
(2019) 04 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 936, 1135-DB Of 2012

Makhan Singh And Another And Ors

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 08-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304B
Code of Criminal Procedure, 1973 — Section 313

Citation : (2019) 04 P&H CK 0018

Hon'ble Judges : Rajiv Sharma, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : S.P.S.Sidhu, Namit Sharma, S.P.S.Tinna

Final Decision : Dismissed

Judgement

1. Since common questions of law and facts are involved in the aforesaid two appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals have been instituted against the judgment and order dated 13.09.2012 rendered by the Additional Sessions Judge, Sri Muktsar Sahib, in Sessions Case No.12 of 03.03.2009 whereby the appellants were charged with and tried for offences punishable under Sections 302, 304-B of the Indian Penal Code (in short 'IPC'). They were convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years each for offence punishable under Section 302 IPC.

3. The case of the prosecution in a nutshell is that an intimation was received in the Police Station from Adesh Hospital, Sri Muktsar Sahib on 17.11.2008 that Monika wife of Aman Kumar, resident of Village Malout was admitted with burn injuries. ASI Darbar Singh along with other police officials reached there. He moved an application Ex.PW3/A before Sh.Ravi Bhagat, SDM, Malout, to depute a

Magistrate for recording the statement of the injured. Sh.Harjinder Singh, Tehsildar, Malout was deputed to record the statement vide endorsement Ex.PW3/A1. He moved an application Ex.PW3/B to the doctor concerned for obtaining fitness consent. Dr.Ish Gupta vide her endorsement Ex.PW3/B1 on the said application declared injured Monika fit to make statement. Thereafter Dr.Ish Gupta and Babbu, brother of the injured, recorded the statement of injured Monika. According to the contents of statement, they were six brothers and sisters. Her father was a scrap dealer at Moga. Her marriage was solemnized on 08.10.2008 with Aman Kumar son of Ram Avtar, resident of village Malout. After marriage, she was having very good relations with her husband. However, her mother-in-law was not happy. She used to taunt her repeatedly for bringing less dowry. Few days ago, her mother-in-law had picked up quarrel. She intimidated her parents. Her brothers and mother had come to their house at Malout at 05.00 P.M. Rest of them had gone back. Babbu remained in the house. Her husband went along with them till bus stand. At about 06.30 P.M., Makhan and Rambir came to their house at Malout. They with the help of her mother-in-law Raj Rani @ Usha Rani tied her brother. Then with an intention to kill her, her mother-in-law sprinkled kerosene on her and set her on fire. She raised the alarm along with her brother Babbu. Accused ran away from the spot. Her mother Meena, brother Ravi, Ajay and her husband Aman Kumar reached at the spot. The vehicle was arranged. She was shifted to Juneja Hospital, Malout. Thereafter she was referred to Adesh Hospital, Sri Muktsar Sahib. The statement was read over and explained to Monika. She after admitting the same to be correct appended her thumb impressions on the statement as she was unable to sign the statement due to burn injuries. FIR Ex.PW3/D was registered. ASI Darbar Singh visited the place of occurrence. Site plan Ex.PW3/F was prepared. Accused Rambir and Makhan Singh were arrested on 19.11.2008. Accused Raj Rani was arrested on 20.11.2008. Monika died on 21.11.2008. The post-mortem was got conducted. Investigation was completed. The challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of appellants were recorded under Section 313 Cr.P.C. The appellants examined four witnesses in their defence. According to appellant Raj Rani, her son Aman Kumar had hatched conspiracy with his in-laws to falsely implicate her. According to other appellants, they have been falsely implicated. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-1 Babbu testified that they were three brothers. He had three sisters. His father had given sufficient dowry to Monika at the time of her marriage. Raj Rani, mother-in-law of Monika was unhappy for bringing insufficient dowry. She was demanding more dowry. Monika used to disclose them about the bad behaviour of Raj Rani telephonically. On 17.11.2008, he along with his younger brothers Ravi, Ajay and mother Meena Rani came to see his sister Monika. They tried their best to settle the matter with Raj Rani amicably. On request of her sister Monika, he stayed with her whereas his brother-in-law Aman, husband of Monika, went to see off his younger brother and his mother at about 05.00 P.M. At 06.30 P.M. accused Makhan and Rambir came to the house of Monika. Accused Raj Rani was also present. All the three accused Raj Rani, Makhan and Rambir in furtherance of common intention tied him in the house of Monika with a hand pump. All the three accused sprinkled kerosene upon Monika. Monika was set on fire by the accused. He and his sister raised alarm. The inhabitants of the locality gathered there. His younger brothers Ravi, Ajay and mother Meena Rani came. They took Monika to Juneja Hospital, Malout. However, she was referred to Adesh Hospital, Muktsar. ASI Darbar Singh came to Adesh Hospital, Muktsar. Statement of Monika Ex.PA was recorded in his presence. She put her thumb impressions on the same as she could not sign the statement due to burn injuries. Ex.PA was also signed by him. Statement Ex.PA was read over and explained to Monika. Thereafter she put her thumb impressions. At that time, she was in fit state of mind. In his cross-examination, he deposed that all the accused had tied him with the hand pump. He tried to resist. He did not notice out of three accused who poured kerosene on his sister Monika. Aman husband of Monika also accompanied them at Juneja Hospital, Malout and Adesh Hospital, Muktsar.

