

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

CRA-D No.1004-DB of 2013

Date of Decision: 28.03.2022

Neeraj Kumar

.....Appellant.

Versus

State of Punjab

.....Respondent

**CORAM: *HON'BLE MS. JUSTICE RITU BAHRI*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Ms. Monita Mehta, Advocate
for the appellant.

Mr. H.S. Grewal, Addl. A.G., Punjab
for the respondent.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and order on sentence dated 18.03.2013 as handed down by learned Additional Sessions Judge, Hoshiarpur (for short 'the trial Court') in the criminal case arising out of the FIR bearing No.113 dated 22.09.2011 registered at Police Station Model Town, Hoshiarpur, under Sections 498-A and 302 IPC whereby the appellant has been held guilty for committing the offence under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay the fine to the tune of Rs.5000/- and in case of default in the payment thereof, to further undergo rigorous imprisonment for a period of 03 months, he (appellant) has preferred the instant appeal.

2. Bereft of unnecessary details, the allegations, as levelled

against the appellant in the present case, are that on 11.09.2011, his wife named Pinki (since deceased) was admitted in Civil Hospital, Hoshiarpur for having suffered the burn injuries. After obtaining the opinion of the doctor regarding her fitness to make any statement, the JMIC, Hoshiarpur recorded her statement and in view thereof, DDR No.15 was entered on 12.09.2011. However, in compliance of the order passed by learned Sessions Judge, the Chief Judicial Magistrate again recorded the statement of the afore-named injured on 19.09.2011 wherein she alleged that on the day of occurrence, she was present in her house along-with her children. Her husband, i.e the appellant, returned home and he was drunk at that time. He abused and gave kick blows to her and then, he bolted the door from inside and poured kerosene oil on her and set her ablaze. He used to ask her to bring Rs.50,000/- from her parents and to bring a woman for him. On her raising an alarm, their neighbours gathered at the spot and the appellant fled away from there. She made a phone call to her brother named Mohan Lal who brought her to the hospital and at the time of the recording of her earlier statement, she was not in her full senses. On the basis of her above-mentioned subsequent statement, a formal FIR was registered under Section 498-A IPC. Later-on, the afore-named victim succumbed to her injuries and the offence under Section 304-B IPC was added in the case. During the investigation, the offence under Section 302 IPC was introduced and the offence under Section 304-B IPC was deleted in this case and on the completion of necessary investigation, the Challan was presented against the appellant in the Court.

3. After perusing the police report under Section 173(2) Cr.P.C as well as the documents referred to therein and hearing learned Additional Public Prosecutor for the State and learned defence counsel, the trial Court framed the charges against the appellant on 01.02.2012 under Sections 302 and 498-A IPC and he pleaded not guilty to the same and claimed trial.

4. To substantiate its allegations against the appellant (accused), the prosecution examined as many as 07 witnesses namely Shri Ram Kumar as PW1, Kajal as PW2, Mohan Lal as PW3, Dr. Harjinderjit Singh as PW4, Dr. Jaswinder Singh as PW5, Draftsman Arjun Kumar as PW6 and SI Kuldeep Kumar as PW7 and thereafter, learned State counsel closed the prosecution evidence. Then, the appellant was examined under Section 313 Cr.P.C. to explain the circumstances/incriminating material appearing against him in the prosecution evidence on the record wherein he pleaded innocence and stated that he had been falsely implicated in this case. In his defence evidence, he (appellant) examined Shri Prashant Verma, JMIC, Sunam as DW1. After hearing learned State counsel as well as learned defence counsel, the trial Court recorded the conviction of the appellant (accused) under Section 302 IPC while acquitting him under Section 498-A IPC and awarded the sentence to him as detailed in the opening para of this judgment.

5. We have heard learned counsel for the appellant as well as learned State counsel in the present appeal and have also gone through the record thoroughly.

6. Learned counsel for the appellant has pointed out that in her

first dying declaration Exhibit DF as recorded on 11.09.2011, the deceased had disclosed about her having sustained the burn injuries accidentally while lighting the stove whereas in her second dying declaration Exhibit P-8, which was recorded subsequently on 19.09.2011, she has implicated the appellant while alleging that he had poured kerosene oil upon her and had lit the matchstick and had set her on fire and he has contended that learned trial Court has erroneously relied upon her above-said subsequent dying declaration and has convicted the appellant whereas her first dying declaration should have been given weightage because the same, being prior in time, is supposed to be containing the true account of the occurrence resulting into the burn injuries on her (victim's) person and it being so, the appellant deserves his acquittal in this case.

