

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

CRA-342-DB of 2005

Reserved on : 13.02.2020

Date of decision : 17.03.2020

Harjit Kaur

.... Appellant

Versus

State of Punjab

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sukhbir Singh, Legal Aid Counsel,
for the appellant.

Mr. H.S. Grewal, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment and order dated 15.03.2005, rendered by learned Sessions Judge, Ropar, in Sessions Trial No. 3 dated 12.03.2001, whereby appellant Harjit Kaur, who was charged with and tried for the offence punishable under Section 302 IPC, was convicted and sentenced thereunder to undergo imprisonment for life and to pay a fine of ₹ 2,000/-, and in default of payment of fine to further undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution, in a nutshell, is that Nazar Singh made a dying declaration that on the intervening night of 14/15.10.2000, he was sleeping in his house at village Chhaju Majra. Some miscreant

sprinkled kerosene oil upon him. He woke up. He saw his wife Harjit Kaur setting him ablaze with a match stick. Earlier, she had threatened to kill him. His wife was religious. He was simpleton. He had the temperamental differences with his wife, on account of which there used to be domestic quarrels. She had set him ablaze. On 15.10.2000 at about 4.00 AM, he was admitted in the Emergency Ward in Civil Hospital, Kharar, having burn injuries over his head, neck, front of the chest, back of the chest and upper arms both sides. PW.1 Dr. Vijay Kumar gave him first aid and referred him to the PGI, Chandigarh for further treatment as his condition was deteriorating. PW.10 ASI Kulwant Singh received information from PGI Chandigarh regarding admission of Nazar Singh. He moved an application Ex.PK to the concerned doctor, enquiring about the fitness of injured Nazar Singh to make statement. Doctor made endorsement Ex.PK/1 and declared Nazar Singh fit to make statement. His statement Ex.PF was recorded by the Judicial Magistrate Ist Class, Chandigarh. Thereafter, FIR Ex.PF/2 was recorded by ASI Gurcharan Singh. The Investigating Officer inspected the spot in village Chhaju Majra. The house of Nazar Singh was already locked. He came back to the Police Station. On the same day, i.e. 15.10.2000, in the evening, he again visited the spot. He prepared rough site plan Ex.PL. The accused was arrested. Iron cot Ex.P2 in burnt condition, an empty bottle Ex.P3, which was smelling of kerosene oil, and the match box Ex.P4, were taken into possession. On 23.10.2000, the police received a chit Ex.PN from PGI, Chandigarh regarding the death of Nazar Singh. Inquest report Ex.PC was prepared. The body was sent for post-mortem examination. 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 was also examined under Section 313 Cr.P.C. She denied the case of the prosecution. According to her, her husband was suffering from epilepsy attack and he had committed suicide by setting himself ablaze. She also examined three witnesses in her defence. She was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing for 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. Vijay Kumar, Medical Officer, Civil Hospital, Kharar, deposed that on 15.10.2000, he was on emergency duty in Civil Hospital, Kharar. According to the record, on 15.10.2000, Nazar Singh son of Balak Singh was brought with burn injuries over the head, neck, front of chest, back of chest and upper arm both sides. He gave first aid to the patient. He gave pain killer injection, intravenous fluid. The police was informed. The patient was referred to PGI for further treatment. His MLR could not be prepared. He proved his report Ex.PA. In his cross-examination, he deposed that he had given the injection fortwin, dezafoam, injection decadron, injection efcorlin and other injection.

7. PW.2 Dr. Chander Parkash conducted the post-mortem examination on 23.10.2000 at 12.45 PM. According to him, there were 45%

septic burn injuries. In his opinion, the cause of death was as a result of septicemia due to 45% septic burn injuries. The injuries were ante mortem in nature. The probable time between injuries and death was seven to nine days and between death and post-mortem examination was 6 hours and 35 minutes.

8. PW.3 Gian Chand prepared the scaled site plan Ex.PE.

9. PW.6 Bimal Krishan, Head Constable, deposed that he along with ASI Kulwant Singh went to the place of occurrence on 15.10.2000. He noticed one burnt cot. There was one empty bottle smelling of kerosene oil. One match box was also lying there. All the items were taken into possession vide memos Ex.PG and Ex.PH. In his cross-examination, he deposed that portion of the cot was burnt to the extent that a person could fall. There was no bed sheet, pillow, quilt, blanket etc. lying near the cot. Empty bottle and the match box were lying at a distance of 10-15 feet from the burnt cot. The empty bottle was of the capacity of 750 mls. He admitted that till the recovery of cot, match box and bottle, Harjit Kaur was not cited as an accused in this case.

