

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

CRA-S-3491-SB-2013(O&M)

Date of decision:-20.9.2018

Suresh Kumar

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Bikramjit Singh Bajwa, Advocate
for the appellant.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr.Nakul Sharma, Advocate
for respondents No.2 to 6.

H.S. MADAAN, J.

Accused Rajesh Kumar, Dharmo @ Dharam Devi, Sweety alias Rekha, Kaka alias Jatinder Kumar and Bitta alias Sudershan Kumar faced trial by learned Additional Sessions Judge, Amritsar, who vide judgment dated 4.7.2013 acquitted such accused of the charge framed against them.

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

are that Sonia wife of Rajesh Kumar was admitted in Emergency Ward of Guru Nanak Dev Hospital, Amritsar and on intimation received therefrom, a police party from Police Station B-Division, Amritsar headed by Inspector Randhir Singh, Additional SHO went there; he was informed by Duty Medical Officer that Sonia was in critical condition, therefore, at his request Judicial Magistrate on Duty at Amritsar went to Guru Nanak Devi Hospital and recorded statement of injured Sonia; that on return to police station, DDR entry No.24 dated 30.3.2008 was recorded; that on 22.4.2008 Sonia had succumbed to her injuries; on getting necessary information, Inspector Randhir Singh from the police station concerned went to Guru Nanak Devi Hospital, Amritsar and carried out inquest proceedings with regard to unnatural death of Sonia; he got the post-mortem examination conducted on the dead body and thereafter, handed it over to Rajesh Kumar, husband of the deceased; on 2.7.2008 Suresh Kumar, brother of the deceased submitted an application to SSP, Amritsar contending that Sonia was married with Rajesh Kumar about 8 years earlier; at that time, they had given sufficient dowry articles, however, husband and member of in-laws family of Sonia were not satisfied therewith and they had been maltreating and harassing her in connection with demand of more dowry, which they could not fulfil; on 30.3.2008 Rajesh Kumar and his family members had hatched a conspiracy and set Sonia on fire for the reason that their demands for dowry could not be got met by Sonia.

On receipt of this application, SP(D), Amritsar conducted a probe and vide his report, recommended taking of action against Rajesh

Kumar, husband of the deceased and thereafter the FIR in question was registered under Section 306 IPC. The matter was investigated. Accused Rajesh Kumar was arrested in this case.

After completion of investigation and other formalities, challan against the accused Rajesh Kumar was prepared and filed in the Court of Judicial Magistrate Ist Class, Amritsar

On presentation of challan in the Court of Judicial Magistrate, Amritsar, copies of documents relied upon in the challan were supplied to the accused, free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 306 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Amritsar vide order dated 9.3.2009 committed the case to the Court of learned Sessions Judge, Amritsar, from where it was entrusted to the Court of learned Additional Sessions Judge, Amritsar.

On receipt of case, learned Additional Sessions Judge, Amritsar, observing that charge for an offence under Section 306 IPC was disclosed against accused Rajesh Kumar, charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the trial, the prosecution moved an application under Section 319 Cr.P.C. for summoning of Dharmo, Bitta, Sweety and Kaka as additional accused, which was accepted by the trial Court and such persons were summoned as additional accused. They put in appearance and fresh charge was framed against Rajesh Kumar, Dharmo @ Dharam Devi, Sweety alias Rekha, Kaka alias Jatinder Kumar and Bitta alias

Sudershan Kumar for an offence under Section 306 IPC. The case was fixed for prosecution evidence.

To bring home guilt to the accused, the prosecution examined as many as 8 witnesses as per details below:

PW Suresh Kumar deposed as per the assertions made by him in his application to the police, in addition to stating that subsequently they came to know that Rajesh Kumar had illicit relations with his sister-in-law (BHABHI) Sweety. He further deposed that Sonia had made a statement before the Magistrate, since she had been threatened by family members of Rajesh Kumar and when he met Sonia, she disclosed that the accused had given her severe beatings and then they had set her ablaze; that the accused had alleged that Sonia had received burn injuries due to burst of kerosene stove but there was no stove at all in the kitchen, rather a gas stove was being used.

