Bhagwan Singh Vs State of Punjab

Criminal Appeal No. D-325-DB of 2008

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 21, 2013

Hon'ble Judges: Jasbir Singh, J; Inderjit Singh, J

Bench: Division Bench

Advocate: Vivek K. Thakur, for the Appellant; B.S. Bhalla, A.A.G., Punjab, for the Respondent

Judgement

Inderjit Singh, J.
The instant appeal is directed against the judgment and order of sentence dated 01.04.2008, passed by the Sessions

Judge, Jalandhar, vide which appellant Bhagwan Singh has been held guilty for the offence punishable u/s 302 IPC and convicted and sentenced to

undergo imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo rigorous imprisonment for four

months. Brief facts of the prosecution case are that the FIR in the present case has been registered on the statement (dying declaration) of Baljit

Kaur @ Sandeep Kaur recorded at 9:00 p.m. on 12.09.2006 by ASI Mohinder Singh, Police Station Mehatpur. Earlier also ASI Mohinder Singh

of Police Station Mehatpur got recorded the statement of Baljit Kaur Ex.PN at 7:30 p.m. on 11.09.2006. In that statement, Sandeep Kaur stated

that she was married to Bhagwan Singh about six years ago. Two daughters namely Maninder and Gurjit Kaur were born. On 11.09.2006, she

and her husband were present at home and her husband had come to take meal. Her daughters had gone to school. After serving the food to her

husband when she came in the kitchen, gas stove on which milk was placed was off. When she lighted that stove with the help of lighter, it gave a

huge burst due to which her face and clothes caught fire and her body was burnt. Her husband tried hard to extinguish the fire but in the meantime

her body was badly burnt and while extinguishing the fire, hands of her husband were also burnt. She caught fire due to bursting of gas stove. No

person was responsible for it. Later on, the police gave application to get recorded the statement of Baljit Kaur from the Magistrate and Judicial

Magistrate recorded the statement of Baljit Kaur (ExPJ) at 5:10 p.m. on 12.09.2006 in which Baljit Kaur @ Sandeep Kaur stated as under:-

My husband Bhagwan Singh is a heavy drunkard and is keeping quarrel with me all the times. He always obeys his mother and calls me that I do

not have any wisdom. Yesterday in the morning on 11.09.2006, he was lying after consuming liquor. I asked him to go to work. He did not agree

and told me that he is going to his friends. When I prevented him, he picked up a quarrel with me. I told him that if he loves his friends only, then I

have no relations with him and what I am to do by living alive. I went to the room and brought kerosene in a glass from the kitchen and after going

into the room sprinkled it on myself. My husband Bhagwan Singh said that if I was so fond of dying he himself will do that work and he lit a match

stick and I caught fire. I raised an alarm on which he became nervous and started extinguishing the fire and at about 1:00 O''clock got me admitted

in Civil Hospital, Nakodar. On refusal from there he brought me here and got me admitted. I have nothing more to say.

2. After recording the statement by the Magistrate, ASI Mohinder Singh, Police Station Mehatpur again recorded the statement Ex.PR of Baljit

Kaur @ Sandeep Kaur at 9:00 p.m. on 12.09.2006 in which she mainly deposed the same facts as stated before the Judicial Magistrate. On the

basis of that statement, ruqa was sent to the police station and the FIR was registered. Then the Investigating Officer went to the place of

occurrence and inspected the same. He prepared the rough site plan Ex.PS. One glass made of steel, smeared with kerosene, was recovered from

the place of occurrence which was taken into police possession vide memo Ex.PB. On 01.10.2006, after receiving the information that Baljit Kaur

@ Sandeep Kaur had died, Investigating Officer reached the hospital. He prepared the inquest report Ex.PY. Dead body was sent for

postmortem examination. On 05.10.2006, accused Bhagwan Singh was arrested. On interrogation, accused suffered disclosure statement and in

pursuance of disclosure statement, he got recovered a "chadar" from his house and the same was taken into police possession after preparing

sealed parcel. Statements of witnesses were recorded. After necessary investigation, challan against the accused was presented before the Court.

3. On presentation of challan, copies of challan and other documents were supplied to accused u/s 207 Cr.P.C. Finding a prima facie case against

the accused, he was chargesheeted for the offence u/s 302 IPC to which he pleaded not guilty and claimed trial.