10. PW.7 Mewa Singh deposed that deceased Nazar Singh was his brother. Nazar Singh was working as a Driver in CTU, Chandigarh. They were having cordial relations. Accused used to go outside. His brother used to object to it. On 15.10.2000, early in the morning, his brother Nazar Singh was running in the street, while he was in flames. He was raising alarm. There was *Thikri Pehra* in the village. His younger brother Rajinder Singh was woken up by the persons, who were on *Thikri Pehra*. They narrated the incident to Rajinder Singh. Rajinder Singh further told him. Then he and

others stopped Nazar Singh near Mundi Kharar. His brother Rajinder Singh was also with him. Nazar Singh told him and others that the accused had set him on fire after putting kerosene oil on his body, while he was sleeping. This fact was told to him by Nazar Singh at about 3.00 AM on 15.10.2000. Nazar Singh was taken to Grewal Hospital, Kharar, from where he was referred to Civil Hospital, Kharar. Finally, he was referred to PGI, Chandigarh. He remained alive for about one week. Nazar Singh told him that the accused had illicit relations with Dr. Sandhu. Nazar Singh used to object to it. He died in PGI on 23.10.2000. He identified the dead body of his brother. In his cross-examination, he deposed that he had stated to the police that his brother was running towards Mundi Kharar and they also ran towards Mundi Kharar. He was confronted with his statement Ex.DA, wherein it was not so recorded. He also stated to the police about the *Thikri Pehra* in the village and about informing his younger brother by the people who were on *Thikri Pehra* and then his younger brother informed him. He was confronted with his statement Ex.DA, wherein it was not so recorded. He also told the police that the accused was having illicit relations with Dr. Sandhu, as disclosed by Nazar Singh, and Nazar Singh used to stop her from indulging in such activities. He was confronted with his statement Ex.DA, wherein it was not so recorded. He did not disclose to the police that he was sleeping in the house at about 3.30 AM, his nephew Surinder Singh came to him and woke him up. Attention of the witness was drawn to portion A to A of his statement Ex.DA, wherein it was so mentioned. He had not told the police that his nephew informed him that his brother had told him that the deceased had put kerosene oil on his body and set himself

on fire. His attention was drawn to portion B to B of his statement Ex.DA, wherein it was so mentioned. He also denied the fact that he had told the police that he asked his nephew to call other members/uncles etc. of the family and when he reached the house, he saw that the accused was present in the house, and on enquiry about the fire, she did not reply satisfactorily. He was confronted with portion C to C of his statement Ex.DA, wherein it was so mentioned. He did not state before the police that thereafter, he saw the body of his brother Nazar Singh and found that portion of the body was burnt and smell of kerosene oil was coming from his body. He was confronted with portion D to D of his statement Ex.DA, wherein it was so mentioned. He had not stated to the police that his brother Nazar Singh told him and Gurmit Singh in his house that his wife had set him on fire when he was sleeping. He was confronted with portion E to E of his statement Ex.DA, wherein it was so mentioned. He had not made this statement to the police. Voluntarily stated that he had not gone to the house of the deceased, but he told him about the fire at Mundi Kharar. He had not stated to the police that his brother used to take liquor and his sister-in-law, i.e. wife of his brother, was a religious lady, or that she used to go to the religious places without informing the deceased or that due to this, they were not having cordial relations. He was confronted with portion F to F of his statement Ex.DA, wherein it was so mentioned. He denied that his brother Nazar Singh had given an application against him and his brother Rajinder Singh that they forcibly wanted to grab the plot of the deceased. The deceased was having five children. The eldest daughter was aged about 22 years. He could not tell the names of the persons, who were on *Thikri Pehra*

on that day. The distance between the house of the accused and the place where his brother was caught by them at Mundi Kharar was about one Kilometer.

