

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1734-DB-2015(O&M)

Reserved on : 25.03.2019

Date of decision : 27.03.2019

Banwari Lal

... Appellant

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Abhinashi Singh, Advocate
for the appellant.

Mr. S.P.S. Tinna, Addl. A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment dated 27.11.2015 and order dated 30.11.2015 rendered by the learned Additional Sessions Judge, Fazilka, passed in Sessions Trial No.117 of 27.11.2015 (Sessions Case No.747 dated 24.04.2012) whereby the appellant, who was charged with and tried for offences punishable under Sections 302 of the Indian Penal Code (in short "IPC"), has been convicted thereunder and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two years.

2. The case of the prosecution in a nutshell is that medical ruqa dated 28.10.2011 was received at the police station from Civil Hospital, Abohar, regarding admission of Manju daughter of Kahna Ram, resident of

village Dharang Wala in burnt condition. I.O. along with other police officials reached the Civil Hospital, Abohar. I.O. made written request to Sh.Mohit Bansal, Judicial Magistrate Ist Class, Abohar, for recording the statement of Manju. Sh.Mohit Bansal, Judicial Magistrate Ist Class, Abohar recorded the statement of Manju daughter of Kahna Ram, aged 14 years, resident of village Dharang Wala on 28.10.2011. According to the contents of the statement, Manju had gone outside the house for throwing garbage and at that time Raj Pal son of Banwari Lal, resident of village Dharang Wala, caught hold of her arm. Then one person came there. Raj Pal went towards his house. She came back. She narrated the entire incident to her father and brother. Father and brother of Manju went to the house of aunt (Masi) of Manju. Thereafter at about 07.00/07.30 P.M., Rajpal and his father Banwari Lal and two other persons came to the house of Manju. Father of Raj Pal poured kerosene on the body of Manju. Raj Pal set her on fire. Manju's father and brother came to the spot. Accused ran away from the spot. Statement of Dr.Jhamb, E.M.O., Civil Hospital, Abohar, was also recorded regarding fitness and conscious condition of Manju to record her statement. FIR was registered. Manju died on 06.11.2011 in Guru Gobind Singh Medical College, Faridkot. Post-mortem was conducted. The matter was investigated and challan was put up in the Court after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of accused was also recorded under Section 313 Cr.P.C. According to him, he was falsely implicated.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against

the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Kahna Ram testified that his daughter Manju received burn injuries while she was using kerosene stove. The stove exploded and she sustained burn injuries. She died on 28.10.2011. He and his son Madan were away in the field. He had not seen any person setting her ablaze. His statement was not recorded by the police. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied that statement Mark A was recorded by the police on 29.10.2011. He denied that accused Banwari Lal and his son Raj Pal set his daughter on fire by pouring kerosene on her. He was confronted with portion A1 to A2 of his statement Mark A. He also denied that due to burn injuries, Manju was admitted in Civil Hospital, Abohar. He also denied that police had seen the place of occurrence in his presence. He also denied that police had taken into possession plastic bottle containing kerosene and burnt clothes of Manju from the place of occurrence. According to him, his thumb impression was obtained on blank papers by the police. He was confronted with portion A3 to A4 of his statement Mark A. He admitted his thumb impressions on Ex.P1 and P2. Volunteered the police had taken his thumb impressions on blank papers.

8. PW-2 Madan Lal, brother of Manju, has also not supported the prosecution case. He deposed that his sister Manju died due to burn injuries while using kerosene stove. He was declared hostile and was cross-

examined by the learned Public Prosecutor. He denied the statement Mark B recorded by the police on 29.10.2011. He denied the suggestion that Banwari Lal and his son Raj Pal set his sister on fire by pouring kerosene on her. He was confronted with portion A1 to A2 of his statement Mark B. He also denied that due to burn injuries, Manju was admitted in the Civil Hospital, Abohar. He denied that statement of Manju was recorded by Judicial Magistrate in Civil Hospital, Abohar. He was confronted with portion A3 to A4 of his statement Mark B.

9. PW-3 Inspector Ranjit Singh deposed that on 28.10.2011 he was posted as SHO, P.S. Sadar Abohar. He received ruqa from the Civil Hospital, Abohar regarding admission of Manju in the hospital due to burn injury. He moved application Ex.P5 to Sh.Mohit Bansal, JMIC, Abohar, for recording statement of Manju under Section 164 Cr.P.C. Thereafter Sh.Mohit Bansal, JMIC, Abohar, reached the Civil Hospital. He recorded the statement of Manju under Section 164 Cr.P.C. on 28.10.2011. He was also present in the hospital. It was night time. FIR was registered. Burnt clothes of Manju were also taken into possession. Police had also taken into possession plastic kerosene bottle. He raided the house of accused to arrest them. He arrested accused Raj Pal. Site plan was also prepared. Banwari Lal was arrested vide arrest memo Ex.P10. In his cross-examination, he deposed that he made enquiries from the brother, cousin brother and parents of the injured before making request to JMIC, Abohar for recording statement of injured. He appeared before Sh.Mohit Bansal, JMIC, Abohar, at about 10.00 P.M. The place of occurrence was thickly populated area. He requested the people to join investigation but people refused.

