
(2002) 12 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 593-DB of 1997

Dalbir Singh and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2003) CriLJ 1878 : (2003) 1 RCR(Criminal) 727

Hon'ble Judges : V.M. Jain, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : R.S. Ghai and Bipin Ghai, for the Appellant; Yash Pal, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This judgment will dispose of Criminal Appeal No. 593-DB of 1997, filed by the accused-appellants against their conviction and sentence and Criminal Revision No. 1043 of 1997, filed by the complainant for enhancement of sentence.

2. Accused Dalbir Singh, Karnail Singh, Gian Singh and Dalbiro have filed the present appeal against the judgment dated 7-8-1997, passed by Additional Sessions Judge, Sirsa, vide which they were convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- each u/s 498A/34 of the Indian Penal Code (hereinafter referred to as "the Code"). In default of payment of fine, the defaulting accused was ordered to further undergo rigorous imprisonment for three months. All the aforesaid accused were also convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- each u/s 302/34 of the Code. In default of payment of fine, the defaulting accused was ordered to further undergo rigorous imprisonment for six months. However, the substantive sentences were ordered to run concurrently.

3. All the accused are interrelated, Balbir Singh is the husband of deceased Jasbir Kaur, Karnail Singh is the father, Gian Singh is the elder brother and Dalbiro is the sister of Dalbir Singh.

4. The prosecution was launched against the aforesaid accused on the basis of statement made by Mukhtiar Singh, father of the deceased Jasbir Kaur, to ASI Ram Kumar (P.W. 8) at 7.30 p.m. on 15-5-1995, who stated that his younger daughter Jasbir Kaur was married with accused Dalbir Singh about 8/9 years ago. After about four years of the marriage, the in-laws of his daughter, namely Karnail Singh, her father-in-law, Gian Singh, elder brother of her husband (Jeth) and Dalbiro, sister of her husband (Nanad), started demanding more dowry from the complainant. He used to give money to his daughter from time to time. In spite of that, they kept on demanding more and more dowry. They also used to harass his daughter for this reason. Accused Dalbir Singh and Karnail Singh used to consume liquor. About 15 days earlier, his daughter fell ill in village Bhavdeen and had come to his house. He got her medically treated. At that time, his daughter told him about the demand of Rs. 10,000/- made by her in-laws. After some time she recovered and about four days back, his son-in-law Dalbir Singh came to his house and took his daughter and her children to his village Bhavdeen. Since at that time, the complainant was not having Rs. 10,000/- with him, therefore, he told his daughter and her husband that he would give the amount as and when the same would be available with him. On 15-5-1995, he along with Trilochan Singh Sarpanch of Village Bahbalpur came to Village Bhavdeen to give the amount of Rs. 10,000/- to his daughter Jasbir Kaur. When he reached the village at 9.00 a.m., he came to know that his daughter Jasbir Kaur was admitted in Government Hospital, Sirsa, because of burn injuries. Therefore, he along with the aforesaid Tirlochan Singh came to Government Hospital, Sirsa and found his daughter lying in a burnt condition. He asked her about the cause of burn injuries, whereupon she told him and Tirlochan Singh Sarpanch that in the morning at about 7 a.m. her husband Dalbir Singh, Jeth Gian Singh caught hold of her, her father-in-law Karnail Singh sprinkled kerosene oil upon her and her Nanad Dalbiro set her on fire with the help of a match box stick, for not bringing Rs. 10,000/- as demanded by them. Thereafter, her husband Dalbir Singh brought her to the Civil Hospital, Sirsa and got her admitted there. The complainant further stated that his daughter has expired in the Hospital due to the aforesaid burn injuries and that she has been murdered by the accused by setting her on fire. Therefore, action be taken against them.

