
(2006) 04 P&H CK 0135

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 270-DB of 2002

Rajinder Kumar alias
Sonu

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 18, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Tej Pratap Singh Mann, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Swinder Singh Siao and Ms. G.K. Mann, for the Appellant; S.S. Randhawa, D.A.G., for the Respondent

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 7.03.2002 whereby he convicted the appellant u/s 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default, to further undergo RI for six months.

2. The case of the prosecution is unfolded by the statement Ex.PB/2 of Kamlesh Kumari daughter of Mykoo Lall aged 15/16 years, given to Shri Tarsem Mangla, J.M.I.C. Amritsar at 12 noon on 27.03.2000. Kamlesh Kumari stated that yesterday, at about 7/8 p.m. she was present in her house, when Rajinder Kumar alias Sonu who works in a tea manufacturing factory in New Golden Avenue, came from outside. He called Kamlesh Kumari and enquired from her about a letter. Kamlesh Kumari addressed him as Haramzada and questioned him as to why she would write a letter to him. On this, Rajinder Kumar got enraged. He had a tin box in his hand containing kerosene oil, which he poured on her and thereafter set her on fire. Kamlesh Kumari raised a hue and cry and Rajinder Kumar ran away. Kamlesh Kumari's father had in the meanwhile come to the spot. He extinguished the fire. In the process, the hands of her father got burnt. Rajinder

Kumar was known to Kamlesh Kumari for a long time and he wanted to marry her, but her parents were against this proposal. Further, she stated in her statement that since Rajinder Kumar had set her on fire, he should be punished severely. On the basis of this statement, F.I.R. Ex.PK/2 was registered on 27.03.2000 at 2.30 p.m. Special report reached the J.M.I.C., Amritsar on the same day at 4 p.m.

3. The prosecution to prove its case, brought into the witness-box Shri Tarsem Mangla PW-1, Dr. Amarjit Singh PW-2, Dr. Harjinder Singh Sidhu PW-3, HC Mangal Singh PW-4, Constable Pardip Kumar PW-5, LC Sukhdev Raj PW-6, Roop Rani PW-7, Maykoo Lal PW-8 and Inspector Baldev Singh PW-9.

4. Learned counsel for the appellant has argued that the alleged occurrence had taken place on 26.03.2000 at 7/8 p.m. F.I.R was registered on 27.03.2000 at 2.30 p.m. There is an unexplained delay of 18 hours. Shri Tarsem Mangla, J.M.I.C. PW-1 recorded the statement Ex.PB/2 at 12 noon after taking the opinion of the doctor at 12.10 p.m. The distance between the Civil Hospital and the place of occurrence is 1-1/2 kms. Dr. Harjinder Singh Sidhu PW-3 has not stated in his endorsement Ex.PB/5 that Kamlesh Kumari was in a fit state of mind to give her statement. As per the prosecution witnesses, appellant left behind a Chappal, a match-box and a tin. The recovery memo Ex.PL has shown the recovery of a Chappal only. Similarly, the Investigating Officer Baldev Singh PW-9 and Roop Rani PW-7, mother of the deceased, have also stated that a Chappal was recovered from the place of occurrence. They have not stated about the match-box or tin being recovered. Though it has been stated by Roop Rani PW-7 and Maykoo Lal PW-8 that they along with their son were present in the house, but it is strange that none of them came forward to save the deceased from getting burnt. Shri Tarsem Mangla, J.M.I.C. PW-1 has stated in his testimony that he did not take the thumb impression of the deceased on the dying declaration Ex.PB/2, as the skin of the thumb of the deceased had been burnt. Dr. Amajit Singh PW-2 and Dr Harjinder Singh Sidhu PW-3 have categorically stated that though the thumb of the deceased were burnt, but the thumb of her feet were intact. The Judicial Magistrate should have taken the foot thumb impression of the deceased. Apart from Shri Tarsem Mangla, J.M.I.C. PW-1, Dr. Harjinder Singh PW-3 and an A.S.I. were also present, as per the prosecution. No reason has been given by Shri Tarsem Mangla, J.M.I.C. PW-1 as to why he did not make Dr Harjinder Singh Sidhu PW-3 and the A.S.I. present witnesses to the dying declaration.

