

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

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**CRA-D-744-DB-2015 (O&M)
Date of Decision : 19.11.2019**

Virender and others

... Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. S.S.Duhan, Advocate for the appellants.

Ms. Palika Monga, DAG, Haryana.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment of conviction 25.03.2015 and order of sentence dated 27.03.2015 passed by the Additional Sessions Judge, Bhiwani, vide which the appellants have been convicted under Section 498-A, 304-B, 302 read with Section 34 of the Indian Penal Code (for short 'IPC') in case FIR No. 634 dated 05.09.2013 registered at Police Station Sadar, Bhiwani.

2. Brief facts of the present case are that an FIR was registered on the statement of victim Babita who was in hospital at that time with 80-90% burns on her person. Her statement (Ex.P-5) was recorded in the presence of the Judicial Magistrate Ist Class, Rohtak and after recording the statement

victim Babita, passed away. The said statement would read as under:-

“I fetched on Tokni (Picher of metal) of water at that time, my husband and father in law Sattu @ Satnarain started saying me some unparliamentary words and also extended beating me. It was happened today at around 9:00/9:30 AM. Thereafter, my father in law said to leave the house otherwise he would set me ablaze. Then my father in law, mother in law, sister in law and Bhanji went to the fields they came back from the fields at about 11:30 AM. At that time, I was taking rest in the room. My father in law and husband caught me. I tried to protect myself. Meanwhile, my mother in law, Bhanji and sister in law reached there and poured kerosene upon me. My mother in law, father in law, husband, sister in law and Bhanji, set me on fire. I tried to run away from there, but they closed the door. Arel (kundi) of outer door was open and I came in the street. Then I was brought to hospital, my marriage was solemnized in the year of 2005. I was living in my in laws house for the last four months. Earlier also they extended beatings to me. They did not provide me food. They used to keep the things under lock and key. They demanded dowry articles like car etc. I brought many dowry articles from my house. At that time, they also used to quarrel with me.”

3. On 06.09.2013, post mortem examination was conducted; spot inspection report was prepared besides collecting of photographs and placed on record as Ex.P-20 and Ex.P-5 to Ex.P-9. Disclosure statement of appellant No.1-Virender (Ex.P-27) was recorded and similarly disclosure statements of appellant No.2 Sat Narayan (father-in-law) and appellant No.3, Savitri (mother-in-law) were also recorded.

4. As per record, investigation in the present case was conducted

by the DSP, Bhiwani and Section 302 IPC was deleted and Section 304-B IPC was added in the FIR and during this very investigation, appellants No.4 and 5, namely, Sushila and Sunil (both sisters-in-laws of deceased) along with grand-daughter Pooja were also declared innocent, but vide order dated 11.12.2013, both appellants No.4 and 5 and Pooja were summoned to face trial but Pooja, was declared juvenile-in-conflict on 19.03.2014.

5. Charges were framed against the appellants under Sections 498-A, 304-B and 302 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution had examined as many as 14 witnesses besides producing on record documentary evidence i.e. as many as 42 exhibits.

7. Appellants, when examined under Section 313 Cr.P.C., denied the prosecution case. It was stated that appellant No.1 had cordial relations with his wife Babita (victim) and that she had made statement against appellant under pressure of her parents. Son Vivek (age 6 years) was residing with the appellants. Thus, in defence DW1 Leela (neighborour)) deposed that appellants No.4 and 5 had been present in their matrimonial homes on 04.09.2012. Similarly DW2, Vinod (neighborour) of appellant No.1 (husband of victim) stated that appellants No. 1 to 3 had not been present when the occurrence took place as they were in their fields and for similar things DW3 and DW4 got recorded their respective statements.

8. After taking into consideration the arguments of learned counsel for the parties and record, the Additional Sessions Judge, Bhiwani convicted all the appellants as under:-

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
498-A/34 IPC	Imprisonment for period of three years each	₹2000/- (₹ two thousands only) each	S.I. For a period of six months.
304-B/34 IPC	Imprisonment for period of seven years each	₹ 3000/- (₹ Three thousands only) each	S.I. For a period of six months.
302/34 IPC	Imprisonment for Life each.	₹ 5000/- (₹ Five thousands only) each	S.I. For a period of one year.

9. Aggrieved of the said judgment and order, the appellants have preferred the present appeal.

10. We have heard learned counsel for the appellants and the learned State counsel at length and with their able assistance have gone through the record of the case.

11. When victim Babita (since deceased) was admitted in hospital with 80-90% burns, at that stage, the Duty Magistrate recorded the statement (Ex.P-15). He stepped into the witness box as PW-14 and stated that the statement of the victim had been recorded under Section 164 Cr.P.C. after seeking opinion of the Medical Officer regarding her fitness to make the statement. Ashok (PW-13), who is brother of victim, stated in his testimony that Babita and Kusum (sister of Babita) were married to appellant No.1 and his brother Kuldeep and appellants were not satisfied with the dowry. Appellant No.3-mother-in-law of the victim used to taunt the victim and this act of all the appellants was brought to his notice by Babita. Regarding this, Panchayats were also convened but all the times the appellants were pressing for more dowry. The victim was left in her parental home on 21.06.2011 and then a complaint was submitted in the Police Station Bhiwani Sadar and later on with the intervention of the Panchayat of Jogi community, the victim joined her matrimonial home and on

04.09.2013, appellant No.1 informed that Babita had received burn injuries and appellants did not attend the last rites of their daughter-in-law.

