

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-117-DB-2005
Reserved on : 07.02.2020
Date of decision : 12.02.2020

Dharambir Singh and others

... Appellants

Versus

State of Haryana

... Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Amrit S. Kang, Advocate
for the appellants.

Mr. Vivek Saini, DAG, Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment dated 17.12.2004 and order dated 20.12.2004 rendered by the Additional Sessions Judge, Hisar, in Sessions case no.62 of 2002 whereby all the appellants along with co-accused Mahabir Singh and Dariya Singh were charged with and tried for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (in short 'IPC') and 498-A IPC. All the appellants were convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months for the offence punishable under Section 302 IPC. However, all the appellants along with co-accused Mahabir were acquitted of the charge under Section 498-A IPC. One of the co-accused Dariya Singh died during the pendency of trial. Co-accused Mahabir was acquitted of the charges.

2. The case of the prosecution in a nutshell is that Smt.Bhagwanti since deceased was married to accused Dharambir according to Hindu rites on 31.05.1987. She was admitted in General Hospital, Hansi, with burn injuries. Her statement under Section 164 Cr.P.C. was recorded by Sh.J.B. Gupta, Sub Divisional Judicial Magistrate, Hansi, pursuant to an application made before him by the police. She died on 24.01.2002 in PGIMS, Rohtak. Post-mortem examination was conducted. Burnt clothes were taken into possession. Place of occurrence was got photographed. Kerosene soaked soil was taken into possession. It was sent to FSL, Madhuban. The disclosure statement was recorded. Plastic can of kerosene was got recovered from Turi Kotha of Dharambir. Statements of witnesses were recorded under Section 161 Cr.P.C. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants examined one witness in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

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

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 Dr.Vinod Sharma medically examined Bhagwanti wife of

Dharambir on 19.01.2002 at 5.45 A.M. He noticed the following injuries on the person of Bhagwanti:-

“1. There were superficial and deep burns present all over the body except back of left side back right side lower part, both glatal regions, perinium, right thumb, right leg and both feet smell of kerosene was not coming from her hair. Hair were partially burnt.”

He declared nature of injuries to be dangerous to life. The duration of injuries was declared within 24 hours and these were caused by fire. She sustained 90% burns. He sent ruqa to the Incharge, P.S. City Hansi. On 19.01.2002 police moved an application Ex.PC seeking his opinion about the fitness of Bhagwanti for recording her statement. He declared her fit to make statement vide his opinion Ex.PC/1. He proved MLR Ex.PA. In his cross-examination, he deposed that the patient was brought by her brother Satbir.

8. PW-2 J.B. Gupta, SDJM, Hansi testified that he recorded the statement of deceased Bhagwanti. Police moved an application Ex.PD/1 on which he passed the order Ex.PD/2. Thereafter, he proceeded to the Civil Hospital, Hansi to record statement of Bhagwanti. He obtained the opinion of doctor on duty. The doctor declared her fit to make statement. After obtaining his opinion, he passed the order Ex.PD/4 before recording the statement of Bhagwanti. Then he recorded her statement Ex.PD/5. The doctor has also given the opinion regarding her fitness. His opinion is Ex.PD/6. After recording the statement, he gave the certificate Ex.PD/7. In his cross-examination, he deposed that at the time of recording her statement, patient was being looked after by a nurse. There was no attendant in the ward near the patient. No relative of the patient met him outside the

ward.

9. PW-4 Satbir deposed that his brother-in-law Dalbir came to him and told him about the incident. He went to village Sainipura along with his brother Raman and two three persons of his village. They went to the house of Dharambir. Bhagwanti was lying in burnt condition in chobara. She told him that Santosh had sprinkled kerosene on her. Wazir, her jeth, lit the fire. Sarupi (her mother-in-law) and Dariya Singh (her father-in-law) and Mahabir, (her jeth), said that she be killed. She was taken to Civil Hospital, Hansi. The doctor treated her. In his cross-examination, he deposed that Bhagwanti was married 14-15 years back. Bhagwanti had three sons. Eldest was Vinod, about 12-13 years of age. Naveen aged about 10 years and Pardeep aged about 7 years. Bhagwanti was lying on the floor of chobara when they reached village Sainipura.

10. PW-5 Dalbir deposed that his sister-in-law Bhagwanti was married to Dharambir. They had three children. All the accused used to beat her. Prior to the occurrence, for many days there was a dispute between Bhagwanti and all the family members. On 19.01.2002 at about 02.30 A.M. when his wife heard noise “bachao-bachao” from the side of house of Dharambir, he and his wife Kamla went to the chobara of Dharambir where the door was closed. They knocked the door. Dariya Singh opened the door of chobara. All the accused present in the Court were in the chobara. A small child was also there. Bhagwanti was lying in a burnt condition. Wazir was having a can of kerosene. All of them came down. He made his wife Kamla sit near Bhagwanti. He went to Dhani Kandu to inform his brother-in-law, where Satbir met him. Wazir Singh was interrogated. He got the plastic can recovered.

11. PW-9 SI Dharampal deposed that he received medical ruqa regarding Bhagwanti wife of Dharambir being admitted in hospital. He went to the hospital. He moved an application Ex.PC before the doctor to know the position of the patient whether she was fit to make statement or not. The doctor on duty opined that the patient was fit to make statement vide opinion Ex.PC/1. Then he moved an application Ex.PD/1 to the SDJM, Hansi for recording statement of Bhagwanti. The SDJM, Hansi recorded her statement. He obtained the certified copy of the statement. He sent ruqa to the police station for registration of the case. FIR Ex.PI/1 was registered. He went to the spot. The earth smeared with kerosene was taken into possession. Burnt clothes were also taken into possession. The case property was deposited with MHC. Inquest report Ex.PM was prepared.