11. PW.8 Rajinder Singh deposed that accused Harjit Kaur was wife of his brother Nazar Singh. They had strained relation for the last 5-6 years. Nazar Singh used to say that Harjit Kaur was not cooking food for him. She was staying away from the house. Harjit Kaur used to say that Nazar Singh was not providing maintenance to her. Nazar Singh used to say Harjit Kaur that she was having illicit relations with some other person. On the intervening night of 14/15.10.2000, Raghbir Singh, who was acting as a watching guard of the village, came to him in his house at about 2.45 AM. Raghbir Singh informed him that his brother Nazar Singh was in flames. Then he accompanied him upto the road. Many persons were standing. Those persons told him that his brother was on blaze and was running towards Mundi Kharar. He accompanied by Tarlochan Singh watching guard followed his brother Nazar Singh. They covered the distance of two Kilometers and stopped his brother. He enquired from his brother what happened. He said that he was going to Police Station as his wife Harjit Kaur had set him on fire. Meanwhile, Raghbir Singh and Surinder Singh also reached there. They took Nazar Singh to Civil Hospital, Kharar. He went to call his brother Mewa Singh. Nazar Singh was taken to PGI. In his cross-examination, he deposed that the police had summoned him in the Police Station. He met his brother Nazar Singh at Mundi Kharar, where he had gone running. The distance between house of Nazar Singh and the place where his brother met him near Mundi Kharar was 1 ½ – 2 Kilometers. His

brother was getting treatment from Military Hospital. Nazar Singh, his brother, had never filed any application against him alleging that he wanted to grab his land. However, Nazar Singh had moved an application against Mewa Singh. He did not make statement before the police that on 15.10.2000, his nephew told him that his mother told him that his father Nazar Singh set himself on fire and he should call his uncles. He was confronted with portion A to A1 of his statement Mark DX, wherein it was so recorded. He did not make statement before the police that when they reached at the spot, where Mewa Singh was already present, they saw that kerosene smell was coming from the body of Nazar Singh and his body was burnt. His attention was drawn to portion B to B1 of his statement Mark DX, wherein it was so recorded. He had not told to the police that meanwhile his brother Gurmit Singh also reached there and they asked their sister-in-law (accused) how he caught fire, but she could not give any satisfactory reply. He was confronted with portion C to C1 of his statement Mark DX, wherein it was so recorded. He had not stated before the police that they asked their brother Nazar Singh, who replied that his wife Harjit Kaur accused put kerosene oil and set him on fire, while he was sleeping. Attention of the witness was drawn to portion D to D1 of his statement Mark DX, wherein it was so recorded. He made statement before the police that during the night of 14/15.10.2000, Raghbir Singh, who was acting as a watchman of village, at about 2.45 AM came to him in his house and informed him that his brother Nazar Singh was on blaze. Then he accompanied him upto the road, where many persons were standing. He was confronted with his statement Mark DX, wherein it was not so recorded. He

had not stated to the police that then those persons told him that his brother was in blaze and was running towards village Mundi Kharar. He had not stated in his statement before the police that then he accompanied by Tarlochan Singh watchman followed his brother Nazar Singh and stated to other people that they should follow them. He had stated before the police that they covered the distance of 2 Kilometers and stopped his brother, and he asked his brother as to what had happened. His brother told that he was going to Police Station as his wife Harjit Kaur had set him on fire. His attention was drawn towards his statement Mark DX, wherein it was not so recorded. He had told the police that meanwhile Raghbir Singh and Surinder Singh also reached there, then they took Nazar Singh to Civil Hospital, Kharar. He was confronted with his statement Mark DX, wherein it was not so recorded. They along with Nazar Singh reached Kharar Hospital at about 4.30 AM. They took Nazar Singh to Civil Hospital, Kharar, on a scooter. The scooter was being driven by him. Nazar Singh was sitting behind him, while Tarlochan Singh was sitting behind Nazar Singh on his scooter. By that time, the fire had extinguished. He along with Tarlochan Singh had followed Nazar Singh on a scooter. He did not tell any thing to the Doctor at Kharar with regard to the occurrence. He did not make any effort to lodge report with the police.

12. PW.10 Kulwant Singh ASI testified that a message was received from Police Post, PGI, Chandigarh, on 15.10.2000. He along with other police officials went to PGI, Chandigarh. He moved an application Ex.PK to know whether Nazar Singh was fit to make statement or not. The doctor made endorsement Ex.PK/1 that Nazar Singh was fit to make

statement. He requested Shri Baljinder Singh, Judicial Magistrate Ist Class, Chandigarh, to record the statement. The Magistrate recorded the statement of the injured, after sending all other persons out of the room. Copy of the statement is Ex.PF. He made endorsement Ex.PF/1, on the basis of which formal FIR Ex.PF/2 was recorded. He came back to the Police Station and narrated the whole facts to the SHO. Accused was arrested. An iron cot Ex.P-2, along with empty bottle Ex.P-3, which was smelling of kerosene, and a match box Ex.P-4, was taken into possession vide memo Ex.PH. In his cross-examination, he deposed that before scribing the application for obtaining opinion from the doctor, no person from the family of the accused met him nor any person informed them about the occurrence. He admitted that in the application moved to the Magistrate, he had not disclosed the reason of burns. Except the son of Nazar Singh, none else from his family was present in the PGI.

