

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

CRA-S-1038-SB-2007(O&M)

Date of decision:-1.11.2022

Prabha Wati

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Sandeep Sharma, Advocate and
Ms.Anuradha, Advocate
for the appellant.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

H.S. MADAAN, J.

1. Feeling aggrieved by judgment dated 29.3.2007 passed by Additional Sessions Judge, Panchkula vide which on conclusion of trial in case FIR No.271 dated 20.6.2005, under Sections 302/34 IPC, registered with Police Station Sector 5, Panchkula, he had convicted accused Prabha Wati wife of Ramesh Kumar for an offence under Section 304 Part II IPC as well as order dated 30.3.2007 in terms of which, she was sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months, accused Prabha Wati has approached this Court by way of filing the instant appeal.

2. Briefly stated, facts of the case as per the prosecution story

are that on 18.6.2005, on receipt of a telephonic message at Police Station Sector 5, Panchkula from Police Post PGI, Chandigarh regarding admission of Suman wife of Lalita Prashad, resident of House No.1402, Rajiv Colony, Panchkula, in a burnt condition at PGI, Chandigarh, HC Krishan Singh along with Constable Randev Singh went to said medical institute, where HC Krishan Singh recorded statement of injured Smt.Suman, who inter alia stated that on 18.6.2005 at about 4:30 a.m. in the morning, while she was taking water from a tap in front of her house and her husband Lalita Prashad had gone out to answer the call of nature, then suddenly somebody came from behind, poured kerosene oil on her and set her ablaze; when she took a turn, she observed that a woman wearing SAARI had entered house of Ramesh Chand son of Ram Surat residing in their neighbourhood and closed the door.

She further stated in her statement that on 17.6.2005 at 7:00 p.m., Prabha Wati wife of Ramesh had placed a cot in the street near house of complainant/injured and when the latter asked her to remove the same, a dispute took place between them; thereafter Shakuntla, sister of Ramesh threatened to kill the complainant. The complainant/injured stated that when she was put on fire, she raised an alarm of bachao – bachao, which attracted her neighbours; she put water on herself, in that way, the fire was extinguished; in the meanwhile, Lalita Prashad, husband of complainant/injured also arrived at the spot, who took her to General Hospital, Sector 6, Panchkula in a three-wheeler of Prem Nath for treatment, from there she was referred to PGI, Chandigarh.

In her said statement, complainant/injured further stated that she had a complete doubt that Prabha Wati wife of Ramesh and

Durga Devi wife of Rajesh had tried to kill her by putting her on fire on account of the grouse due to earlier dispute.

3. After recording statement of complainant/injured Smt.Suman, HC Krishan Singh put his endorsement below it, sending the said statement to Police Post, Sector 16, Panchkula, where report No.8 dated 18.6.2005 was entered regarding the incident. HC Krishan Singh went to the spot, verified the facts, collected copy of MLR of Suman and finding that offences under Sections 323, 307 IPC were disclosed, an FIR No.271 dated 20.6.2005 for the offences under Sections 323, 307 IPC was registered at Police Station Sector 5, Panchkula.

On 20.6.2005, ASI Kanwaljeet Singh along with HC Krishan Singh went to the house of complainant/injured, where her husband Lalita Prashad handed over a *petikot* and SAARI, which were partly burnt to ASI Kanwaljeet Singh, which clothes were taken into possession vide a separate recovery memo.

On 29.6.2005, injured Suman succumbed to the injuries at PGI, Chandigarh. ASI Kanwaljeet Singh went there and carried out inquest proceedings under Section 174 Cr.P.C. He got postmortem conducted on the dead body of Suman from PGI, Chandigarh itself. On account of death of Suman, offence under Section 302 IPC was added in the FIR. ASI Kanwaljeet Singh went to the spot and prepared rough site plan of the place of occurrence. He recorded statements of witnesses. Durga Devi and Prabha Wati named by the complainant/injured Suman in her statement to the police were arrested in this case on 29.11.2005 by Inspector Ram Kala, CIA Staff, Panchkula. After completion of

investigation and other formalities, challan against both the accused was prepared and filed in the Court of Chief Judicial Magistrate, Panchkula.

4. On presentation of challan in the Court of learned Chief Judicial Magistrate, Panchkula, he supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Panchkula committed the case to the Court of learned Sessions Judge, Panchkula vide order dated 9.1.2006 from where it was entrusted to the Court of learned Additional Sessions Judge, Panchkula.

