

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal-S No. 1700-SB of 2004 (O&M)
Date of decision : July 04, 2019

Satnam Singh

....Appellant

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Gurveer Sidhu, Advocate as Amicus Curiae
for the appellant

Mr. Rakeshinder Singh Sidhu, AAG, Punjab for the State

Fateh Deep Singh, J. (Oral)

Appellant Satnam Singh through this appeal has sought to lay challenge to judgment order dated 6.8.2004 of the court of learned Additional Sessions Judge, Moga whereby the appellant has been found guilty for the commission of offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs 5000/- and in default of payment of fine to further undergo RI for six months.

Heard Mr. Gurveer Sidhu, Advocate as Amicus Curiae for the appellant; Mr. Rakeshinder Singh Sidhu, AAG, Punjab for the State and perused the records.

On 31.10.2001, a QST message was received by Station House Officer of Police Station, City-II, Moga that Charanjit Kaur now deceased wife of the appellant was admitted in Civil Hospital, Moga with burn injuries, on the basis of which the police official went to the hospital and after securing medical ruqa obtained opinion of the doctor as to the fitness of the injured to record her statement and being found fit, the police official ASI Gurmohan Singh recorded statement of the complainant. In her statement, the deceased stated that she was aged around 23/24 years and was married about four years with the appellant. On account of death of her close relations, she had gone to her parental house on Saturday telling the appellant that she would return by Monday but on account of some delay she returned a bit late and the appellant husband got infuriated and gave her slaps and fist blows. It is as a sequel to this, the complainant on 30.10.2001 around 9.00 PM sprinkled kerosene oil and set herself on fire. It was also alleged by the complainant that her husband often used to tease her for not begetting him a child and on account of which he often used to assault her. After the complainant set herself aflame, the husband tried to extinguish the fire and rushed her to the

Civil Hospital but she died. Upon completion of investigations and necessary formalities the appellant was put to trial.

At the trial, the prosecution examined PW1 Dr. Sukhwinder Singh to prove the post mortem; PW2 HC Naginder Singh MHC; PW3 Hazura Singh father of the complainant; PW4 Dr. Ramesh Sharma regarding intimation of hospitalization and intimation of death of the deceased; PW5 Harphool Singh, Naib Tehsildar, Moga who proved the dying declaration; PW6 Gurmail Singh from the parental village of the deceased was examined and thereafter PW7 Devinder Singh Draftsman proved the site plan. The prosecution thereafter examined PW8 HC Jarnail Singh as to the recovery; PW9 Constable Harmesh Lal who tendered his affidavit; PW10 Dr. RS Sandhu who was present at the time of recording of the statement of the deceased; PW11 ASI Gurmohan Singh who detailed the investigations of the case and in the process the prosecution proved documents Exs. PA, PA/1, PB, PB/1, PC, PD, PE, PF, PF/1, PG, PH, PH/1 (subsequently denoted as Ex. PH/3), PH/2, PH/3 (subsequently denoted as PH/5), PH/4 (subsequently denoted as Ex. PH/2), PI, PJ, PK, PK/1, PK/2, PK/3, PK/4, PM and articles Exs. MO/1 to MO/8. It is consequent thereupon the impugned findings were recorded. Hence, the present appeal.

Appreciating the submissions of the two sides, it has very

well come in the evidence of the prosecution that after the occurrence the injured was rushed to the hospital where her statement was got recorded at the behest of the Investigating Officer ASI Gurmohan Singh. However, the learned State counsel to the submissions of Mr. Gurveer Sidhu, counsel for the appellant fairly concedes at the bar that the original dying declaration was not brought on the record and thus, the question of its being exhibited does not arises. It is well settled preposition of law that in such a situation since the onus to prove its case is upon the prosecution it is supposed to establish it beyond shadow of reasonable doubt and therefore, ought to bring and prove documents by means of primary evidence and which it failed to establish. Rather it is no where suggestive from the records of the impugned findings if any effort has been made to prove the dying declaration by secondary means and therefore, the very axle on which the prosecution story revolves has not been able to carry the weight of the prosecution story, reliance placed on **Narain Singh and anr. Vs State of Haryana, 2004(2) RCR (Criminal) 933** and rather what is more intriguing is the observation of the trial court in para no. 10 page nos. 10 and 11 of the impugned findings where the court has drawn the conclusion that the dying declaration of Charanjit Kaur was never despatched from

