

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

CRA-D No. 822-DB of 2014 (O&M)

Reserved on : 22.5.2019

Date of decision : 28.5.2019

Tarsem Singh @ Sema

.... Appellant

versus

State of Punjab

... Respondent

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

Present Mr. J. S. Brar, Advocate, for the appellant.
 Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal has been instituted against judgment and order dated 10.4.2014, rendered by learned Sessions Judge, Ferozepur, in Sessions Trial No. 21 of 2014, whereby appellant Tarsem Singh @ Sema, who was charged with and tried for the offence under Section 302 IPC, was convicted and sentenced thereunder to undergo life imprisonment and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. The case of the prosecution in a nutshell is that on 9.9.2012, a telephonic message was received at Police Station, Ghall Khurd, from Police Post, DMC Hospital, Ludhiana, with regard to admission of Kuldeep Kaur wife of Tarsem Singh @ Sema with burn injuries. Accordingly, ASI Hardev Singh along with fellow police officials reached the hospital. He

went to Burns Ward of DMC Hospital, Ludhiana. He submitted a request seeking opinion of the doctor with regard to the fitness of the injured to make statement. Dr. Anup Handa declared the patient fit to make statement. The patient had suffered 80% to 85% burns. Thereafter, a request was made in writing to Ms. Rupa Dhaliwal, Judicial Magistrate 1st Class, Ludhiana, for recording the statement of Kuldeep Kaur. Ms. Rupa Dhaliwal came to the hospital and recorded the statement of the injured. ASI Hardev Singh had recorded the statement of Kuldeep Kaur wherein she alleged that her marriage was solemnized with accused Tarsem Singh @ Sema about 20 years back. Three sons were born from the wedlock. The accused had been giving beatings to her. He was addicted to liquor. They had eight killas of land at the time of her marriage. The accused had sold five killas of land to fulfill his lust of intoxicants. They also had two trucks but her husband was not supervising them. On 7.9.2012, at about 8.00/9.00 P.M., the accused poured kerosene upon her and set her ablaze. The injured had sustained substantial burn injuries. She raised alarm, which attracted her children and neighbours. They poured water and put off the fire. She was taken to the hospital at Moga. Thereafter, she was referred to DMC Hospital, Ludhiana. Her husband never came to take care of her. A telephonic message was received on 12.9.2012 from DMC Hospital, Ludhiana with regard to the death of Kuldeep Kaur. Thereafter, Section 302 IPC was added. The dead-body was sent for post-mortem examination. The post-mortem was conducted. The investigation was initiated and challan was put up after completion of codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313

Cr.P.C. He denied the case of the prosecution. He was convicted and sentenced, as noticed above. 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. PW7 Dr. Avnish Jindal had conducted the post-mortem examination on 12.9.2012. The cause of death was septicaemia due to burns, which was sufficient to cause death in ordinary course of nature. The burns were ante-mortem in nature. The time between injury and death was about four days. The time between death and post-mortem examination was about 11 hours. He proved post-mortem report. In his cross-examination, he admitted that patient was unable to give answers due to gravity of burn injuries.

7. PW8 Dr. Anoop Handa has categorically deposed that on 8.9.2012 Kuldeep Kaur wife of the appellant was admitted in the hospital with burn injuries. The patient had died on 12.9.2012 at 3.40 a.m. The patient was also treated by him on 8.9.2012. The police had made a request, vide Ex.PN, seeking the opinion with regard to the fitness of patient to make statement. He made endorsement, Ex.PN/1. It was recorded at 4.00 P.M. on 8.9.2012. The patient was declared fit to make statement.

8. PW1 Hardeep Singh testified that Kuldeep Kaur was his sister. Her marriage was solemnized with Tarsem Singh. Three children were born.

The accused was consuming liquor to some extent. He owned eight killas of land. He had sold about three killas of land. He was owner of two trucks. His sister had no dispute with the accused. She was leading happy married life. About one year ago, his sister had sprinkled kerosene over the fire wood and while setting it on fire, she accidentally caught fire. He was declared hostile. In his cross-examination by the Public Prosecutor, he denied his statement, PW1/A, recorded by the police. He admitted that his sister had died on account of burn injuries at DMC Hospital, Ludhiana. Volunteered that his signatures were obtained on blank papers.