12. PW-10 Jai Kishan Inspector deposed that accused Wazir made the disclosure statement Ex.PQ that he had concealed the kerosene can. Accused led the police party to the place of concealment. He got recovered the can. It was taken into possession.

13. PW-11 Dr.Paramjit conducted the post-mortem examination of dead body of Bhagwanti. In his opinion, the cause of death was shock due to burn and its complications which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The time between injury and death was not recorded in the post mortem report because the patient died in PGI Rohtak after her admission. The time between death and post-mortem was within 12 hours. He proved the post-mortem report Ex.PU.

14. DW-1 Vinod Kumar deposed that Bhagwanti deceased was his mother. Dharambir accused was his father. He was student of 7th class. His

younger brother Naveen was a student of 4th class. About 3 / 4 years back, he along with his father and mother were present in chobara. His mother started beating Naveen. His father intervened. He saved him. She started abusing his father. Dharambir gave her a slap blow. Thereafter, she set herself on fire. His father extinguished the fire by putting a quilt on her. His father also received burn injuries. In his cross-examination, he admitted that he was living with his uncle Mahabir. His uncle was not residing in the house where he was living with his father. He told his grand father in the morning and also other family members that his mother set herself on fire and was lying in the chobara.

15. According to PW-1 Dr.Vinod Sharma, injury received by the deceased was dangerous to life. The duration of injury was declared within 24 hours and these were caused by fire. She sustained 90% burn. Police moved an application Ex.PC for seeking his opinion about fitness of Bhagwanti for recording her statement. He declared her fit to make statement vide his opinion Ex.PC/1. PW-2 J.B.Gupta deposed that police moved an application before him. He passed order Ex.PD/2. He proceeded to the Civil Hospital, Hansi. He obtained the opinion of doctor on duty. The doctor declared her fit to make statement. Thereafter, he passed the order before recording statement of Bhagwanti. He recorded the statement of deceased vide Ex.PD/5. In his cross-examination, he categorically deposed that no attendant was present in ward near the patient. No relative of the patient met him outside the ward. Only nurse was there. PW-4 Satbir also testified that he went to village Sainipura to see his sister. She told him that Santosh had sprinkled kerosene on her. Wazir (her jeth) lit the fire. Sarupi (her mother-in-law) and Dariya Singh (her father-in-law) and Mahabir (her

jeth) said that she be killed. She was taken to the hospital. PW-5 Dalbir has also corroborated the statement of PW-4 Satbir. He had gone to see Bhagwanti. She was lying in burnt condition. Wazir was having a can of kerosene. Thereafter, he informed Satbir. PW-9 SI Dharampal deposed that he moved an application Ex.PD/1 to the SDJM, Hansi for recording the statement of Bhagwanti. The SDJM, Hansi went to the hospital. He recorded statement of Bhagwanti. Thereafter, he sent ruqa to the police. The disclosure statement was made by Wazir. On the basis of which, can containing kerosene was recovered. According to the post-mortem report, the dead body of female was brought with superficial to deep burns. According to the police, the death was due to burn injuries. In the opinion of PW-11 Dr.Paramjit, the cause of death was shock due to burn and its complications which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

16. We have gone through the dying declaration made by deceased Bhagwanti. She had categorically stated that her sister-in-law Santosh sprinkled kerosene and her brother-in-law Wazir set her on fire. Her father-in-law Dariya Singh and her mother-in-law Saroopi said, kill her. They would remarry their son. Her husband was under their influence and he was also party to setting her on fire. Her husband was standing nearby when she was put on fire.

17. Though the appellants have relied upon the statement of DW-1 Vinod Kumar. It does not inspire confidence. In case he had seen his mother setting herself on fire, he would have definitely raised alarm. He would have told this incident to the family members immediately.

18. Learned counsel for the appellants has vehemently argued that

Dharambir had extinguished the fire. However, the fact of the matter is that none of the family members of the deceased have taken her to the hospital. She was taken to the hospital by her brother Satbir. The doctor has opined that Bhagwanti was fit to make statement. No attendant or relative of the deceased was present at the time when her statement was recorded. Her statement is voluntary in nature. It inspires confidence. There was no reason for her to falsely implicate her family. The plastic can containing kerosene was recovered at the instance of appellant Wazir.

19. According to FSL report Ex.PV, kerosene residues were detected in exhibit-1, i.e. bundle of partially burnt multicoloured clothes comprising of chunni, salwar and jumper. Kerosene or its residues could not be detected in exhibit-2, i.e. some flakes of loose earth. Exhibit-3, i.e. some light blue coloured liquid, was identified as sample of kerosene mixed with some blue coloured dye. According to the inquest report, the deceased had received burn injuries to the extent of 90%. According to the post-mortem report, soot particles were found in larynx and trachea. The prosecution has proved the case against the appellants beyond reasonable doubt.

20. Accordingly, there is no merit in the appeal and the same is dismissed. Appellants are on bail. Their bail bonds and surety bonds are cancelled. The police is directed to take them into custody to undergo remaining sentence imposed by the learned trial Court.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 12, 2020.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No