13. PW.11 ASI Jaswant Singh deposed that on 23.10.2000, the police received chit Ex.PN regarding the death of Nazar Singh. He inspected the dead body. He prepared inquest report Ex.PC. The dead body was identified by Gurinder Singh son of the deceased and Mewa Singh, brother of the deceased. Their statements were recorded. The body was sent for post-mortem examination.

14. PW.12 Baljinder Singh deposed that on 15.10.2000, he was Duty Magistrate at Chandigarh. At about 10.35 AM, he got request of the police to record the statement of injured Nazar Singh. He went to PGI, Chandigarh, in Ward No.4, where Nazar Singh was admitted with burn injuries. He made request Ex.PQ to the Doctor whether injured Nazar Singh

was fit to make statement or not. The doctor vide endorsement Ex.PQ/1 opined that Nazar Singh was fit to make statement. Thereafter, statement of Nazar Singh was recorded. The doctor remained present during that period. The statement is Ex.PQ/3. The statement was read over and explained to Nazar Singh. Statement by Nazar Singh was made voluntarily. Patient was fully conscious. In his cross-examination, he deposed that he did not record the statement of the patient in question-answer form. He reached the PGI within 20 minutes.

15. DW.1 Mewa Singh deposed that he was Sarpanch of village Chhaju Majra in the year 2000. He had heard on 15.10.2000 in the morning that Nazar Singh set himself on fire under the influence of epilepsy attack. Accused Harjit Kaur and her children took Nazar Singh to PGI, Chandigarh, to save his life.

16. DW.3 Amritpal Kaur deposed that accused Harjit Kaur was her mother. Nazar Singh was her father. Her father was suffering from mental disease. He was a patient of epilepsy. She found her father to be ill since she attained the age of discretion. Her father gave a writing in the Department, where he was serving, that he be put on some light duty due to epilepsy attack. He was provided light duty by the Department. She was married in the year 1997. Due to her delivery, she had come to her parental house in the year 2000. Her mother used to sleep in her room with her. Her father used to sleep in the verandah. They smelt smoke. They got up. Her mother went outside the verandah. Her father was on fire. Thereafter, her mother with the help of her brothers tried to extinguish the fire. Her father was removed to Civil Hospital, Kharar by her mother and brothers. Sarpanch of

the village was also with them. Her father was referred to PGI, Chandigarh, where he died. Her father remained under treatment from PGI and other hospital for the treatment of epilepsy and mental diseases.

17. According to PW.7 Mewa Singh, on 15.10.2000, early in the morning, his brother Nazar Singh was running in the street, while he was on flames. There was *Thikri Pehra* in the village. His younger brother Rajinder Singh was woken up by the persons, who were on *Thikri Pehra*. They narrated the incident to Rajinder Singh. Rajinder Singh further told it to him. Then he and others stopped Nazar Singh near Mundi Kharar. Nazar Singh told him and others that the accused had set him on fire after putting kerosene oil on his body, while he was sleeping. Nazar Singh was taken to Grewal Hospital, Kharar, from where he was referred to Civil Hospital, Kharar. Thereafter, Nazar Singh was referred to PGI, Chandigarh. His brother told him that the accused had illicit relations with Dr. Sandhu. His brother died in PGI on 23.10.2000. The statement of PW.7 Mewa Singh under Section 161 Cr.P.C. was recorded by the police on 23.10.2000, vide Ex.DA. In that statement, he stated that on the intervening night of 14/15.10.2000, at about 3.30 AM, his nephew Surinder Singh came to his house and woke him up, when he was sleeping. He told him that his mother had sent him and his father had set himself on fire after pouring kerosene oil. His condition was serious. He told his nephew that he should call all the remaining uncles. He went to the spot. He noticed that his sister-in-law Harjit Kaur was present on the spot. He asked her the cause of fire. She could not give any satisfactory reply. The body of his brother was burnt. It was smelling of kerosene oil. His brothers Gurmit Singh and Rajinder Singh

