
Before Viney Mittal and H.S. Bhalla, JJ.

STATE OF PUNJAB,—*Appellant*

versus

RAKESH KUMAR,—*Respondent*

CRIMINAL APPEAL NO. 232/DBA OF 1996

24th October, 2006

Indian Penal Code, 1860—S. 302—Allegations against husband for setting her wife on fire after about six months of their marriage—Prosecution version regarding presence of mother & brother of deceased at the time of occurrence highly doubtful—Prosecution failing to explain as to why these two witnesses did not intervene in order to save the deceased—Presence of these witnesses also not recorded in hospital's record—No report to police by these witnesses—Registration of case on the statement of deceased after an inordinate delay of 3 days—Prosecution failed to prove guilt of husband beyond shadow of doubt—State's appeal dismissed, order of trial Court acquitting accused of the charge framed against him upheld.

Held, that the mother of the deceased and her brother, as per prosecution version, were present at the spot and the entire occurrence took place in their presence, meaning thereby that they are chance witnesses and particularly keeping in view their relationship and the manner in which their presence have been shown by the prosecution at the time of occurrence clearly spells out that the Court should be very cautious while appreciating the testimony of these chance witnesses. These two witnesses have been introduced later on and their presence at the spot is highly doubtful. It does not afflict to reasoning that in the presence of these close relations, the accused would even attempt to harm his wife and in case he attempted to do so, then no explanation has come forward as to why mother and brother did not intervene in order to save the deceased.

(Para 9)

Further held, that the matter was not reported by mother and brother of the deceased to the police clearly spells out that they have been introduced later on and were not present at the scene of occurrence.

It is strange to note that the matter was not reported to the police by them either on 23rd February, 1993 and 24th February, 1993 or on 25th February, 1993 and ultimately the case was registered on 26th February, 1993 on the statement of Anu Rani (deceased) allegedly suffered by her before Assistant Sub Inspector. No explanation has come forward as to why the matter was not reported to the police earlier either by brother or mother of the deceased. It is *ipso facto* clear there is about three day's delay in registering the matter to the police and no satisfactory explanation has come forward by not registering the matter. All this shows that the case has been registered after a lapse of three days with due deliberations and confabulations.

(Para 11)

S.S. Brar, Additional Advocate General, Punjab *for the appellant.*

None, *for the respondent.*

JUDGEMENT

H.S. BHALLA, J.

(1) Anu Rani (hereinafter referred to as "the deceased") could not enjoy the warmth of her married life and after about six months of their marriage she met her edge of doom by the hands of her husband Rakesh Kumar (hereinafter referred to as "the accused"), who was tried in a case registered against him under FIR No. 25 of 1993, Police Station Sadar Ludhiana, but was acquitted of the charge by the then learned Sessions Judge, Ludhiana,—*vide* his order dated 4th May, 1995. Aggrieved against this order, the Punjab State had no other option but to knock door of this Court by challenging the acquittal order through the appeal in hand.

(2) The other facts required to be noticed for the disposal of this appeal are that the deceased was married to the accused six months prior to 26th February, 1993. After marriage, she learnt that her husband had illicit relations with his sister-in-law Smt. Babita Rani. On that account, they used to quarrel with each other. Prior to her marriage with accused Rakesh Kumar, their entire family, including Babita Rani and her husband Sunil Kumar had been residing in Shashtri Nagar, Ludhiana. After the marriage of the accused, Babita Rani, shifted to Kailash Nagar, Ludhiana.

