

(2008) 03 P&H CK 0202

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 60 DB of 1999

Ravinderjit Singh alias Bittu

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 4, 2008**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: S.D. Anand, J; A.K. Goel, J**Bench:** Division Bench**Advocate:** B.K. Mann, for the Appellant; Rajesh bahrdwaj, DAG, Punjab, for the Respondent

Judgement

Adarsh Kumar Goel, J.

The appellant challenges his conviction u/s 302 IPC, for which he has been sentenced to undergo life imprisonment and to pay fine of Rs. 2000/-, in default, to undergo further RI for six months.

2. Case of the prosecution is that Kuljit Kaur, deceased was married to the appellant about three years prior to the date of occurrence i.e. 15.7.1997. A son was born out of the marriage, who was about two years old at the time of the occurrence. The accused used to quarrel with the deceased as she used to object to his taking liquor. On 15.7.1997, at 3 PM, the accused was under the influence of liquor and he put kerosene on the body of the deceased and set her on fire and went out of the house. The deceased ran to the bathroom and sat under the tap of water and extinguished the fire. The accused then came alongwith his aunt Gurmit Kaur PW3 and Simranjit Kaur, who removed her to hospital at Rehana Jattan where she was given first aid. She was then taken to a doctor at Phagwara and because of her serious condition, she was then taken to Christian Medical College and Hospital, Ludhiana. ASI Bhupinder Singh PW11 reached the hospital on 18.7.1997 and applied to the CJM, Ludhiana for deputing a Judicial Magistrate to record statement of Kuljit Kaur. PW8 Shri Sanjiv Joshi, Judicial Magistrate 1st Class Ludhiana visited the

hospital and after satisfying himself about the fitness of Kuljit Kaur to make statement, recorded her statement in presence of Dr. Ajay Abrol PW9. PW11 ASI Bhupinder Singh visited the house of the accused and prepared rough site plan. The accused was arrested on 26.7.1997. Kuljit Kaur died in the hospital on 13.8.1997. PW10 ASI Sawinder Singh reached the hospital and prepared inquest report Ex.PB and sent the dead body for post mortem examination.

3. Dr. Vidhur Bhalla PW1 conducted post mortem examination on the dead body on 14.8.1997 at 9.45 AM. He found as under :-

"The length of the body was 5'-4". It was dead body of female subject, moderately built and was lying in mortuary of civil hospital, Phagwara. It was covered with white bandages on neck, chest, abdomen. Both the upper limbs and lower limbs partially. Bandages were removed. Rigor mortis absent in upper limbs and present in the lower limbs. Dirty yellowish white and at places blackish scabs were present over the front of the neck, chest, abdomen, over the back (excluding hips and lower part of the back), both the upper limbs on left side involving left forearm and left hand at places on right side extending just below elbow, front and sides of both the thighs extending just above knee.

Dirty white exudate and pus were present at places over these areas.

Healed light brownish scar was present over fingers and hands. 8 cm x 7 cm pressure sore was present on the sacrococcygeus region, reddish brown scab formation was present. Congestion of membranes and brain tissue was present. Both the lungs were edematous. Kidneys were edematous and clotting of tissues present. Rest of the viscera was healthy and normal. In our opinion, the cause of death in this case was septicaemia with thermal burns. The injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature."

The statement of the deceased Ex.PF/1 recorded by PW 8 Sanjiv Joshi is as under :

"Q. What is your age ?

A. My age is 23 years.

Q. How many years have been passed of your marriage ?

A. My marriage taken place 3 years before March 1997.

Q. How many children have you ?

A. I have one boy of two years.

Q. What is the name of your father in law ?

A. Mohan Singh.

Q. How and when you set on fire ?

A. On 15.7.1997 Tuesday at 3 PM my husband Ravinderjit Singh was in drunkard condition and he poured kerosene oil upon me and set fire. After the marriage my husband was quarrelling with me as I objected him to take liquor.

Q. Where you set on fire ?

A. My husband has set me on fire in the room near the stairs in my in-laws house.

Q. What you have done after fire ?

A. After setting me on fire my husband went outside the house then I went to the bath room and sat down under the water tap and extinguished the fire. After set off the fire my husband came alongwith my aunt (Tai) Gurmeet Kaur and Simranjit Kaur, aunt (Chachi).

Q. Who and when you have taken to hospital ?

A. First of all Gurmeet Kaur, Simranjit Kaur and brother of Simranjit Kaur, whose name I do not know, taken me to Guru Nanak Hospital, Rehana Jattan, where medical treatment was given to me then I was sent to Phagwara, but I do not know the doctor. As I was serious. I was advised to reach the CMC Ludhiana, where I am under the treatment. I was admitted in CMC Ludhiana by the aunt (Chachi) of my husband, Kulwinder Kaur, daughter of the sister of my father and my husband Ravinderjit Singh. I was admitted in CMC Ludhiana on Tuesday at 11.30 PM.

Q. On which portion of the body you have received the injuries of fire ?

A. Injuries of fire are on my both the arms, abdomen and both leg gs.

Q. Whether any other person was present in the house at the time of fire?

A. No other person was present in the house except my two years child. My mother in law and father in law had already gone to America.

Q. Whether in your opinion any other person involved in setting you on fire ?

A. My husband Ravinderjit Singh alone has set me on fire. No other person has been involved in this regard.

Q. Whether the dispute occurred between you and your husband Ravinderjit Singh was due to taking liquor by him on any other reason ?