also came at the spot. Their brother Nazar Singh told that his wife Harjit Kaur had set him on fire, while he was sleeping. They took their brother to Civil Hospital, Kharar, from where he was referred to PGI, Chandigarh. His sister-in-law Harjit Kaur was of religious nature. The relations between his brother and sister-in-law were not strained. His nephew told him that on 14.10.2000, quarrel took place between his sister-in-law Harjit Kaur and his brother. However, while appearing as PW.7, he had taken a different stand, as noticed here-in-above. What he had stated while appearing in the Court as PW.7 is that on 15.10.2000, there was *Thikri Pehra* in the village. His younger brother Rajinder Singh was woken up by the persons, who were on *Thikri Pehra*. They narrated the incident to Rajinder Singh. Rajinder Singh further told it to him. Then he and others stopped Nazar Singh near Mundi Kharar. Nazar Singh told them that the accused had set him on fire after putting kerosene oil on his body, while he was sleeping. This was told to him at about 3.00 AM on 15.10.2000. This is at variance with the statement, which he got recorded to the police on 23.10.2000. According to the statement recorded by the police on 23.10.2000 vide Ex.DA, his nephew came to him and narrated the incident. However, while appearing in the Court as PW.7, he deposed that his brother Rajinder Singh narrated him the incident. Thereafter, they followed their brother Nazar Singh, who was running towards village Mundi Kharar. He was confronted with his statement Ex.DA. He had denied the contents of Ex.DA. In his cross-examination, he admitted that the distance between the house of the accused and the place where his brother was caught by them at Mundi Kharar was about one Kilometer. A person, who is on flames, can not run for a distance

of one Kilometer.

18. Similarly, PW.8 Rajinder Singh, another brother of deceased Nazar Singh, in his examination-in-chief, deposed that on the intervening night of 14/15.10.2000, Raghbir Singh, who was acting as a watching guard of the village, came to him in his house at about 2.45 AM. Raghbir Singh informed him that his brother Nazar Singh was in flames. Then he accompanied him upto the road. Many persons standing on the road told him that his brother was in flames and was running towards Mundi Kharar. He accompanied by Tarlochan Singh followed his brother. They covered distance of two Kilometers and stopped his brother. His brother told him that he was going to Police Station as his wife Harjit Kaur had set him on fire. How a person in flames could walk for a distance of two Kilometers. He was confronted with his statement Mark DX. In his statement Mark DX, he also stated to the police that his nephew had told him about the incident. His nephew was sent to him by his mother. According to the contents of Mark DX, he reached the spot and saw the body of Nazar Singh.

19. The statements of PW.7 Mewa Singh and PW.8 Rajinder Singh are not believable. They had made statements before the police vide Ex.DA and Mark X, respectively. However, they changed their stand in their statements while appearing in the Court.

20. According to the dying declaration Ex.PQ/3, recorded by PW.12 Baljinder Singh, Judicial Magistrate, the time of occurrence was 3.00 AM. Nazar Singh was sleeping. He was Driver in CTU. Some body poured oil upon him. He tried to get up. Some body put him ablaze with a match stick. The match stick was thrown on him by his wife. His wife was

religious type lady and he was simpleton. There was friction in their relationship. Therefore, she put him on fire. Why a religious woman would put her husband on fire. PW.7 Mewa Singh and PW.8 Rajinder Singh had given a picture that the accused had some illicit relations with one Dr. Sandhu, but Nazar Singh had not stated so in his statement. He simply stated that his wife was of religious type and he was simpleton.

21. The police had recovered the cot, the match stick and empty bottle. These were not sent for FSL examination. PW.7 Mewa Singh and PW.8 Rajinder Singh had deposed that they had taken their brother Nazar Singh to the hospital, but PW.10 Kulwant Singh ASI in his cross-examination admitted that except the son of Nazar Singh, none else from his family was present in PGI.

22. The prosecution has failed to prove its case against the appellant beyond reasonable doubt.

23. Accordingly, the appeal is allowed. The impugned judgment and order dated 15.03.2005 rendered by the learned trial court are set aside. Appellant Harjit Kaur is acquitted of the charge framed against her. She is on bail. Her bail bond and surety bond are discharged.

(**RAJIV SHARMA**)
JUDGE

March 17, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No