4. The prosecution, in support of its case, examined PW1 Dr. H.S. Kahlon, Medical Officer, Civil Hospital, Jalandhar, who mainly deposed that

he alongwith Dr.Gurinder Chawla conducted the postmortem examination on the dead body of Sandeep Kaur on 02.10.2006. He deposed that

dead body was having deep burns all over the body except some area in the pubic region. The burnt area was 97%. Some area of the burns

showed granulation tissue formation. Line of redness was present between the burnt and the rest of the same. In the opinion of the doctor, the

cause of death was septicemic shock following burns which was sufficient to cause death in the ordinary course of nature. Burns were ante-mortem

in nature. The trial Court also summoned Dr.Puneet Pasricha, Plastic Surgeon, Pasricha Hospital, Jalandhar as a Court witness to know whether

any smell of petroleum product was coming from her person or wearing apparels at that time and the doctor stated that no such smell was coming

out. PW2 Sukhbir Singh, father of Baljit Kaur, mainly deposed that Baljit Kaur was married about six years before her death with Bhagwan Singh.

After her marriage, she was named as Sandeep Kaur by her in-laws. Two daughters were born from that wedlock. The accused had not been

doing the work for all the thirty days of the month and he is addicted to liquor. About one month before the occurrence, he had opened a shop for

sale of plastic goods. His daughter used to prevent him from taking the liquor and on that account he used to beat her. He further deposed that he

was told this fact by his friends. On 11.09.2006, he came to know that she had received burn injuries. On receipt of this information, he came to

Civil Hospital, Jalandhar and met his daughter at that place. She was not in a position to speak at that time. This witness has not supported the

prosecution version and was declared hostile. In cross-examination, when this witness was confronted, he stated that he was told by his daughter

on that date itself that on that date the accused consumed liquor in the morning and she asked him to go to the place of his work but inspite of that

he had gone to his friends. She also told him that when she did not allow him to go to his work/his friends, he started quarreling with her and gave

beatings and as a result of this, she poured oil on herself and accused set her on fire with the intention to kill her. PW3 Manpreet Singh, brother of

Baljit Kaur (deceased), deposed that on receiving information on 11.09.2006, he alongwith his mother and father went to Civil Hospital,

Jalandhar. It was disclosed by his sister that on that day the accused had been quarrelling to her and she had asked him to go to the place of his

work. On this, he (accused) replied that he will go to his friends and when she stopped him from going there, he again quarreled. Upon this, she

poured kerosene on her and accused set her on fire by saying that if she was interested in death then he will set her on fire. He also deposed

regarding taking of glass into police possession. PW4 Constable Gurdev Singh deposed regarding delivery of special report to Illaqa Magistrate

etc. PW5 Dr. K.K. Pasricha mainly deposed that Sandeep Kaur wife of Bhagwan Singh was admitted in his nursing home and hospital on

11.09.2006 as a case of burn injuries. He gave information to the police about her admission. He was not present at the time of her admission and

as such he cannot say if any information about her admission was given or not. He was present at the time of death and intimation about death was

given in writing to the police which is in his hand. He also deposed regarding bed head ticket. PW6 Dr.Harjit Singh mainly deposed that on

11.09.2006 he was posted as E.M.O., Civil Hospital, Jalandhar. On that day, Sandeep Kaur was admitted in the hospital as a case of burn

injuries by Sukhchain Singh. She was referred to this hospital from Civil Hospital, Nakodar. He treated her for the burn injuries. On the same day,

the police came to the hospital and made an application for inquiring about the fitness of the injured for making her statement. He declared her fit to

make her statement. Then her statement was recorded in his presence. PW7 Sh.K.K.Goyal, Chief Judicial Magistrate, mainly deposed that on

12.09.2006, he was posted as Judicial Magistrate 1st Class, Jalandhar. On that day, the application given by the police for recording the statement

of Baljit Kaur u/s 164 Cr.P.C., was marked to him by the Chief Judicial Magistrate. He went to Pasricha Hospital and got recorded her statement

Ex.PJ. He also deposed that he gave an application to the doctor for inquiring about the fitness of the injured to make her statement and the doctor

declared her fit to make the statement. He also deposed that throughout the recording of her statement, she remained fit and stable and he obtained

certificate Ex.PK from the doctor to that effect. PW8 Head Constable Sarabjit Singh mainly deposed regarding getting conducted the postmortem

examination on the dead body of Sandeep Kaur @ Baljit Kaur. PW9 ASI Mohinder Singh mainly deposed regarding partly investigating the case.

