

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1110-DB-2016
Reserved on : 07.05.2019
Date of decision : 10.05.2019

Naresh

... Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.V.P.Sangwan, Advocate
for the appellant.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 27.10.2016 and 28.10.2016 rendered by learned Additional Sessions Judge, Bhiwani, in Sessions Trial No.329 of 02.01.2015, whereby the appellant, who was charged with and tried for offence punishable under Section 302 of the Indian Penal Code (in short "IPC"), has been convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one year.

2. The case of the prosecution in a nutshell is that Geeta Devi wife of Naresh, aged 30 years was admitted with burn injuries in Jindal Institute of Medical Science, Hisar, at 08.30 P.M. on 12.10.2014. Her medico legal examination was conducted vide MLR Ex.PF. Since ventilator was not available, she was admitted in Sukhda Hospital, Hisar, at 05.00 A.M. on 03.11.2014. An application Ex.PA was moved by police to Duty Magistrate

for recording statement of Geeta Devi under Section 32 of the Indian Evidence Act, 1872. Police also moved an application Ex.PG seeking opinion of the doctor regarding fitness of the patient. The doctor gave his opinion Ex.P1 to the effect that the patient was fit to make statement. Thereafter, the Magistrate recorded the statement Ex.PB/1 of Geeta Devi. On the basis of the statement, ruqa was sent. FIR Ex.PM was lodged. Police reached the spot. Police inspected the spot. Police prepared rough site plan. Police took into possession one match box, one red strip towel, one plastic bottle, green colour of bisleri emitting smell of petrol. Investigation was carried out and challan was put up after completing all the codal formalities.

3. Prosecution examined number of witnesses. The statement of appellant was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The appellant examined three witnesses in his defence. The appellant was convicted and sentenced as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the judgment and order dated 27.10.2016 and 28.10.2016.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Rajat Verma testified that on 13.10.2014 he was posted as Judicial Magistrate. Police moved application Ex.PA/1. He passed order Ex.PD. Thereafter he moved an application before the doctor of Jindal Hospital, Hisar, Ex.PE to seek his opinion regarding fitness of the patient

injured Geeta. Doctor gave certificate that patient was fit to make statement. He passed the order Ex.PD/1. Thereafter he recorded statement Ex.PB/1 of Geeta Devi. He certified the statement vide his endorsement Ex.PC/1. Thereafter, the doctor also gave his statement that during recording of her statement, the patient remained in a fit state of mind while deposing. He passed the order Ex.PD/2. In his cross-examination, he deposed that he did not remember whether the parents of patient Geeta Devi were present in the hospital premises at that time or not.

8. PW-2 Pawan Kumar is brother of deceased Geeta Devi. He testified that marriage of Geeta Devi was solemnized with accused Naresh about 11-12 years ago. Naresh and his family members had demanded a car in the dowry from his sister. Sister-in-law Radha used to raise demand of watch and jewellery from his sister. Accused had brought a girl namely Usha from the city of Sonapat. He used to reside with Usha in a rented house at Tosham. When his sister came to know about the illicit relation of accused Naresh and Usha, she protested about the relations. Accused Naresh started to torture and beat her. His sister filed a complaint in the Court at Hisar on 18.10.2012. Geeta Devi had also filed a complaint before SP, Fatehabad on 01.09.2014. She also filed application regarding domestic violence in the Court at Fatehabad on 20.08.2014. Naresh was summoned by the Incharge of Women Cell, Fatehabad. Naresh along with his cousin came there on 15.09.2014. They assured that Naresh will not beat and torture Geeta. Compromise took place. Geeta Devi along with her son Dinesh was taken away by accused Naresh. He came to know through a telephonic message that his sister was set on fire. She was being taken to

Jindal Hospital, Hisar. He reached the hospital. When her sister regained consciousness, they enquired from his sister about the incident of burning.

Geeta told them that *“my husband Naresh, Usha with whom Naresh accused was living at Tosham, my mother-in-law Lado Devi, both sisters-in-law namely Shyamo and Radha and Hari Bhagwan (Kaka-Sasur) and Phula Devi (Bhabhi of Naresh) took out petrol from the motor cycle and sprinkled on me and set on fire, due to which I received burn injuries.”*

Rajat Verma, JMIC recorded the statement of his sister. She was shifted to Sukhda Hospital, Hisar on 03.11.2014. In his cross-examination, he deposed that he received information regarding the incident on 12.10.2014 at 08.30 P.M. They met her after recording her statement by the Magistrate at about 11.30 A.M. They had not talked with the deceased. He again reiterated that his sister told the manner she was put on fire.

9. PW-3 Dr.Shashi Kant deposed that he was posted as a Casualty Medical Officer in Jindal Hospital, Hisar on 12.10.2014. He medico legally examined Geeta Devi wife of Naresh. She had received 70% burn injuries. She remained in Jindal Hospital from 12.10.2014 to 03.11.2014.

10. PW-9 Dr.Anil Goyal deposed that he was posted as Medical Officer in Sukhda Multispeciality Hospital, Hisar on 03.11.2014. Geeta Devi was brought to the hospital. She was treated in the hospital. She died on 03.11.2014 at 07.30 P.M.

11. PW-10 Dr. Reena Jain had conducted the post-mortem examination. The cause of death was due to extensive burns, its sequelae and its septic shock. The cause was ante mortem and sufficient to cause death in ordinary course of life. She noticed burns superficial to deep, on

both legs, thigh, over left leg coupled with pyoderma present, abdomen, chest and back both red line. Both upper limbs, neck singed hair, blister present, red line of demarcation present, extensive burn 50-70% present on body coupled with Pyoderma and sepsis. The post-mortem was conducted on 04.11.2014.

12. PW-4 Dharmender Singh is a material witness. He has prepared site plan Ex.PH. In his cross-examination, he categorically stated that he had not noted if room shown Mark A in the site plan Ex.PH was being used as a kitchen.

13. PW-6 Tek Ram was the Investigating Officer. He got the information and went to ICU. According to MLR, the patient had received 70% burn injuries. He moved an application before the doctor to obtain his opinion if the patient was fit to make statement vide Ex.PG. The doctor gave his opinion that the patient was fit to make statement. The opinion of doctor is Ex.P-I. He moved another application before the Duty Magistrate requesting him that statement of Geeta Devi be recorded. The application is Ex.PD/1. On his application, Duty Magistrate Mr. Rajat Verma accompanied him to the hospital for recording statement of Geeta Devi. Thereafter the Magistrate recorded the statement of victim Ex.PB/1. After recording statement, on his request, the Magistrate handed over to him carbon copy of statement of victim Ex.PB. The statement was thumb marked by Geeta Devi. He made endorsement on the statement. Thereafter FIR was registered. He inspected the place of occurrence. He found one match box in a room, one towel red in colour with white stripes in front of chowk which was in semi burn condition, one plastic bottle bisleri emitting smell of

petrol. These were converted into parcel. He received information on 04.11.2014 that Geeta Devi had died. He went to the police station. He denied the suggestion in the cross-examination that face of Geeta Devi was not affected with burn. He could not say if brother and father of Geeta Devi had chance to meet Geeta Devi in Jindal Hospital, Hisar.

14. PW-7 SI Ajit Singh deposed that on 24.11.2014 both the parties were summoned in the police station to verify the facts of the case. He recorded statement of Krishan Sarpanch and Ganshyam under Section 161 Cr.P.C.

15. DW-1 Usha deposed that on 12.10.2014 at about 08.00 P.M. she heard the noise of “*bachao-bachao*” of her *devrani* Geeta Devi from the house of his *devar* Naresh. She along with his husband went to the house of Naresh. Geeta Devi caught fire while she was cooking food. They saved her with the help of towel. Thereafter they took her to the hospital. In her cross-examination, she admitted that she did not tell the doctor of Jindal Hospital, Hisar and that Geeta Devi caught fire while she was cooking food. She narrated this fact first time before the Court.

16. PW-6 Tek Ram testified in his examination-in-chief that he received information. He went to ICU. He moved application to the doctor to seek his opinion whether the patient was fit to make statement. Doctor gave opinion Ex.PI. He moved application before the Duty Magistrate requesting him to record statement of Geeta Devi vide Ex.PD/1. The Duty Magistrate visited the hospital. He recorded the statement. PW-1 Rajat Verma has deposed that police made a request Ex.PA/1. He passed the order Ex.PD. He moved an application to the doctor of Jindal Hospital, Hisar

Ex.PE seeking opinion of doctor regarding fitness of patient Geeta Devi. The doctor gave certificate that patient was fit to make statement. He passed the order Ex.PD/1. Thereafter he recorded the statement Ex.PB/1 of Geeta Devi. He also certified the statement vide his endorsement Ex.PC/1. The doctor also made statement that patient remained in a fit state of mind while deposing.

17. The learned trial Court has discarded dying declaration Ex.PB/1 by holding that it was tutored. However the fact of the matter is that dying declaration Ex.PB/1 could not be discarded. It had been made voluntarily by the deceased. All the codal formalities have been completed by the police, the Magistrate and the doctors at the time of recording statement of the deceased. PW-2 Pawan Kumar has categorically deposed that they had not talked to Geeta Devi before her statement was recorded. Statement cannot be termed tutored or prompted. There was no occasion for Geeta Devi to falsely implicate her husband.

18. Learned counsel appearing on behalf of the appellant has placed strong reliance on FSL report Ex.PX. No doubt it has come in the report that petrol, kerosene, diesel and their residues could not be detected in exhibits-1, 2 and 3 but the fact of the matter is that as per the statement of the deceased, the petrol was taken out from the motor cycle. The petrol was bound to evaporate with the passage of time.

19. Learned counsel appearing on behalf of the appellant has also argued that the deceased died at the time of cooking food. He has relied upon site plan Ex.PH. Site plan Ex.PH was prepared by PW-4 Dharmender Singh. According to the site plan, the deceased was set on fire at Mark A.

PW-4 Dharmender has specifically stated that he had not noticed that the room shown by Mark A in the site plan Ex.PH was being used as a kitchen. Thus the plea of the appellant that Geeta Devi died while cooking food in the kitchen merits rejection. Statement of DW-1 Usha is contrary to the statement of PW-4 Dharamender. According to him, he had not noticed any cooking material in Ex.PH.

20. Geeta Devi died in the house of the appellant. He has to explain in what circumstances she died. It is a fit case where Section 106 of the Indian Evidence Act, 1872 is attracted. It has come on record that the appellant used to maltreat her. A complaint was also filed before the Court under the Protection of Women from Domestic Violence Act, 2005. The matter was also reported to the Superintendent of Police. Accused had not appeared till 25.10.2014. He was produced before the police by his brother-in-law. He absconded for 10 days. He was bound to attend his wife. He had not given any money for treatment of his wife. PW-2 Pawan Kumar has categorically stated that his sister had gone back to her matrimonial home at Kirawar and started living with Naresh. No suggestion was put to PW-2 Pawan Kumar to dispute this fact.

21. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 10 , 2019.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No