied upon. Besides the fact the doctor has stated that *"50% burn injuries sustained could be dangerous to life"* and rather does not shows that the injuries were dangerous to

life and there was likelihood of being dangerous to life. Further-more what treatment has come about of such burn injuries could not be satisfactorily proved on the record. It is there reflective on the record on the proceedings Ex. PC/1 when statement of the victim on police application was recorded by way of Ex. PC by the Magistrate through his endorsement Ex. PC/2 that is on 5.6.2001, the day of the occurrence, when the patient was found fit and conscious. It is well settled preposition of law, reliance of which can be placed on **V.D.Jhingan vs State of UP, AIR 1966 SC 1762** that in a criminal case, the onus rests heavily on the prosecution to establish its case beyond shadow of reasonable doubt. However, in the present circumstances as has been detailed and discussed above it is the prosecution version itself which has been put to doubt and therefore, the applicability of offence under Section 307 IPC certainly is not made out. Section 307 IPC requires that an attempt has been made for the death of a human being and which was as an attempt or in consequence of an act of the accused and such an act was done with the intention of causing death or with the intention of causing such bodily injury as the accused knew would be likely to cause death and or subsequent in the ordinary course of nature to cause death. It is the own stand of the prosecution as spelled out by the victim that at the time when the occurrence had taken place, the

complainant along with her husband were living separately from the other accused and it was in that very premises during the course as per the allegations when the husband tried to forcibly administer her medicine and on her resistance is alleged to have been put on fire. Thus, presence of other accused seemingly is not made out and how it was with their connivance and participation and sharing of common intention or object such a thing has come about is not established by any legitimate legal means. How, the court below had drawn the conclusion that accused Rajesh Kumar had sprinkled kerosene oil on the body of the complainant and put her on fire with intention to kill her which resulted in 50% burn injuries to her. How the conclusion has been drawn that the same was dangerous to life in absence of any clearly enumerated medical opinion or document certainly does not deserves to be accepted and needs to be brushed aside.

The second most contentious argument that has come about is the demand of dowry by the accused side. The inter-se relationship of the complainant with the accused side is well admitted and the document which was executed between the parties by way of Ex. DA also exhibited as Ex. DB which is also admitted by the complainant in her testimony as PW1, shows that an agreement of settlement was arrived at between the parties where it is stated that

the girl referring to the complainant shall not raise unnecessary allegations of demand of dowry against the in-laws and which is otherwise false one and that the girl would not level any such allegations in future. It is further stated in this admitted document that the girl referred to as the complainant would not leave her house without the permission of the husband on the pretext of meeting her relatives is rather suggestive of the fact that it is not a dispute arising out of demand of dowry but on account of vagabond habits of the complainant wife.

Further-more scanning the evidence is the deposition of the complainant as PW1 and in the light of the submissions she has been confronted with her previous statement Ex. DA where allegations against husband Rajesh Kumar, Seema Rani and Sudesh Kumar were not made out by her and thus shows and reflects belated allegations having cropped up for a motivated cause and further-more when confronted with the statement Ex. DA demand of Rs 2 lacs at the instigation of Amar Nath, Seema Rani and Santosh Kumari are also found to be missing. The presence of PW2 Jodh Singh who happens to be brother of complainant Gurmit Kaur who lives at Amritsar at a great distance from the place of occurrence which is located at Mehta and thus, his presence certainly needs to be taken with a pinch of salt and in his cross-examination accepts

that he did not make any statement before the police and therefore is in itself illustrative of the fact that he is subsequently belatedly propped up witness and his stand that he used to visit the place of occurrence which is rented premises of Rajesh Kumar accused is negated when he was confronted that his earlier statement Ex. PC where he never stated it so and has rather refuted the fact that he ever stated in his statement that the accused were demanding car. The other witness that has been examined is the Investigating Officer ASI Sukhwinder Singh PW5 and in his cross-examination accepts the fact that the accused Santosh Rani, Sudesh Kumar and Seema Rani were found innocent during investigations conducted by DSP Rakesh Kaushal and rather what has transpired in his deposition that he had inquired from the complainant how she received burn injuries and she has narrated the whole story but he never recorded statement of Gurmit Kaur at that time and therefore, her subsequent statement which forms very FIR is hit by the provisions of Section 162 Cr.P.C. read with Section 154 Cr.P.C. It is further admitted by this witness, the Investigating Officer that when he went to Batra Hospital, he also found Rajesh Kumar was also admitted in Batra hospital as a case of poisoning and the most important admission is that when he admits that he did not sent any ruqa for the registration of the case after receiving copy of the statement of Gurmit Kaur

recorded by the Duty Magistrate. Further-more the admission of the Investigating Officer when confronted with the site plan that he has not depicted point from where Jodh Singh has witnessed the occurrence rather corroborates the fact as has come in the cross-examination of Jodh Singh PW2 whose presence at the time of occurrence has been put to doubt and the admission by this witness that on the day of occurrence he never met PW2 Jodh Singh and rather DW1 Taro has sought to give impetus to the case of the defence when she states that when she arrived at the hospital she found accused Rajesh Kumar being admitted there because of poisoning and when she confronted the complainant about this, she told that she has poisoned her husband as she wanted divorce from Rajesh Kumar as her marriage was not performed as per her own wishes and rather has given an explanation that Gurmit Kaur accepted the fact before her that out of fear after poisoning her husband she has put herself on fire to escape from punishment. The presence of this witness is also admitted by the prosecution side and therefore, lends credence to the defence version so brought about in the case. Thus from all this the prosecution upon whom the heavy onus lay to prove its case has even failed by any means to prove how the complainant was treated with cruelty by the accused side. Not even an iota of evidence has come about as a semblance to the

same. The over-all summing up of the evidence oral as well as documentary it bears out that the learned trial court has failed to properly appreciate the evidence in the right earnest and has remained in oblivion to the golden principle of criminal law that it is for the prosecution to establish its case beyond shadow of reasonable doubt and which it has failed to do so.

In view of the foregoing discussion and remises undermine the very acceptability of the prosecution story. The impugned findings are wrong appreciation of the evidence and needs to be set aside by way of acceptance of the appeal. Accordingly, the present appeal is allowed and the accused are acquitted from the charges framed against them.

December 01, 2018
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>