



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). 660-661 OF 2015

STATE OF PUNJAB

....APPELLANT(S)

VERSUS

RANDHIR SINGH ETC.

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. These appeals by special leave have been preferred by the State of Punjab to assail the judgment dated 17th July, 2014 rendered by the High Court of Punjab and Haryana in Criminal Appeal Nos. 580 of 2002 and 606 of 2002 whereby, the learned Division Bench, allowed the appeals preferred by the respondents(accused) and acquitted them while reversing the judgment dated 12th July, 2002 passed by the learned Additional Sessions Judge, Faridkot(hereinafter referred to as 'trial Court') in Sessions Case No. 118 of 1998. The learned trial Court had convicted and sentenced the accused as below: -

<p><u>Randhir Singh</u> (Accused No. 1)(A1)</p>	<p>U/s 302 of the Indian Penal Code(hereinafter being referred to as 'IPC') and awarded rigorous imprisonment for life with fine amounting to Rs. 1000/- and in default of payment of fine to further rigorous imprisonment for two months, each.</p>
<p><u>Surjit Kaur alias Seeto</u> (Accused No. 3)(A3)</p>	<p>U/s 302 IPC and awarded rigorous imprisonment for life with fine amounting to Rs. 1000/- and in default of payment of fine to further rigorous imprisonment for two months, each.</p>
<p><u>Baldev Singh</u> (Accused No. 2)(A2)</p>	<p>U/s 302 r/w 34 IPC and awarded rigorous imprisonment for life with fine amounting to Rs. 1000/- and in default of payment of fine to further rigorous imprisonment for two months, each.</p>
<p><u>Karamjit Kaur</u> (Accused No. 4)(A4)</p>	<p>U/s 302 r/w 34 IPC and awarded rigorous imprisonment for life with fine amounting to Rs. 1000/- and in default of payment of fine to further rigorous imprisonment for two months, each.</p>

2. The case of the prosecution in nutshell is that Randhir Singh(A1) was married to the deceased-Smt. Kuldeep Kaur @ Raj Kaur(hereinafter being referred to as 'victim'/'deceased') about 6 to 7 years prior to the date of incident, i.e. 24th August, 1998. Randhir Singh(A1) and his elder brother Baldev Singh(A2) brought the victim to the Civil Hospital, Kotakpura in a seriously burnt condition(80% burns). The intimation regarding the arrival of a woman at the hospital in a burnt condition was sent to the concerned police station by the duty doctor *vide ruqa*(intimation) (Exhibit-PA) whereupon, Surjit Singh, ASI(PW-11) reached the hospital. In the intervening period, considering the serious condition of the victim, she was referred to Guru Gobind Singh

Medical College and Hospital, Faridkot(hereinafter being referred to as 'GGSMC Hospital'). Thereupon, Surjit Singh(PW-11) proceeded to the GGSMC Hospital and made an enquiry from the doctor attending the victim about her fitness to give a statement. At 9:30 am, the doctor *vide* endorsement(Exhibit-PF), declared the victim to be 'unfit' to make a statement. On the same day, at around 12:50 pm, the duty doctor, *vide* another endorsement(Exhibit-PG) declared that the victim was 'fit' to give her statement. Thereupon, at 1:30 pm Surjit Singh, ASI(PW-11) claims to have recorded a statement(Exhibit-PM) of the victim. At 2:00 pm, on the very same day, Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as the Executive Magistrate recorded the statement(Exhibit-PJ and PJ/1) of the victim under Section 164 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') and thereupon, a formal First Information Report(FIR)(Exhibit-PM/2) came to be registered.

