

2024:PHHC:075046-DB



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

CRA-D-459-DB-2003 (O&M)
Date of Decision:-27.5.2024

Suresh Kumar ... Appellant

Versus

State of Punjab ... Respondent

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

Present:- Mr. Balram Singh, Advocate (Amicus Curiae) with
Mr. Raghav Soni, Advocate for the appellant.

Mr. I.P.S. Sabharwal, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. Appellant – Suresh Kumar assails judgment dated 17.3.2003 passed by learned Additional Sessions Judge (Adhoc), Amritsar vide which he has been held guilty of having committed offence punishable under Section 302 of Indian Penal Code and has been sentenced to undergo life imprisonment apart from fine of Rs.1,000/-.
2. The matter relates to death of Ritu Bala, who died on account of burn injuries, in respect of which FIR No.73 dated 17.6.1999 under Section 302 of Indian Penal Code was lodged at Police Station Islamabad, Amritsar. It was initially on 28.4.1999 that ASI Harinder Singh had received telephonic



message that one Ritu Bala had been admitted in Shri Guru Ram Dass Hospital, Amritsar due to burn injuries. ASI Harminder Singh went to the hospital and recorded the statement (Ex.DC) of Ritu Bala, wherein she disclosed that she had been married to Suresh Kumar about 1½ years earlier and was blessed with a child. She stated that on 26.4.1999, she and her husband had gone to see her parents, who reside in Ram Nagar Colony and after returning back at about 10:30 P.M., she opened the door of her house and proceeded to light the oil lamp ('*diya*'), so that the electricity light switch is visible for switching on the light. However, because of her long flowing shirt and '*dupatta*', the same caught fire from the oil lamp ('*diya*'). She shrieked, which attracted her husband at the spot, who extinguished fire from her clothes. Firstly, she was taken to Dr. Pasricha's Hospital, Haripura, Amritsar and thereafter to Guru Ram Dass Hospital, Amritsar and from where she was shifted to CMC Hospital, Ludhiana, where she breathed her last on 3.5.1999. She categorically stated that her clothes had suddenly caught fire from oil lamp ('*diya*') as a result of which all of her body sustained injuries.

3. The aforesaid statement (Ex.DC) was recorded on 28.4.1999 in the presence of Dr. Pankaj Gupta, Medical College, Amritsar, who had made endorsement to this effect on the said statement as Ex.DB.
4. Subsequently, on 9.5.1999, Sudesh Kumari, mother of deceased Ritu Bala, sent a letter 'Ex.PA' to Senior Superintendent of Police, Amritsar, which reads as under:

“To

The S.S.P.,



Amritsar.

Subject : Injustice with poor lady, daughter done to death by burning by her husband, Police Station Islamabad.

Sir,

It is requested that I, Sudesh Kumari wife of Garish Chand, am resident of Ram Nagar Colony and my husband is a retired person. We make both ends meet by doing labour work. At the time of retirement, my husband had received the retiral emoluments. I have got married my daughter at Adarash Nagar. The name of my daughter is Ritu Bala. She was living in a rented house. She was killed by pouring kerosene oil on her body. The police of police station Islamabad is not taking any action in the matter. They have joined hands with the accused.

1. Accused Suresh Kumar s/o Duni Chand.
2. Guddi w/o Sohan Lal.
3. Sohan Lal
4. Rajinder Kumar.

Sd/-

Sudesh Kumari (in Hindi)
Yours faithfully,
Sudesh Kumari w/o Garish Chand,
Ram Nagar Colony, PS Islamabad,
Amritsar.”

5. It was on the basis of aforesaid letter that the FIR was lodged for offence under Section 302 IPC. The matter was investigated by the police. Inquest proceedings were conducted. The dead-body was got subjected to post-mortem examination. Statements of witnesses were recorded. Upon conclusion of investigation, challan was present before the Court of learned Judicial Magistrate 1st Class, Amritsar, who committed the case to the Court of Sessions vide commitment order dated 22.12.1999. Initially, challan was presented only against accused Suresh Kumar, but subsequently the other accused namely Guddi, Rajinder Kumar and Sohan Lal were also summoned



with the aid of Section 319 Cr.P.C. and thereafter charges were framed afresh against all four accused for offence under Section 302 IPC with alternate charges under Section 304-B IPC.

6. The prosecution, in order to establish its case, examined as many as 9 PWs, who broadly stated to the following effect:-

PW-1 Sudesh Kumari, Complainant stated that her daughter Ritu Bala was married to Suresh Kumar on 5.12.1997 and that after her marriage, whenever she used to visit her parental home, she used to complain that her husband Suresh Kumar, sister-in-law Guddi, brother-in-law Rajinder Kumar and Sohan Lal, husband of Guddi, used to maltreat and harass her so as to compel her to bring more dowry from her parents. She stated that on 27.4.1999, her daughter Ritu Bala and her husband Suresh Kumar had dinner at her (complainant's) house and thereafter left for their home situated at a distance of about half a kilometer. She stated that on the same night, her acquaintance Paramjit Kaur living near the house of accused informed her that Ritu Bala had received burn injuries. The accused Suresh Kumar took her daughter in a tempo to Ram Nagar Colony, where the complainant also reached and that her daughter was taken to Dr. Pasricha's Hospital, Amritsar by her husband and that complainant also accompanied him. Later the accused took complainant's daughter to Guru Ram Dass Hospital, Amritsar. On the next day, Ritu Bala was shifted to C.M.C. Hospital, Ludhiana i.e. on 28.4.1999, where she breathed her last on 3.5.1999. She stated that her daughter, while at CMC Hospital, Ludhiana, had disclosed while crying that the accused Suresh Kumar and other members of his family had set her on fire and that her son



should not be handed over to the accused as he would also be killed. She (complainant) stated that she had entered into an agreement to purchase a plot in the name of her daughter Ritu Bala, which was not liked by the accused and that the accused wanted cash from her.

PW-2 Constable Amarjit Singh is a formal witness, who tendered his affidavit 'Ex.PC' in evidence.

PW-3 Dr. Gurinder Singh, Resident, Plastic Surgery Department, C.M.C. Medical College, Ludhiana proved the medical record 'Ex.PD'. He stated that Ritu Bala was admitted in their hospital on 28.4.1999 with burn injuries to the extent of 90% and that he had notified the police.

PW-4 Ajit Singh stated that he knows accused Suresh Kumar, who used to purchase milk from him. He stated that about 3 years ago, accused Suresh Kumar had come to his house at about 06:45 P.M. and disclosed to him that he had killed his wife and was feeling remorseful.

PW-5 Kamlesh Rani stated that Suresh Kumar was a tenant in her house about 5-6 months prior to the occurrence and that about 2½ years back at about 11:00 P.M. accused Suresh Kumar had knocked at the door so as to enter the house alongwith his wife and his son and that later she heard shrieks of a woman, who was being burnt. She stated that Suresh Kumar wrapped his wife in a curtain cloth and took her to toilet. She heard the accused telling his wife that she should state that she had caught fire from an earthen lamp and should not name any person to be responsible for her death.



PW-6 ASI Baldev Singh, who had conducted inquest proceedings and proved the inquest report as 'Ex.PW/6/A'.

PW-7 Paramjit Kaur @ Pammi stated that she knew Ritu Bala and that on 27.4.1999 at about 12:00 in the night, she heard shrieks of Ritu Bala. She stated that she was on the roof of her house and saw that she (Ritu Bala) was lying at the door of their house and was crying that she had been set on fire by her husband. She further stated that her husband was compelling her that she should make a statement that she had caught fire from a '*diya*' (earthen lamp).

PW-8 Dr. Jasbir Singh, MO, CHC, Ludhiana, who had conducted post-mortem examination on the dead body of Ritu Bala and proved his report as 'PW-8/B'. He opined that the cause of death was due to shock as a result of extensive burns, which were sufficient to cause death in ordinary course of nature.

PW-9 Inspector Avtar Singh is the Investigating Officer of the present case who stated with respect to the proceedings of investigation conducted by him. He proved various documents prepared during the course of investigation.

7. Upon conclusion of evidence of prosecution, statement of accused in terms of provisions of Section 313 Cr.P.C. was recorded, wherein he denied the prosecution case in *toto* and pleaded false implication. The accused took a stand that Ritu Bala had caught fire accidentally, when she tried to light a '*diya*' and the clothes she was wearing caught fire and that although he had



immediately taken her to Guru Ram Dass Hospital and later shifted her to C.M.C. Ludhiana, but she could not survive.

8. The accused in his defence examined two witnesses. DW-1 Dr. Pankaj Gupta, Medical College, Amritsar stated that on 28.4.1999, when he was posted as Medical Officer at Guru Ram Das Hospital, Amritsar, ASI Harminder Singh had moved an application Ex.PA seeking his opinion regarding fitness of Ritu Bala and that upon examination of Ritu Bala, he furnished opinion Ex.DA to the effect that Ritu Bala was fit to make statement. He further stated that thereafter statement of Ritu Bala was recorded in his presence and Ritu Bala had thumb marked the same after admitting the same to be correct. DW-2 ASI Harminder Singh, Incharge, PP Kukranwala, PS Rajasansi, Amritsar stated that on 28.4.1999, upon receipt of a message from police control room regarding admission of Ritu Bala in Guru Ram Dass Hospital due to burn injuries, he went to the said hospital and after seeking opinion of the doctor regarding fitness of Ritu Bala recorded her statement Ex.DC in the presence of doctor.
9. The Trial Court, upon considering the evidence on record, held that the prosecution had been unable to establish its case qua accused Guddi, Rajinder Kumar and Sohan, but the charges stood fully established qua Suresh Kumar (appellant).
10. Learned counsel representing the appellant, while assailing the impugned judgment, submitted that the Trial Court fell in error in discarding the dying declaration made on 28.4.1999 pursuant to intimation sent to police station, which was recorded in the presence of doctor. It has been submitted that the



Trial Court further erred in relying upon the testimonies of the complainant, whereas apparently the FIR was lodged by her after concocting a false story after about 1 month of the occurrence and she even went ahead to make improvements while in the witness-box.