5. On receipt of case in the Court, learned Additional Sessions Judge Panchkula, observing that prima facie charge for offences under Section 302 read with Section 34 IPC was disclosed against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

6. During the course of its evidence, the prosecution examined as many as thirteen witnesses, namely, PW1 Constable Yadvinder Singh, PW2 Constable Ved Parkash, PW3 ASI Manphool Singh, PW4 EHC Gurdev Singh, PW5 Ram Saran, Draftsman, PW6 Dr.Aruna Dhingra, PW7 Lalita Prashad, PW8 Meena Devi, PW9 Dr.Yoginder Bansal, PW10 ASI Kanwaljeet Singh, PW11 Inspector Balram, PW12 HC Krishan Singh, PW13 DSP Ram Kala. Thereafter, giving up the remaining PWs, the learned Public Prosecutor had closed the evidence of prosecution.

7. Statements of both the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in

prosecution evidence were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Accused Durga Devi stated that on 18.6.2005 she was present in her house, preparing meals for her family and on that day no incident had taken place in her presence; at about 4:30/5:00 a.m., she came to know about the occurrence from her neighbours; even the deceased had not named her being a participant in the incident.

Whereas accused Prabha Wati took up a plea that on 18.6.2005, she was taking a bath in her house; she did not know how the deceased had received burn injuries and she was not present at the spot at that time; she came to know regarding the incident from her neighbours. She further added that at the time of incident, neither any family member of the deceased nor any member of public was present; as stated by the deceased herself in her statement, even she had not named her or alleged anything against her and she had been falsely implicated in this case.

8. In their defence evidence, the accused produced documents i.e. copy of statement of Lalita Prashad recorded under Section 175 Cr.P.C. as Ex.DA and copy of statement of Lalita Prashad recorded under Section 161 Cr.P.C. as Ex.DB.

With that the defence evidence stood closed.

9. After hearing arguments, learned trial Court acquitted accused Durga Devi and convicted and sentenced accused Prabha Wati, as mentioned above, which left her aggrieved and she had filed the present appeal, which was taken up on 21.5.2007 when it was admitted

for regular hearing. On application under Section 389 Cr.P.C. having been filed on behalf of the appellant, her remaining sentence was suspended during the pendency of the appeal vide order dated 3.12.2008 and she was ordered to be released on bail on her furnishing bonds to the satisfaction of CJM, Panchkula.

10. Now the appeal has come up for final hearing.

11. I have heard learned counsel for the appellant – accused – convict, learned Additional Advocate General for the State of Haryana besides going through the record.

12. The most important piece of evidence in this case is the statement made by the injured Suman before HC Krishan Singh on 18.6.2005 while she was admitted in PGI, Chandigarh in an injured condition having suffered severe burn injuries. She had succumbed to those injuries on 29.6.2005. Therefore, her such statement is to be taken as her dying declaration. As is commonly said truth sits upon the lips of a dying person. A person contemplating death would not normally tell a lie. It is for that reason solemnity is attached to the words coming from the mouth of a person, who is about to depart from this moral world and statement of such person is given due weightage and importance, although such statement is not tested by cross-examination. The statement made by Suman comes out to be natural and in normal course. Though she had not stated that it was Prabha Wati, who had poured kerosene oil on her and set her ablaze but all the circumstances points out towards involvement of Prabha Wati in the case. Suman had stated that some woman had come from behind and poured kerosene oil on her setting her on fire, thereafter, going to the house of Ramesh and shutting

the door from inside. Ramesh is none-else but husband of Prabha Wati and they are having house in the neighbour of the house of the deceased. She had further referred to a dispute between her and Prabha Wati, a day prior to the incident. The reason for the dispute being Prabha Wati had placed a cot in the street to which the deceased had objected. In her statement, Suman had stated that she nursed a strong doubt that it was Prabha Wati, who had set her ablaze after putting kerosene oil upon her.