PW10 Sub Inspector Onkar Singh deposed regarding the arrest of accused and partly investigating the case. PW11 ASI Jagdish Kumar mainly

deposed regarding scribing of FIR on receiving the statement of Sandeep Kaur.

5. At the close of prosecution evidence, the accused was examined u/s 313 Cr.P.C. and confronted with the evidence of prosecution. The

accused denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he is innocent and has been falsely

implicated. He was having good relations with his wife. Two daughters aged five years and six years were born from the said wedlock and they are

residing with him. On the day of alleged occurrence i.e. 11.09.2006, he came to his house. His wife was preparing food on the gas stove and she

caught fire accidentally. He tried to extinguish the fire and during that process his both hands received burn injuries. He alongwith his brother,

brother"s wife and other family members removed his wife to Civil Hospital, Nakodar and from Civil Hospital, Nakodar to Civil Hospital,

Jalandhar and from there she was referred to Pasricha Hospital. Statement of his wife was recorded by ASI Mohinder Singh in the presence of the

doctor to the effect that she received the burn injuries accidentally while working on the stove. His wife also informed the doctors of Pasricha

Hospital that she caught fire accidentally. He was medically examined at Civil Hospital, Nakodar and remained admitted there for 25 days for his

burn injuries. Ajit Singh is the husband of his wife"s sister. He was also middleman of his marriage. He used to interfere in their family unnecessarily

and he asked him not to visit their house and due to that he was annoyed with him. During the night of 11.09.2006, Ajit Singh alongwith other

relatives of his wife came to the hospital. Ajit Singh and other family members of his wife tutored her to make statement against him and a false

case has been registered against him. He had spent Rs. 1,00,000/- for her treatment.

6. In defence, the accused examined DW1 Joginder Singh, who stated that accused is from his village. They are on visiting terms with each other.

He never heard any complaint against accused and his wife. Accused used to operate combine harvester and own agricultural land also. He never

received any complaint from the side of Daljit Kaur or her parents that she was being harassed by the accused. DW2 Dr.Ajay Kumar Gupta

mainly deposed that Bhagwan Singh was admitted in Civil Hospital, Nakodar on 11.09.2006 as a case of burn injuries and he was discharged on

05.10.2006. He also deposed regarding bed head ticket. Accused after tendering into evidence medical bills Mark A-1 to Mark A-34 closed the

defence evidence.

7. The trial Court, after appreciation of evidence, convicted and sentenced the accused as stated above.

8. At the time of arguments, learned counsel for the appellant-accused contended that a reasonable doubt exists in the prosecution version.

Appellant has been falsely implicated in the present case and he is innocent as there are three dying declarations given by Baljit Kaur (deceased)

out of which first dying declaration was correct whereas under the pressure of her relatives as a result of tutoring, she made two other dying

declarations. Learned counsel for the appellant also contended that there was no pre-planning to commit the murder nor there was any intention to

commit the murder nor there was any motive to commit the occurrence. He further contended that expenses on treatment of Baljit Kaur were

borne by her husband. Both Baljit Kaur (deceased) and Bhagwan Singh (accused) were admitted in the hospital. Accused had also received burn

injuries which shows that accused had tried to extinguish the fire and to save her. Learned counsel for the appellant next contended that as per the

statement of CW1 Dr.Puneet Pasricha, there was no smell of kerosene from the deceased and her clothes. Therefore, learned counsel for the

appellant contended that the appeal be accepted accordingly.

9. On the other hand, learned Addl. Advocate General, Punjab contended that the case of the prosecution has been duly proved by the PWs. The

first statement was given by the deceased under the influence of accused and his relatives whereas the correct statement was given before the

Magistrate. He contended that there are oral dying declarations made by the deceased to her father and brother. There is no other evidence to

show that there was any influence of her relatives or the dying declaration given to the Magistrate is tutored one. He further contended that there

being no merit in the appeal, the same should be dismissed.

10. We have heard learned counsel for the appellant and learned Addl. Advocate General, Punjab and with their assistance we have gone through

the evidence on record minutely and carefully.

11. From the evidence on record, we find that the occurrence took place in the house of accused. It is admitted case that accused alone was

present at the time of occurrence in the house as accused has proved that he was also admitted in the hospital alongwith Baljit Kaur and was

having burn injuries on his hand. In the first statement Ex.PN which was recorded on that day i.e. 11.09.2006 at 7:30 p.m. by ASI Mohinder

Singh, Baljit Kaur stated that she received injuries accidentally from the gas stove. Admittedly, at that time, only the accused was present in the

hospital and none of the relatives had come there. The statement Ex.PJ was recorded by the Judicial Magistrate on the next day i.e. 12.09.2006.