(3) On 23rd February, 1993 at about 1.00 P.M. deceased told her husband that he should give up his illicit relations with Babita Rani, but Rakesh Kumar reacted and out of reaction, he gave beating to the deceased and went away. Anu Rani went to her parents house in New Shiv Puri and narrated them the entire version. After having heard the entire version as narrated by her, her brother Madan Lal and mother Chander Lekha along with Anu Rani came to her house in New Shashtri Nagar. At about 6.30 P.M. accused came to the house and he asked Anu Rani to prepare tea for him, but he was told that there was no milk in the house and he should bring milk, so that she could prepare tea for him. Thereafter, accused sprinkled kerosene oil on her lying in a tin **pipi** in the room of his house within the very sight of Anu Rani's mother Chander Lekha and brother Madan Lal and lighted match stick and set her on fire saying that she was causing obstruction in his love affair with Babita. After setting her on fire, Rakesh Kumar ran away from the house. Anu Rani raised an alarm. As per the prosecution version, Chander Lekha the mother of the deceased, and brother Madan Lal witnessed the occurrence. They extinguished fire and took her to D.M.C. Hospital, Ludhiana for treatment. In the hospital, she was given treatment and on receipt of a ruqa, Assistant Sub-Inspector Om Parkash of Police Post New Subhash Nagar, Ludhiana, reached the hospital and inquired from the doctor if Anu Rani was fit to make statement. The doctor opined that she was unfit to make statment. On 25th February, 1993 Assistant Sub Inspector Om Parkash again went to the hospital and inquired from the doctor regarding the condition of Anu Rani, but he was again told that she was not fit to make statement. On 26th February, 1993, he submitted an application to the doctor seeking his opinion whether Anu Rani was fit to make statement and the doctor opined that she was fit to make statement and thereupon Assistant Sub-Inspector Om Parkash recorded the statement of Anu Rani, Ex. PJ, which was sent to the Police Station Sadar Ludhiana and on its basis, formal FIR bearing No. 25 dated 26th February, 1993 was registered against the accused. Anu Rani died due to burn injuries and the offence was converted into under Section 302 of the Indian Penal Code. Post mortem on the dead body of the deceased was conducted on 7th March, 1993 at Civil Hospital, Ludhiana. Inquest report was prepared and after investigation, Rakesh Kumar was challaned under Section 302 of the Indian Penal Code.

(4) Charge was framed under section 302 of the Indian Penal Code by the learned trial Judge,—*vide* his order dated 2nd July, 1993, to which the accused did not plead guilty and claimed trial.

(5) In order to prove its case, the prosecution examined as many as 10 witnesses, namely, Dr. Kulwant Singh (PW-1), Dr. Gurvidar Singh (PW-3), Smt. Chander Lekha (PW-4), Madan Lal (PW-5), Vijay Kumar Patwari (PW-6), Dr. Koshy George (PW-7), Dr. Ashutosh Talwar (PW-8), ASI Om Parkash (PW-9), Dr. Rajiv Kumar (PW-10), and Ashok Kumar Chopra (PW-2) Assistant Medical Record Office, DMC Hospital, Ludhiana. Constables Kulbir Singh, Rur Singh, SI Sadhu Singh and Jatinder Kumar were given up being unnecessary.

(6) Accused-respondent was examined under Section 313 of the Code of Criminal Procedure. He denied the prosecutin version put forward against him and submitted an explanation that the deceased was alone in the house preparing chapattis on electric heater. She was removed to CMC Hospital, Ludhiana, from where information was sent to her parents and thereafter, she was shifted to DMC Hospital by him. He further disclosed that he informed her relations that she had been shifted to CMC Hospital, Ludhiana. While going to the hospital, she had told him how she had received flame burns. He further submitted that he was implicated falsely after a lapse of four days after making consultations with others.

(7) We have heard the learned counsel appearing for the appelland and have also gone through the record carefully.

(8) At the very outset, we would like to observe that it is well settled law that order of acquittal can be interfered with only if there is an absolute assurance of the guilt of the accused upon the evidence on record and the High Court would not be justified in interfering with the order of acquittal, unless the same is found to be perverse and the order of acquittal can be set aside if the view taken by the trial Court is perverse. We would also like to observe that if on over-all appreciation of evidence available on record, two views are possible and when on appreciation of evidence, a particular view has been preferred by the learned Sessions Judge and when the findings cannot be said to be perverse merely because another view is possible, the High Court would not be justified in interfering with the acquittal order recorded by the learned trial Judge. The entire case of the prosecution is to be scrutinized in the light of evidence available on record and keeping in view the observations made above.