PW Rakesh Kumar, a cousin brother of the deceased and PW Satya Rani mother of the deceased lend corroboration to the version of the prosecution.

PW Inspector Randhir Singh, who had carried out the investigation in this case initially deposed in that regard.

PW ASI Balwinder Singh, who was member of the police party on 22.4.2008 stated that they had gone to Amandeep Hospital, Amritsar, where inquest proceedings were conducted and then dead body of Sonia was deposited in the mortuary and post-mortem examination was got conducted.

PW Inspector Bakhtawar Singh deposed that on 30.3.2008,

on receipt of complaint Ex.P1 at Police Station B-Division along with inquiry report Ex.P2, formal FIR Ex.P3 was registered; that he had then gone to the place of occurrence preparing site-plan Ex.P4, raided the house of the accused and arrested him vide memo Ex.P5. He recorded statements of witnesses and then further investigation was carried out by ASI Harnam Singh.

PW ASI Manjit Singh had filed the challan before the Court on completion of investigation and deposed in that regard.

PW Dr.Anil Kumar, who had examined injured Sonia on 30.3.2008 proved her bed head ticket as Ex.P3.

PW Dr.Ashok Chanana, who had conducted post-mortem examination on the dead body of the deceased on 23.4.2008 deposed that she had received her injuries to the extent of 63% and such burn injuries were ante-mortem in nature and cause of death was as a result of septicemia shock as a result of burn which was sufficient to cause death in the ordinary course of nature. He proved copy of post-mortem report as Ex.PW5/A.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Further, in addition to pleading false implication, accused Rajesh Kumar took up a plea that on the fateful day i.e. on 30.4.2008, Sonia was cooking meals; that there was an accidental blast of cooking

stove, which resulted into burn injuries to her and he tried to save her by dousing her with water. He further stated that Sonia suffered a statement before Judicial Magistrate Ist Class on 30.3.2008 at 5:20 p.m. at the hospital.

The remaining accused adopted the plea as taken by accused Rajesh Kumar.

In their defence, accused proved dying declaration of the deceased Sonia as Ex.DC, application moved by Investigating Officer as Ex.DE, certificate furnished by the doctor as Ex.DD and order passed by Judicial Magistrate as Ex.DB besides tendering documents Ex.D1 to D92(receipts) and injury report Ex.D93.

Learned trial Court had formulated the following points for determination:

- (1) Whether the death of the deceased was suicidal or accidental?
- (2) If the death of the deceased is proved to be suicidal, whether the accused abetted the suicidal death?

After hearing arguments, learned Additional Sessions Judge, Amritsar acquitted all the accused of the charge framed against them, which left the complainant aggrieved and he has filed the present appeal, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

A perusal of the impugned judgment goes to show that the trial Court referring to the dying declaration Ex.DC of the deceased observed that it was recorded by Judicial Magistrate on 30.3.2008, though it was own document of the prosecution and the prosecution does not dispute this document but it was not relied upon by the prosecution for the reason that version recorded therein is not favourable to the prosecution. It was observed that it being an admitted document, the Court did not feel necessity to summon the Magistrate in order to prove the same, however, the Magistrate has recorded the proceedings on application Ex.DE, which clearly shows that before recording the statement, the Magistrate obtained certificate from the doctor regarding fitness of the patient to render the same and further PW Dr.Anil Kumar Marwaha had stated that he was very much present by the side of the Magistrate when the statement was being recorded and the patient was in fit mental condition to render her version; further after recording the statement, the Magistrate obtained the certificate Ex.DB from the doctor certifying that the patient remained fit and conscious during the process of recording of her statement and that the Magistrate had recorded the endorsement Ex.DE that at the time of recording statement of the injured, all the relatives and police officials were directed to stay outside the room, thus showing that the deceased was not under any kind of influence, pressure, threat or coercion at the time when her statement was recorded. The trial Court has referred to judgment by a Constitutional Bench of the Apex Court i.e. **Laxman Versus State of Maharashtra, 2002 AIR SC 2973** summed up the law with regard to dying declaration as under:

- (1) Dying declaration is accepted on the theory that person on death bed will speak the truth – But great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth.
- (2) Since the accused has no power of cross-examination, the court should insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness.
- (3) Court should also see that the statement of the deceased was not as a result of either tutoring or prompting or a produce of imagination.
- (4) Court further satisfy that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant.
- (5) Statement of eyewitnesses that deceased was fit and conscious to make the declaration will prevail over medical opinion.
- (6) A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will be sufficient provided the indication is positive and definite.
- (7) When dying declaration is recorded on oath is necessary nor is the presence of a magistrate is

absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available.

(8) There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording.

(9) What evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.

(10) Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution.

Thus the trial Court came to the conclusion that the execution of dying declaration Ex.DC is duly proved on record. The English translation of the dying declaration of the deceased as mentioned by the trial Court in para No.28 of the judgment is to the following effect:

“Stated that I was married 9 years ago and I had two sons and one daughter. Today, around 2:00 PM, I was cooking meals when there was a stove burst. At that time, my husband, my children, sisters in law Sweety, Nitika and Darshana were present at home. My father-in-law had already expired and mother-in-law was present in the ground floor of the house.

Due to stove burst, I caught fire. All the family members rushed to her. My husband poured water upon me with the help of bucket and put off the fire. All my family members took me to hospital. No one is responsible for the accidental fire. I have suffered this statement out of my free will and consent without any pressure”.

The trial Court has further observed that besides narrating her version to the Magistrate, injured Sonia had given that very version to the Investigating Officer on the same day which being Ex.P3 recorded at around 7:00 p.m. duly proved on record by the Investigating Officer in which she again stated that on account of stove burst kerosene oil fall on her body and she caught fire; that her husband, sister in law Sweety and Darshana rushed to her and put off the fire and that the fire was accidental and no one was responsible for the same, as such she did not want action against anyone.

The trial Court found that version rendered by the victim through dying declaration appears to be trustworthy inasmuch as she did not introduce any exaggerations and narrated only the basic and important facts surrounding the circumstances of her death, whereas, the circumstantial evidence in the form of depositions of complainant, PWs Suresh Kumar, Rakesh Kumar and Satya Rani was not found to be trustworthy for the reason that they remained silent till 2.7.2008 and it was within their knowledge that the deceased had already given her version before the Magistrate as well as the Investigating Officer; the deceased had remained alive till 22.4.2008 and no application was moved

to record fresh version of the deceased and it was only after death of the deceased and several days later that complainant came up with such version with regard to harassment of deceased at the hands of her husband and his family members in connection with demand of dowry. The trial Court has further taken note of the fact that after marriage of the deceased with Rajesh Kumar in the year 2000, no application was ever moved by parents and brother of the deceased to any police official or any authority complaining about maltreatment of deceased. The trial Court has further observed that Suresh Kumar was present outside the room when statement of deceased was being recorded by Judicial Magistrate and Rakesh Kumar had met the deceased before such statement was recorded. The contention of the complainant that the deceased was being pressurised by her husband and his family members etc. to make statement in a particular way are not convincing, giving detailed reasoning the statements of these three PWs have been found to be not worthy of reliance. In view of the above discussion, the trial Court came to the conclusion that death of deceased was not suicidal but was an accidental death. Therefore, question of accused abetting the suicide death did not arise. Therefore, the prosecution having failed to prove its case against the accused, they were acquitted accordingly.

It is well settled law that the judgment of acquittal is not be upset in a light manner unless the findings arrived at by the trial Court are perverse and in clear violation of settled principles of criminal justice.

In my considered view, the judgment of acquittal passed by the trial Court is well reasoned one, based upon proper appraisal and

appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The same is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

20.9.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No