9. PW-2 Ajay is brother of deceased Monika. He deposed that few days prior to 17.11.2008, his sister Monika conveyed them telephonically that an altercation took place between her and Raj Rani for bringing insufficient dowry. He along with his brother Babbu, Ravi and his mother Meena had gone to village Malout on 17.11.2008. At about 05.00 P.M. they left the matrimonial home of his sister Monika after leaving brother Babbu in her in-laws house. Aman Kumar accompanied them to Bus Stand Malout. No bus was available. They came back to Monika's house. They noticed that many people had gathered at the house of Monika. His brother Babbu was tied with the hand pump. His sister Monika was burning. Babbu and Monika raised alaram "BACHAO BACHAO". Thereafter Monika was taken to Juneja Hospital, Malout from where she was referred to Adesh Hospital, Muktsar.

10. PW-3 SI Darbar Singh deposed that on 17.11.2008 a telephonic message was received from P.S. Sadar Malout regarding admission of Monika wife of Aman Kumar with burn injury at Adesh Hospital, Muktsar. He wrote application Ex.PW3/A to Sh. Ravi Bhagat, SDM, Malout, for deputing the Executive Magistrate for recording the statement of Monika at Adesh Hospital, Muktsar. SDM deputed Sh.Harjinder Singh, Naib Tehsildar/ Executive Magistrate, Muktsar vide his endorsement Ex.PW3/A1. Thereafter he along with police party reached at

P.S.Sadar Muktsar. He along with police party as well as Executive Magistrate Harjinder Singh reached at Adesh Hospital, Muktsar. He moved an application Ex.PW3/B for seeking opinion from the concerned doctor regarding the fitness of Monika injured. Doctor declared the patient fit to make statement vide his endorsement Ex.PW3/B1. Thereafter he recorded the statement of Monika in the presence of Babbu and Dr.Ish Gupta. Monika put her thumb impressions on the statement after admitting the same to be correct. PW Babbu and Dr.Ish Gupta signed the statement Ex.PA. He attested the statement Ex.PA and made his endorsement Ex.PW3/C. FIR was registered. He along with brother of the complainant namely Babbu and other police officials reached at the place of occurrence. Accused were arrested. They were interrogated. Accused Makhan voluntarily made disclosure statement Ex.PW3/M. Thereafter accused Rambir was interrogated. Accused Rambir voluntarily made disclosure statement Ex.PW3/N. On the basis of disclosure statements, recoveries were made from them on 22.11.2008. He denied the suggestion in his cross-examination that Monika did not make any statement before him as well as Tehsildar Muktsar. He was sitting outside when statement of Monika was recorded Ex.PW5/A.

11. PW-4 ASI Kulwant Singh deposed that statement of Monika Ex.PA was recorded by the I.O. Statement was attested by PW Babbu, Dr. Ish Gupta and the I.O. FIR was registered. Accused were interrogated and at their instance, stove/container and match box were recovered. In his cross-examination, he deposed that I.O. had tried to join independent witness from the neighbourhood but nobody came forward.

12. PW-5 Harjinder Singh deposed that he was posted as Tehsildar at Sub Division Muktsar on 17.11.2008. He along with police party visited Adesh Hospital, Muktsar where Monika wife of Aman Kumar resident of Malout was admitted with 80% burns. He inquired from Dr.Ish Gupta regarding fitness of Monika before recording her statement. Dr. Ish Gupta declared her fit to make statement. He recorded the statement of Monika in the presence of Dr.Ish Gupta. After recording the statement of Monika, it was sealed and sent to SDM, Malout. He had seen the sealed parcel in the Court. The sealed parcel was permitted to be opened. He had seen the original statement Ex.PW5/A which was narrated to him by Monika. It was scribed by his subordinate on his dictation. The contents were read over to Monika. She after admitting the contents of Ex.PW5/A to be correct put her thumb impressions on the same as her right hand was burnt.