13. Even otherwise, the evidence adduced by the prosecution point out that it was Prabha Wati, who is the culprit in this case. PW7 Lalita Prashad, husband of the deceased deposed about dispute having taken place between his wife Suman deceased and accused Prabha Wati stating that the latter had threatened to kill the former and the matter was reported at Police Post, Sector 16 Panchkula, where his wife Suman moved an application Ex.PH and he had gone along with her; on the next day, at about 5:30 a.m. while his wife Suman was taking water from the tap, then both the accused reached there; accused Durga Devi poured kerosene oil on Suman, whereas Prabha Wati set her ablaze with a match box; he reached at the spot, then both the accused ran away. He further stated that he had tried to save his wife and in the process had received injury on his hand; Suman was taken to General Hospital at Panchkula from where she was referred to PGI, Chandigarh, where her statement was recorded. He identified signatures of his wife Suman on the statement adding that Suman had died due to burn injuries after 10-12 days. In his cross-examination, he stated that the dispute had earlier arisen between accused as well as deceased wife Suman regarding a wall prior to the incident and Prabha Wati as well as Suman had received

injuries in the occurrence, which took place a day prior to the incident. In that way, the accused themselves admit a quarrel having taken place between the parties prior to the incident in question. In that way, Prabha Wati had a strong motive to cause death of Suman by burning. In his cross-examination, Lalita Prashad was confronted with the earlier statements Ex.DA and Ex.DB made by him, wherein he had not claimed to have seen the incident. Even if it is taken that he was not there at the spot when the incident had actually taken place and he had arrived there soon after the incident and had taken his wife to hospital, his wife making statement to the police in the hospital in his presence, all these things make him a material witness and his testimony is to be given due weightage in terms of Section 6 of the Evidence Act applying the principle of *res gestae*. Section 6 provides that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

14. Then there is testimony of PW8 Meena Devi, who deposed that on 17.6.2005 at about 7/7:30 p.m., a dispute had taken place between Suman deceased and accused persons regarding a wall and she along with some other woman had taken Suman to General Hospital, Sector 6, Panchkula and further Suman had moved an application at Police Post, Sector 16, Panchkula that accused were threatening her. She further added that on the next day at about 5/5:30 a.m., Suman came in front of her house in burning condition and she was crying that she had been burnt and she be saved; thereafter her husband Lalita Prashad came and took Suman to General Hospital, Sector 6, Panchkula. Although in

her cross-examination, she stated that she did not see any person putting Suman on fire but she stated that dispute regarding wall was between Suman and both the accused.

15. As already observed, the statement got recorded by Suman with the police is a crucial piece of evidence admissible under Section 32 of the Evidence Act, which provides that statements, written or verbal, of relevant facts made by a person who is dead, are relevant when those relate to cause of death or any of the circumstances of the transaction, which resulted in death of that person.

16. The remaining evidence adduced by the prosecution also supports its case on material aspects.

PW1 Constable Yadvinder Singh had taken a sealed parcel given to him by ASI Manphol Singh to FSL Madhuban depositing it there.

PW2 Constable Ved Parkash had taken the special reports given to him by MHC Amarjit Singh on 20.6.2005 for delivering those to Illaqa Magistrate and Senior Police Officers.

PW3 ASI Manphool Singh, who on 9.12.2005 was posted as MHC, P.S. Sector 5, Panchkula deposed about Constable Randev Singh depositing with him a sealed parcel along with sample seal, which he had handed over to Constable Yadvinder Singh for depositing the same in the office of FSL, Madhuban. He stated that so long as those articles remained in his possession, no tampering therewith had taken place.

PW4 EHC Gurdev Singh had proved report/DDR No.25 dated 17.6.2005 as Ex.PA and report/DDR No.8 dated 18.6.2005 as

Ex.PB and report/DDR No.27 dated 29.6.2005 as Ex.PC.

PW5 C-1 Ram Saran, Draughtsman deposed regarding his visiting the spot on 18.8.2005 and preparing scaled site-plan thereof as Ex.PD.

PW6 Dr.Aruna Dhingra, who while posted as Medical Officer in G.H. Sector 6, Panchkula on 17.6.2005 at about 9:25 p.m. had medico legally examined Suman preparing her MLR, stated that the patient came to the hospital with the history of assault at 6:00 p.m. and she had observed several injuries on her person. She had proved copy of her MLR as Ex.PF. She stated that she had also medically examined accused Prabha Wati finding several injuries on her person. She proved her MLR as Ex.PG.

PW9 Dr.Yoginder Bansal, Asstt. Professor, Department of Forensic Medicines, PGI, Chandigarh stated that on 29.6.2005, he had conducted postmortem examination on the dead body of Suman and found following external injuries:

Infected dermoepidermal burn injuries were present over upper front of abdomen, few patches over lower front of abdomen, front and back of both forearms including palms, front and back of both lower limbs, few abdomen patches over right side back, left side upper back of abdomen. A scalp hair in front and pubic hair showed sinzing. A skin was peeled off at most places leaving a greenish yellow leathary base on to which foul smelling pus like material was sticking. Unhealthy granulation tissue was present at the margin of healthy and unhealthy region. Area of burn : 60% of total body surface area.