10. PW-4 ASI Gurchran Singh had prepared inquest report Ex.P12.

11. PW-5 Dr.Ashwani Kumar deposed that he was posted as Assistant Professor on 06.11.2011. Dead body was brought by HC Rajpal Singh. The cause of death in his opinion was septicaemia consequent upon infected burn injuries. All injuries were ante mortem in nature and were caused due to dry heat and were sufficient to cause death in ordinary course of nature. He proved the post-mortem report Ex.PAA.

12. PW-6 Krishan Lal Sondhi had prepared site plan Ex.PAC.

13. PW-8 Dr.Arun Jhamb deposed that he was posted as Medical Officer at Civil Hospital, Abohar, on 29.10.2011. On that day, patient Manju daughter of Kahna Ram was admitted in casualty ward of the Civil Hospital with burn injuries. Sh.Mohit Bansal, Judicial Magistrate Ist Class, Abohar came there and recorded statement of patient Manju daughter of Kahna Ram. During the course of recording statement of patient Manju, patient Manju remained fit and conscious. He identified his signatures Ex.PW8/A on the statement of Manju. In his cross-examination, he volunteered stated that Manju was fully conscious at the time of recording of her statement.

14. PW-9 Mohit Bansal deposed that he was posted as Judicial Magistrate Ist Class, Abohar on 28.10.2011. He received written request from Inspector Ranjit Singh. He requested him to visit the Civil Hospital, Abohar, for recording the statement of Manju daughter of Kahna Ram. He visited the Civil Hospital, Abohar. He recorded her statement word by word and after recording statement, he read over the same to her and after admitting the same to be correct, she signed the same. Dr.Arun was also present. He made endorsement to the effect that patient Manju remained fit and conscious during recording of statement by him. Application made by

Inspector Ranjit Singh is Ex.P9/A. He passed the order on it vide Ex.P9/B. The dying declaration is Ex.P9/C. He identified his signature Ex.P9/D. The doctor had also given fitness certificate Ex.P9/F.

15. PW-1 Kahna Ram and PW-2 Madan Lal were declared hostile. However, PW-1 Kahna Ram has identified his thumb impressions on statement Ex.P1 & Ex.P2 as well as on Mark A. The deceased had made dying declaration which was recorded by PW-9 Mohit Bansal. Statement Ex.P9/C reads as under:-

“I had gone at some distance from my house to throw the rubbish. The time was about 5-6 PM in the evening. Rajpal s/o Banwari Lal r/o village Dharang Wala caught my arm. A person came to see him. I came at house. I narrated the entire matter to my father as well as brother. My father as well as brother inquired here and there and went to the house of my maternal aunt.

Thereafter Rajpal, his father Banwari Lal and two other persons came at our house at 7-7.30 o'clock. Rajpal altercated with me. Rajpal's father poured the kerosene oil on my body which they brought with themselves in bottle. After that Rajpal set on fire. I shouted. On hearing my shout my father as well as brother came there. Rajpal, his father and two other persons fled away from the spot.

My mother had also gone to the house of my maternal aunt.”

16. PW-9 Mohit Bansal, Judicial Magistrate Ist Class, Abohar has categorically deposed that he received an application. He visited the hospital. He recorded the statement of Manju word by word. Doctor had given fitness certificate Ex.P9/F. Mohit Bansal had also made endorsement that the patient was fit and conscious during recording of statement. PW-8

Dr.Arun Jhamb had also made endorsement Ex.P9/F that the patient was fit to make statement. According to the contents of dying declaration, Manju had gone at some distance from her house to throw the garbage. It was 05.00/06.00 P.M. Rajpal caught hold of her arm. He ran away after seeing a person. She narrated the incident to her father as well as her brother. They made inquiries and went to the house of her maternal aunt. Rajpal, his father Banwari Lal and two other persons came to her house at 07.00/07.30 o'clock. Rajpal quarreled with her. Rajpal's father had poured kerosene on her body which they had brought with themselves in bottle. Rajpal set her on fire. Statement made by the deceased is voluntary. She was fit and conscious to make statement. The statement of deceased had been recorded strictly in accordance with law by PW-9 Mohit Bansal. PW-8 Dr. Arun Jhamb had also deposed that the patient was fit and conscious at the time of recording her statement. The cause of death as per post-mortem report was septicaemia consequent upon infected burn injuries. All injuries were ante mortem in nature. There was no motive for the prosecution to implicate the appellant falsely in the case. The acquittal of Rajpal by the Juvenile Justice Board has no bearing on this case.

17. Learned counsel for the appellant has also moved application (CRM-25632-2017) for additional evidence.

18. We have gone through the medical record. It is stated in the medical record relied upon by the appellant that initially the patient was delirious. However the fact of the matter is that PW-8 Dr.Arun Jhamb and PW-9 Mohit Bansal found Manju fit and conscious to make statement. PW-9 Mohit Bansal had made categorical endorsement Ex.P9/G that he had asked all men to move out of the room except the doctor at the time of

recording statement. PW-2 Madan Lal has denied even the statement of Manju recorded under Section 164 Cr.P.C. by PW-9 Mohit Bansal. Statement of PW-9 Mohit Bansal is duly corroborated by medical evidence. Accordingly the application for additional evidence is disposed of.

19. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 27, 2019.
Davinder Kumar

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