12. Post mortem report of victim Babita, Ex.P20, proves her death due to burns ante-mortem in nature by Dr. Varun Garg (PW-6). Babita died on 05.09.2013 after getting her dying declaration recorded which has been scrutinized carefully by the trial Court and as per record, Babita was conscious when brought to hospital by Vinod son of Umesh Singh at 10.45 a.m. The trial Court has rightly held that PW14, Judicial Magistrate had discharged her duty with utmost sincerity and devotion as she not having any concern with the complainant party or with the appellant, had given her version, which cannot be disbelieved.

13. We have also taken into consideration the compromise dated 06.04.2012 entered in the Lok Adalat (Ex. PY). The contents of the compromise are reproduced hereunder:-

“That we (1) Virender S/O Satyanarain R/O Village Dinod, Tehsil and Distt. Bhiwani who according to this agreement is first party and (2) Babita D/O Sh. Krishan Kumar R/O Village Halwas at present R/O Kharkari railway crossing, Lajpat Nagar, Bhiwani is called second party according to the term and condition of this agreement deed and parties to this agreement are husband and wife and a dispute persists between them. Which has been settled by fraternity and hon'ble person. And a settlement has been agreed upon and the terms has been settled as (1) That the first party i.e. husband will not harass in any kind to the second party i.e. wife and as husband he will fulfill all his responsibility towards her wife for which she is legally entitled and he will be fully responsibilities for the same (2) That the second party i.e. wife will withdrawn after making

signature, the matter whatever is pending in the court. Nobody will allege nothing against each other and will unitedly and peacefully (3) That there is no reservation or accusation is pending between the parties and both will be bounded by this agreement and second party will do her responsibility towards her husband. If any party does any wrong to this agreement then that party will be responsible for the damage, costs or bearing of the court proceedings. So this agreement has been written so the same may be used at appropriate time if occurs. The draft of the agreement has been read over and understand of them. Both parties signed the same s founding it is correct.”

14. This factor shows that victim Babita was not happy in her in-laws' family and appellant No.1 (husband-Varinder) had gone to the extent of filing a divorce petition and the victim had filed a petition for maintenance. Since the compromise was effected between the husband and wife and Babita later on joined her matrimonial home, but there was something else in the mind of the in-laws of the victim.

15. The stand taken by the defence regarding the appellants being not present at the scene of occurrence cannot be taken into consideration because it was without any documentary evidence.

16. Appellants-Sunil and Sushila are married sisters of appellant No.1. It is very important to mention here that in the statement of victim (Babita) Ex.P-15 word 'Nanad' has been mentioned. There are two nanads (sisters-in-law) of the deceased. As far as other appellants are concerned, we do not find any doubt about their being named in the dying declaration but by not mentioning the specific names of Nanad i.e. appellants No.4 and 5, we do not find any specific attribution to any of them.

17. Even during investigation, DSP found them innocent and they were kept in column No. 2.

18. We do believe the dying declaration in all respects but we are unable to pin-point the word '*Nanad*' as to on which of the two, the finger had been raised by the victim (since deceased).

19. The veracity of the dying declaration is indubitable so far as the other accused, specifically named in it, are concerned. In the instant case, admittedly, the word '*Nanad*' mentioned in the dying declaration has led us to observe that on the mere mentioning of such word, it is not safe to record the finding of conviction as regards the two *Nanads* of the deceased. It has come in evidence that both of them were married and residing in their matrimonial homes and thus, their very presence at the time of occurrence could not be established. Thus, we find that the dying declaration regarding the presence and participation of the other accused except, the *Nanads* (sisters-in-law), does not suffer from any ambiguity. However, as regards *Nanads* (sisters-in-law), we find the dying declaration as ambiguous and find that it would not be safe to record their conviction on the basis of the unconfirmed details in the dying declaration to that extent. There is also no occasion to imply or infer that '*Nanad*' means both the sisters-in-law, when admittedly, as per common prudence, the word '*Nanad*' would take to mean a singular meaning and not a plural one. Of course, we would have not interfered with the judgment of conviction and order of sentence, had the deceased stated '*Nanadon*' in her dying declaration.

20. Since '*Nanad*' (sister-in-law) had not been specifically pointed out in the admitted dying declaration, we hereby give benefit of doubt to appellants No.4 and 5.

21. Thus while upholding the judgment of conviction and order of sentence qua appellants No.1 to 3, we hereby give benefit of doubt to appellants No.4 and 5, who are '*Nanads*' (sister-in-laws). Accordingly, appellants No. 4 and 5, namely, Sushila and Sunil are acquitted of the charges framed against them. They shall be set free, if not required in any other case.

22. Since the main case is decided pending CRM if any, shall also stand disposed of.

19.11.2019	(AJAY TEWARI) (HARNARESH SINGH GILL)
pooja saini	JUDGE JUDGE

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