13. PW-6 Dr. Sukhpal Singh conducted the post-mortem examination. According to him, probable time between death and post mortem examination was within 24 hours. The cause of death in his opinion was shock leading to cardio respiratory arrest because of burn injuries. The burn injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature.

14. PW-7 Dr.Ish Gupta deposed that injured Monika wife of Aman Kumar was admitted in Adesh Hospital and Research Centre, Muktsar. Information was sent to SHO regarding admission of Monika in the hospital vide letter Ex.PW7/A. On

18.11.2008 at 12.15 A.M. he declared the injured fit to make statement vide endorsement Ex.PW3/B1. Thereafter statement of Monika was recorded by Harjinder Singh Tehsildar-cum-Executive Magistrate, Muktsar at 12.30 A.M. in his presence. Statement of Monika is Ex.PW5/A. He also signed the statement Ex.PW5/A.

15. DW-1 Harwinder Singh deposed that he knew Raj Rani. Aman was married to Monika. His house was situated near the house of Raj Rani. About one week after the marriage, Aman and Monika started living separately. He received information in the evening on 17.11.2008 that Monika had burnt accidentally while she was cooking food with the help of stove of kerosene. When he reached in their house, he came to know that Aman Kumar husband of Monika had taken Monika to Juneja Hospital, Malout.

16. DW-2 Jaskaran Singh deposed that on 17.11.2008 in the evening Aman Kumar brought his wife Monika with burn injuries in their hospital, i.e. Juneja Hospital. Monika was referred to specialized institution.

17. DW-3 Bhajan Dass deposed that he took Monika Rani having burn injuries from Juneja Hospital, Malout, to Adesh Hospital, Muktsar.

18. DW-4 Asha Rani deposed that she knew Raj Rani. Her house was adjoining to the house of Raj Rani. The marriage of Aman son of Raj Rani was solemnized with Monika. After 15 days of marriage, Aman and Monika started living separately. At the time of occurrence, Monika was working in the kitchen with kerosene stove. She caught fire accidentally. She found Monika and her husband Aman in the house.

19. The marriage of the deceased was solemnized on 08.10.2008. Monika had brought to the notice of her family members that she was being harassed by her mother-in-law Raj Rani. Her family members visited her house on 17.11.2008. Family members tried to settle the matter amicably. One of the brothers of the deceased PW-1 Babbu stayed back. Rest of the family members had gone to catch the bus. In the meantime accused had put deceased Monika on fire at about 06.30 P.M. She was taken to Juneja Hospital, Malout and thereafter she was referred to Adesh Hospital, Muktsar. She died on 21.11.2008.

20. Statement of Monika Ex.PA was recorded by PW-3 SI Darbar Singh, on the basis of which FIR was registered. He had sought opinion of doctor before recording the statement of deceased. Doctor declared that she was fit to make the statement vide endorsement Ex.PW3/B1. Statement was recorded by PW-3 SI Darbar Singh in the presence of Babbu and Dr.Ish Gupta. The contents of the same were read over to the deceased. He visited the spot. We have gone through the statement Ex.PW5/A. She had categorically stated in her dying declaration that her brother-in-law and mother-in-law caught hold her. Makhan put her on fire. There was no occasion for her to falsely implicate the accused. The appellant Raj Rani has deposed that her son had conspired with the family members of Monika to frame her. There was no occasion for the son to falsely

implicate his mother. The other appellants are also distant relations.

21. Statement Ex.PW5/A was recorded by PW-5 Harjinder Singh strictly in accordance with law. PW-7 Dr.Ish Gupta had also deposed that Monika was in a fit condition to make statement. The statement made by the deceased was voluntary in nature. She also made statement vide Ex.PA in the manner in which incident had happened. The cause of death was due to burn injuries which were ante mortem in nature. The marriage was solemnized on 08.10.2008. Monika died within few days of her marriage. The incident had also been seen by PW-1 Babbu who remained with her sister. Other family members had gone to catch the bus. However the bus was not available and they came back. Monika was taken to the hospital. She died on 21.11.2008. Appellants examined four witnesses in their defence. Statements of DW-1 Harwinder Singh and DW-4 Asha Rani do not inspire confidence. However, it has come on record from their statements that kerosene stove was available in the maternal house of the deceased Monika. It is also not believable that how DW-1 Harwinder Singh and DW-4 Asha Rani came to know that it was an accidental fire. Statement Ex.PA and dying declaring Ex.PW5/A are duly corroborated by medical evidence.

22. There is no merit in these appeals and the same are dismissed.