

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-670-DB-2009 (O&M)

Reserved on: 24.8.2022

Date of Decision: 30.8.2022

Jhirmal Singh and others

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present: Mr. Yashvir Kharb, Advocate
Legal Aid counsel for the appellants.

Mr. Aman Dhir, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 24.4.2009, by the learned Sessions Judge, Amritsar, upon Sessions Case No. 22 of 24.5.2007, wherethrough he proceeded to convict the accused qua a charge drawn against them, for an offence punishable under Section 302 read with Section 34 of the IPC, and, also proceeded to, through a separate sentencing order, drawn on 24.4.2009, impose the hereinafter extracted sentence(s) of imprisonment, and, also sentences of fine, upon each of the convicts-accused.

<i>Name of the accused</i>	<i>RI</i>	<i>Fine</i>	<i>In default of payment of fine</i>
<i>Jhirmal Singh</i>	<i>Imprisonment for life</i>	<i>Rs. 5,000/-</i>	<i>Six months</i>
<i>Kashmir Singh alias Sheera</i>	<i>Imprisonment for life</i>	<i>Rs. 5,000/-</i>	<i>Six months</i>
<i>Kashmir Kaur</i>	<i>Imprisonment for life</i>	<i>Rs. 5,000/-</i>	<i>Six months</i>
<i>Paramjit Singh</i>	<i>Imprisonment for life</i>	<i>Rs. 5,000/-</i>	<i>Six months</i>

2. The convicts become aggrieved from the above recorded

verdict of conviction, and, also, the consequent therewith sentence(s) of imprisonment, and, of fine, as imposed, upon each, and, hence prefer thereagainst the instant appeal before this Court.

3. The deceased Lakhwinder Kaur received burn injuries on 7.1.2007, and, was admitted for their treatment on the same day at Sandhu Hospital, Daduana, Mehta Road, Amritsar. On 8.1.2007, ASI Baldev Singh moved an application before PW-12, for recording the statement of injured Lakhwinder Kaur, and, on the above application, PW-12, on 9.1.2007 made an opinion, embodied in Ex. PQ/1, that she was unable to make a statement. However, subsequently ASI Baldev Singh re-moved an application about the fitness of Lakhwinder Kaur, to make a statement, and, thereons PW-12 again, through an opinion, as carried in Ex. PR/1 rather declared, that she was unfit to make a statement. However, on 10.1.2007, ASI Baldev Singh again moved an application for seeking a declaration from PW-12 about the fitness of one Lakhwinder Kaur to make a statement, and, thereons PW-12 made an opinion, as, comprised in Ex. PS/1, that she is fit to make a statement. Consequently, ASI Baldev Singh for ensuring that the statement of the injured Lakhwinder Kaur is recorded, submitted an application before the CJM, Amritsar, with a request that the statement of the injured be recorded by a Magistrate, upon which the learned CJM, Amritsar directed, Sh. T.S.Bindra, JMIC (D), to proceed to the hospital to record the statement of injured Lakhwinder Kaur. Consequently, Sh. T.S.Bindra, JMIC (D), proceeded to Sandhu Hospital, and, recorded the statement of injured Lakhwinder Kaur, and, also on the request of the ASI, supplied to him a copy of the appositely recorded statement. The statement of Lakhwinder Kaur, as became recorded on 10.1.2007, by Sh. T.S.Bindra, JMIC (D), is

extracted hereinafter.

“I am resident of village Chananke. The name of my husband is Jhirmal Singh. I have studied upto 5th class. I have a dole whose name is Jaspreet. My daughter is one year old. I can understand and speak Punjabi. I have been set on fire four days ago again said it happened five days earlier. I have been set on fire by my mother-in-law and father-in-law. My husband had pored kerosene oil upon me and Devar had set me on fire with match box. The name of Devar is Paramjit. The name of my father-in-law is Sheera and name of my mother-in-law is Kashmiro. I was married about three years ago. When I was set on fire I was in my house. It would be at about 8½ A.M. I do not want to say anything more. I am making my statement of my own accord. I am not under any pressure or duress (Last question is court question).”

4. In sequel to the making of the above statement by injured Lakhwinder Kaur, the investigating officer concerned, proceeded to register an FIR, embodying therein offences constituted under Sections 307, 34 of the IPC. However, Lakhwinder Kaur was admitted, on 15.1.2007, with CR No. 85258, at Guru Nanak Dev Hospital, Amritsar, and, she remained there under treatment upto 6.3.2007, and, there she ultimately succumbed to the burn injuries on 6.3.2007, at 9.00 A.M..

5. The doctor, PW-3, who conducted the post-mortem on the body of the deceased, and, prepared the post-mortem report Ex. PF, has therein attributed the demise of Lakhwinder Kaur, to those reasons, as become hereafter extracted.