The deceased had received 97% burn injuries. There is no cogent evidence on record to show any tutoring. Rather, as per evidence, PW2

Sukhbir Singh and PW3 Manpreet Singh, father and brother of the deceased respectively, have also deposed regarding the oral dying declaration

made by the deceased to them. If the deceased Baljit Kaur had to make exaggeration or had been tutored by her father and brother etc. then she

might had attributed even pouring of kerosene oil on her by the accused. This fact shows that the second statement Ex.PJ, recorded by the

Magistrate, is not tutored one nor any exaggeration has been made in that statement. Admittedly, at the time of first statement given to ASI

Mohinder Singh, accused Bhagwan Singh, husband of deceased Baljit Kaur was also admitted in the same hospital by having only superficial burns

at his hands which as per DW2 Dr.Ajay Kumar Gupta, in cross-examination, being self suffered cannot be ruled out. He (DW2) has also stated

that the condition of that patient was not serious. He was not brought by anyone and had come of his own. Therefore, as both accused and injured

were admitted at the same time in the same hospital, there is chances of some pressure of the accused upon Baljit Kaur. The mere fact that CW1

Dr.Puneet Pasricha says that he has not mentioned in the record regarding smearing of kerosene on her person and clothes will not make the

prosecution case doubtful. The doctor has nowhere specifically mentioned in the record that there was no smell of kerosene coming from the

clothes of Baljit Kaur etc. When Dr. Puneet Pasricha was summoned as CW1 (Court witness) then he stated that no such smell was coming at that

time. The second and third dying declarations are almost the same. Perusal of the evidence on record shows that dying declarations Ex. PJ and Ex.

PR are further supported by statements of PW2 Sukhbir Singh and PW3 Manpreet Singh. If Baljit Kaur had caught the fire accidentally then there

was no question to falsely implicate her husband i.e. accused without any reason or ground. The accused has not given any cogent ground why he

was falsely implicated in the present case. If he was having good relations why Baljit Kaur had made dying declarations. Furthermore, we find that

recovery of glass from the house of accused, smelling kerosene, and dying declaration Ex.PJ made by Baljit Kaur (deceased) before the

Magistrate also support and corroborate the prosecution version. The conduct of accused that he remained admitted in the hospital for so many

days on the basis of superficial burns and he has not made the statement to the police at the earliest when he was admitted in the hospital at

Nakodar also shows his involvement in the occurrence. As per prosecution version, he has not given the statement as he was unfit but there is

nothing on record to show that he was unfit. In any way, injuries on the person of accused were at no time serious one. There is no reason or

ground to falsely implicate the accused in the present case. No reasonable doubt exists in the prosecution version. Therefore, from the evidence on

record which is duly supported by medical evidence and investigation of the case, we find that accused had put Baljit Kaur on fire. Therefore, the

contentions of learned counsel for the appellant to that extent are having no merit. Further, from the evidence on record, we find that there was no

pre-planning to commit the crime. There was a sudden quarrel. Even as per dying declaration Ex.PJ, Baljit Kaur herself put kerosene on her

person and the accused only, in the fit of anger, lit a matchstick and she caught fire. In the dying declaration Ex.PJ itself, it is written that accused

became nervous and started extinguishing the fire and at about 1:00 O''clock got her admitted in Civil Hospital, Nakodar. It is also written in this

dying declaration Ex.PJ that on refusal from there, he brought her in Civil Hospital, Jalandhar and got her admitted there. This conduct of the

accused that he tried to extinguish the fire and further as stated by accused in the statement u/s 313 Cr.P.C. that the family of the accused spent out

Rs. 1,00,000/- on the treatment of deceased Baljit Kaur, shows that the occurrence took place due to sudden quarrel in the heat of passion. There

was no pre-planning. There was no intention to commit the murder. The accused tried to extinguish the fire and received burn injuries on his hand

and admitted Baljit Kaur in the hospital. All these facts show that accused was not having any intention to commit the murder. Therefore, the

present case falls u/s 304 Part I IPC and not u/s 302 IPC. Therefore, from the aforesaid discussion, the present appeal is partly accepted.

Appellant-accused Bhagwan Singh has been held guilty for the offence u/s 304 Part I IPC instead of offence u/s 302 IPC and is convicted and

sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo

rigorous imprisonment for six months u/s 304 Part I IPC.