9. PW2 Gian Kaur is the mother of the deceased. She has also not supported the case of the prosecution. According to her also, her daughter had no dispute with the accused. She was leading happy married life. About one year ago, her daughter had sprinkled kerosene over the fire wood and while setting it on fire, she accidentally caught fire. She was also declared hostile. She was cross-examined by the Public Prosecutor. She denied her statement, PW2/A, recorded by the police. She also admitted that her daughter had died on account of burn injuries at DMC Hospital, Ludhiana. In her cross-examination by the defence counsel, she deposed that villagers had tutored her daughter to falsely implicate Tarsem Singh.

10. PW3 Harvinder Singh is the son of deceased Kuldeep Kaur. According to him, about one year ago, his mother had sprinkled kerosene over the fire wood and while setting it on fire, she accidentally caught fire. He was declared hostile by the Public Prosecutor. He was cross-examined. He denied his statement, PW3/A. However, he admitted that they had raised alarm, which attracted neighbours and they put off the fire. He also testified in his cross-examination by the learned defence counsel that his mother was

tutored by the villagers to falsely implicate his father.

11. PW4 Harjinder Singh @ Gora is another son of deceased Kuldeep Kaur. According to him, about one year ago, his mother had sprinkled kerosene over the fire wood and while setting it on fire, she accidentally caught fire. He was declared hostile by the Public Prosecutor. He was cross-examined. He denied his statement, PW4/A, recorded by the police. However, he admitted that his mother had died on account of burn injuries at DMC Hospital, Ludhiana.

12. PW5 Lakhwinder Singh @ Lakha is the third son of deceased Kuldeep Kaur. He deposed that about one year ago, his mother had sprinkled kerosene over the fire wood and while setting it on fire, she accidentally caught fire. He was declared hostile by the Public Prosecutor. He was cross-examined. He denied his statement, PW5/A, recorded by the police. However, he admitted that his mother had died on account of burn injuries at DMC Hospital, Ludhiana.

13. PW6 Ms. Rupa Dhaliwal is the material witness. On 8.9.2012, she was posted as Judicial Magistrate 1st Class at Ludhiana. The police made a request, Ex. PB, for recording statement of Kuldeep Kaur. The injured was admitted in DMC Hospital, Ludhiana. She had procured certificate of Dr. Avinash with regard to the fitness of injured Kuldeep Kaur to make statement. Certificate is Ex.PC. She informed Kuldeep Kaur that she was free to make statement without any pressure. Kuldeep Kaur told her that she would make the statement voluntarily and was not under any pressure. Certificate in this regard is Ex.PD. Thereafter, she recorded her statement, Ex.PE. The contents of the statement were read over and explained to her and the thumb impression of her right foot was procured on

the statement. Thereafter, she also procured certificate of Dr. Avinash with regard to the fitness of the patient during the period her statement was recorded. The certificate is Ex.PF. The proceedings recorded by her are Ex.PH. She admitted in her cross-examination that no time has been mentioned on the certificates Ex.PC and Ex.PF. She had not gone through the bed head ticket or patient record.

14. PW9 ASI Hardev Singh deposed that on 8.9.2012 he received the information. He went to the hospital. He submitted request, Ex.PO, seeking opinion of the doctor with regard to the fitness of Kuldeep Kaur to make statement and vide endorsement, Ex.PO/1, she was declared fit to make statement. He had submitted a request, Ex.PB, to the learned Judicial Magistrate, Ludhiana, for recording statement of Kuldeep Kaur. Accordingly, statement of Kuldeep Kaur was recorded by Ms. Roopa Dhaliwal, Judicial Magistrate 1st Class, Ludhiana. The right thumb impression of the foot of Kuldeep Kaur was procured on the statement as her other body parts had suffered burn injuries. The statement recorded by learned Magistrate is Ex.PE. Thereafter, he had also recorded the statement of Kuldeep Kaur. The contents of statement, Ex.PA, were read over and explained to her. She put her right thumb impression of foot in token of its correctness. He made endorsement, Ex.PP, thereon and on return to the police station, recorded the FIR, Ex.PP/1. Accused was arrested on 16.9.2012. He disclosed that he had concealed the bottle which was containing kerosene and a match box in the room meant for storing goods. The disclosure statement, Ex.PV, was reduced into writing. It was signed by the accused. On the basis of disclosure statement, the plastic bottle and match box were recovered. These were converted into two separate parcels.

In his cross-examination, he admitted that none of the case properties were sent for chemical examination.