the office of Naib Tehsildar, Moga which the prosecution has got recorded and sent it to Illaqa Magistrate and therefore, in view of the preposition of law as has been laid down in **Sait Tarajee Khimchand and others vs Yelamarti Satyam and others, 1971 AIR SC 1865**, mere exhibiting of document does not dispenses with its proof and to the mind of this Court, this alleged dying declaration Ex. PH/2 to Ex. PH/5 being mere photostat copy cannot be allowed to be exhibited and read into evidence and therefore, by no stretch of imagination such a document exhibited can be a legal piece of evidence. The findings as such needs to be brushed aside and the conclusion drawn by the court below which goes to the roots of the prosecution story as such a vital piece of evidence which has been rendered otiose by casual approach by the trial court which never made any effort to ensure proving of documents by even secondary means by resorting to the provisions of Sections 61, 62 and 63 of the Evidence Act. Even statement of PW5 Harphool Singh, Naib Tehsildar is suggestive that without adhering to legal procedure has recreated the copy subsequently after the original was lost merely from his memory is another dent in the prosecution story. Besides the fact that the Investigating Officer PW11 ASI Gurmohan Singh in his cross-examination claims that he recorded statement of the deceased in

the hospital is quite in contrast of the claim of the prosecution.

The doubt of the Court over the very veracity of the allegations and sincerity of the prosecution is further aggravated from the fact that admittedly the occurrence has taken place on 30.10.2001 and the deceased had died on 3.11.2001 and for almost long period of time no effort was made to get the statement of the patient recorded by a Judicial Magistrate is another distressing feature which implores this Court to hold that there has been total apathy and lack of sensitivity by the Investigating Officer to this case.

Mr. Gurveer Sidhu, counsel for the appellant has placed reliance on **Poonam Bai vs The State of Chhattisgarh, Criminal Appeal No. 903 of 2018, decided on 30.4.2019; Rajesh vs State of Haryana, Criminal Appeal No. 93 of 2019, decided on 18.1.2019; Ms Shikha Gupta vs State (GNCT of Delhi), Criminal Revision No. 330 of 2017, decided on 8.1.2019 (Delhi High Court); Ramesh Kumar vs State of Chhattisgarh, 2001(4) R.C.R. (Criminal) 537; Chitresh Kumar Chopra vs State (Govt. of NCT of Delhi), 2009(4) R.C.R.(Criminal) 196; Randhir Singh and anr. Vs State of Punjab, 2004(4) R.C.R. (Criminal) 740; Ramilaben Hasmukhbhai Khristi and Anr. Etc. vs State of Gujarat, 2002(3) R.C.R. (Criminal) 786 and Paparmbaka Rosamma vs State of**

Andhra Pradesh, 1999(4) R.C.R. (Criminal) 104 which certainly helps the case of the appellant. Firstly, on account of the fact as has been argued and is the stand of the accused in his statement under Section 313 Cr.P.C. that the deceased had given birth to two children at different point of times and who died soon after birth and therefore, was cause of depression for the deceased and compelled her to take this step on account of this stress. The prosecution has not proved any particulars with cogent evidence of previous history of physical torture/beatings by the husband and since the onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring to an end her life. In the present case because the wife came late from her parental home, it is alleged that the husband present appellant physically abused her and therefore, is more of quarrel between spouses and there is nothing suggestive that the husband present appellant had in any manner instigated the wife to force her to commit suicide and the very essential ingredient that it was on account of act and conduct of the husband which was probable cause and consequence of the wife taking such a step. Besides the fact it is there irrefutably established that when the wife put herself on fire, the husband came to her rescue and after putting off the fire, rushed her to a hospital is a conduct which goes to establish and show that the husband had

taken every possible step to save life of the wife, therefore, improbabilizes the theory of the prosecution that the husband abetted to this suicide.

Even the own witness of the prosecution PW3 Hazura Singh father of the deceased accepts that he never levelled the allegations of beatings by the accused in his statement to the police.

From this scanning of the evidence of the prosecution, it clearly emancipates that the learned court below in the impugned findings has rather relied on presumption and self assumptions and relied on evidence which was not legally and legitimately proved through legal means and the prosecution has miserably failed to prove and establish its case beyond shadow of reasonable doubt. Accordingly, the present appeal stands allowed and the impugned findings of the court below are set aside. The appellant who is already on bail, is discharged from his bail bonds.

Copy of this judgment be also sent to the appellant.

July 04, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No