5. Learned counsel for the State has argued, that apart from the dying declaration Ex.PB/2 which inspires confidence the dying declaration is corroborated by the statements of Roop Rani PW-7 and Maykoo Lal PW-8. Both these witnesses had seen the occurrence. Dr. Anil whose signatures were identified by Dr Hadinder Singh Sidhu PW-3, has stated in his endorsement Ex.PB/1 that before recording of the dying declaration, the deceased was well oriented. The dying declaration is precise and inspires confidence. Shri Tarsem Mangla, J.M.I.C. PW-1 before recording of the statement, had identified himself to Kamlesh Kumari and then recorded her statement after affirming oath to her. Opinions of the doctors present at that moment Exs.PB/1 to PB/6 were taken,

before recording of the statement. It was natural for Roop Rani PW-7 mother of the deceased, Maykoo Lal PW-8 father of the deceased and brother of the deceased to be present in the house, as the occurrence had taken place in the night. There is no delay in recording of the F.I.R. The occurrence had taken place in the night and it was natural for the J.M.I.C. to come on the next day and record the statement.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. This case hinges on two pieces of evidence. Firstly, the dying declaration EX.PB/2 on the basis of which the F.I.R. Ex.PK/2 was recorded. The second piece of evidence being the eye-witness accounts as stated by Roop Rani PW-7 mother of the deceased and Maykoo Lal PW-8 father of the deceased. Shri Tarsem Mangla, J.M.I.C. PW-1 in his testimony before the Court has stated, that on 27.03.2000, an application was made by the police Ex.PA to the Chief Judicial Magistrate, Amritsar and he was directed by the C.J.M. by order Ex.PA/1 to go to Guru Nanak Dev Hospital, Amritsar (for short, "G.I.M.D. Hospital") for recording the statement of Kamlesh Kumari. He reached G.N.D. Hospital and found Kamlesh Kumari lying admitted in the Emergency Ward of the hospital with burn injuries. He sought the opinion of the doctor and vide endorsement Ex.PB/1 Dr. Anil endorsed that the patient was fit to make a statement and was well oriented. Vide endorsement Ex.PB/5, Dr. Harjinder Singh Sidhu PW-3 opined that patient is fit to make a statement. Thereafter the statement of Kamlesh Kumari was recorded. Her statement is Ex.PB/2. He has further stated that two doctors were present near Kamlesh Kumari at that time. Further, he himself verified from Kamlesh Kumari as to whether she was in a fit condition to give a statement and was she well oriented. After satisfying himself, he then introduced himself to Kamlesh Kumari and informed her that he wanted to record her statement. Thereafter he recorded her statement Ex.PB/2 on oath. Whatever Kamlesh Kumari stated he recorded in verbatim. Kamlesh Kumari stated that on the previous day i.e. 26.03.2000 at about 7/8 p.m. she was present in her house when Rajinder Kumar alias Sonu who was working in a tea manufacturing factory, came to her and enquired from her about a letter. Kamlesh Kumari stated that she then scolded Rajinder Kumar. Rajinder Kumar got angry and threw kerosene oil on her body. He then set her on fire with a match-stick. She raised a hue and cry whereupon her father came there and extinguished the fire. Rajinder Kumar thereafter ran away. In the process her father also suffered burn injuries. She further stated that Rajinder Kumar wanted to marry her but her parents were not agreeable to it. Her statement was read over to her and she admitted its contents to be correct. He could not obtain the thumb impressions of Kamlesh Kumari, as both her thumbs were burnt and he gave a note to this effect as Ex.PB/3. He further certified that the version recorded was true and truthful, vide endorsement EX.PB/4. Thereafter vide endorsement Ex.PB/6 he sealed the statement which was sent to the District Magistrate. As per Ex.PB/6, by 12.05, the statement of Kamlesh Kumari had been recorded. Apart from Kamlesh Kumari, both the doctors were the only persons who were present there. The dying declaration Ex.PB/2 is further corroborated by the medical

evidence. Dr Amarjit Singh PW-2 who performed the post-mortem on the body of Kamlesh Kumari, has stated that superficial to deep burns were present all over the body, sparing both legs and back of head and both feet of the deceased. Extent of burns was about 80%. It is clear from the statement of Dr. Amarjit Singh PW-2 that the back of the head of the deceased was not burnt.

8. Learned counsel for the appellant has laid much stress in his arguments, that it was a case of suicide. This argument of the counsel does not cut much ice. If we take it that Kamlesh Kumari poured kerosene oil on her head before burning herself, then kerosene oil would have also gone on the back of her head and that portion also would have got burnt. But as per the medical evidence, it is clear that kerosene oil was thrown on Kamlesh Kumari from the front which burnt her face and other parts of her body, except the back of her head. Further, if she had poured kerosene on herself, the kerosene oil would have gone down to her feet which also would have got burnt. Both the hands of the deceased including the thumb and fingers were burnt. Due to these burns, she was not in a position to thumb-mark any paper.

9. It was natural for both Roop Rani PW-7 mother of the deceased and Maykoo Lal PW-8 father of the deceased to be present in their own house at 7/8 p.m. Both of them witnessed the occurrence. Their testimony in cross-examination could not be shattered. In fact, Maykoo Lal PW-8 showed to the Court, during the course of his statement the burn injuries which he suffered while trying to extinguish the fire. The dying declaration recorded by Shri Tarsem Mangla, J.M.I.C. PW-1 inspires confidence. It gets corroboration from the statement of Roop Rani PW-7 and Maykoo Lal PW-8.

10. We do not find any infirmity in the judgment of the trial Court.

11. Dismissed.