7. However, it is pertinent to mention here that in **Nagabhushan vs. State of Karnataka, 2021 (2) RCR (Criminal) 289**, the Apex Court has recently made the following observations: -

“8. At this stage, the decisions of this Court in the cases of Nallam Veera Stayanandam v. Public Prosecutor (2004) 10 SCC 769; Kashmira Devi v. State of Uttarakhand (2020) 11 SCC 343; and Ashabai v. State of Maharashtra (2013) 2 SCC 224 are required to be referred to. In the aforesaid decisions, this Court had an occasion to consider the cases where there are multiple dying declarations. In the aforesaid decisions, it is held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is

also held that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.”

8. It goes undisputed in the present case that the deceased and the appellant were living together in the same house and the occurrence in question had taken place there only. In her subsequent dying declaration, the deceased categorically alleged that after setting her ablaze and on seeing the neighbours gathering at the spot, the appellant fled away from there and then, she telephonically called her brother who had brought her to the hospital. In normal course of events, if the wife accidentally sustains the burn injuries, then the husband is supposed to remain with her and to make all the possible endeavours to save her life by taking her to the hospital at the earliest for her immediate medical treatment and cannot be expected to run away leaving his wife writhing in pain and agony. In case the appellant was innocent and had no role to play in the said occurrence, then there could not have been any occasion for him to escape from the spot, instead of taking his wife, i.e the victim, to the hospital.

9. Further, in the Inquest Report Exhibit PA, it has specifically been mentioned that on the receipt of an intimation, through verbal transmission, regarding the said victim and the appellant having been admitted in the hospital on 11.09.2011, SI Kuldeep Kumar reached there and came to know that the appellant had left the OPD after taking the

medicine and was not admitted there. The factum of the appellant having taken the medicine for his injuries, in itself, does suffice to prove his presence at the spot at the time of the said occurrence. Again, being the husband of the victim, he was supposed to stay with his wife during the period when she remained admitted in the hospital for her treatment but throughout in his statement as recorded under Section 313 Cr.P.C, the appellant has nowhere stated that he had remained with his wife, i.e the deceased, to take care of her during the said period and he has also not led any evidence on the record to this effect.

10. Though the appellant is stated to have sustained the burn injuries but as discussed in the preceding paragraph, he had left the OPD after taking the medicine for the same and did not remain admitted in the hospital for his treatment and these facts make it clear that the injuries suffered by him were not serious in nature at all. Moreover, Hon'ble Supreme Court has also observed in *Nagabhushan's case (supra)* that *"merely because the accused husband might have tried to extinguish fire, it would not bring the case out of clause fourthly of Section 300 IPC and the act of the accused pouring the kerosene on the deceased and thereafter, setting her ablaze by matchstick was imminently dangerous which, in all probabilities would cause death"*.

11. To cap it all, Exhibit PM is the memo as prepared by the Investigating Officer at the time of effecting the recovery of the plastic bottle having smell of kerosene and the matchstick box from the place of occurrence and the factum of any stove having been found lying at the spot,

does not find mention in the same. This fact also renders the above-said version of the deceased, as put-forth in her first dying declaration regarding her having accidentally caught the fire while lighting the stove, highly improbable.

12. All the above-discussed facts and circumstances, when tested on the touch-stone of the afore-cited observations as made by the Apex Court in **Nagabhushan's case (supra)**, unequivocally speak volumes regarding the truthfulness of the version of the deceased as narrated in her subsequent dying declaration Exhibit P8. It being so, it is held that the trial Court has not committed any error in relying upon the above-discussed subsequent dying declaration of the deceased to record the conviction of the appellant in this case.

13. Learned counsel for the appellant has also contended that PW-2 Kajal is the minor child of the deceased and the appellant and PW-3 Mohan Lal happens to be the sibling of the deceased and thus, both these witnesses, being closely related to the deceased, are interested witnesses and therefore, their testimonies should not have been relied upon to hold the appellant guilty in the present case.

14. However, this contention also does not hold much water because the afore-named PW2, being the daughter of the deceased and the appellant, was supposed to be at home at the time of the alleged occurrence, i.e 08:00 PM and is, thus, a natural witness to the same. Moreover, she is supposed to be having equal love and affection as well as respect for both her parents, i.e the deceased and the appellant. Therefore,

we do not find any cogent reason to believe that she would have falsely deposed against the appellant, her father, to get him implicated/convicted in this case. As regards the testimony of PW3 Mohan Lal, he is the brother of the deceased and as discussed earlier, he had brought her to the hospital. It being so, he must be well-versed with the facts and circumstances resulting into the burn injuries on the person of his sister which ultimately proved fatal for her. Hence, his testimony cannot be painted with black colour merely on account of his said relationship with the deceased.

15. As a sequel to the fore-going discussion, it follows that the impugned judgment as well as the order on sentence as passed by learned trial Court, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court and are, accordingly, upheld. Resultantly, the present appeal, being *sans* any merit, stands dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

28.03.2022

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Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*