3. Investigation was carried out and the charge sheet was filed against Surjit Kaur @ Seeto(A3), mother-in-law of the deceased and Randhir Singh(A1), husband of the deceased for the offence punishable under Section 302 IPC and Babu Singh(A5), father-in-law of the deceased, Karamjit Kaur @ Pappi(A4), sister-in-

law(*jethani*) and Baldev Singh(A2), brother-in-law(*jeth*)) for the offence punishable under Section 302 read with Section 34 IPC. Since the offence punishable under Section 302 IPC was exclusively triable by the Sessions Court, the case was committed and made over to the Court of learned Additional Sessions Judge, Faridkot for trial. The trial Court framed charges against the five accused as per the charge sheet. The accused abjured their guilt and claimed trial. The prosecution examined 11 witnesses and exhibited 17 documents in the following order: -

Prosecution Witness('PW')	Role/Position
PW1- Dr. M.S. Sandhu	Medical Officer, Civil Hospital Kotkapura
PW2- HC Jarnail Singh	Police Station Sadar Kotkapura
PW3- Dr. Sarabjit Singh Sandhu	Head Quarter Government Medical College, Patiala
PW4- Guddi	Sister of Kuldeep Kaur (Deceased)
PW5- Thana Singh	Brother of Kuldeep Kaur (Deceased)
PW6- Mohinder Singh	Member of Panchayat, Ajit Gill
PW7- Ramesh Kumar Jain	Naib Tehsildar, Faridkot
PW8- Dharam Singh	Draftsman, Faridkot
PW9- Dr. Manjit Singh	SMO, Registrar, Surgery, GGS Medical College, Faridkot
PW10-Raj Rani	Record Keeper, GGS Medical College & Hospital, Faridkot
PW11- Surjit Singh	ASI, CIA Staff, Moga

Exhibit No.(s)	Exhibit
Exhibit PA	Information regarding burn Case

Exhibit PB	Affidavit
Exhibit PC	Postmortem Report
Exhibit PC/1	Pictorial Diagram of the Injuries
Exhibit PD	Police request for conducting PMR.
Exhibit PE	Inquest report & opinion signed by PW3
Exhibit PF, and Exhibit PF/1	Request to police and opinion of doctor
Exhibit PG and Exhibit PG/1	Request to the doctor In-Charge of G.G.G. Medical College and Hospital as to whether the patient is fit to make the statement or not.
Ex.PJ & ExPJ/1	Statement of Kuldeep Kaur(victim)
Ex.PK	Map
ExPL	Bed Head Ticket
Ex.PL & ExPL1	Request to Tehsildar & opinion of doctor regarding statement
Ex.PM/Ex.PM/1	Statement of Kuldeep Kaur
Ex. PM/2	Copy of FIR
Ex.PN	Map
Ex. PO	Recovery Memo
Ex. D/1, ExD/2, ExD/3	Case entries of registrars, Ration card

4. The accused were questioned under Section 313 CrPC and upon being confronted with the circumstances appearing in the prosecution evidence, they denied the same and took a plea of innocence and false implication. Randhir Singh(A1) stated that the deceased had received burn injuries in an accidental fire whereas, Karamjit Kaur @ Pappi(A4) and Baldev Singh(A2) pleaded that they had been living separately from the deceased and her husband since long and had no role to play in the incident. Five witnesses were examined by the defence in the following order:

Defence Witness[s] ('DW')	Role/Position
DW-1 Ran Singh	Head Teacher, Govt. Primary School, Kaleke, District Moga
DW2- Manminder Kaur	Teacher, Government Primary School, Kaleke
DW3- Balwinder Singh	Teacher, Adarsh Public School, Kaleke
DW4- Kartar Singh	Inspector Food Supply Grade I, Baghapurana
DW5- Kewal Singh	Labourer, Panj Grain Kalan

5. The trial Court heard the arguments advanced by the learned Additional Public Prosecutor and the learned defence counsels, appreciated the evidence available on record, and *vide* judgment dated 12th July, 2002, proceeded to convict Surjit Kaur @ Seeto(A3) and Randhir Singh(A1) for the offence punishable under Section 302 IPC, whereas, Karamjeet Kaur(A4) and Baldev Singh(A2) were convicted for the offence punishable under Section 302 IPC read with Section 34 IPC. Each accused was sentenced to undergo rigorous imprisonment for life and to pay the fine of Rs.1,000/- each, and in default of payment of fine to further undergo rigorous imprisonment for a period of two months. However, Babu Singh(A5) was acquitted by the trial Court on the reasoning that prosecution failed to produce any evidence regarding his participation in the commission of the alleged offence.

