

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

CRA-D No. 490-DB of 2003 (O&M)

Reserved on : 7.1.2019

Date of decision : 14.1.2019

Rajbir and another

.... Appellants

versus

State of Haryana

... Respondent

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

Present Mr. V. B. Aggarwal, Advocate, for the appellants.
Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment and order dated 20.3.2003 rendered by learned Additional Sessions Judge, Kurukshetra, in Sessions Trial No. 7 of 2001, whereby accused Rajbir and Tarawati were charged with and tried for the offence punishable under Sections 302/34 IPC. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo rigorous imprisonment for life and to pay fine of ₹ 2,500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month.

2. The case of the prosecution in a nutshell is that on 20.9.1999 a wireless message was received in Police Station, Babain, from police post 3rd Gate, Kurukshetra University, Kurukshetra, to the effect that Kamlesh resident of Sunarian was admitted in L. N. J. P. Hospital, Kurukshetra, as a burn case. ASI Sat Pal along with other police officials reached Police Post 3rd Gate, Kurukshetra University, Kurukshetra. He submitted an application to Parveen Gupta, Judicial Magistrate First Class, to record the statement of Kamlesh. He recorded the statement of Kamlesh. On the basis of dying

declaration, a case under Section 307 IPC was registered. On 21.9.1999, the police received V. T. message that Kamlesh died due to burn injuries. Thereafter, the case was converted to Section 302 read with Section 34 IPC. The post mortem was conducted. Dead-body was handed over to the relatives. The matter was investigated 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 five witnesses in defence. They were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants 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 Parveen Gupta testified that on 20.9.1999, he was posted as Judicial Magistrate First Class, Kurukshetra. He deposed that application Ex.PA was presented before him by ASI Sat Pal of Police Station, Babain, at 11.50 P.M. on 20.9.1999. He was discharging his duties as Duty Magistrate on that day. Request was made to him that Kamlesh was admitted in the hospital with burn injuries and her statement was to be recorded. He accordingly accompanied ASI Sat Pal to L. N. J. P. Hospital, Kurukshetra. He found that Kamlesh Devi was lying in the ward with burn

injuries. He explained her that he had come to record her statement. He put questions to her. She answered the same correctly. Thereafter, he recorded her willingness to make statement before him. All the proceedings are Ex.PA/1. He then sought medical fitness certificate from the doctor vide endorsement, Ex.PA/2. The doctor opined that patient was medically fit to make the statement vide Ex.PA/3. Thereafter, he directed all the persons present inside the room to leave the same vide Ex.PA/5. He recorded the statement of Kamlesh vide Ex.PA/6. Kamlesh also put her right thumb impression beneath the statement. He read over the contents of the statement to her. He appended certificate, Ex.PA/7, below the statement. Ex.PA/8 is the correct copy of the statement of Kamlesh. In his cross-examination, he deposed that he had not put any question about the identity of the patient to the persons present there. Volunteered that he had only asked the ASI and the doctor about the identity of the patient. He further deposed that when he recorded the statement of the deceased, he and Kamlesh were the only person in the ward. Volunteered that one or two patients might be there in the ward. He took 15/20 minutes in recording the statement.

7. PW5 Dr. Subhash Chander Grover on 20.9.1999 at 8.35 P.M. has medico-legally examined Kamlesh wife of Rajbir, resident of Sunarian. Smell of kerosene was present. Multiple burn injuries all over the body except face and some parts of legs were found. Burns were approximately 80%. The same were dangerous to life. He sent ruqqa, Ex.PE/1, to the Incharge, Police Post 3rd Gate, Kurukshetra.

8. PW6 Dr. Harbans Singh had conducted the post-mortem examination on the body of deceased Kamlesh. According to his opinion, the cause of death was due to shock as a result of burns, which were

approximately 85%. The burns were ante mortem in nature and sufficient to cause death in ordinary course of life. The probable time between death and post-mortem could not be ascertained.

9. PW7 Nafe Singh is the brother of the deceased. According to him, Kamlesh was married with accused Rajbir about 15 years back. His sister had delivered a female child and a male child. His sister on visit to his house had complained that her husband Rajbir had illicit relations with accused Tarawati wife of Dev, brother of accused Rajbir. On 20.9.1999, he was present at his house. A telephonic message was received. The message was to the effect that Kamlesh was burnt. Thereafter, he along with his brother Nathi Ram and other family members left for Kurukshetra. They went to the hospital. They talked to her. She told them that on that day she had gone to harvest the paddy crop in the field of a zimidar. When she returned in the evening, she found Tarawati and Rajbir lying on a cot in compromising position. She snubbed her husband. Rajbir sprinkled kerosene on her and Tarawati put her on fire. He had denied the suggestion that relations between Rajbir and Kamlesh were strained. He deposed that his sister could speak only in a feeble voice while demanding water.

10. PW9 Rameshwar Dass had taken the photographs.

11. PW10 Inspector Mehar Chand recorded the statement of photographer Rameshwar Dass.

12. PW12 ASI Sat Pal deposed that he received the message from Police Post 3rd Gate, Kurukshetra University, Kurukshetra, about the admission of Kamlesh wife of Rajbir, resident of Sunarian in L. N. J. P. Hospital with burn injuries. He along with Constables Jai Karan and Sudesh Kumar reached police post 3rd Gate, Kurukshetra University, Kurukshetra.

He collected copy of MLR of Kamlesh, Ex.PE, and ruqqa, Ex.PE/1. He drafted application, Ex.PA, and moved the same before Parveen Gupta, Judicial Magistrate First Class, Kurukshetra at his residence. The Judicial Magistrate took opinion regarding fitness. He also identified Kamlesh Devi. Thereafter, he was sent outside and the Magistrate recorded the statement of Kamlesh Devi. He supplied copy of the statement, Ex.PA/8, to him. He made endorsement, Ex.PA/10. He also recorded the statements of PWs Jai Karan, Mam Chand and Sunehri Devi.

13. PW13 Inspector Ranbir Singh deposed that he took over the investigation from ASI Sat Pal. He along with ASI Sat Pal after collecting ruqqa from the police post 3rd Gate, left for L. N. J. P. Hospital. He prepared the inquest report and recorded the statements of Nafe Singh and Nathi Ram.

14. The appellants have relied upon the statement of DW1 Karam Singh and DW2 Sushma. According to DW1, approximately 3½ years ago on 20th day of 9th month, wife of Rajbir died due to burns. Rajbir in those days was employed with him as servant. On 20.9.1999 at about 6.30 P.M., he and Rajbir were cutting the grass on a machine installed at his house, Sohan Lal Balmiki came and told that wife of Rajbir had put herself on fire. Thereafter, he along with Rajbir went to his house. In his cross-examination, he admitted that he had never moved an application to any senior officer of the District that Rajbir was innocent and he remained with him on the date of occurrence.

15. The appellant also examined her daughter Sushma as DW2. She was about 11 years of age at the time of recording her statement. She deposed that her mother died because of burn injuries, which she received

by herself pouring kerosene on her. She deposed that it was about 7/8.00 P.M. and the sun was about to set. She and his brother were playing under a tree at that time. Her grand-father used to reside in a *baithak* nearby their house. Her grand-father had gone to play cards. Her father had left the home in the morning on that day. After setting herself on fire her mother came out of the house and shouted for help by saying '*Hae Bhagwan Bachalo*'. She started crying and weeping. Villagers extinguished fire.

16. The case of the prosecution precisely is that deceased Kamlesh had gone to harvest the paddy crop in the field of one zimidar on that day. When she returned in the evening, she saw Tarawati and Rajbir lying on a cot in compromising position. She snubbed her husband Rajbir. Rajbir sprinkled kerosene on her and her *Jethani* Tarawati put her on fire. The police has taken into possession a plastic can and earth soiled with kerosene. The statement of deceased Kamlesh was recorded by PW1 Parveen Gupta, Judicial Magistrate First Class. He found that Kamlesh Devi was lying in the ward with burn injuries. He put questions to her, which were answered by her correctly. He also sought medical fitness certificate from the doctor vide endorsement, Ex.PA/2. The doctor opined the patient medically fit to make the statement vide Ex.PA/3. Thereafter, he directed all the persons present inside the room to leave the same vide Ex.PA/5. He recorded the statement of deceased, on which she has put her thumb impression. He had read over the contents of the statement to her. He appended certificate, Ex.PA/7, below the statement. Ex.PA/8 is the correct copy of the statement of Kamlesh. According to the contents of Ex.PA/6, the deceased had gone to field for doing agriculture work. When she came back, she saw her husband in compromising position with her *Jethani*

Tarawati. Her husband caught hold of her and sprinkled kerosene oil on her and Tarawati set her ablaze.

17. DW2 Sushma has tried to save her father. The possibility of her being tutored cannot be ruled out.

18. According to the post-mortem report, she died due to burn injuries, which were approximately 85%. Dying declaration inspire confidence. It has been duly corroborated by medical evidence.

19. According to PW7 Nafe Singh, his sister Kamlesh used to complain about the extra marital relations of her husband Rajbir with his *Bhabi* Tarawati. He had gone to the hospital. She had narrated the incident and the manner in which she was put on fire by the accused.

20. PW5 Dr. Subhash Chander Grover had medico-legally examined Kamlesh. Smell of kerosene was present. He had seen multiple burn injuries all over her body except face and some parts of legs. Burns were approximately 80%. As per FSL report, Ex.PM, kerosene residues were detected in exhibits, which were burnt pieces of clothes and flakes of earth.

21. Accordingly, the prosecution has proved the case against the appellants beyond reasonable doubt. There is no merit in the appeal. The same is dismissed.

(Rajiv Sharma)
Judge

14.1.2019
vs

(Harinder Singh Sidhu)
Judge

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