5. On the basis of the aforesaid statement, formal FIR bearing No. 70 was registered at 8.40 p.m. on 15-5-1995 u/s 304B/34 of the code against the aforesaid four accused at Police Station Ding. After investigation, the police filed challan in the Court only against accused Dalbir Singh and Karnail Singh and the other two accused, namely Gian Singh and Dalbiro, were kept in column No. 2, but subsequently, the complainant filed an application under Sections 227/228 of the Code of Criminal Procedure for summoning them, upon which the learned trial Court, vide its order dated 17-10-1995 summoned the aforesaid two

accused to face trial u/s 304B/34 of the Code. However, the learned trial Court charge sheeted the aforesaid four accused for committing offence under Sections 498A, 302 read with Section 34 of the Code for harassing the deceased Jasbir Kaur on account of unlawful demand of dowry and for intentionally and knowingly causing her death. The accused did not plead guilty to these charges and claimed trial.

6. In support of its case, the prosecution examined 10 witnesses, including Dr. S.I. Aggarwal (P.W.-3), who initially medically examined the deceased Jasbir Kaur at 8.15 a.m. on 15-5-1995, when she was brought with burn injuries in the Hospital by her husband Dalbir Singh, Dr. Dharamender Singh (P.W. 4), who conducted "the postmortem on the dead body of the deceased, Mukhtiar Singh (P.W.- 5) complainant, Harjit Singh (P.W.-6), 11 years old son of deceased Jasbir Kaur and accused Dalbir Singh, as an eye-witness of the occurrence and Ram Kumar ASI (P.W.-8), the Investigating Officer of the case. In addition to that, several documents were exhibited to prove the guilt of the accused. In defence, the accused examined three witnesses, namely Head Constable Des Parkash (D.W.-1). Dr. Satpal Narula (D.W.-2) and Baj Singh (D.W.-3).

7. After considering the evidence brought on record by the prosecution and the accused, the learned trial Court convicted and sentenced the accused on the basis of statement of Harjit Singh (P.W. 6), 11 years old child of the deceased, who was the eye-witness of the occurrence and whose statement was held to be corroborated by the statements of other witnesses and the medical evidence brought on record by the prosecution. Against this judgment, all the four accused have filed the appeal and the complainant has filed the revision petition.

8. During the pendency of the appeal, ? accused Karnail Singh is stated to have expired and the fact of his death has been confirmed by both the parties. Therefore, the appeal qua accused Karnail Singh stands abated.

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

10. Learned counsel appearing for the accused-appellants submitted that the entire version of the occurrence, as alleged by the prosecution, is concocted and false. According to him, neither Mukhtiar Singh (P.W. 5) was present in the Hospital in the morning before the death of his daughter Jasbir Kaur nor his deceased daughter disclosed him about the commission of alleged offence by the accused. The recording of FIR in question was deliberately delayed as the police was waiting for Mukhtiar Singh, the father of the deceased, to reach the Hospital and as and when he reached the Hospital in the evening, the FIR in question was registered after concocting a story, in which the accused-appellants were falsely implicated for causing burn injuries to the deceased, whereas actually the deceased herself caused the burn injuries to commit suicide. In this regard, learned counsel submitted that the alleged occurrence took place at 7 a.m. in the morning on 15-5-1995. The deceased was brought to the Hospital by her husband Dalbir Singh at 8.15 a.m. when Dr. S.L. Aggarwal (P.W. 3) examined her

