

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 1023-DB of 2012 (O&M)

Reserved on : 20.3.2019

Date of decision : 27.3.2019

Sukhwinder Singh and another Appellants
versus
State of Punjab ... Respondent

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

Present Ms. Gursharan Kaur Mann, Advocate, for the appellants.
Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. The present appeal has been filed by appellants Sukhwinder Singh and Surinder Kaur @ Manjit Kaur, against the judgment dated 20.9.2012 and order dated 22.9.2012, passed by learned Additional Sessions Judge, Amritsar, in Sessions Case No. 23 of 2010. They along with their co-accused Anokh Singh and Major Singh were charged with and tried for the offence punishable under Section 498-A, 304-B IPC. Co-accused Anokh Singh and Major Singh were acquitted. The appellants were, however, convicted and sentenced as under:-

<i>Name of convict</i>	<i>Offence</i>	<i>Sentence</i>
Sukhwinder Singh	302 IPC	To undergo life imprisonment and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	498-A IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
Surinder Kaur @ Manjit Kaur	302 IPC	To undergo life imprisonment and to pay a fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
	498-A IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Palwinder Kaur daughter of Mohan Singh, resident of Rattan Singh Chowk, Faijpura, Amritsar, got recorded her statement to the effect that she was married to Sukhwinder Singh about five years back. Surinder Kaur @ Manjit Kaur, mother-in-law and her husband Sukhwinder Singh used to torture her for bringing less dowry. On 29.10.2009 at about 11.00 AM her mother-in-law and her husband gave her beatings. Thereafter, her mother-in-law pulled her hairs and threw her on the ground. Her husband Sukhwinder Singh poured kerosene upon her and set on fire. She raised hue and cry, upon which many persons gathered there on the spot. She was taken to the hospital. Her mother-in-law and husband put her on fire with an intention to kill her, as they were demanding more dowry and motorcycle. She died on 18.11.2009 in the hospital. The post-mortem examination was conducted. The FIR was registered. The investigation was completed and challan was put up after completion of all the cordal formalities.

3. The prosecution examined number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated. They had never raised any demand of dowry. Palwinder Kaur died of her own. Accused also examined two witnesses in defence. The appellants 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. PW5 Dr. Manpreet Kaur has conducted post-mortem examination on the dead-body of Palwinder Kaur. All the burns were found ante-mortem in origin. The cause of death was septicaemia as a result of approximately 95% burns, which was sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was 20 days and between death and post-mortem examination was 12-24 hours. She proved the post-mortem report Ex. P3.

7. PW11 Dr. Arvind Kaushal deposed that he was posted as Junior Resident in Surgical Ward No. 3, Guru Nanak Dev Hospital, Amritsar. On 29.10.2009 patient Palwinder Kaur was admitted with burn injuries. She was having approximately 100% burns injuries. Patient remained under his treatment till 17.11.2009 when she expired. He proved bed head ticket and treatment of record vide Ex. PW11/C. On 30.10.2009, on the application of the police, Ex P6, he declared patient Palwinder Kaur fit to make statement vide endorsement, Ex. PW11/B. Patient died due to the burn injuries. In his cross-examination, he admitted that the deceased was brought to the hospital by her husband Sukhwinder Singh accompanied by her mother-in-law Surinder Kaur @ Manjit Kaur.

8. PW12 Dr. Vijay Kumar Vohra deposed that he conducted the medico-legal examination of injured Palwinder Kaur. There was alleged history of beating and burning of patient on 29.10.2009 at about 10.30 to 11.00 A.M. The patient was conscious, oriented to time, place and person. The skin was contracted at places. The extent of burns was about 97%. The

nature of injury no.1 was dangerous to life and injury no.2 was simple in nature.

9. PW1 Mohan Singh is the father of Palwinder Kaur deceased. He deposed that Palwinder Kaur was married with Sukhwinder Singh about five years ago at the time of recording of his statement in the Court. After the marriage, relations remained cordial for two months between husband and wife. After two months of marriage, Sukhwinder Singh, Anokh Singh and Surinder Kaur @ Manjit Kaur and Major Singh started maltreating and harassing and gave beatings to his daughter due to insufficient dowry and used to send her to his house. At the time of marriage, they gave dowry articles as one L.G. T.V., Godrej Almirah, Gas Cylinder, etc. along with gold. They were consistently demanding ₹ 50,000/-. The matter also went to the panchayat. On 28.10.2009, the deceased was given beating. They also made phone calls to his daughter but there was no response. On 29.10.2009, they also made phone calls, but there was no response. On 29.10.2009, the deceased was put on fire by accused Sukhwinder Singh and her mother-in-law Surinder Kaur @ Manjit Kaur caught hold of her from hairs. The accused admitted her in hospital. He along with his brother Baldev Singh and his wife Nirmal Kaur visited Guru Nanak Hospital, where his daughter told about the incident. She told that her mother-in-law caught her from hairs and thrown on the ground. Thereafter, her husband Sukhwinder Singh put her on fire. In his cross-examination, he stated that statements of his wife and Baldev Singh were recorded on 30.10.2009 in the hospital. The deceased was married in the year 2003. She gave birth to two sons. He did not produce the panchayat witnesses before the police for compromising the matter.

