

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

CRA-D-119-DB of 2017 (O&M)

Reserved on : 27.05.2019

Date of decision : 29.05.2019

Malkiat Singh and another

.... Appellants

Versus

State of Punjab

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Aman Deep Singh Rai, Advocate,
for the appellants.

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

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment and order dated 22.12.2016, rendered by learned Additional Sessions Judge, Ludhiana, in Sessions Case No. 22 dated 12.02.2014. Appellants Malkiat Singh and Kuldeep Singh, who were charged with and tried for the offences punishable under Sections 302/458/506/34 IPC, were convicted and sentenced as under :-

<i>Name of appellant</i>	<i>Offence</i>	<i>Sentence</i>
Malkiat Singh	Section 302/34 IPC	To undergo rigorous life imprisonment and also to pay fine of ₹ 20,000/- (Twenty Thousand). In default of payment of fine, to undergo further rigorous imprisonment for a period of thirty days.
	Section 506/34 IPC	To pay fine of ₹ 3,000/- (Three Thousand). In default of payment of fine to undergo further rigorous imprisonment for a period of four days.
	Section 458/34 IPC	To undergo rigorous imprisonment for seven years and also to pay fine of ₹ 10,000/- (Ten Thousand). In default of payment of fine, to undergo further rigorous imprisonment for a period of twenty days.
Kuldeep Singh	Section 302/34 IPC	To undergo rigorous life imprisonment and also to pay fine of ₹ 20,000/- (Twenty Thousand). In default of payment of fine, to undergo further rigorous imprisonment for a period of thirty days.
	Section 506/34 IPC	To pay fine of ₹ 3,000/- (Three Thousand). In default of payment of fine to undergo further rigorous imprisonment for a period of four days.
	Section 458/34 IPC	To undergo rigorous imprisonment for seven years and also to pay fine of ₹ 10,000/- (Ten Thousand). In default of payment of fine, to undergo further rigorous imprisonment for a period of twenty days.

2. The case of the prosecution, in a nutshell, is that on 25.09.2013, information was received at Police Station, Bus Stand Jagraon, on mobile phone, to the effect that complainant Paramjit Kaur wife of Kulwant Singh has been got admitted in an injured condition at Civil Hospital, Jagraon. On 26.09.2013, ASI Lakhbir Singh, In-charge Police Post Kaunke Kalan, Police Station Sadar Jagraon, after obtaining MLR, Ex.PA, of injured Paramjit Kaur, from MHC Police Post, Bus Stand, Jagraon, visited Civil Hospital, Jagraon. He moved an application, Ex.PW.5/A, to the doctor for recording statement of the injured. However, the doctor declared her unfit to make statement vide endorsement Ex.PW.5/B. On 27.09.2013, the Investigating Officer again visited Civil Hospital, Jagraon, for recording statement of the injured. However, the doctor declared her unfit to make statement. On 28.09.2013, the Investigating Officer visited Civil Hospital, Jagraon and moved an application Ex.PW.5/E to the doctor for recording statement of the injured. The doctor declared the injured fit to make statement vide endorsement Ex.PW.5/F. The Investigating Officer recorded statement of injured Paramjit Kaur vide Ex.PW.5/G. The contents of the same were read over to the complainant-injured. She put her right thumb impression on the same. FIR Ex.PW.5/H was registered. The complainant died on 03.10.2013. The body was sent for post mortem examination. The accused were arrested. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely

implicated. They were convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has 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. PW.1 Dr. Sandeep Singh had medico legally examined Paramjit Kaur on 25.09.2013, when she was brought to Civil Hospital, Jagraon. He found following injuries on her body :-

1. Bruise 6 by 0.5 cm on anterior part of neck. Injury was kept under observation.
2. Bruise .5 by .5 cm on lateral side of lips on right side.
3. Complaint of pain lower abdomen. No external mark seen. LMP 20.9.13.

Injuries No.2 and 3 were declared simple in nature. The weapon used was blunt. The patient was admitted on 25.09.2013. Her condition deteriorated. She was referred to Baba Farid Medical College, Faridkot on 01.10.2013. In his cross-examination, he deposed that duration of injuries was within six hours.

7. PW.7 Dr. Radha Goel conducted post mortem examination on the body of Paramjit Kaur on 04.10.2013. She noticed the following injuries on her body :-

1. Partially healed abrasion on lower lip on left side 0.5 x 0.5 cm.
2. Scabes of abrasion of both elbows.

3. Bed sores 2 x 2 cm on right glutaly region.
4. Contusion blue colour on upper chest, infra scapular region 10 x 10 cm.