“Burns are of antemortem origin. In our opinion, cause of death in this case is suppurative discharge leading to exhaustion due to burns which is sufficient in ordinary course of nature to cause death. ”

6. The makings of the post-mortem report by the doctor, who conducted autopsy on the body of deceased Lakhwinder Kaur, rather led to an offence constituted under Section 302 IPC, becoming substituted, in FIR Ex. PT, from the one which was initially recorded therein, to be an offence

under Section 307 of the IPC. During the course of investigations, being made by the investigating officer concerned, into the FIR (supra), he proceeded to record, on 27.1.2007, the signed disclosure statement of accused Jirmal Singh @ Mota son of Kashmir Singh, and, to which Ex. PAA is assigned, hence with echoings therein, that he had kept concealed a plastic can of kerosene oil 4-5 days earlier, and, had therefrom poured kerosene oil onto his wife Lakhwinder Kaur, and, thereafter had set it aflame, and, with further relevant echoings, that he can ensure its recovery from the southern corner of his house, to the investigating officer concerned. The above signed disclosure statement of accused Jirmal Singh, and, as becomes embodied in Ex. PAA, resulted in his leading the investigating officer concerned, to the place of its hiding, and, concealing it, and, also ultimately he ensured its recovery therefrom, besides in respect thereof, a recovery memo, to which Ex. PBB is assigned, became prepared, whereons the signatures of the witnesses thereto become carried.

7. It is trite, and, also conspicuous, that the FIR in respect of the ill-fated occurrence, became lodged on the statement of deceased Lakhwinder Kaur. During the course of the investigating officer conducting investigations into the FIR (supra), he also recorded the statements of Balkar Singh, and, Shiv Dayal, and, to which statements Mark-A, and, Mark-B, are respectively assigned.

8. After completing the investigations into the appeal FIR, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned, and, the latter through an order, made on 10.5.2007, committed the offenders for trial to the Court of Session.

9. The learned Sessions Judge concerned, upon receiving the police challan, on its becoming committed to him, proceeded to formulate a charge against the accused, for an offence punishable under Section 302/34 of the IPC and, also he did put the above framed charge to the accused, but the accused pleaded not guilty, and, claimed trial.

10. After the learned Sessions Judge concerned entering, upon, the trial qua the above drawn charge, against the accused, he recorded the statement of 14 prosecution witnesses, and, subsequently drew proceedings, under Section 313 of the Cr.P.C., wherein, the accused claimed false implication, and, pleaded innocence.

11. In defence, the accused examined two defence witnesses

12. The learned Sessions Judge concerned, after appreciation of evidence, as became adduced before him, proceeded to convict the accused qua the above drawn charge, and, also proceeded to impose, upon each, the consequent therewith sentence(s) (supra).

13. The learned counsel appearing for the aggrieved convicts-appellants herein, has contended before this Court, that the appreciation of evidence, as made by the learned Sessions Judge concerned, is completely infirm, and, as such, he has argued that the impugned verdict of conviction, and, consequent therewith sentence(s) (supra), as imposed, upon the convicts-appellants, do require an interference from this Court.

14. On the other hand, the learned State counsel has vigorously argued before this Court, that the appreciation of evidence, as made by the learned Sessions Judge concerned, is neither faulty, nor perverse, as such he has prayed that the impugned verdict does not warrant any interference from this Court.

15. Initially, as above stated, Lakhwinder Kaur suffered burn injuries on 7.1.2007, and, on the very same day, she was admitted, for receiving treatment, at Sandhu Hospital, Daduana, Mehta Road, Amritsar. However, much subsequently therefrom, when she was thereafter taking treatment, at Guru Nanak Dev Hospital, Amritsar, she succumbed to the burn injuries on 6.3.2007.

16. She, as above stated, after being declared fit by PW-12, through an opinion, as comprised in Ex. PS/1, and, as became recorded 10.1.2007, rather proceeded to make a statement, on the very same day, before Sh. T.S.Bindra, JMIC(D). In the above statement, she has attributed penal inculpations to the accused. Therefore, her statement, which has been extracted hereinabove, becomes a potent piece of evidence, as it is a dying declaration, and, thereto a grave evidentiary solemnity is to be assigned.

17. Be that as it may, the hallmark of gravest evidentiary solemnity becoming assigned to by it, is, qua it being provenly authored by the deceased, and, that too when she was in the fittest mental state to make it.

18. For determining the above facet, an illusion is to be made to the deposition of PW-12, who, on the request of ASI Baldev Singh, made a proven opinion, as embodied in Ex. PS/1, that the patient Lakhwinder Kaur, was fit to make a statement. The above statement was made by her, during the course of hers receiving treatment at the hospital concerned. She therein has assigned rather in the hereinabove extracted manner, an incriminatory role to the accused in the extant crime event. She has also appended thereons the thumb impression of her right foot. The original of the dying declaration is carried in Ex. PP. Since the original of the dying declaration has been placed on record, therefore, it comprises the apt

primary evidence, in respect of the makings therein qua incriminatory echoings against the accused concerned.