10. PW2 Baldev Singh deposed that Palwinder Kaur deceased was daughter of his brother Mohan Singh. After some time of the marriage, the in-laws of Palwinder Kaur were not happy due to bringing insufficient dowry articles and started maltreating and harassing her on that count. Sufficient dowry was given at the time of marriage, inspite of that her-in-laws were harassing her. She was thrown out from her matrimonial home 2-3 times after giving beatings. His brother informed him on telephone that Palwinder Kaur was set on fire by her husband and mother-in-law. On 29.10.2009, they went to the hospital. The deceased told that her mother-in-law Surinder Kaur @ Manjit Kaur had caught hold of her from the hairs and thrown on the ground and Sukhwinder Singh poured kerosene oil on her and set on fire. In his cross-examination, he stated that on 29.10.2009 he visited the house of the deceased with his brother PW1 Mohan Singh. No other person had accompanied them.

11. PW3 HC Sarwan Singh deposed that on the basis of disclosure statement of accused Surinder Kaur @ Manjit Kaur, the police party recovered T.V., Almirah, Fridge, etc.

12. PW7 Inspector Mohan Singh deposed that on 30.10.2009, he went to Guru Nanak Dev Hospital for recording the statement of Palwinder Kaur. He moved an application, Ex.P6, to the concerned doctor for fitness of Palwinder Kaur for recording her statement. The doctor made his endorsement on the application that she was fit to make statement. He recorded the statement, Ex.P7, of Palwinder Kaur (deceased). He read over and explained the same to her and on admitting the same to be correct, she thumb marked it (Ex.P8). The same was attested by him vide Ex.P9. He made endorsement, Ex.P10, and sent to the police station through Constable

Ranjodh Singh and on the basis of which formal FIR, Ex.P11, was recorded.

He along with other police officials visited the place of occurrence and prepared rough site plan, Ex.P12. From the court yard of the house of the accused, plastic canister smeared with kerosene and match box were recovered and taken into possession vide recovery memo. Ex.P5. On 31.10.2009, he recorded the supplementary statement of Palwinder Kaur vide Ex.P13. In his cross-examination, he stated that he had not preferred to move any application to any Magistrate to record the statement of the deceased under Section 164 Cr.P.C. He did not get any fitness certificate with regard to fitness of the patient after completing her statement on 30.10.2009.

13. Post-mortem examination on the dead-body of Palwinder Kaur was conducted by PW5 Dr. Manpreet Kaur. She proved the post-mortem report Ex. P3. The cause of death was septicaemia as a result of approximately 95% burns, which was sufficient to cause death in ordinary course of nature. The probable time that elapsed between injury and death was 20 days and between death and post-mortem examination was 12-24 hours.

14. PW11 Dr. Arvind Kaushal deposed that patient Palwinder Kaur was admitted with burn injuries on 29.10.2009. He declared on the application of the police, Ex P6, the patient Palwinder Kaur fit to make statement vide endorsement, Ex. PW11/B. PW12 Dr. Vijay Kumar Vohra had conducted the medico-legal examination of injured Palwinder Kaur.

15. PW7 Inspector Mohan Singh recorded the dying declaration of Palwinder Kaur, vide Ex.P7. He had moved application, Ex.P6, to the concerned doctor for fitness of Palwinder Kaur for recording her statement.

The doctor made his endorsement on the application that she was fit to make statement. Supplementary statement of Palwinder Kaur, vide Ex.P13, was also recorded by PW7 Inspector Mohan Singh on 31.10.2009. The statement, Ex.P7, is voluntary in nature. The deceased told that she was caught hold by her mother-in-law Surinder Kaur @ Manjit Kaur from the hairs and thrown on the ground and her husband Sukhwinder Singh poured kerosene on her and set on fire.

