



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

1.

CRA-D-310-DBA-2003 (O&M)
Date of Decision:- 14.05.2024
- State of Punjab

... Appellant
- Versus
- Vinod Kumar and others

... Respondents
2.

CRR-1847-2002 (O&M)
- Sham Lal

... Petitioner
- Versus
- State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present:- Mr. I.P.S.Sabharwal, DAG, Punjab,
for the appellant in CRA-D-310-DBA-2003 and
for respondent-State in CRR-1847-2002.

Mr. Ishan Gupta, Advocate with
Ms. Harita Panthey, Advocate, for the respondents
in CRA-D-310-DBA-2003 and
for respondents No.2 to 6 in CRR-1847-2002.

Mr. Rajesh Girdhar, Advocate, for the petitioner
in CRR-1847-2002.



FIR NO.	DATE	POLICE STATION	OFFENCES
37	21.5.1996	Lambi, District Faridkot	506, 304-B IPC

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the above mentioned appeal as well as revision petition, as both are directed against the same very judgment i.e. judgment dated 30.05.2002 passed by learned Additional Sessions Judge, Faridkot vide which the respondents/accused namely Vinod Kumar, Rakesh Kumar, Lajwanti, Rajni Bala and Kiran Bala have been acquitted of the charges framed against them in respect of offences punishable under Sections 498-A, 302 IPC or 304-B IPC.
2. The FIR (Ex.PE-1) was lodged at the instance of Sham Lal wherein it is alleged that he has five daughters, the youngest being Anshu Bala who was married to Vinod Kumar about 3 years back. He stated that he had given dowry, as per his capacity at the time of marriage, but her husband Vinod Kumar and her in-laws namely Lajwanti (mother-in-law), Rajni (sister-in-law), Saroj Rani (sister-in-law) and Rakesh Kumar (brother-in-law) used to beat her and pressurized her to bring Rs.1.5 lakhs from the complainant. It is alleged that on 21.4.1996, at about 5.00 am, Anshu Bala being fed up with the maltreatment set herself on fire. It is alleged that the accused had also been threatening to kill her child in case she ever disclosed about her maltreatment to anybody. It is further the case of prosecution that Anshu Bala was taken to Civil Hospital, Bathinda on 21.4.1996 where her statement



was recorded in presence of a Judicial Magistrate. However, Anshu Bala could not survive and succumbed to her injuries on the night intervening 21/22.5.1996.

3. The dead body of Anshu Bala was subjected to post mortem examination on 23.5.1996. Police conducted the inquest proceedings Ex.PC and also recorded the statement of witnesses. Upon conclusion of investigation, challan was presented in the Court of learned Judicial Magistrate 1st Class, who upon finding that the facts *prima facie* disclosed commission of offences punishable under Sections 498-A and 304-B, committed the case to the Court of Sessions.
4. Upon commitment, the case was entrusted to learned Additional Sessions Judge, who framed charges against the accused for offences punishable under Sections 498-A and 302 IPC with alternative charge of 304-B IPC on 18.11.1997 to which the accused pleaded not guilty and claimed trial.
5. The prosecution in order to establish its case examined as many as 10 PWs, the gist of whose testimonies is being briefly referred to herein under:-

PW-1-Dr. S.S.Malik, Emergency Medical Officer, Civil Hospital, Bathinda, stated that patient Anshu Bala was admitted in the hospital on 21.4.1996 at 7.45 am with burn injuries and that she was having



75% superficial to deep burns all over the body. He proved head ticket as Ex.PA.

PW-2-Dr. Kasturi Lal, Medical Officer, Civil Hospital, Bathinda conducted post mortem examination on the dead body of Anshu Bala and proved the post mortem report as Ex.PB. He opined the cause of death was due to septicemia as a result of burn injuries which was sufficient to cause death in ordinary course of nature.

PW-3-Sham Lal (complainant) stated in tune with the version got recorded by him in the FIR. He broadly stated that his daughter Anshu Bala who was married about 3 years back used to be harassed by her in-laws in order to press upon their demand of money and that on 21.4.1996 he came to know that his daughter had been set on fire by the accused, upon which he accompanied by some others went to Civil Hospital, Bathinda where he saw that his daughter was lying unconscious. He stated that he got his statement recorded before the police and also moved an application Ex.PF to Chief Judicial Magistrate, Bathinda.

PW-4-Panna Lal, brother of the complainant stated in support of the case of prosecution and corroborated the statement made by the complainant to the effect that the accused had been harassing and maltreating the deceased to press upon their demand of money.

PW-5-SI Swaran Singh stated that he had arrested Kiran Bala and Rajni Bala.