(9) It is crystal clear from the facts quoted above, the mother of the deceased and her brother, as per the prosecution version, were present at the spot and the entire occurrence took place in their presence, meaning thereby that they are chance witnesses and particularly keeping in view their relationship and the manner in which their presence have been shown by the prosecution at the time of occurrence, clearly spells out that the Court should be very cautious while appreciating the testimony of these chance witnesses. To our mind, these two witnesses have been introduced later on and their presence at the spot is highly doubtful. It does not afflict to reasoning that in the presence of these close relations, the accused would even attempt to harm his wife and in case he attempted to do so, then no explanation has come forward as to why Chander Lekha and Madan Lal did not intervene in order to save the deceased. Moreover, as per prosecution version on 23rd February, 1993 at about 6.30 P.M., the deceased was admitted with burn injuries firstly at CMC Hospital, Ludhiana, by Chander Lekha and Madan Lal, but strangely enough, the names of Chander Lekha and Madan Lal did not figure on the admission record relating to Anu Rani in CMC Hospital, Ludhiana. Dr. Koshy George (PW-7) has categorically deposed that she was brought to the hospital by her husband Rakesh Kumar and then again when she was shifted to D.M.C. Hospital, Ludhiana, neither the presence of Chander Lekha nor Madan Lal has been recorded in the hospital's record. Dr. Gurvinder Singh (PW-3) has disclosed that Anu Rani was brought to the Emergency of DMC Hospital, Ludhiana, by Santosh, sister of Anu Rani, on 23rd February, 1993 at about 10.45 P.M. This witness has further disclosed that Anu Rani herself narrated the history which runs as under :—

“The patient alleged to have sustained flame burns on 23rd February, 1993 at about 6 P.M. at their residence when her back side caught fire (Dupatta), while the patient was making Chapatis over electric heater. History of fighting with her husband present. History of crying, history of extinguishing fire by her husband by putting bed sheet over the patient.”

(10) Then again Dr. Koshy George (PW-7) has stated that it was a cause of accidental burns. To our mind, no importance could be attached to the history given by the deceased to Dr. Gurvinder Singh

(PW-3) particularly when she was unfit to suffer a statement at that stage. Moreover, no such history has been recorded by Dr. Koshy George (PW-7). The record further spells out that she was unfit to make statement on 24th February, 1993 and then again she was unfit to make statement on 25th February, 1993. It was not possible for her to make statement on 23rd February, 1993 at 10.45 P.M. Therefore, we find that the learned Sessions Judge has rightly ignored the narration of the history given by the deceased while preparing the record by Dr. Gurvinder Singh (PW-3) and nor he has attached any importance to this part of the case while passing an order of acquittal.

(11) The only question, which requires determination is, as to whether Anu Rani was set on fire by her husband and whether her mother and brother were present at the time of occurrence if so its effect? The very fact that the matter was not reported by Madan Lal and Chander Lekha to the police clearly spells out that they have been introduced later on and were not present at the scene of occurrence. It is strange to note that the matter was not reported to the police by them either on 23rd February, 1993 and 24th February, 1993 or on 25th February, 1993 and ultimately the case was registered on 26th February, 1993 on the statement of Anu Rani allegedly suffered by her before Assistant Sub-Inspector Om Parkash. No explanation has come forward as to why the matter was not reported to the police earlier either by Madan Lal or Chander Lekha. It is *ipso facto* clear that there is about three day's delay in registering the matter to the police and no satisfactory explanation has come forward by not registering the matter. All this shows that the case has been registered after a lapse of three days with due deliberations and confabulations.

(12) One of the essential requisites to ensure a fair trial is that the First Information Report in respect of a cognizable offence should be lodged as soon as possible and then sent to the Ilaqa Magistrate without any delay and where the registration of the case is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of the coloured version, thought out stories and twists to actual facts. The interested parties can then be sounded and some of them shown as false witnesses. Likewise, some innocent persons can be roped in and named culprits as a result of much thought, consultation and discussion. To avoid these dangers, the Courts have always insisted upon the prompt lodging of the report to the police.