16. It has also come in the statement of PW1 Mohan Singh that after the marriage relations between husband Sukhwinder Singh and wife Palwinder Kaur were not cordial. The in-laws of deceased Palwinder Kaur started maltreating and harassing and gave beatings to her due to bringing insufficient dowry. They used to send her to his house. They were consistently demanding ₹ 50,000/-. The matter also went to the panchayat. The appellants were harassing the deceased to bring more dowry immediately before her death. The dying declaration recorded by PW7 Inspector Mohan Singh, vide Ex.P7, is corroborated by medical evidence. On 30.10.2009, on the application of the police, Ex P6, PW11 Dr. Arvind Kaushal declared patient Palwinder Kaur fit to make statement vide endorsement, Ex. PW11/B. Thus, it cannot be said that the patient was not conscious. The trial Court has correctly considered the dying declaration recorded by Inspector PW7 Mohan Singh as genuine. The dying declaration recorded by the police officer after getting fitness certificate from the doctor, which is duly corroborated by the medical evidence and free from any suspicious circumstances, cannot be doubted, especially when there was no allegation against him of any kind. The same statement had been made by the deceased before her father PW1 Mohan Singh.

17. Their Lordships of Hon'ble the Supreme Court in Lakhan vs State of M. P. 2010 (8) SCC 514, have relied upon the dying declaration recorded by ASI of police in preference to the dying declaration recorded by Executive Magistrate and upheld the conviction of the husband. Their Lordships have held as under:-

“25. Undoubtedly, the first dying declaration had been recorded by the Executive Magistrate, Smt. Madhu Nahar (DW.1), immediately, after admission of the deceased, Savita, in the hospital and the Doctor had certified that she was in a fit condition of health to make the declaration. However, as she had been brought to the hospital by her Father-in-Law and Mother-in-Law and the medical report does not support her first dying declaration, the trial Court and the High Court have rightly discarded the same. Even before us, Shri Kulshreshtha, learned counsel appearing for the appellant, has not been able to explain under what circumstances in the accident case as disclosed by the deceased in her first declaration, the deceased could get the injuries only on the upper part of the body and smell of kerosene was coming from her body. The second dying declaration fully stands corroborated not only by the medical evidence but oral dying declarations made by the deceased to her parents, i.e. Phool Singh (PW.1) and Sushila (PW.3) who were examined in the court.

26. Sh. Damodar Prasad Mahure, ASI, (PW.19), in his cross- examination, has explained that he was not aware of the factum of recording of the first Dying Declaration of the deceased on 27.02.2000. Therefore, there was no reason for him to ask the deceased about the same. More so, it is evident that Dr. Umesh Kumar Shastri certified the mental and physical condition of the deceased at the time of recording of the second Dying Declaration, while at the time of recording of the first Dying Declaration, Dr.

Subhash Jain (PW13) certified the mental and physical condition of the deceased. Undoubtedly, the witnesses of the second Dying Declaration namely, Premchand Jain (PW9) and Sanjay (PW18) turned hostile and did not support the prosecution case, however, they have admitted their signatures on the Dying Declaration and could not give any explanation as to why they had attested the said Declaration. Thus, in view of the above, the second Dying Declaration cannot be held to be a fabrication.”

18. In Salim Gulab Pathan vs State of Maharashtra through SHO 2012 (6) SCC 606, have also upheld the verdict of conviction recorded on the basis of dying declaration recorded by a police constable in the presence of a doctor. The relevant paragraph of the judgment is extracted below:-

“9. In Paras Yadav v. State of Bihar, 1999 (2) SCC 126 and also in Balbir Singh v. State of Punjab, 2006 (12) SCC 283, it has been held that a dying declaration would not lose its efficacy merely because it was recorded by a police officer and not by a magistrate. In Paras Yadav case (supra), it has been held that the statement of a deceased recorded by a police officer as a complaint and not as a dying declaration can in fact be treated as a dying declaration if the other requirements in this regard are satisfied.”

19. In view of the above discussion, the prosecution has proved the case against the appellants beyond reasonable doubt that the deceased was beaten by the accused on account of bringing insufficient dowry, thereafter, she was put on fire by her husband Sukhwinder Singh. The dying declaration is genuine. The same is duly corroborated by the statement of PW1 Mohan Singh and the medical evidence. The conviction of the appellants under Section 302 IPC is upheld.

20. The appellants have subjected the deceased to cruelty by harassing her to meet unlawful demands of dowry immediately before her death. Thus, their conviction under Section 498-A IPC is also sustained. Accordingly, the appeal is dismissed.

21. The sentence of imprisonment of appellant Surinder Kaur @ Manjit Kaur was suspended vide order dated 22.1.2014. Her bail bonds are cancelled. The police is directed to take her in custody forthwith.

(Rajiv Sharma)
Judge

27.3.2019
vs

(Kuldip Singh)
Judge

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