11. On the other hand, learned State counsel submitted that the impugned judgment is a well reasoned judgment based on credible evidence led by the prosecution and does not suffer from any infirmity. Learned State counsel submitted that the dying declaration does not merit reliance inasmuch as the same has not been recorded by any Judicial Magistrate and that such a statement recorded by a police officer would be suspect.
12. This Court has considered rival submissions addressed before this Court.
13. It is a case where statement of the deceased was recorded on 28.4.1999 i.e. just after 2 days of the occurrence when intimation was sent to the police station, wherein she categorically took a stand that it is a case of accidental fire. It is not in dispute that it is Suresh Kumar, who had initially taken the deceased to Guru Ram Dass Hospital, Amritsar and later on to C.M.C. Hospital, Ludhiana, where she breathed her last on 3.5.1999. The complainant admittedly was very much present in the hospital right from day one. However, she did not chose to inform the police. Still further, though the prosecution has examined 2 PWs i.e. PW-5 Kamlesh Rani and PW-7 Paramjit Kaur @ Pammi, who claim to have heard shrieks of the deceased, when she was set on fire, but even they did not chose to take any step to lodge any complaint or even to inform the complainant that it is not a case of accidental fire. There is a huge delay of about 1 month and 4 days in lodging the FIR,



which remains absolutely unexplained. Still further, in the statement made by complainant in the Court, she had made various improvements over and above what was recorded in the FIR, wherein it is simply alleged that accused had killed her daughter by pouring kerosene and setting her on fire.

14. Coming to the reliability of dying declaration, though it is a case where the dying declaration was recorded by a police official, who had reached the hospital on 28.4.1999 immediately upon receipt of intimation from the hospital authorities, but the police official had taken due care and had sought the opinion of doctor regarding fitness of Ritu Bala before recording her statement. The accused examined DW-2 Harminder Singh, ASI, Incharge, PP Kukranwala, PS Rajasansi, Amritsar, who duly proved the statement of deceased as Ex.DC. The accused also examined DW-1 Dr. Pankaj Gupta, Medical College, Amritsar, who categorically stated that upon request for seeking opinion about the fitness of Ritu Bala, he had medically examined Ritu Bala and had found her to be fit to make statement and that it was thereafter that her statement was recorded and he remained present throughout the course when her statement was recorded. He further stated that Ritu Bala had thumb marked the statement after admitting the contents of the same to be correct and that the statement also bears his signatures.
15. Both the aforesaid witnesses i.e. DW-1 Dr. Pankaj Gupta and DW-2 Harminder Singh, ASI, Incharge were cross-examined, but nothing substantial could be elicited during the course of their cross-examination so as to doubt their veracity. No inconsistency could be pointed out in their statements so as to discard the said statement. While it is correct that a dying



declaration should ideally be recorded by a Magistrate, but that does not mean that dying declaration made before other person cannot be relied upon.

16. In this context, a reference may be made to a judgment of Hon'ble the Supreme Court rendered in State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai, 2023(2) R.C.R. (Criminal) 334, wherein it has been held as follows:-

“41. There is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case.”

17. No suspicious circumstance having been shown to be existing at the time of recording of such statement, which was recorded immediately after intimation was sent to police and was recorded in presence of doctor, this Court does not find any reason for discarding the said statement. The deceased having given a clean-chit to the accused, the case of prosecution, which is based on a belated version, certainly does not merit credibility. In any case, as already discussed above the enormous delay of about 1 month in lodging the FIR despite the fact that complainant was always in touch with her daughter, also casts serious doubt as regards the case of prosecution.
18. In view of the discussion made above, we are of the opinion that the findings of guilt of appellant – Suresh Kumar as recorded by learned Trial Court,



CRA-D-459-DB-2003 (O&M) (11)

cannot sustain and are liable to be reversed. Consequently, the instant appeal is accepted and the impugned judgment dated 17.3.2003 passed by learned Additional Sessions Judge (Adhoc), Amritsar convicting the appellant is set aside. The appellant is acquitted of all the charges framed against him. His bail bonds/surety bonds shall stand discharged.

(GURVINDER SINGH GILL)
JUDGE

27.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

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