Scalp, skull and vertebrae were normal. Meninges and brain spinal cord were normal.

The cause of death could be septicemia as pus was detected in lung and pleural cavities of dead body of Paramjit Kaur. She proved the post mortem report Ex.PW.7/A.

8. PW.10 Dr. Amarjit Singh Kukka testified that Paramjit Kaur was admitted in Medical College and Hospital, Faridkot on 01.10.2013. The patient left the hospital against medical advice on 03.10.2013. He identified his signatures on bed head ticket Ex.PW.10/A.

9. PW.11 Dr. R.S. Dang testified that as per bed head ticket record of Paramjit Kaur, she was admitted in Guru Gobind Singh Medical Hospital on 01.10.2013. She left the hospital on 03.10.2013 against medical advice. The patient was not operated and just managed in the ICU under the team of doctors.

10. PW.2 Kulwant Singh testified that on 25.09.2013, he never received any telephone call from his uncle Major Singh. He was at home on 24.09.2013 and 25.09.2013. Accused never gave beatings to his wife in the night on 24.09.2013. They never compelled his wife to make physical relations with them. Accused never caused any electric shock to his wife. He was re-called for further examination. In his further examination, he deposed that his wife Paramjit Kaur never suffered any statement in his presence. Her thumb impression was obtained on blank paper. His signatures were also obtained on blank papers. Major Singh did not inform

him on telephone about the incident. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination, he denied the contents of statement Mark B. In his cross-examination by the learned defence counsel, he deposed that his house was situated in thickly populated area. His wife received some injuries on 25.09.2013 at about 10.00/11.00 AM by falling on ground. Condition of his wife started deteriorating from evening of 25.09.2013. She was unable to speak. She did not speak to any body till 03.10.2013.

11. PW.3 HC Zorawar Singh testified that ASI Lakhbir Singh had deposited with him one parcel containing clothes of deceased Paramjit Kaur, one box bearing 16 seals of the hospital and one envelope bearing six seals of the hospital, on 04.10.2013. He handed over the parcel, viscera of deceased Paramjit Kaur to HC Hakam Singh for depositing the same in the office of FSL, Kharar, on 15.10.2013.

12. PW.4 Major Singh testified that on 25.09.2013, Kala Singh son of Hukam Singh told me that Paramjit Kaur wife of Kulwant Singh was beaten up. He went to the house of Kulwant Singh. He saw that main gate of the house of Kulwant Singh was lying open. He went inside and noticed that Paramjit Kaur was lying in the gate of the house in injured condition. Her condition was serious. She was unable to speak. She did not tell him that Malkiat Singh, Kuldeep Singh and one unidentified person entered her house by scaling the wall and tried to establish physical relations with her, and when she opposed, they gave her beatings and electric shock. He was declared hostile and was cross-examined by the learned Public Prosecutor.

In his cross-examination, he denied the contents of statement Mark A. In his

cross-examination by the learned defence counsel, he deposed that on 25.09.2013, Kulwant Singh was present at his home. When he reached the house of Kulwant Singh, number of people had gathered there.

13. PW.5 ASI Lakhbir Singh deposed that he moved an application before the doctor to ascertain whether patient Paramjit Kaur was fit to make statement. He moved an application Ex.PW.5/E on 28.09.2013 to record statement of Paramjit Kaur. She was declared fit to make statement vide Ex.PW.5/F. Thereafter, he recorded the statement of Paramjit Kaur vide Ex.PW.5/G. The contents of the same were read over to Paramjit Kaur and she put her thumb impression on the same. He sent ruqa to Police Station Sadar Jagraon. The FIR Ex.PW.5/H was registered. He further deposed that on 03.10.2013, they received information about the death of Paramjit Kaur. The dead body was sent for post mortem examination. Accused Malkiat Singh was arrested on 06.10.2013. In his cross-examination, he deposed that at the time of recording statement Ex.PW.5/G, Paramjit Kaur was in semi conscious condition and no doctor was present at that time.

14. PW.9 HC Hakam Singh deposed that on 20.01.2014, he along with Constable Gurcharan Singh was present in the police party of ASI Baldev Singh. ASI Baldev Singh received information that Kuldeep Singh along with his relatives was coming to village Kaunke Kalan in order to effect compromise with Kulwant Singh, husband of deceased Paramjit Kaur. Accused Kuldeep Singh was arrested.