19. Moreover, the apposite best proof in respect of authenticity of its contents, besides in respect of the fit cognitive abilities, of the declarant, rather at the relevant time, was apart from the opinion made in Ex. PS/1, declaring her to be fit to make a statement, rather became also comprised in Sh. T.S.Bindra, JMIC (D), wherebefore whom it was made/recorded, also becoming enjoined to prove the same, through his stepping into the witness box. Therefore, it becomes but imperative to allude to the statement of Sh. T.S.Bindra, JMIC (D), who stepped into the witness box as PW-1, and, PW-8, and, in his examination-in-chief, he has unequivocally deposed, that he had, hence on the directions of the learned CJM, Amritsar, proceeded to the hospital concerned, for the relevant purpose. He further deposed that at the hospital concerned, he obtained an affirmative opinion from the doctor, as embodied in Ex. PN/1, about the fitness of Lakhwinder Kaur, to make a statement, and, continues to depose that thereafter he recorded her statement, to which Ex. PP is assigned, and, whereunders he testifies that she put the right foot impression of her toe. Significantly, he has also identified the existence of his signatures on Ex. PP. The effect of the making of the above deposition by the judicial officer, who recorded the dying declaration of Lakhwinder Kaur, is that, not only proof has emanated in respect of the fit mental condition, at the relevant time, of the declarant concerned, but also proof has emanated, with respect to the authenticity of the contents carried therein, conspicuously when the same has been provenly signed by the Judicial Magistrate concerned.

20. Be that as it may, the effect of the above deposition, could but

may have been eroded, but only when an efficacious cross-examination became conducted, upon PW-1 (PW-8). However, a reading of the cross-examination, as made, upon PW-1 (PW8), does not reveal, that the Judicial officer concerned, did not visit the hospital, nor does it reveal that he did not, in the presence of the maker of the dying declaration, record her declaration, nor is there any suggestion, put to him, that the investigating officer concerned, after his recording the dying declaration, rather his placing the same before him in the Court. The absence of meteings of the above suggestions to PW-1 (PW8), during the course of cross-examination, being made, upon him, does yet constrain this Court, to assign the completest evidentiary worth to it, moreso, when his proven signatures are carried thereons, and, even if the maker has not put her thumb impression thereons, but has put her right foot thumb impression thereons, yet when prior to the recording of the apposite dying declaration, PW-1 (PW-8) had, apart from Lakhwinder Kaur being declared to be fit to make a statement, through an opinion carried in Ex. PS/1, has also taken an opinion in that regard, from the doctor concerned, and, as becomes embodied in Ex. PN/1. Resultantly the apposite opinion, as made by PW-12, and, as carried in Ex. PS/1, becomes corroborated by Ex. PN/1. In addition, when none other than PW-1 (PW-8), and, the declarant were in the room concerned, at the time of the declarant making her declaration, about the cause of her demise, resultantly the dying declaration, as made by Lakhwinder Kaur, is to be concluded, to be free from any vices of hers being coached, and, goaded to make it.

21. In nutshell, the proven dying declaration, as embodied in Ex. PP, does constitute a potent incriminatory evidence against the accused,

and, also hence, the charge drawn against them, becomes proven to the hilt.

22. Moreover, corroboration to the above inference, is also garnered by the signed disclosure statement, made by accused Jhirmal Singh, and to which Ex. PAA, is assigned, in consequence whereof, through recovery memo, to which Ex. PBB is assigned, a plastic can of kerosene oil, and, a match box from the place of each rather becoming hidden and camouflaged, rather became recovered by the accused concerned, to the investigating officer concerned. Since the disclosure statement Ex. PAA, is signed by accused Jhirmal Singh, and, unless he had denied his making his signatures thereon, and/or, had propagated that he had been compelled to make it, and/or had proven, that it was falsely drawn, thereupon alone both the disclosure statement, and, the consequent therewith recoveries, as made through Ex. PAA, rather would lose their evidentiary vigour, otherwise not. However, the accused has not denied his signatures on the disclosure statement, as carried in Ex. PAA, nor has taken the defence that the recoveries of the relevant incriminatory items, as made through the recovery memo, were false, contrived or engineered recoveries. In consequence, the recovery of incriminatory items rather does corroborate the incrimination, as made against the accused, through the proven dying declaration, as made by the declarant, and, to which Ex. PP is assigned.

23. Even, the post-mortem report, as carried in Ex. PF, and which has been proven by PW-3, does also corroborate, the assigning, through Ex. PP, of an incriminatory role to the accused, by the deceased. In sequel, the Court is of the formidable opinion, that the prosecution has been able to unflinchingly prove the charge, as drawn against the accused.

24. Though, PW-4, and, PW-5 have resiled from their previously

made statements, in writing, and, as such the learned counsel for the aggrieved convicts-appellants has argued, that hence the dying declaration cannot be assigned any probative vigour, but to the considered mind of this Court, for the reasons (supra), rather primacy is to be assigned to the provenly made dying declaration, by the deceased, than to any oral evidence to the contrary, moreso when both PW-4, and, PW-5 were evidently not present at the relevant time, rather at the crime site.

25. The result of the above discussion is that this Court does not find any merit in the appeal, and, is constrained to dismiss it.

26. Consequently, the appeal is dismissed. The impugned verdict of conviction, and, the consequent therewith sentence, as become imposed upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. If the convicts are on bail, thereupon, the sentence of imprisonment, as imposed, upon the convicts-appellants be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, after the expiry of the period of limitation for the filing of an appeal.

27. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

August 30th, 2022

Gurpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No