and sent a ruqa Ex. PF to Police Station City Sirsa, which in turn sent a V.T. message to Police Station Ding at 9 a.m. ASI Ram Kumar (P.W. 8) reached the Civil Hospital, Sirsa at 10.30 a.m. and at that time, deceased Jasbir Kaur was conscious and capable of making a statement, as Dr. S.L. Aggarwal told him that the deceased was fit to make statement, but her statement was not recorded. According to the learned counsel, the explanation given by ASI Ram Kumar (P.W. 8), the Investigating Officer of the case, that he was advised by the Doctor to get the statement of the deceased recorded by a Magistrate and then he went to SDM and brought Om Parkash Naib Tehsildar (P.W. 1) at 1.00 p.m. to record the statement is not believable and appears to be factually wrong, as according to ruqa Ex. PB, Naib Tehsildar Om Parkash obtained the opinion of Dr. S.L. Aggarwal about the fitness of Jasbir Kaur to make the statement at 12-30 p.m. on 15-5-1995. It is not believable that in spite of the fact that the deceased was fit to make the statement, as opined by the Doctor, she did not make any statement to the Naib Tehsildar, as reported by him vide Ex. PC, where he has reported that in spite of his repeated asking, the deceased did not give any statement. Learned counsel for the appellants further submitted that the explanation given by Om Parkash Naib Tehsildar (P.W. 1) about not recording the statement of deceased that she was not making the statement is not trust worthy, as Dr. S. L. Aggarwal (P.W. 3) has stated that his signatures on report Ex. PC and Ex. PC/1 were obtained by the Naib Tehsildar lateron. The further explanation given by ASI Ram Kumar (P.W. 8) that at 4.30 p.m. he was informed about the death of deceased and when he came back to the Hospital, Mukhtiar Singh complainant met him at 6.00 p.m. and he told her entire version alleged by the prosecution, on the basis of which FIR in question was recorded. According to learned counsel for the appellants, the explanation given by the Investigating Officer about the delay in lodging the FIR is improbable and not believable and actually the FIR was deliberately reported at a later stage and meanwhile the alleged version of the prosecution was concocted and the appellants were falsely implicated for the alleged crime, which they did not commit.

11. Learned counsel for the appellants further argued that the explanation given by the complainant Mukhtiar Singh about his presence in the morning in the Hospital and subsequently his disappearance from and coming to the Hospital at 6.00 p.m. is also not believable. The version given by him is concerned and in fact, he reached the Hospital only late in the night. According to the complainant Mukhtiar Singh, he came to village Bhavdeen on 15-5-1995 alongwith Sarpanch Tirlochan Singh to give Rs. 10,000/- to his daughter, which the accused were demanding as dowry. When he reached at 9.00 a.m. in the said village, he was informed that his daughter was admitted in Civil Hospital, Sirsa with burn injuries. When he came to the Hospital, his daughter told the alleged incident and commission of the alleged offence by the appellants to him and Sarpanch Tirlochan Singh. Thereafter, according to the complainant, he immediately went to his village to bring money and after roaming in different villages alongwith aforesaid Tirlochan Singh, he came back to the Hospital in the evening at 6.00

p.m. In his statement, he stated that his daughter told him about the commission of offence by the appellants, but he went to his village to bring the money. Learned counsel for the appellants submitted that this version given by the complainant Mukhtiar Singh is highly improbable when he was having Rs. 10,000/- in his pocket, as admitted by him in the cross-examination and there was no occasion for him to go to his village and other villages to bring money and to inform his relatives about the incident. Learned counsel further submitted that it has come in evidence that one Kartar Singh, real brother-in-law of the complainant resides at a distance of 1 k.m. from the Hospital, but he did not go to him. The version given by him cannot be believed at all. Actually, he came to the Hospital in the evening after the death of his daughter Jasbir Kaur and his version that his daughter told him and Sarpanch Tirlochan Singh about the commission of alleged offence in the mariner as stated in the FIR is wholly incorrect and concocted, particularly when Tirlochan Singh, who according to the complainant accompanied him throughout, was not produced by the prosecution as a witness. Learned counsel further submitted that the complainant has given aforesaid false version with intention to introduce the alleged dying declaration made to him by his daughter.