A. My dispute with my husband occurred only due to taking liquor daily, as I used to prohibit him to take liquor.

Q. Whether you want to say any thing else about the above said incident.

A. The dispute was only due to liquor and only Ravinderjit Singh set me on fire. Nothing is to say except this."

4. The prosecution examined PW1 Vidhur Bhalla, who conducted post mortem, PW2 Dalip Singh, Draftsman, PW3 Gurmit Kaur, aunt of the accused, who did not support the case of the prosecution, PW4 Bhupinder Singh, father of the deceased, PW5 Dr. Sandip Jiwan Mal, who admitted Kuljit Kaur to the hospital on 16.7.1997, PW6 Dr. Deepak Bhatti of CMC Ludhiana, PW7 CI Ram Kumar, who handed over special report to the Magistrate, PW8 Sanjiv Joshi, Judicial magistrate 1st Class, who was deputed to record the statement of Kuljit Kaur, PW9 Dr. Ajay Abrol, who gave opinion of fitness of Kuljit Kaur to make statement, PW10 ASI Sawinder Singh and PW11 ASI Bhupinder Singh, Investigating officer.

5. The accused denied the prosecution allegations and stated that on 15.7.1997, he returned from his fields and found that some persons had collected at his house. His wife had suffered burn injuries. On enquiry, she informed him that she had accidentally caught fire from the stove and he then went to his aunt Gurmit Kaur. She and Simranjit Kaur accompanied by other ladies came to the house and removed Kuljit Kaur to Guru Nanak Hospital Rehana Jattan, where she was given first aid. She was taken to CMC Ludhiana. Statement of deceased was manoeuvred by ASI Bhupinder Singh.

6. After considering the evidence on record, the trial court held that the case of the prosecution was proved beyond reasonable doubt and convicted and sentenced the appellant.

7. We have heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellant submitted that there being 60% burns and the deceased having survived for one month, her statement could not be treated as dying declaration. In the history given in the MLR Ex.PE/1, the cause of burns was said to be leaking of the stove. The dying declaration was recorded three days after the occurrence and was, thus, not truthful. Procedure of taking medical opinion was not followed before recording the dying declaration. Thumb impression was taken on the dying declaration which was unusual. The Magistrate despatched the dying declaration only on 2.9.1997. The accused immediately called her aunt and removed Kuljit Kaur to the hospital which was consistent with his stand that Kuljit Kaur had caught fire on account of stove leak. The Investigating Officer admitted that he did not associate father of the deceased with investigation. Father of the deceased PW4 Bhupinder Singh did not make any allegation against the appellant. Death was on account of septicaemia. There being no motive and no intention to cause death, the case will not fall u/s 302 IPC.

9. We do not find any merit in the contentions raised.

10. Dying declaration Ex.PF/1 has been recorded by PW8 Shri Sanjiv Joshi, Judicial Magistrate, 1st Class. He deposed that he obtained opinion of the doctor Ex.PG/1 about fitness of Kuljit Kaur to make statement. He also put questions to her to ascertain her condition and then he recorded statement Ex.PF/1 in question answer

form. The doctor was present with him throughout. The statement was made by the deceased of her own wish and without influence or pressure on her. She thumb marked the same in token of its correctness. After completing the statement, he again obtained certificate Ex.PF that she was fully alert and fit during the statement. His statement was sent to the Ilaka Magistrate vide memo Ex.PF/2. PW9 Dr. Ajay Abrol corroborated the said version. He proved his opinion Ex.PG/1 :

"Patient is fit to give statement at present"

4.45 PM.

He stated that in his presence, statement Ex.PF/1 was recorded. She remained fit during the time her statement was being recorded. He also gave note Ex.PF to that effect. Ex.PF is to the effect that :-

"Patient was fully alert and fit during her statement"

5.30 PM.

He had identified Kuljit Kaur before PW8 Shri Sanjiv Joshi, Judicial Magistrate, Ist Class. Her thumb impression was taken as she was not in a position to append her signatures.

11. The dying declaration has been duly recorded in question-answer form. The doctor remained present and he certified fitness of Kuljit Kaur to make statement. The dying declaration is quite natural and reliable and inspires confidence. The same does not suffer from any infirmity. Independent corroboration was a rule of prudence but when the dying declaration was free from any suspicion and had been properly recorded, the same could be validly made the basis of conviction. The plea of the accused is that the deceased caught fire accidentally. There is absolutely no material to substantiate the said self serving plea. Merely because the appellant assisted in removing the deceased to the hospital does not falsify his role in having caused the death of Kuljit Kaur by setting her on fire. Septicaemia or cardiac arrest are direct consequence of burn injuries. The endorsement Ex.PE/2 to the effect that the patient was admitted with the history of burning due to leak from kerosene stove could not be attributed to the deceased.

12. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any

infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming a safe basis for conviction. [Smt. Laxmi Vs. Om Prakash and Others,](#)

13. In the present case, the dying declaration was properly recorded and can be accepted as genuine. The occurrence was in the day light. There could be no dispute about identity. There is no infirmity whatsoever for rejecting the dying declaration.

14. Mere fact that the Magistrate forwarded the dying declaration vide memo dated 2.9.1997 may at best be the negligence of the staff of the Magistrate but the same does not, in any manner, cast any doubt about the genuineness of the dying declaration. Mere delay on the part of the Investigating Officer in taking steps to get the dying declaration, does not, in the circumstances of the present case, create any suspicion about the genuineness of the statement made. Admissibility of the statement cannot be objected on the ground that declarant died after about one month. Reference may be made to judgment of the Hon"ble Supreme Court in [Tehal Singh and Others Vs. State of Punjab,](#) . There is no infirmity in the prosecution version.

Thus, we do not find any merit in this appeal. Conviction and sentence of the appellant is affirmed.