

CRA-D-380-DB-2004 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

CRA-D-380-DB-2004 (O & M)

Reserved on: 28.04.2025

Date of Pronouncement:01.05.2025

Om Beer

.... Appellant

V/s

The State of U.T., Chandigarh

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Ms. Ekta Thakur, Advocate,
Ms. Shikha Advocate and
Ms. Aditi Singh Rana, Advocate, for the appellant.

Mr. Kanwar Pal Singh, Addl.PP, U.T., Chandigarh with
Mr. Sanal Kumar, Advocate.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 29/30.01.2004 passed by the Additional Sessions Judge, Chandigarh.

2. The instant FIR came to be registered on 30.06.2000. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 29/30.01.2004. The present appeal against the judgment of conviction and order of sentence was filed on 29.03.2004. The matter has come up for final hearing now after almost 25 years of the registration of the FIR.

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3. According to the prosecution case deceased Anita was present in Jhugi No.291, Shahpur Rajiv Colony, Sector 38 (West), Chandigarh alongwith her younger brother Naresh and mother Smt. Bala Devi. At about 10 or 11 PM on 29.06.2000 Ombir accused and his brother-in-law Rakesh Kumar came there after attending a birthday party. They were under the influence of liquor. Ombir started saying that Anita was not a good girl and she had developed relations with Rakesh. Anita asked Ombir accused not to make such statements. In the meanwhile, Smt. Bala mother of Anita also came there. Ombir accused started beating Smt. Bala and thereafter, he struck a knife blow on the body of Rakesh. Anita started crying stating that Rakesh had been killed. Soon after, Ombir accused brought kerosene oil. He poured the same on the body of Anita and set her body on fire. After sustaining knife injuries Rakesh fell down and became unconscious. Anita had sustained burn injuries and a blanket was put on her body by Smt. Bala to extinguish the fire. Thereafter, Anita and Rakesh were taken to hospital and both of them were medico legally examined. The statement of Anita was recorded by Sh.Pushvinder Singh, the then Judicial Magistrate Ist Class, Chandigarh on 30.06.2000 at about 7.00 AM. Smt. Anita remained admitted in PGI upto 18.07.2000 and on that day she breathed her last. Smt. Anita died on account of injuries sustained on her body. On the basis of the statement of Anita, a case under Sections 302,307 IPC was registered against the accused. The Medical Officer found two injuries on the body of Rakesh and the head injury was declared as grievous and subsequently was

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considered dangerous to life. During investigation wearing clothes of the accused, burnt pieces of clothes of Smt. Anita, plastic cane with lid and one blanket etc. were taken in police possession and were sent to Central Forensic Science Laboratory for chemical examination. On these allegations, after recording statements of the prosecution witnesses, preparing site plan, receiving report of CFSL, receiving copy of post mortem report and completion of necessary investigation, the accused was challaned under Section 302,307 IPC.

4. On commitment, the accused was charge sheeted under Sections 302,307 IPC. He pleaded not guilty and claimed trial.

5. The prosecution examined 16 prosecution witnesses. The gist of the deposition of the relevant witnesses is as under:-

PW-1/Dr. S.P. Mandal conducted the examination of the dead body of the deceased-Anita and stated that as per the dying declaration of Anita made before the Magistrate Pushvinder Singh, JMIC, Chandigarh, she had sustained thermal burn injuries after a quarrel with Ombir who had poured kerosene oil on her and had lit her. On examination, the cause of death was opined to be 'septicemia' as a result of 46% septic burns. The time between the death and the injuries was 18 days and the death and post-mortem was 12 hours.

PW-7/Bala Devi, the mother of the deceased stated that on 29/30.06.2000 at about 9.00 PM, Ombir-accused came to her house in a drunken condition, started abusing and levelled allegations against her



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daughter-Anita (deceased) that she had illicit relations with his brother-in-law Rakesh Kumar. Ombir started beating her as well as her daughter-Anita. He also gave a blow of a stone on the head of his brother-in-law who fell unconscious. He, thereafter, poured kerosene oil on her daughter-Anita and set her on fire. One boy came there and wrapped Anita in a blanket and put off the fire. She took Anita to PGI and got her admitted there. In cross-examination, she stated that the accused went towards his *kothi* to bring a car, then took his brother-in-law/Rakesh Kumar to the PGI, while she accompanied by her daughter Anita and also went to the PGI in the same car. She denied the suggestion that her daughter had committed suicide by putting herself on fire.

PW-8/K.M. Varshney, the then Senior Scientific Officer at CFSL, Sector 36, Chandigarh, stated that he had detected kerosene oil or its residue in Ex.P-2 but the same could not be detected in Exs.P-1, P-3 and P-4.

PW-9/Dr. Shivika Malhotra, SMO, PGI (Emergency), Chandigarh stated that on 30.06.2000, when she was posted at PGI, one lady, namely, Anita wife of Mukesh was admitted at the hospital as a burn case.

SI Kuldeep Singh moved an application Ex.PG on the basis of which she declared Anita fit to make a statement. At 7.05 AM, JMIC Pushvinder Singh made a request Ex.PH and vide her endorsement Ex.PH/1, Anita was declared fit to make a statement on the basis of which Ex.P-16 was recorded in question answer form and she remained fit during the statement. She had

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made an endorsement Ex.P-17 after recording of the statement of Anita. The said statement recorded by the Magistrate was read over to the patient and she admitted it to be correct. On the same day, Rakesh Kumar was admitted and SI Kuldeep Singh submitted an application Ex.PJ on which vide endorsement Ex.PJ/1, he was declared fit to make a statement.

PW-10/Dr. Madhusudan stated that on 18.07.2000 at 2.40 AM, Anita who was admitted in the hospital on 30.06.2000, expired. He prepared her death summary.

PW-13/Dr. Arun Saroha stated that on 30.06.2000, he examined Rakesh Kumar and found the following injuries:-

(i) C.L.W. Right Parietal 3 cm.

(ii) X-ray skull fracture right parietal bone.

The nature of injury was declared grievous and the patient was discharged on 30.06.2000 on his request. In cross-examination, he stated that the CLW on the right parietal could be caused by a blunt or sharp edged weapon but could also be caused due to fall on a hard surface.

PW-14/Pushvinder Singh, Judicial Magistrate Ist Class, Chandigarh stated that on 30.06.2000, an application was submitted by SI Kuldeep Singh to him while he was discharging his duties as a Magistrate at U.T., Chandigarh. The application Ex.PH/2 was filed to record the statement of Anita wife of Rakesh Kumar under Section 164 Cr.P.C. He proceeded to the PGI to record her statement on the basis of the opinion of the Dr. Shivika who declared the patient fit for recording of a statement Ex.P-16. In cross-

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examination, he stated that after asking the first few questions, he found that she was fit to make a statement. The doctor had also checked the patient to know about her fitness.

PW-15/SI Kuldip Singh stated that on the night intervening 29/30.06.2000 on receipt of a wireless message, he proceeded to PGI, Chandigarh and moved an application Ex.PG, on the basis of which the doctor on duty vide his endorsement PG/1 declared Anita fit to make a statement. The doctor asked him to arrange a Magistrate for recording her statement. The doctor also declared Rakesh Kumar fit to make a statement who refused to give one. Thereafter, he proceeded to the residence of Pushvinder Singh JMIC, Chandigarh who proceeded to the spot and recorded the statement of the deceased. During the course of investigation, he prepared the rough site plan, took into possession burnt clothes pieces, an empty match box, an empty plastic container and one blanket. Ombir was produced by PW-Amrik Singh. His clothes were taken into possession. On receipt of information of the death of Anita, he proceeded to PGI, recorded the statements of Bala Devi mother of the deceased and Naresh her maternal uncle. On conclusion of the investigation, the report under Section 173 Cr.P.C. was presented.

PW-16/Rakesh Kumar did not support the prosecution version and instead stated that on 30.06.2000 while he was returning from some party with his brother-in-law/Ombir one stone struck his hand due to which he became unconscious and when he gained consciousness, he was in

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hospital. In cross-examination, he denied that he was in relationship with Anita-deceased.

The statements of PW-2/SI Balkar Singh, PW-3/HC Baljit Singh, PW-4/Constable Harjinder Singh, PW-5/Constable Dalbir Singh, PW-6/HC Manjit Singh, PW-11/SI Jai Singh and PW-12/Constable Yash Paul were recorded with regard to the different aspects of the investigation.

6. The statement of the accused was recorded under Section 313 Cr.P.C. wherein he denied the allegations of the prosecution and pleaded innocence.

7. Two prosecution witnesses, namely, Amrik Singh and Ajay Kumar were given up as having been won over by the accused. Both these witnesses were examined by the accused in his defence. DW-1/Amrik Singh stated that Ombir and Bala were residing in separate rooms/*jhuggies* situated in his land as tenant. Smt. Anita got married in Dadu Majra Colony. He stated that he had seen brother-in-law of Ombir, namely, Rakesh lying on the ground with injuries on his head. The vehicle was brought by Ombir and Rakesh was taken to PGI in that car alongwith Anita. He stated that Anita came out from the *jhuggi* and started weeping while sitting near Rakesh. Therefore, she went inside her *Jhuggi* and put kerosene oil on her body and set herself on fire. At that time Smt. Bala asked Anita to get Ombir involved in this case. One plastic can and match-box were recovered in his presence but no parcel was prepared in his presence. Anita had illicit relations with



Rakesh. Anita remained with her husband only for two months and thereafter, started living at the house of her parents.

Ajay Kumar DW-2 also stated that on hearing the noise of a quarrel at about 10.00 or 11.00 PM on 29.06.2000 he went to the place of occurrence. Ombir and Rakesh were quarrelling. Rakesh was lying there in an unconscious condition. He also stated that Anita came out and started crying, lying on the body of Rakesh. Thereafter, Anita went inside her house and after 15 minutes, she came out of her *jhuggi* in burning condition. He (DW-2) put his blanket on her body to extinguish the fire.

8. Based on the evidence led, the accused-appellant, namely, Ombir came to be convicted and sentenced by the Court of the Additional Sessions Judge, Chandigarh, vide judgment of conviction and order of sentence dated 29/30.01.2004 as under:-

Offence U/S	Sentence	Fine	In default of payment of fine
302 IPC	RI Life Imprisonment	Rs.5,000/- each	RI 01 year

9. The aforementioned judgment of conviction and order of sentence dated 29/30.01.2004 passed by the Additional Sessions Judge, Chandigarh is under challenge before this Court.

10. During the pendency of this appeal, the sentence of the accused-appellant/Ombir was suspended by this Court vide order dated 05.04.2007.



11. The learned counsel for the accused-appellant contends that the questions put to Anita-deceased were not sufficient to establish that she was mentally fit to record her statement. Merely because she was not unconscious and was able to speak could not lead to a presumption that she was mentally fit. In fact, she was unable to tell the name of her father and had stated that he had died although, he was alive. Bala Devi (PW-7), mother of the deceased-Anita had also stated that her husband was alive. She, thus, contends that the dying declaration cannot be accepted. She has also pointed out some contradictions in the statements of Anita recorded by the JMIC as well as that recorded of PW-7/Bala Devi. Anita stated in her statement that the injury was inflicted with a knife by Ombir on the body of Rakesh Kumar whereas PW-7/Bala Devi stated that Rakesh Kumar received injuries by throwing of a stone on his head by Ombir. Anita had stated that the blanket was put on her body by Bala Devi (PW-7), though, Bala Devi stated that the blanket was put by another boy. The case of the prosecution was that the blanket was put on the body of Anita by Ajay Kumar who had been examined as defence witness. She contends that Rakesh Kumar the alleged injured-eye witness had turned hostile and Amrik Singh as well as Ajay Kumar who were cited as prosecution witnesses also did not support the case of the prosecution. In such a situation, the statement of Anita and Bala Devi (PW-7) could not be believed. She further contends that the deceased was taken to the hospital by the accused which he would not have done had he committed the offence. A reference has also been made to



certain anomalies in the scaled site plan. She, thus, contends that the impugned judgment was liable to be set aside.

12. The learned counsel for the respondent-State, on the other hand, contends that the dying declaration made before PW-14/Pushpinder Singh, JMIC cannot be disbelieved. Though, there are certain discrepancies between the statements of the deceased and that of her mother/Bala Devi (PW-7), the same are not fatal to the prosecution case. The medical evidence of the doctors is categoric to the effect that the deceased was in a position to make a statement. The motive is also emanating from the dying declaration, though, Rakesh Kumar/brother-in-law of Ombir who was having illicit relationship with the deceased because of which the offence was committed has denied the same. He, thus, contends that the present appeal was liable to be dismissed.