12. Learned counsel for the appellants further submitted that the learned trial Court has convicted the appellants on the basis of statement made by Harjit Singh (PW6), who is alleged to be an eye-witness of the occurrence. He submitted that on the date of alleged incident, this witness was only 8 years old. As per the evidence available on the record, immediately after the incident, he was taken by his maternal uncle (Mama) to his village where he remained throughout after the incident till the time he made statement in the Court. His statement was recorded after two years of the alleged occurrence and during this period, he remained with his maternal uncle and the possibility of tutoring him about the alleged incident cannot be ruled out. Learned counsel submitted that it is highly dangerous to convict the appellants on the basis of the sole statement of such child witness, particularly when there is no corroborative evidence to the version given by this witness.

13. Learned counsel for the appellants further submitted that the motive of the crime, as alleged by the prosecution, is highly improbable and unbelievable as no body will believe that in-laws of a woman will demand Rs. 10,000/- after eight years of her marriage, particularly, when there is no allegation that they had demanded dowry on earlier occasion. He further submitted that in case there was no occasion or motive for the elder brother of the husband of deceased to join hands with him, particularly when admittedly he was living separately. Learned counsel further submitted that even during the investigation by the police, accused Gian Singh and Dalbiro were found innocent and the prosecution could not produce any reliable evidence during the trial for connecting both these accused with the alleged offence. In the last, he argued that the entire version given by the prosecution is false and all the appellants are innocent and the prosecution has failed to establish the guilt against them beyond a reasonable

doubt. Therefore, all of them are entitled to be acquitted.

14. On the other hand, learned Assistant Advocate General, Haryana, assisted by learned counsel for the complainant, submitted that the trial Court has rightly convicted all the accused on the basis of statement of eye-witness Harjit Singh (PW6) and other corroborative evidence brought on record by the prosecution. The delay in lodging the FIR has been duly explained by Mukhtiar Singh (PW5) and ASI Ram Kumar (PW8), the complainant and the Investigating Officer respectively, and by other evidence available on the record. He submitted that the learned trial Court has rightly relied upon the statement of Harjit Singh (PW6), though he may be a child witness. While relying upon the decision of Hon'ble Supreme Court in Satish Kumar v. State of Punjab (1994) 1 Rec Cri R 610 and a Division Bench decision of this Court in Sawinder Singh Vs. State of Punjab, , learned State counsel submitted that conviction can be made on the basis of statement of a child witness if the Court finds that the child was answering all the questions intelligently and in a rational manner and his tutoring about the alleged incident has been ruled out from the facts and circumstances of the case.

15. After giving our thoughtful consideration to the contentions raised by learned counsel for the appellants, we find no substance in either of them. The incident in question took place at 7.00 a.m. on 15-5-1995. The deceased was brought to the Hospital with burn injuries, where the following injury was found on her person by Dr. S. L. Aggarwal (PW3) at 8.15 a.m. :

"There was superficial to deep burns all over the body of Jasbir Kaur except both hands and both feet, burnt clothes were adherent to the body here and there. Smell of the kerosene oil was coming from the body and burnt clothes. Singing of the hair was present. Red line of demarcation was present between burnt and the healthy area. Skin was peeled off at places. There was about 90% burns and it was dangerous to life. The probable duration was fresh."

(Emphasis underlined added)

16. Due to the aforesaid injury, deceased Jasbir Kaur expired at 4.00 p.m. on the same day. Dr. Dharmender Singh (PW4) conducted postmortem on her dead body and found the following injuries.

"There was burn varying degree with depth present all over the body except the part of both gluteal region and lower part of both feet. Skin was peeled off at places. The blister was present. There was partial singeing of the scalp hairs at places. Burnt pieces of the clothes were present. Total burn was about 90%. All the organs were healthy and congested. Semi digested food material was present in the stomach. The larynx and trachea were congested and contained few black sooty particles. Small and large intestine were congested and slightly distended."

(Emphasis underlined added)

17. In the opinion of this witness, the death of deceased Jasbir Kaur was caused due to shock as a result of extensive burns which were ante mortem in nature and were sufficient to cause death in the normal course of nature. So, the death of deceased by the aforesaid injuries, which were sufficient to cause death, has been proved. Now, the prosecution was to further prove that the accused-appellants have caused the aforesaid injuries to the deceased in the manner, as alleged in the FIR. To prove this, the prosecution has examined two witnesses, namely Harjit Singh (PW6) and complainant Mukhtiar Singh (PW5). Harjit Singh is the son of deceased Jasbir Kaur and accused Dalbir Singh. He is the most natural witness because his presence in the house at the time of incident cannot be doubted at all. He was 8 years old at the time of incident and was capable to understand the happening that happened on the day of incident. On the next day of the incident, this witness made the statement Ex.DA before the police, narrating the entire version, as alleged. Before recording his statement in the Court as PW6, the learned trial Judge has put a note that certain questions were put to this witness before examination and after putting those questions, he was satisfied that the witness understands the sanctity of oath and was in a position to give rational answers to the questions to be put to him by both the sides. Therefore, the learned trial Court, before recording his statement, formed an opinion that the child was in a position to give rational answers to all the questions to be put to him. In his statement, this witness has given detailed account of the whole incident, sequence wise. He stated that one day prior to the occurrence, his father Dalbir Singh and grand father Kartar Singh gave beating to his mother after consuming liquor. On the next morning, he alongwith his sisters was playing in the street, when his Taya Gian Singh came to their house. Then his Taya Gian Singh, father Daljit Singh and Bua Dalbiro started quarrelling with his mother, due to which he reached near them to see what is happening. His Bua Dalbiro said that let the matter be settled for ever. Then, his Taya Gian Singh and father Dalbir Singh caught hold his mother from arms and took her inside the room; his grandfather Karnal Singh sprinkled the kerosene oil on his mother and asked his Bua Dalbiro to set fire on his mother, because she failed to bring amount from his father. Thereafter, his Bua Dalbiro set his mother on fire with the help of match box stick. His mother caught fire and was burnt. He started weeping and came out of the house. Thereafter, he went to the house of his Mausi (sister of his mother) in the village and his mother was taken to Hospital by his father and Taya, where she expired. This witness was cross-examined at length by learned defence counsel, but his testimony could not be shattered. In the cross-examination, he stated that accused Gian Singh caught hold one arm of his mother and another arm was caught hold by his father Dalbir Singh. First of all, the accused put his mother on the cot and then her arms were caught hold by the accused and she was put on fire. At that time, his mother was lying in straight position on the cot. He also stated that his grandfather sprinkled kerosene oil on his mother and his Bua Dalbiro set fire with the help of a match box stick. This version of Harjit Singh has been fully corroborated by the medical evidence and the recovery memos. As per the injury noticed by Dr. S.L. Aggarwal

(PW3) at the time of initial examination and by Dr. Dharmender Singh (PW4) at the time of post mortem, it is clear that there was no burn injury on the arms as well as legs of the deceased. This fact clearly establishes that the deceased was burnt when she was lying in a straight position. The statement given by this witness is highly reliable because in our opinion no child will give a false statement against his father and grandfather. We see no reason to disbelieve the statement of this witness, who was the eye-witness of the incident and whose presence cannot be ruled out at the time of incident merely because he was a child witness.