15. The Chemical Examiner report is Ex.PX. No poison was detected in the contents of exhibits I, II, III, IV and V.

16. The dying declaration is Ex.PW.5/G. It was recorded by PW.5

ASI Lakhbir Singh on 28.09.2013. He had moved an application, Ex.PW.5/E, seeking opinion of the doctor whether patient Paramjit Kaur was fit to make statement. The doctor declared the patient fit to make statement vide endorsement Ex.PW.5/F. Thereafter, he recorded her statement Ex.PW.5/G. According to the contents of her dying declaration, on 24.09.2013, she was sleeping in her *Vehra* (compound) by putting lock at the main door. The light was on. At about 11.00 PM, three persons entered her house by scaling the wall. When she got up, she identified two of them to be Malkiat Singh and Kuldeep Singh and one person was unknown to her. They gave kick blows on her abdomen. Malkiat Singh caught hold of her neck. He took out cable wire which was passing from the compound. He gave electric shocks on her neck and right ear in order to kill her. The third unknown person raised lalkara. The reason for resentment was that she was having illicit relationship with Malkiat Singh which was broken about one and half years back, when her husband came to know this. Malkiat Singh forcibly wanted to make relationship with her and that is why all three, in order to kill her, gave her severe beatings and electric shocks.

17. There was no occasion for Paramjit Kaur to falsely implicate the accused. The case of the prosecution is not supported by PW.2 Kulwant Singh, husband of deceased Paramjit Kaur. He deposed that his wife had not made any statement and her thumb impressions were obtained on blank papers and his signatures were also obtained on blank papers. However, he had not filed any complaint before the officers that his signatures were obtained on blank papers. According to him, his wife had received injuries by falling on ground on 25.09.2013 at about 10.00/11.00 AM. Her condition

started deteriorating from evening of 25.09.2013. Similarly, PW.4 Major Singh has not supported the case of the prosecution. He was declared hostile. However, in his cross-examination by the learned Public Prosecutor, he admitted that he took Paramjit Kaur to Civil Hospital, Jagraon, where she was admitted. He also admitted that Paramjit Kaur died at Guru Gobind Medical College and Hospital, Faridkot. It is settled law that entire statement of a hostile witness is not to be disbelieved. The statement as far as it supports the case of the prosecution can be relied upon. There was no occasion for the prosecution to falsely implicate the accused.

18. PW.1 Dr. Sandeep Singh medico legally examined Paramjit Kaur on 25.09.2013. He had noticed bruise on the anterior part of neck and bruise on lateral side of lips on right side. He deposed in his cross-examination that injuries could not be caused by the electric current but were caused by a blunt weapon. According to PW.7 Dr. Radha Goel, who conducted post mortem examination on the body of Paramjit Kaur, the cause of death could be septicemia as pus was detected in lung and pleural cavities of dead body of Paramjit Kaur. In her cross-examination, she deposed that the possibility of septicemia due to natural course could not be ruled out. Volunteered, it could be caused by an injury also. She had given the opinion after seeing the chemical examiner report Ex.PX. PW.10 Dr. Amarjit Singh Kukka, in his cross-examination, deposed that the patient remained unconscious from 01.10.2013 to 03.10.2013. According to PW.11 Dr. R.S. Dang, Paramjit Kaur was admitted in Guru Gobind Singh Medical Hospital on 01.10.2013 and she left the hospital on 03.10.2013. In his cross-examination, he deposed that Paramjit Kaur remained unconscious during

her stay in the hospital.

19. It is duly proved that when statement of Paramjit Kaur was recorded on 28.09.2013, she was conscious. Certificate to this effect was given by the concerned doctor vide Ex.PW.5/F. The statement of Paramjit Kaur is voluntary in nature. It is duly supported by the medical evidence. The dying declaration recorded by a police officer under Section 32 of the Indian Evidence Act can be relied upon, if it is voluntary in nature.

20. Their Lordships of 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.”*

21. In **Salim Gulab Pathan vs State of Maharashtra through SHO 2012 (6) SCC 606**, their Lordships of the Supreme Court 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.”

22. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in the instant appeal and the same is dismissed. The impugned judgment and order dated 22.12.2016 are upheld.

(RAJIV SHARMA)
JUDGE

May 29, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes