

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

CRA-D No. 418-DB of 2014 (O&M)

Reserved on : 15.1.2019

Date of decision : 22.1.2019

Satbir
State of Haryana

.... Appellant

versus

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. B. S. Sidhu, Advocate, for the appellant.
Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 5.2.2014 and order dated 7.2.2014 rendered by learned Additional Sessions Judge, Bhiwani, in Sessions Case No. 57 of 2012, whereby accused Satbir was charged with and tried for the offence punishable under Sections 304-B read with Section 34 IPC and alternate charge under Section 302 IPC, along with co-accused Bhim Singh and Roshni. Appellant Satbir was convicted and sentenced for the commission of offence punishable under Section 302 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. Co-accused Bhim Singh and Roshni were acquitted of the charges framed against them.

2. The prosecution story is that on 13.7.2012, a telephonic message was received from General Hospital, Bhiwani, at Police Post, Jain Chowk, Bhiwani, intimating that Saroj wife of Satbir, resident of Bank Colony, Bhiwani, was admitted in General Hospital, Bhiwani with burn

injuries. She was referred to PGIMS, Rohtak. On receiving information, ASI Ram Kishan along with EHC Mahender Singh proceeded for General Hospital, Bhiwani. They obtained ruqqa and MLR and reached PGIMS, Rohtak. Bimla wife of Sukhbir was found present near the dead-body of Saroj. When she was asked to make statement, she told that her husband was serving in Army. He had left after availing leave. On 14.7.2012, Sukhbir husband of Bimla and other family members were found present at PGIMS, Rohtak. Bimla got the statement recorded to the effect that she was resident of village Dang Kalan. Her husband was serving in Indian Army. Her sister-in-law (*nanad*) Saroj was married to Satbir son of Chander, resident of village Kuchrana Kalan, District Jind. Her sister-in-law was residing in Bank Colony. She was tortured by her husband Satbir, Bhim Singh brother of Satbir, Bittu son of Bhim Singh and Roshni wife of Bhim Singh for bringing insufficient dowry. They had tried to persuade them to mend their ways but all in vain. On 13.7.2012 a telephonic message was received by her that Saroj was burnt after pouring kerosene oil on her. FIR was registered. Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The accused examined three witnesses in defence. Co-accused Bhim Singh and Roshni were acquitted, however, Satbir was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned

counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

6. PW1 Ram Niwas testified that he registered formal FIR, Ex.P1.

7. PW3 Dharmender Singh has prepared the site plan.

8. PW4 SI Attar Singh deposed that investigation was entrusted to him on 15.7.2012. DSP Headquarter verified the facts. Accused Satbir was produced by his brother Rajbir in the police post on 26.7.2012.

9. PW5 Dr. Kuldeep Panchal, has conducted the post-mortem examination. He led his evidence by filing affidavit, Ex.P6. According to him, the cause of death was burns and their complications. The burns were ante-mortem in nature. The probable time that elapsed between death and autopsy was opined to be between 24-36 hours.

10. PW6 HC Om Parkash has led his evidence by filing affidavit, Ex.P8. The doctor had handed over him two sealed parcels which were taken into police possession by ASI Ram Kishan vide memo, Ex.P9.

11. PW8 ASI Ram Kishan deposed that on 13.7.2012, a telephonic message was received from Police Post, General Hospital, Bhiwani, to the effect that Saroj was admitted with burn injuries. She was referred to PGIMS, Rohtak. He reached General Hospital and thereafter PGIMS, Rohtak. He met Bimla, sister-in-law of Saroj. He recorded the statement of Bimla, Ex.P2. Post-mortem examination was conducted.

12. PW9 Dr. Pardeep Kumar has also led his evidence by filing affidavit, Ex.P14. He proved MLR, Ex.P15. He stated that the patient was

conscious but was disoriented.

13. PW10 Bimla is the material witness. She deposed that her husband was in Army. He was posted at Hisar Cantonment. Saroj was married with accused Satbir. The marriage between Saroj and Satbir was solemnized about 16-17 years back. The in-laws of Saroj started harassing her for bringing insufficient dowry. They tried to settle the dispute. She received telephonic message from neighbour. She came to know that Saroj was set on fire. She along with her brother-in-law Surender came to Government Hospital, Bhiwani, where she met Saroj in the hospital and asked about the incident. She told that all the accused present in the court set her on fire. She intimated about the incident to her husband. He came after taking leave. In her cross-examination she stated that elder son of Saroj was 15-16 years of old. They owned $2\frac{3}{4}$ kills of land. Her statement was recorded on 14.7.2012 at about 4.00/5.00 P.M. in PGIMS, Rohtak.

14. PW11 Bijender Singh is the brother of deceased Saroj. He deposed that his sister was living in Bank Colony, Bhiwani. Her in-laws were demanding money and panchayat in this regard was convened. He got information about the incident on 14.7.2012. He went to PGIMS, Rohtak and identified the dead-body of Saroj.

15. FSL report is Ex.P9. As per report, residues of diesel were detected in exhibit-1 (a bunch of some partially burnt hair) and exhibit-2 (some broken pieces of red coloured glass bangles along with a copper metallic ring).

16. The appellant has also produced DW1 Ram Chander. According to him, Bhim and Satbir were from his mohalla. Accused Bhim has left his village about 37 years back. There was dispute between Bhim

and accused Satbir. A panchayat was convened. Accused Satbir and Bhim were his brothers in relation.

17. DW2 Nanak Chand was neighbour of accused Satbir. On the day of incident, on hearing noise, he also went to the house of Satbir. Accused Satbir was not present. He came later on. Satbir and other residents of the colony took his wife to General Hospital, Bhiwani.

18. Learned counsel appearing on behalf of appellant vehemently argued that it was a case of accidental fire. Deceased Saroj was cooking meal on gas stove. Saroj had died in the house of the appellant. It is for him to explain under what circumstances his wife had died. The case of the appellant is belied. As per FSL report, Ex.P9, residues of diesel were detected in exhibit-1 and exhibit-2. If it was an accident, no traces of diesel could be found on exhibit-1 and exhibit-2. It is a case where Section 106 of the Evidence Act is attracted.

19. PW10 Bimla has categorically deposed that Saroj had told her the manner in which she was put on fire. She died due to burn injuries. Though there is some delay in lodging the report, however, the same has been explained by PW8, whose husband was in Army and she waited for him.

20. The appellant has taken the plea of alibi taking support from the statement DW2 Nanak Chand, who was his neighbour. We have already discussed the defence evidence of DW2 Nanak Chand. According to him, on hearing the noise on the day of incident, he also rushed to the house of Satbir. He was not present. Residents of the colony took Saroj to General Hospital, Bhiwani. Statement of DW2 Nanak Chand does not inspire confidence. The appellant has failed to prove the plea of alibi. The plea of

alibi is a double edged weapon. In case the accused fails to prove the plea of alibi, his presence at the spot cannot be ruled out.

21. In order to prove plea of alibi, their Lordships of Hon'ble the Supreme Court in Binay Kumar Singh vs State of Bihar (1997) 1 SCC 283, have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden

it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* 5; *State of Maharashtra v. Narsingrao Gangaram Pimple*.”

22. The statement of PW10 Bimla is duly corroborated with medical evidence, according to which Saroj died due to burn injuries. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order recorded by the learned trial Court. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

22.1.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No