18. The law regarding the testimony of a child witness is well settled. A conviction can be based on the basis of testimony of a child witness. His testimony can be relied on even in the absence of oath, if he understood nature of the questions and gave rational answers thereof. The only precaution, which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable and his or her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand, but as a rule of prudence the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. Before recording the statement of a child witness, the learned trial Court has to satisfy itself that the witness was capable to depose. The testimony of a child witness cannot be rejected simply on the ground that because of his tender age, he was likely to be tutored. It is not the law that if a witness is a child, his evidence shall be rejected even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him. In the facts and circumstances of the present case, the learned trial Court has rightly believed the testimony of Harjit Singh (PW6) and the necessary precaution has been taken while relying upon his statement. We have also examined the statement of this witness alongwith other evidence available on the record. The version of the incident, narrated by him, is reliable as the same has been corroborated by other evidence available on the record, particularly the medical evidence, as discussed in the earlier part of this judgment. Learned counsel for the appellants, while referring to the statement of this witness in the Court as PW6 and statement made by him before the police, which is Ex.DA on the record, has pointed out certain contradictions, like that before the police he stated that the quarrel between his mother and accused Dalbir Singh and Karnail Singh took place in the day time, while in the Court, he stated that the quarrel had taken place in the night time; or that before the police, he told that diesel oil was sprinkled on his mother, whereas in the Court, he stated that kerosene oil was sprinkled; or that in the Court, he stated that accused Gian Singh and Dalbir Singh caught hold of his mother by arms and took her in the room, whereas before the police, he did not mention about the arms. We are of the opinion that these contradictions in the evidence of a child witness

are of trivial nature and do not effect the substratum of the prosecution case.

19. The prosecution proved the alleged commission of offence by the accused not only the examining the aforesaid witness, but also by the statement of complainant Mukhtiar Singh (PW5), who stated that before her death, his daughter had told him about the whole incident and she explained how the accused-appellants committed the offence. We are not agreeing with the learned counsel for the appellants that this witness did not come in the Hospital before the death of deceased Jasbir Kaur. Merely because this witness, after coming to the Hospital, went to his village to inform his relatives and to collect some more money for the treatment of his daughter, it cannot be assumed that he was not present in the morning in the Hospital. It has come in evidence that in the morning time, the deceased Jasbir Kaur was in a condition to make the statement. Therefore, it was but natural for her to disclose her father about the whole incident, when he and Sarpanch Tirlochan Singh came to see her in the morning.

20. We do not agree with the learned counsel for the appellants that there is delay in lodging the FIR in the present case. The Investigating Officer, ASI Ram Kumar (PW8), has clearly explained the circumstances, in which he could not record the FIR in spite of the fact that he reached the Hospital at 10.30 a.m. He cannot be disbelieved that he wanted that the statement of deceased Jasbir Kaur should be recorded by a Magistrate, because the deceased was in a serious condition and if he would have recorded her statement, the same would not have been believed. Therefore, his version that he called the Naib Tehsildar for the purpose of recording the statement of Jusbir Kaur cannot be disbelieved. Even Naib Tehsildar, Om Prakash (PW1) has stated that the deceased was not making the statement in spite of his repeated asking. In such a situation, how the FIR could have been recorded, when there was no body to tell as to how the incident took place. When Mukhtiar Singh came back from his village at 6.00 p.m., he told the entire incident to the Investigating Officer and only then, on the basis of his statement, the FIR in question was recorded. We are also not agreeing with the learned counsel for the appellants that the recording of FIR in question was deliberately delayed to concoct the story in order to falsely implicate the accused-appellants.

21. We are also not agreeing with the learned counsel for the appellants that the prosecution has failed to prove the motive behind the commission of the offence. From the statement: of Mukhtiar Singh (PW. 5), it has been established that the appellants were harassing the deceased on account of demand of dowry. Harjit Singh (P.W. 6) has also stated that one day prior to the incident, the accused-appellants Dalbir Singh and Karnail Singh gave beating to his mother Jasbir Kaur after consuming liquor.

22. In our opinion, the learned trial Court has rightly convicted and sentenced all the accused-appellants in this case and there is no illegality or infirmity in the judgment passed by it.

23. In view of the aforesaid discussion, we find no merit in the appeal filed by the accused-appellants and the same is hereby dismissed.

24. We have considered the submission, made by learned counsel for the complainant-petitioner in the revision petition for enhancement of the sentence. We are of the opinion that the learned trial Court has adequately punished the accused-respondents and we see no reason to enhance any part of the sentence. Therefore, the revision petition is hereby dismissed.