

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

CRA-D No. 873-DB of 2003 (O&M)

Reserved on : 11.2.2019

Date of decision : 15.2.2019

Buta Singh

.... Appellant

versus

State of Punjab

... Respondent

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

Present Mr. Parveen K. Kataria, Advocate, for the appellant.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment and order dated 12.8.2003, rendered by learned Sessions Judge, Sangrur, in Sessions Trial No.30 of 2003, vide which appellant, who was charged with and tried for the offence punishable under Section 302 IPC, was convicted and sentenced thereunder to undergo rigorous imprisonment for life and to pay a fine of ₹ 2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.

2. The case of the prosecution in a nutshell is that PW2 Balbir Singh got his statement recorded to the effect that his daughter Harjinder Kaur was married with Buta Singh about 8-9 years back. They had three children. Buta Singh was separated by his parents and he was given a plot over which he was to raise construction. Buta Singh used to ask Harjinder

Kaur to arrange a sum of ₹ 50,000/- from her parents. Harjinder Kaur brought this fact to the knowledge of his father PW2 Balbir Singh and his brother PW4 Rachhpal Singh. They were not in a position to pay the amount. Accused Buta Singh was harassing his daughter for the last 1½ years. On 29.9.2002, Buta Singh rang up at the house of PW3 Mohan Singh. He requested PW4 Rachhpal Singh to receive the call. Accused Buta Singh asked PW4 Rachhpal Singh to send ₹ 50,000/-, failing which they would see the dead-body of Harjinder Kaur. They came to know on 30.9.2002 that Buta Singh set Harjinder Kaur on fire on 29.9.2002 at about 9.00 P.M. Thereafter, she was shifted to Malerkotla. On 30.9.2002, when PW2 Balbir Singh along with others reached the hospital, he found her daughter lying dead. The statement is Ex.PF. The dead-body was sent for post-mortem examination. 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 statement of the accused was also recorded under Section 313 Cr.P.C. According to him, he was falsely implicated in the case. The accused 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. PW1 Dr. Sanjay Goyal testified that he was posted at Civil Hospital, Malerkotla. Harjinder Kaur wife of Buta Singh was admitted with more than 90% burns. She expired on 30.9.2002 at 9.30 A.M. Ruqa, Ex.PA, was sent to the Police Station, Sadar Malerkotla, by him. He conducted the post-mortem examination on the dead-body of Harjinder Kaur. The post-mortem examination was conducted on 30.9.2002 at 5.50 P.M. The cause of death was burn injuries more than 90% and carbon particles were found in the trachea and larynx, which were sufficient to cause death in ordinary course of nature. He proved the post-mortem report, Ex.PD.

7. PW2 Balbir Singh deposed that the marriage of his daughter Harjinder Kaur was solemnized with Buta Singh about 8-9 years back. Buta Singh used to ask his daughter to bring ₹ 50,000/- from him for the construction of his house. He was a poor man. He could not arrange ₹ 50,000/-. Buta Singh gave a telephonic call in the house of Mohan Singh, which was attended by his elder son Rachhpal Singh. Buta Singh asked them to provide ₹ 50,000/-, otherwise they would see the dead-face of Harjinder Kaur. The call was received at about 9.00 A.M. one day prior to her death. On the next day, they came to know that Harjinder Kaur was admitted in the hospital as she was set on fire. He, his elder son Rachhpal Singh and neighbourer Mohan Singh reached Civil Hospital, Malerkotla. He identified her. In his cross-examination, he deposed that there was no telephone facility in his house. He denied the suggestion that his daughter was trying to take the cane of kerosene oil, which was lying in the almirah above the stove, the kerosene oil poured down on the stove as a result thereof, the clothes of Harjinder Kaur caught fire.

8. PW3 Mohan Singh deposed that he received the telephonic call on 29.9.2002 at 9.00 A.M. The call was for PW2 Balbir Singh from accused Buta Singh. He went to the residence of PW2 Balbir Singh. He was not available. His son PW4 Rachhpal Singh was present. Accused Buta Singh had asked PW4 Rachhpal Singh to pay him ₹ 50,000/-. Next day, he went to Civil Hospital, Malerkotla.

9. PW4 Rachhpal Singh testified that Harjinder Kaur deceased was his sister. She was married with accused Buta Singh about 8-9 years back. He used to compel his sister to bring ₹ 50,000/- from her parents. On 29.9.2002, Mohan Singh came to their house. He informed that one telephonic message has been received from accused Buta Singh. He received the message from accused Buta Singh that he should send him ₹ 50,000/-. On the next day, they came to know that his sister Harjinder Kaur was admitted in Civil Hospital, Malerkotla, on account of burn injuries. He, his father, his brother Sewa Singh and Mohan Singh went there. They saw that Harjinder Kaur was admitted with burn injuries. In his cross-examination, he stated that the accused had been maltreating Harjinder Kaur.

10. PW5 ASI Joginder Singh deposed that on 30.9.2002 he was joined in investigation by SI Gurbans Singh. From the spot, one match box and one partially burnt container of kerosene were taken into possession, vide memo. Ex.PH.

11. PW6 SI Gurbans Singh sent ruqa, Ex.PF, to the police station, on the basis of which formal FIR, Ex.PF/1, was recorded. He prepared the inquest report. He prepared the rough site plan, Ex.PK. From the spot, he took into possession match box, Ex.P1 and plastic cane melted with heat,

Ex.P2. He denied the suggestion in his cross-examination that the cane of kerosene oil fell on the stove when Harjinder Kaur was trying to take it out from the almirah lying on the stove.

12. PW7 ASI Inderjit Singh deposed that on 3.1.2003, he moved an application to the Medical Officer, Civil Hospital, Malerkotla, seeking opinion regarding cause of death. Vide endorsement, Ex.PO/1, it was opined that the cause of death was due to burn injuries, which were more than 90%. All the injuries were ante-mortem in nature.

13. The appellant in his statement recorded under Section 313 Cr.P.C. admitted that he had demanded ₹ 10,000/- from PW2 Balbir Singh for construction of the house. He has also admitted his presence at the site. Harjinder Kaur died in his house. He has to explain the circumstances in which Harjinder Kaur died.

14. According to the post-mortem report, the cause of death was burn injuries, which were more than 90%, and sufficient to cause death in ordinary course of nature. Carbon particles were found in the trachea and larynx. All the injuries were ante-mortem in nature.

15. It has come on record that Harjinder Kaur was maltreated by the appellant. The appellant had called PW4 Rachhpal Singh on telephone that he should send ₹ 50,000/- to him, otherwise they would see dead-body of Harjinder Kaur. It is a fit case in which Section 106 of the Indian Evidence Act would be attracted since Harjinder Kaur died in his house.

16. The prosecution has proved the case against the appellant beyond reasonable doubt. Accordingly, the appeal filed by the appellant is dismissed. The judgment and order of the trial court are upheld. Sentence of appellant Buta Singh was suspended vide order dated 5.5.2008. The order of

his suspension of sentence is revoked. He is ordered to surrender before the trial Court to undergo his remaining sentence awarded to him by the trial Court vide judgment and order dated 12.8.2003.

(Rajiv Sharma)
Judge

15.2.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No