In murder cases because of the enormity of the stakes involved, certain additional safeguards are provided to ensure that the version of the occurrence is disclosed as soon as possible thereafter and then a safeguard have again been provided under the law so that the investigating agency may not change the scene of occurrence and other facts. We find that there is an inordinate delay of three days in lodging the FIR with the police.

(13) In view of the circumstances narrated above, and the well settled law, we are of the opinion that if there is delay in lodging the FIR, then it leads to suspicion that the FIR was prepared subsequently to fit in with the case which the prosecution wants to make out. The FIR serves only the purpose of the contracting or supporting its author or to show his conduct. That object will be defeated if it is embellished and prepared subsequently. In the instant case, the entire occurrence, as per the prosecution, took place on 23rd February, 1993 at 6.30 P.M. in the presence of the mother and brother of the deceased, but even then, matter was not reported to the police till 26th February, 1993 and all this clearly spells out that such FIR is a false document and certainly creates a ring of doubt around the entire prosecution version. Moreover, the presence of Chander Lekha and Madan Lal at the spot is again doubtful on another count since both of them have stated that they tried to extinguish fire by rolling Anu Rani on the ground, but strangely enough, neither the clothes of Madan Lal nor that of Chander Lekha caught fire and then again no burn injuries on the hands of these two star witness of the prosecution were found. The admission on the part of Madan Lal, who was examined as PW-5, before the trial Court that for the first time, police had met him in DMC Hospital, Ludhiana and he did not make any statement before the police narrating the incident, has added another nail to the coffin of the case of the prosecution and in fact, they figured only during investigation after the deceased had allegedly made statement to Assistant Sub Inspector Om Parkash on 26th February, 1993 at about 2.00 P.M. and even if Anu Rani was unfit to make statement on 24th February, 1993, Assistant Sub Inspector Om Parkash could have contacted her mother or brother at their house in New Shiv Puri, Ludhiana, in order to find out as to how Anu Rani sustained burn injuries, but Assistant Sub Inspector Om Parkash did not try to contact either Madan Lal or Chander Lekha or the neighbours of the house of the accused in order to find out as

to how Anu Rani caught fire. Moreover, the learned Sessions Judge has rightly observed that if Anu Rani was really fit to make statement, some Magistrate could have been called and he could be requested to record the statement of Anu Rani. Seen from every angle, the case of the prosecution falls to the ground.

(14) Thus, looking from every angle, the prosecution story does not seem to be probable and no reliance can be placed on it. From the over-all assessment of the evidence led by the prosecution, the inevitable result is that the prosecution has miserably failed to prove guilt of the accused beyond shadow of doubt. The learned Sessions Judge has rightly acquitted the accused of the charge framed against him. As a result, we also find no merit in this appeal and the same, being devoid of any merit, is dismissed. It is sad to note that the death of deceased is going unnoticed and unheard.

R.N.R.

Before S.S. Nijjar & S.S. Saron, JJ.

SUKHVINDER SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondent*

C.W.P. NO. 7619 OF 2004

18th January, 2007

Constitution of India, 1950—Arts. 14, 16 & 226—Punjab Market Committee Class III Service Rules, 1989—Circular dated 8th December, 1992 issued by the Punjab Mandi Board—Recruitment of petitioner as an Electrician in 1987—No provision for the post of Electrician in 1989 Rules—Board directing merger of all employees into the cadre of Clerks—Board rejecting recommendations of the Market Committee for approval of promotion of petitioner to post of Clerk—Challenge thereto—Persons similarly situated absorbed on the permanent cadre of Clerks—Merely because post of Electrician is not mentioned in Circular would not disentitle petitioner from similar treatment—Petition allowed holding the petitioner entitled to be absorbed on permanent basis on the post of Clerk subject to passing necessary type test in Punjabi.