15. In the statement recorded by PW6 Ms. Rupa Dhaliwal, Kuldeep Kaur deposed that she had a fight with her husband. He threw her out of the house. When she ran away, they again kept her in the house. They had given beatings to her. She hid near the *chulah* (earthen stove). Then he poured kerosene on her. She raised hue and cry and her children came. They only poured water on her. Her husband had not come along with her to the hospital. Her neighbours had brought her to the hospital. He wanted to kill her, therefore, he poured kerosene on her. It was around 8.00 /9.00 in the night when he poured kerosene on her. She had given the statement voluntarily.

16. The statement of deceased Kuldeep Kaur was also recorded by PW9 Investigating Officer ASI Hardev Singh, vide Ex.PA. According to PW9 ASI Hardev Singh, he went to DMC Hospital, Ludhiana. He submitted request, Ex. PO, seeking opinion of the doctor regarding fitness of the injured to make statement. The doctor declared the injured fit to make statement. He submitted written request, Ex.PB, to Ms. Rupa Dhaliwal, Judicial Magistrate 1st Class, Ludhiana, for recording statement of injured Kuldeep Kaur. Thereafter, he had also recorded the statement of injured Kuldeep Kaur. He read over the contents to her. PW1 Hardeep Singh also signed the same. Thereafter, he made endorsement, Ex.PP.

17. PW6 Ms. Rupa Dhaliwal deposed that on 8.9.2012, she was posted as Judicial Magistrate 1st Class at Ludhiana. She has categorically submitted that on the request of police, Ex.PB, she recorded the statement of Kuldeep Kaur. She had procured certificate, Ex.PC, of Dr. Avinash with

regard to the fitness of injured Kuldeep Kaur to make statement. She informed the injured that she was free to make statement without any pressure. The injured told her that she would make the statement voluntarily and was not under any pressure. Thereafter, she recorded the statement of the injured vide Ex.PE. The contents of the statement were read over and explained to her. Thumb impression of her right foot was procured on the statement. She also obtained certificate, Ex.PF, of Dr. Avinash with regard to the fitness of the patient during the period her statement was recorded. She, however, admitted in her cross-examination that no time has been mentioned on the certificates Ex.PC and Ex.PF.

18. PW8 Dr. Anoop Handa testified that he was working as Junior resident in Dayanand Medical College and Hospital, Ludhiana. On 8.9.2012 Kuldeep Kaur wife of Tarsem Singh, resident of village Jaida Da Wara, was admitted in the hospital with burn injuries. She died on 12.9.2012 at 3.40 A.M. The patient was treated by him on 8.9.2012. The police had made request, vide Ex.PN, seeking opinion regarding her fitness to make statement. He made endorsement, Ex.PN/1. It was recorded at 4.00 P.M. on 8.9.2012. The patient was declared fit to make statement. The date of endorsement is 7.9.2012 instead of 8.9.2012. It could be a typographical error as in all the documents the date is mentioned as 8.9.2012.

19. The prosecution case is not supported by PW1 Hardeep Singh, brother of the deceased, PW2 Gian Kaur, mother of the deceased, PW3 Harvinder Singh, PW4 Harjinder Singh @ Gora and PW5 Lakhwinder Singh @ Lakha, sons of the deceased. They have denied the statements made before the police. However, they have admitted that Kuldeep Kaur was admitted in the hospital with burn injuries. She died due to burn

injuries. The cause of death was septicaemia due to burns, which was sufficient to cause death in ordinary course of nature. The burns were ante-mortem in nature.

20. According to the statement made by the appellant under Section 313 Cr.P.C., Kuldeep Kaur died while preparing the meal and the statements recorded by the Magistrate and the police were tutored by relatives and the respectable persons of the village. Why the villagers would falsely implicate the appellant. The fact of the matter is that the appellant had not even visited the hospital when she was admitted in the hospital. She was got admitted in the hospital by the children and the neighbours. The dying declaration made by Kuldeep Kaur, Ex.PE, is duly corroborated by the medical evidence.

21. PW6 Ms. Rupa Dhaliwal and PW8 Dr. Anoop Handa while recording statement of deceased Kuldeep Kaur had completed all the codal formalities. She had suffered 80% to 85% burns. The statement made by her is voluntary in nature.

22. In view of the aforesaid discussed evidence, the prosecution has proved the case against the appellant beyond reasonable doubt. Accordingly, there is no merit in the appeal. The same is dismissed.

(Rajiv Sharma)
Judge

28.5.2019
vs

(Harinder Singh Sidhu)
Judge

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