PW-6-Prem Kumar son of Panna Lal stated that Anshu Bala had regained consciousness on 08.05.1996 and had disclosed that accused Lajwanti, Rajni, Saroj, Rakesh and Vinod had been harassing her and had been demanding an amount of Rs.1.5 lakhs and that she had been set on fire by them on 21.4.1996.

PW-7-Suresh Kumar, Draftsman proved scaled map Ex.PG, prepared by him.

PW-8-HC Surinder Singh, who had recorded formal FIR, pursuant to receipt of ruqa, proved the same as Ex.PE/1.

PW-9-A.S.Virk, SDJM, Patti, Amritsar, stated that on 06.05.1996 he was posted as Judicial Magistrate 1st Class, Bathinda and that pursuant to an application Ex.PF moved by Sham Lal which had been marked to him by learned Chief Judicial Magistrate, Bathinda, he proceeded to Civil Hospital, Bathinda and recorded statement Ex.PJ of Anshu Bala and that he had obtained certificate of doctor on duty about fitness of Anshu Bala to make statement.

PW-10-ASI Bhalla Singh, had recorded the initial statement Ex.PE made by complainant Sham Lal on the basis of which FIR came to be lodged, stated about the said fact. He further stated that in respect of the investigation as conducted by him in the instant case and proved various documents prepared during the course of investigation.

6. Upon conclusion of prosecution evidence, statements of the accused were recorded in terms of Section 313 Cr.P.C. wherein they denied



the case of prosecution in toto and pleaded innocence. The accused further took a stand that the FIR in question had been lodged falsely after about one month of the incident whereas it was actually a case of an accidental fire. It has been submitted that immediately on the day of incident, after Anshu Bala had been taken to hospital, her statement was recorded by DW-2 Mr. Birinder Singh, learned Judicial Magistrate 1st Class, Bathinda. Accused Vinod Kumar stated that the deceased had caught fire while she was working on a stove and that he tried to extinguish the fire and during the said process he had also sustained injuries on his person and on account of which he was also admitted in Civil Hospital, Bathinda. He further stated that the deceased was suffering from epilepsy and they had got her treated from various doctors.

7. **DW-1** Dr. Niranjana Lal Garg stated that on 21.4.1996, he had medically examined Vinod Kumar and had found the following injuries on his person:

- “1. There is superficial burn on face. Hair are singed and partial burning of mustaches, beard, forehead. Blister formation was present on the forehead. Red line was present. Right ear on anterior aspect was also involved.
2. There were superficial to deep burn on both sides of hands and fore-arms on right side of hand 12 cms above the right wrist joint, both anterior and posterior aspect and on both sides, skin is also peeled off within of redness. On the left side of hand both anterior and posterior aspects and fore arm 11 cms above the left wrist joint. Both anterior and posterior aspects, line of redness was present. Blister formation was



present. The skin was also peeled off at few placed. Line of redness was present.”

8. DW-1 further stated that on 21.4.1996 on the asking of learned Judicial Magistrate 1st Class, he had furnished his opinion regarding the fitness of Anshu Bala and that it was pursuant thereto that her statement was recorded by learned Judicial Magistrate and that he had also certified that Anshu Bala remained fit throughout the course of recording her statement by Mr. Birinder Singh, Duty Magistrate, Bathinda, which he had signed.
9. **DW-2**-Mr.Birinder Singh, Additional Sessions Judge (Muktsar) stated that on 21.4.1996 he was posted as Judicial Magistrate 1st Class, Bathinda and had recorded statement of Anshu Bala after taking opinion of the doctor regarding her fitness and had made it clear to Anshu Bala that she was free to make her statement without any fear or pressure. He further stated that after recording of statement of Anshu Bala, the doctor furnished certificate that the patient had remained fit during the course of recording her statement.
10. **DW-3**-Om Prakash stated that a *Jagrata* was being conducted at his house on 19.4.1996 where accused Rajni Bala and Kiran Bala had come and stayed at his house in Gidderbaha, till the next day. He stated that on 21.4.1996 a telephonic call was received that Anshu Bala had caught fire and that he took Rajni Bala and Kiran Bala to village Badal and had left them at the house of their uncle.



11. Upon marshaling the evidence led by the prosecution as well as by the defence, the trial Court held that the prosecution had failed to establish its case beyond reasonable shadow of doubt and consequently acquitted the accused.
12. Learned State counsel as well as learned counsel for the complainant assailed the impugned judgment on the ground that the trial Court fell in error in relying upon the dying declaration recorded by DW-2 Mr. Birinder Singh, learned Judicial Magistrate 1st Class, Bathinda on 21.4.1996 whereas the same cannot be said to be a statement having made voluntarily. It has been submitted that the statement made before DW-2 Mr. Birinder Singh, Judicial Magistrate 1st Class, Bathinda, cannot even be treated as a dying declaration as it was after about a month back that injured Anshu Bala breathed her last on 22.5.1996. It has further been submitted that as a matter of fact a few days before her death, the statement of the victim was got recorded by another Judicial Officer i.e. by PW-9 Mr. A.S.Virk, Judicial Magistrate 1st Class on 06.05.1996, wherein she categorically levelled allegations against the accused and that the said statement having been recorded more proximate to the death of Anshu Bala actually deserves to be characterized as dying declaration, but the trial Court has not given due weightage to the same.
13. This Court has considered the rival submissions addressed before this Court and has gone through the evidence led by the prosecution as well as by the accused with the assistance of the able counsel.



