

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

Crl. Appeal No.D-423-DB of 2003 (O&M)

Date of Decision: March 14, 2018

Rakesh Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Amandeep Singh, Advocate
for the appellant.

Mr.Vivek Saini, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 08.04.2003 and order of sentence dated 10.04.2003, passed by the learned Sessions Judge, Hisar, whereby he was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹2000/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. However, co-accused Ladia was acquitted of the charge framed against her.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Baljit Singh, which was got recorded to ASI Om Parkash on 07.09.2001. Endorsement on this statement was made at 11.35 p.m. on the same date, on the basis of which, FIR No.395

dated 08.09.2001 was registered. Baljit Singh @ Kala in his statement, stated that they were five brothers and sisters and he is eldest. His father expired 13-14 years back. His sister Rajbala, who is younger to him, was married to Rakesh about three years back and they had given sufficient dowry beyond their capacity. From the very beginning of the marriage of his sister, her husband Rakesh and mother-in-law Ladia used to harass Rajbala for dowry. He, his mother Indrawati and Ajmer requested Rakesh and his mother many times to keep their honour and rehabilitate Rajbala. About five months after marriage, ₹20,000/- was given to Rakesh. For some days, Rakesh kept his sister nicely but thereafter, Rakesh again started demanding money and started harassing her. Then his mother gave ₹5000/- and a colour T.V. to Rakesh but it still could not fulfill their lust. As and when Rajbala used to visit their house, she used to tell that they are greedy of dowry. Rakesh and her mother-in-law used to taunt her for bringing less dowry and it is difficult for her to live with them. The complainant further sated in his statement that for the last about one week, his sister Rajbala had gone to the house of her Jeth-Jethani at village Gorakhpur but there also, Rakesh did not allow Rajbala to live peacefully and one day earlier, he took Rajbala to his house and harassed her and asked to bring ₹10,000/- from her parental house. Feeling disturbed on account of harassment due to demand of dowry by her husband and mother-in-law, his sister Rajbala had set herself on fire and is admitted in the hospital. After registration of the FIR, dying declaration of the victim Rajbala was got recorded by learned Judicial Magistrate First Class, Hisar on 08.09.2011 at 8.30 a.m., in which, the victim stated as under:-

“XXX XX XX XXX
This fact is of yesterday i.e. 7.9.2001 evening at 6-7 p.m. My husband set me on fire. By taking out kerosene from the stove, poured on me. When I was coming out from the house, he set me on fire by pouring kerosene on me. I had gone to my house and had come back. My husband asked as to why you had gone to the house. Then I replied that I had gone because of you. My husband set me on fire after drinking liquor and asked either you or I will survive. My husband Rakesh used to harass me because he was felling uneasy (difficulty) to keep me. I was set on fire with a match box. Thereafter, I cried loudly. My husband had fled away and my fire was extinguished by neighbours. I cannot tell their names because I became unconscious. I was brought to the hospital by my mother. Except my husband no other person harass me.”

On 01.10.2001, Rajbala died due to burn injuries. Post-mortem examination was got conducted on the dead body. Site plan was prepared. Statements of witnesses were recorded. Accused was arrested. After necessary investigation, challan was presented against the accused-appellant and co-accused.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant and co-accused under Section 207 Cr.P.C. Finding prima facie case, the appellant and co-accused were charge-sheeted under Sections 302 and 304-B IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr.Ramesh Kumar Arora, who deposed that he and Dr.Rajpal Singh were members of the board and they conducted post-mortem examination on the dead body of Rajbala on 01.10.2001 and found following injuries:-

There were superficial to deep burns present all over the body except right leg, left leg, back of chest and abdomen on right side and gluteal region. Singing of scalp hair was present. On remaining crusts (covered with cream) granulation tissue with pus discharge was

present over most of the burnt areas. Line of demarcation was present between burnt and healthy tissues.

Left side was half full with blood and right side of full with blood. Uterus was bulky. Six to eight weeks of gestation size was found. On dissection, production, products of conception were present in the uterus.

In the opinion of the doctors, the cause of death in this case was due to septicemia shock as a result of massive burns, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. PW-2 Dr.Daya Nand mainly deposed that on 07.09.2011, he medico-legally examined Rajbala wife of Rakesh and found that there was superficial to deep burns on face. Scalp, neck, front of chest, both upper limbs except hands, at places of back and both thighs. Both legs and feet were spared. Blisters were present at places, skin was peeled off at places. Kerosene oil smell was coming from the burnt clothes. The clothing was sealed and handed over to the police. PW-3 Subhash Chander, Draftsman, mainly proved the scaled site plan Ex.P12. PW-4 SI Mohinder Singh deposed regarding preparing inquest report etc. He also deposed regarding giving application for conducting post-mortem examination. He further deposed that on 20.10.2001, father of accused, produced dowry articles. PW-5 MHC Om Parkash, is formal witness, who tendered into evidence his affidavit Ex.P15. PW-6 ASI Amar Singh deposed regarding recording of formal FIR Ex.P17. PW-7 Head Constable Miya Singh mainly proved the photographs Ex.P18 to Ex.P21 and their negatives Ex.P22 to Ex.P25. PW-8 Baljeet, complainant, has not supported the prosecution version and he stated that accused never made any demand of dowry and also never demanded T.V.