6. The accused preferred two appeals referred to *supra*, before the High Court of Punjab and Haryana assailing the judgment of

the trial Court. The Division Bench of the High Court of Punjab and Haryana, *vide* common judgment dated 17th July, 2014, allowed the appeals, set aside the judgment rendered by the trial Court and acquitted the accused of the charges. The common judgment dated 17th July, 2014 rendered by the Division Bench of the Punjab and Haryana High Court is subjected to challenge by the State in these two appeals.

Submissions on behalf of the Appellant-State: -

7. Shri Vivek Jain, Deputy Advocate General, learned counsel appearing for the State of Punjab, vehemently and fervently contended that the judgment rendered by the High Court is unsustainable in facts as well as in law. He urged that there is unimpeachable evidence on record to show that the victim, Smt. Kuldeep Kaur @ Raj Kaur, was being harassed and humiliated by the respondents(accused) in the matrimonial home. He contended that husband, Randhir Singh(A1) was indulged in an illicit relationship with his sister-in-law, Karamjit Kaur(A4) and when the deceased raised objection to this illicit relationship, she was beaten up by her husband, Randhir Singh(A1). The deceased was also subjected to character assassination by her in-laws. She was set to fire by her in-laws in the matrimonial home with the

intention of eliminating her. The burn injuries were so serious that the victim succumbed just three days after the incident i.e. on 27th August, 1998. He urged that two dying declarations of the deceased were recorded, first by Surjit Singh, ASI(PW-11) and the second by Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as an Executive Magistrate. In the first dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11), the deceased made categorical allegations that her husband, Randhir Singh(A1) and her in-laws, namely, Baldev Singh(*Jeth*)(A2), Babu Singh(father-in-law)(A5), Surjit Kaur @ Seeto(mother-in-law)(A3), Karamjit Kaur(*Jethani*)(A4) subjected her to harassment, torture and often used filthy language towards her. The deceased also stated that in the morning of 24th August, 1998 at about 5:00 am, she overheard her *Jeth*(A2), husband(A1), father-in-law(A5) and *Jethani*(A4) talking to each other. She went to prepare tea for herself whereupon, her *Jeth*(A2) extorted that kerosene oil should be poured on her. Randhir Singh(A1) thereupon, immobilized her by catching hold of her hair and poured kerosene oil on her. Karamjit Kaur(A4) suggested that she should be set to fire whereupon, Surjit Kaur(A3) set her ablaze with a matchstick. She rushed outside and raised a hue and cry on which the neighbours came and

extinguished the fire. She also stated that the motive behind the incident was that her husband, Randhir Singh(A1) was indulged in an illicit relationship with her *jethani* Karamjit Kaur (A4), to which she had objected. Fuelled by this motive, the accused acting with common intention had set her on fire. The second dying declaration of the deceased(Exhibit-PJ) was recorded by Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as an Executive Magistrate and the same reads as below: -

“I state that my marriage about seven years ago. No child born to me. My husband earns livelihood by doing labour work. In the morning at 4 am it was dark, the people of my house set me on fire but I do not know who had lit the match box and set me on fire. I was turned out from the house after giving me beating. I prepared tea on the stove. We used to prepare meals etc. on the stove. When I caught fire I raised alarm. Then the people of our house and neighbour extinguished the fire. My husband brought me to the hospital and got me admitted.”

8. Learned State counsel contended that there is no reason to doubt the dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11). His contention was that even otherwise, there are no significant contradictions in the two dying declarations i.e. Exhibit-PM and Exhibit-PJ, so as to discard one in preference to the other. He further urged that even in the dying declaration(Exhibit-PJ) recorded by the Executive Magistrate, the deceased categorically stated that the people of her house had set

her on fire. As per learned counsel, the respondents herein were the only persons present in the house when the incident took place and thus, it can safely be presumed that while referring to the people of her house, the victim was indicating about the accused-respondents as her assailants.