Internal examination:

Brain, liver spleen, both kidneys were found congested. Larynx and trachea contained foul smelling discharged in the lumen. Both lungs shown consolidation patches in all lobes.

In his opinion cause of death in this case was due to septicaemia consequent to infected burn injuries as described. All the burn injuries were ante-mortem and caused due to fire. The probable time lapsed between injury and death around 11 days and between death and postmortem examination ten hours thirty minutes as calculated.

He proved the postmortem report as Ex.PL.

PW10 ASI Kanwaljit Singh, the Investigating Officer of this case deposed with regard to the investigation conducted by him proving various documents.

PW11 Inspector Balram, a formal witness, who had prepared challan in this case deposed in that regard.

PW12 HC Krishan Singh stated that on 17.6.2005 while he was posted at Police Post Sector 16, Panchkula, on that day Prabha Wati came to the police post and told about quarrel between her and Suman, who had beaten her; thereafter he had recorded DDR and got Prabha Wati medico legally examined from General Hospital, Sector 6, Panchkula. He further stated that after some time Suman also came there and reported about the occurrence stating that Prabha Wati had beaten her. Thereafter, both went back seeking some time. He further deposed that on 18.6.2005 on receipt of information from PGI, Chandigarh, he went there and sought medical opinion regarding fitness of injured

Suman to make statement and on getting the opinion in affirmative, he recorded her statement Ex.PJ appending his endorsement Ex.PJ/1 below it and on the basis of that DDR Ex.PB was recorded. He further stated that on 20.6.2005, he along with Constable Nahan Singh and ASI Kanwaljit Sihnggh went to the house of Suman, where they met Lalita Prashad, husband of Suman and Lalita Prashad handed over a *petikot* and one *saari* partly burnt to ASI Kanwaljit Singh, which were taken into possession vide recovery memo Ex.PN.

PW13 DSP Ram Kala, who had carried out the investigation in this case partly deposed in that regard.

17. Thus, from the evidence both oral as well as documentary, brought on file by the prosecution, the prosecution had successfully established that on 18.6.2005 at about 4:30/5:00 a.m., Prabha Wati had poured kerosene oil upon Suman, setting her ablaze causing burn injuries to her to which she had succumbed later on. Prabha Wati had a strong motive to commit such criminal act on account of quarrel having taken place between her and the deceased a day earlier with regard to dispute regarding a wall. Accused has not furnished any reasonable or plausible explanation which might have created a reasonable doubt in the mind about her involvement in the incident.

18. It may be mentioned here that the facts and circumstances of the case and evidence brought on record by the prosecution rather disclosed a more grave offence of murder than culpable homicide not amounting to murder. The incident had not taken place at the spur of moment, rather Prabha Wati nursed a grudge against Suman on account of quarrel, which had taken place between them a day earlier and she

had performed the criminal act after due deliberations and planning bringing kerosene oil and match box with her and while Suman was drawing water from the tap, she poured kerosene oil upon her and set her ablaze. Therefore, such criminal acts were squarely covered within the definition of murder in terms of Section 300 of the Indian Penal Code because death was caused with intention of causing death or causing such bodily injury, which the accused knew was likely to cause death of Suman. Rather the case did not fall within exception to Section 300 because there is nothing to show that the accused was deprived of the power of self-control by grave and sudden provocation coming from victim Suman. The reason given by the trial Court for convicting accused for offence under Section 304 Part II IPC instead of 302 IPC is not very convincing. Nevertheless as more than 15 years have passed since the date of judgment, I do not find it proper and appropriate to convict the appellant/accused for the offence under Section 302 IPC and would rather maintain the conviction for the offence under Section 304 Part II IPC.

19. The prosecution had proved its case against the accused conclusively and affirmatively beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

20. As such, the judgment of conviction and order of sentence are upheld, whereas appeal is found to be without any merit and the same is dismissed accordingly.

21. Prabha Wati appellant – accused is stated to be on bail

granted to her by this Court vide order dated 3.12.2008 while suspending her sentence. Her bail is cancelled. Chief Judicial Magistrate, Panchkula is directed to issue arrest warrant to get her arrested so as to make her undergo the remaining sentence.

1.11.2022
Brij

(H.S.MADAAN)
JUDGE

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