13. We have heard the learned counsel for the parties and gone through the record.

14. It is apparent that Anita-deceased could not tell the name of her father and stated that he had died, although, he was alive. The prosecution evidence shows that Smt. Bala Devi (PW-7)/mother of the deceased-Anita had been deserted by her husband much prior to the occurrence. In these circumstances, it appears that Anita had been told by her mother that her father had died on account of this desertion. Therefore, the deceased treated her father to be dead. Be that as it may, other than this question, Anita-deceased has replied correctly to all question put to her. Even otherwise, as



she had suffered 46% burn injuries on vital parts of her body, minor discrepancies in her statement such as calling Rakesh Kumar her maternal uncle and Ombir the maternal uncle of Rakesh Kumar cannot effect the prosecution case in its entirety. From the record it emerges that Anita was declared fit to make a statement at 3.15 AM and thereafter, was declared fit to make a statement at 7.05 AM and thereafter at 7.40 AM.

15. In the case in hand, PW-9/Dr.Shivika Malhotra has given her opinion at every stage that the patient was fit for recording her statement. Merely because Dr.Shivika Malhotra did not specifically mention that Anita was mentally sound, it cannot be held that the statement of Anita is not believable. Further, PW-14/Pushpinder Singh, JMIC, Chandigarh has clearly stated that after asking her a few questions he found her to be fit to make a statement. As enumerated above, the opinion of the Magistrate is duly supported by the opinion of the doctor. In these circumstances, we have no doubt whatsoever that Anita was mentally sound and fit for recording her statement till her statement was completed.

16. The contradictions as mentioned above, are not sufficient to create doubts in the case of the prosecution. We cannot lose sight of the fact that the deceased had suffered 46% burn injuries. Therefore, if she said her father was dead and in fact, he was alive though estranged from birth or as to how Rakesh Kumar came to be injured would not create a substantial doubt in the prosecution case.



17. As regards Rakesh Kumar-injured turning hostile and Amrik Singh and Ajay Kumar prosecution witnesses appearing as defence witnesses thereby leaving the statement of Amrik Singh uncorroborated, we may point out that the statement of Anita recorded before her death is duly corroborated by the statement of her mother PW-7/ Bala Devi. Amrik Singh and Ajay Kumar had appeared at the place of occurrence after the body of Anita had already been put on fire. Therefore, it makes little difference if both these witnesses did not support the case of the prosecution. Even otherwise, it is the quality and not quantity of evidence that is relevant.

18. Though, there are certain discrepancies in the site plan regarding distances of some points from each other, the same would not amount to any material flaw in the prosecution case so as to disbelieve it in toto. Investigations are conducted by human beings and some contradictions etc. are bound to occur. It is for the Court to examine whether such lapses in investigation or flaws are fatal to the prosecution case or not. In the instant case, as discussed above, the dying declaration of Anita-deceased, the deposition of her mother PW-7/Bala Devi cannot be disbelieved.

19. As per evidence, after the occurrence, Rakesh Kumar was taken to PGI in a car which was arranged by Ombir accused. There is also clear evidence on the file that Anita was also taken to the PGI for her treatment in the same car. The argument that the accused would not have taken the deceased to the hospital had he committed the offence cannot be accepted. Ombir is not a habitual criminal but a first time offender. After the



commitment of the offence, sometimes the offender feels that he has committed a mistake and if the victim dies, he shall have to face the consequences. It was in these circumstances that the accused probably took the deceased and her mother to the hospital.

20. As a result of the above discussion, there is no reason to disbelieve the statements of the prosecution witnesses, particularly, the statement of PW-7 Smt. Bala Devi, dying declaration of Anita and statements of Medical Officers examined in this case. The prosecution witnesses have brought forth a true version of the occurrence. The statements of the prosecution witnesses cannot be discarded merely because Rakesh Kumar turned hostile and Amrik Singh and Ajay Kumar did not support the case of the prosecution and were examined as defence witnesses. The defence version is not believable that Anita committed suicide merely because Ombir inflicted a knife injury to Rakesh with whom she had developed illicit relations. Anita was a married woman although she was not living with her husband in those days. From the evidence on the file it appears that illicit relations had developed between Rakesh and Anita. Rakesh Kumar is brother-in-law of Ombir and in such circumstances, the possibility cannot be ruled out that Ombir thought it proper to kill Anita to get rid of her. Therefore, it is not a case of suicide as is sought to be projected by the defence.

21. In view of the aforementioned discussion, we find that the allegations stand duly established from the evidence led and therefore,

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finding no merit in the present appeal, the same stands dismissed. The accused-appellant is directed to surrender before the Jail Authorities concerned forthwith to serve out his remaining sentences.

22. The pending applications, if any, stand disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

01.05.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No