9. Learned counsel vehemently urged that the trial Court, upon a thorough appreciation of the evidence on record came to the only possible and logical conclusion that the dying declaration(Exhibit-PM) was a reliable piece of evidence and that the conviction of the accused was justifiably based thereupon, by the trial Court. He urged that the High Court committed a grave error in holding that the first dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11) was suspicious and unreliable. He contended that the dying declaration(Exhibit-PM) was recorded after taking opinion regarding fitness of the victim, to give such statement, from the duty doctor(PW-9) and the FIR came to be promptly registered on the basis of said dying declaration and hence, there is no justification whatsoever to cast a doubt on the said dying declaration(Exhibit-PM). He submitted that Surjit Singh, ASI(PW-11) had no reason to falsely implicate the accused persons and

thus there was no reason as to why he could create a false dying declaration of the deceased.

10. Learned counsel further urged that the witnesses Guddi(PW-4), Thana Singh(PW-5) and Mohinder Singh(PW-6) gave reliable evidence regarding the oral dying declaration made by the victim at the hospital in their presence. The said oral dying declaration was almost on the same lines as the dying declaration(Exhibit-PM) recorded by the Surjit Singh, ASI(PW-11). He thus contended that the judgment rendered by the High Court is based purely on conjectures and surmises inasmuch as the most significant and unimpeachable evidence being the dying declaration(Exhibit-PM) admissible in evidence by virtue of Section 32 of the Indian Evidence Act, 1872 was brushed aside by the High Court without assigning cogent reasons. He further urged that the victim had categorically stated that she was being harassed in her matrimonial home by her in-laws for the reason that her husband, Randhir Singh(A1) was indulged in an illicit affair with her sister-in-law Karamjit Kaur(A4). This illicit affair led to holding of a panchayat on a complaint by the victim's maternal relatives and hence, it can safely be concluded that the accused had strong motive to eliminate the victim.

11. Learned counsel, thus, urged that the High Court committed an error apparent on the face of the record while accepting the appeals of the accused and acquitting them of the charges. His fervent plea was that the view taken by the trial Court is the only possible view of the matter and thus, the appeal deserves to be allowed and the respondents should be convicted while reversing the judgment rendered by the High Court.

12. On these submissions, learned counsel for the State implored the Court to accept the appeals, reverse the judgment of the High Court and restore the conviction of the accused as recorded by the trial Court.

Submissions on behalf of the respondents: -

13. Learned counsel for the respondents, vehemently and fervently opposed the submissions advanced on behalf of learned counsel for the State. He urged that the High Court has rightly held that the dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11) was a post-investigation document manufactured with an aim to falsely implicate the accused acting at the behest of Thana Singh(PW-5), brother of deceased who was also a Police Officer. He urged that Surjit Singh, ASI(PW-11) did not make any effort to call the concerned Magistrate at that instant

moment, however, he himself recorded the statement of the deceased(Exhibit-PM) at 1:30 pm on 24th August, 1998. Later on, he moved an application to the SDO with a request to record the statement of the victim. However, he was surprisingly unavailable when Ramesh Kumar Jain(PW-7), Executive Magistrate recorded the victim's statement(Exhibit-PJ). He further urged that in the dying declaration(Exhibit-PJ) made before Ramesh Kumar Jain, Naib Tehsildar(PW-7), the deceased did not specifically refer to any family member about who had set her on fire. She did not make any allegation about ill treatment being meted out to her at the matrimonial home. Rather, she stated that she had no idea about who lit the matchbox and set her on fire. She also stated that it was her husband, Randhir Singh(A1) who brought her to the hospital and got her admitted for treatment. Thus, the dying declaration(Exhibit-PM) made before Surjit Singh, ASI(PW-11) is apparently a subsequently created document and was rightly discarded by the High Court. He contended that the conviction of the accused was rightly interfered by the High Court and that the impugned judgment does not warrant any interference by this Court. On these grounds, learned counsel for the respondents

implored the Court to dismiss the appeals and affirm the impugned judgment.