14. Leaving aside the other aspects, the material issue in the instant case is as to whether it is dying declaration dated 06.05.1996 (Ex.PJ) recorded by PW-9 Mr. A.S.Virk, the then Judicial Magistrate 1st Class Bathinda, which is to be relied upon or as to whether dying declaration dated 21.4.1996 (Ex.DA) recorded by DW-2 Mr. Birinder Singh, the then Judicial Magistrate 1st Class, Bathinda merits reliance. A perusal of statement Ex.PJ would show that Anshu Bala raised categoric allegations to the effect that her in-laws used to demand share out of her parent's property and had set her on fire as the said demand was not acceded to. She had specifically stated that her mother-in-law Lajwanti, sisters-in-law Rajni Bala and Kiran Bala, brother-in-law Rakesh Kumar and her husband had set her on fire by pouring oil on her.
15. On the other hand a perusal of the dying declaration Ex.DA recorded on 21.4.1996 would show that she categorically stated that she had caught the fire accidentally in the morning while igniting the kerosene stove and that her husband had tried to save her and that nobody had set her on fire.
16. It is worth noticing that both the aforesaid statements had been recorded by Judicial Magistrates, who had recorded the same in discharge of their duties. Both of them adhered to the prescribed procedure and safeguards and had solicited opinion of the doctor regarding fitness of Anshu Bala before recording her statements. It is however, pertinent to mention here that while the deceased is stated to



have remained fit during the entire course of recording of her statement (Ex.DA) on 21.4.1996 by DW-2 Birinder Singh, Judicial Magistrate 1st Class, as has been stated by DW-2 Birinder Singh and by DW-1 Dr. Niranjana Lal Garg, but no specific evidence has been led by prosecution from which it could be inferred that the deceased, during the entire course of recording of her statement (Ex.PJ) on 06.05.1996 by PW-9 A.S.Virk, Judicial Magistrate 1st Class, had remained fit throughout. None of the doctors examined by prosecution has stated regarding fitness of deceased during the course of recording of statement (Ex.PJ) on 06.05.1996 by PW-9 A.S.Virk, Judicial Magistrate 1st Class. Even PW-9 did not state so. Under these circumstances, the statement recorded in the first instance on 21.4.1996 (Ex.DA) will have an edge over the second dying declaration (Ex.PJ).

17. Since both the dying declarations are in sharp contradiction with each other, therefore it is apparent that one of the said statements is a false statement or is apparently a tutored statement. At this stage, it is worth noticing that even the husband had sustained burn injuries, as is the specific plea raised by the husband that he had sustained injuries in the process of his attempt to extinguish the fire. The said injuries stand duly proved from the testimony of DW-1 Dr. Niranjana Lal Garg who had medico legally examined Vinod Kumar (husband) on 21.4.1996 at 10.am. While, it is correct that there is a gap of about 15 days between recording of both the statements, but it cannot be said



that when the first statement was recorded, the injured was out of danger so as to disqualify the said statement as a dying declaration.

18. Further, there is a huge delay of one month in lodging the FIR which would show that none from the family of the deceased had nursed any doubt regarding the involvement of the respondents/accused. In case, the accused had regularly been maltreating the deceased or had maltreating her shortly before the death, the relatives of the deceased would have surely reported the matter to the police immediately and would have expressed their suspicion by not having done so, the belated FIR would also lose its sanctity.
19. In any case, this Court does not find any reason to discard the dying declaration recorded in the first instance by Judicial Officer as it was recorded by adhering to all the safeguards expected to be adhered to i.e. the opinion of the doctor regarding fitness and also regarding the deceased having remained fit during the entire process of recording statement. Rather the second dying declaration would suffer from some infirmity inasmuch as there is no evidence to show that deceased remained fit throughout the course of recording her statement.
20. In view of the discussion made above, this Court does not find any ground to interfere with the findings of the trial Court to the effect that the prosecution has failed to establish the charges framed against the accused.



- 21. The appeal as well as the revision petition are found to be devoid of merit and the same are hereby dismissed.
- 22. A photocopy of this order be placed on the file of connected case.

(GURVINDER SINGH GILL)
JUDGE

14.05.2024
mohan

(N.S.SHEKHAWAT)
JUDGE

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