Or cash. Rajbala never made any complaint to him against the accused. He

also does not have any complaint against the accused. This witness on being declared hostile, was cross-examined by learned Public Prosecutor but nothing substantial came out from the statement. PW-9 Indrawati, mother of the deceased, also turned hostile and has not supported the prosecution version. PW-10 Sh.N.K.Singhal, JMIC deposed regarding dying declaration of Rajbala. He deposed that he took opinion of the doctor regarding fitness of the victim. He also stated that he recorded the statement of Rajbala, which was read over to her and she admitted the same as correct and put her RTI and the doctor was present throughout when he recorded the statement of Rajbala. He also prepared certificate Ex.P28/D in this regard. PW-11 Dr.Varun Kawatra, deposed that he gave opinion to the effect that Rajbala is fit to make statement and proved his opinion. PW-12 Ram Singh, is also formal witness, who tendered into evidence his affidavit Ex.P29. PW-13 ASI Om Parkash, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. He also deposed that he took into possession one stove containing some kerosene oil, one match-box containing some match sticks, one Can of plastic containing kerosene oil and one burnt piece of cloth. All were made into separate parcel and sealed and were taken into possession vide recovery memo.

At the close of prosecution evidence, the accused-appellant and co-accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. Accused Rakesh Kumar further pleaded that he did not set his wife on fire. She received burn injuries accidentally when she was lifting some articles from a

shelf constructed under the stove. The stove accidentally fall on her and she caught fire. He further pleaded that her (victim) statement before the Magistrate was not voluntary. She was tutored by her relatives. He has been falsely involved in his case. He was not present at the time of occurrence and he never harassed his wife.

In defence, accused examined DW-1 Balwan Singh, who mainly deposed that he is neighbour of accused. The wife of accused Rakesh was lying in the courtyard in burning condition and was crying. They put earth on Rajbala in order to put off the fire. He asked her as to how she caught fire, she told that she caught fire from the stove as she was picking some article underneath the shelf and stove fallen on her. Rakesh accused was not present in the house at that time. He further deposed that after 15-20 minutes, mother of Rajbala along with 2-3 other persons came there. She also made enquiry from her as to how she caught fire and she narrated same as she told to him. He also deposed that her mother tutored her to give different statement involving Rakesh. DW-2 Parkash also deposed same facts.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above. However, co-accused Ladia was acquitted of the charge.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that PW-8 Baljeet, complainant and PW-9 Indrawati, mother of the deceased, have turned hostile and have not supported the prosecution version. Therefore, a reasonable doubt exists regarding the prosecution

version against the present accused-appellant. He further argued that defence version is believable and correct. Rajbala received/got accidental fire while working in the kitchen. He next contended that dying declaration is tutored one as family members of the deceased were present in the hospital. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that the case of the prosecution has been duly proved by dying declaration of the victim which is on the record. There is no reason or ground to falsely implicate the accused-appellant. He next argued that though complainant and mother of the deceased have turned hostile but dying declaration is supported and corroborated by other evidence also. He further argued that the defence version cannot be believed. No statements of DW-1 Balwan Singh and DW-2 Parkash were recorded during investigation nor they moved any representation/application to the higher authorities regarding false implication of the accused. First time, this defence version came during the defence evidence and such type of evidence can be procured in defence at later stage. It is next contended by learned State counsel that there is no cogent evidence on record that victim was tutored. If it would have been the case, the victim might have falsely implicated other family members also but she has specifically stated in the dying declaration that only Rakesh is involved in the occurrence. Learned State counsel, therefore, argued that accused-appellant has been rightly convicted and there being no merit in the present appeal, the same should be dismissed.

learned State counsel and have gone through the record minutely and carefully.

From the evidence on record, we find that though in the present case, complainant Baljeet and Indrawati, mother of deceased have not supported the prosecution version and have turned hostile but they were not present on the spot at the time of occurrence and are not eye witnesses to the occurrence. The victim herself gave statement to the Magistrate under Section 164 Cr.P.C. that her husband took out kerosene oil from the stove and then poured the same on her, which is corroborated from the fact that Investigating Officer, from the spot, has taken into police possession a stove, match stick box and a plastic Can containing kerosene oil. Further, the doctor has also stated that clothes of the victim were smelling like kerosene oil when he firstly examined the victim and the patient came immediately after the occurrence. The statement given by the victim in her dying declaration that her mother got her admitted in the hospital is also corroborated by statements given by DWs, who stated that her (victim) mother came there after some time and got admitted Rajbala in the hospital. In the dying declaration, the victim has narrated the occurrence and there is nothing on the record to disbelieve the dying declaration. It is also in the dying declaration that she had gone to her house and came back and her husband asked as to why she had gone to parental house. This version that victim had returned to the matrimonial house on the same day or one day earlier, is also not challenged by the defence. There is nothing on the record to show that at the time of recording of dying declaration, the victim was tutored by her brother or mother. Rather, brother and mother of the deceased have not supported the prosecution version and have turned

hostile in the Court. Learned Magistrate has specifically deposed that statement was voluntarily, without any pressure and relatives were turned out from the room. There is also no cross-examination to the Magistrate that victim was not fit to make statement at that time.

Therefore, from the evidence on record, we find that prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The findings have been given by learned trial Court while appreciating the evidence in right perspective.

In view of the above discussion, we find that the impugned judgment of conviction dated 08.04.2003 and order of sentence dated 10.04.2003 passed by the learned Sessions Judge, Hisar, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellant Rakesh Kumar is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 14, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No