Discussion & Conclusions: -

14. Since these are appeals against acquittal, a detailed and elaborate discussion of the evidence is not necessary because the law is well settled by a catena of judgments rendered by this Court that the scope of interference in an appeal against acquittal is very limited. If two views are possible, one favourable to the accused and the other favourable to the prosecution, the former would prevail. An interference with the judgment of acquittal is only permissible if the same suffers from patent illegality, perversity or misreading of the evidence available on record. Reference in this regard may be made to the judgment of this Court in the case of ***Thakore Umedsing Nathusing v. State of Gujarat.***¹

15. Keeping the above principles in mind, we shall now proceed to analyse the evidence available on record.

16. At the trial, the prosecution examined Guddi(PW-4), the sister of the deceased, Thana Singh(PW-5), brother of the deceased and Mohinder Singh(PW-6), panchayat member in order to prove the

¹ 2024 SCC OnLine SC 320

theory that the deceased was being maltreated in her matrimonial home. Guddi(PW-4) stated that her sister Smt. Kuldeep Kaur @ Raj Kaur(deceased) was married to Randhir Singh(A1) about 6 to 7 years back and that she was the mediator who had arranged their marriage. The witness(PW-4) stated that her sister had been complaining to her that the accused persons had been casting aspersions on her character. The witness(PW-4) also imputed that Randhir Singh(A1) was indulged in an illicit relationship with Karamjit Kaur(A4) and that her sister(deceased) was objecting to the same and resultantly, she was beaten up by her husband. The witness(PW-4) further stated that about an year ago, she along with her husband, Faqir Singh went to the village, Panj Grain Kalan to see her sister. When they reached the matrimonial home of her sister at about 7:00 am, they found that she had been burnt and was crying out. At that time, no other family member was present in the house. Her sister(victim) told that, at about 5:00 am, while she was preparing tea, all the five accused persons were planning to murder her and that on the paraenesis of Baldev Singh(A2) and Karamjeet Kaur(A4), Randhir Singh(A1) immobilized and poured kerosene oil on her and thereafter, Surjit Kaur(A3) set her ablaze with a matchstick. She rushed out of the house and

raised an alarm, whereupon the neighbours extinguished the fire. The witness(PW-4), admitted in her cross-examination that her brother Thana Singh(PW-5) was working in the police department. After seeing her sister in a burnt condition, she and her husband proceeded to the village, Ajit Gill, to inform her brothers. It took them about one and half hours to reach the said village. From there, she along with her brothers again returned to the village, Panj Grain Kalan, in the afternoon. At that time, her sister(victim) was not to be seen in the house. Thereafter, they went to the GGSMC Hospital where her sister(victim) was admitted and was writhing with pain. She stated that while her sister(victim) was admitted in the hospital, she was conscious and was narrating the incident to all present there, including her brothers. The witness(PW-4) feigned ignorance as to whether the police visited the hospital or not. She stated that her brothers and other relatives were present besides Smt. Kuldeep Kaur(victim) till her death. The witness(PW-4) further stated that it was after the death of her sister(deceased) that the police came to the hospital. She feigned ignorance about the place of posting of her brother, Thana Singh(PW-5) at the time of occurrence.

17. Thana Singh(PW-5) deposed that his sister(deceased) was married to Randhir Singh(A1) about 6-7 years ago. After the marriage, all the accused persons started maltreating his sister by casting aspersions on her character. He stated that her sister(deceased) often complained about these incidents of cruelty by her in-laws, when she came to the village. Thereupon, a panchayat was convened wherein the accused were advised not to maltreat his sister(deceased). The accused agreed to stop the maltreatment, but sometime later, they re-indulged in the acts of cruelty with his sister. He came to know from his sister Guddi(PW-4) that Smt. Kuldeep Kaur(victim) had been set ablaze by the accused on which, he proceeded to the GGSMC Hospital and found her lying on the bed of the hospital in a burnt condition. The witness(PW-5) further stated that Smt. Kuldeep Kaur made an oral dying declaration holding the accused responsible for her condition. The witness admitted in his cross-examination that he was posted at the District Jail, Faridkot at the time of the incident and that the GGSMC Hospital is located just nearby. He also stated that in the preceding years, two panchayats had been convened. The last panchayat took place about 2-3 years, before the death of his sister(deceased) wherein an oral compromise had been arrived

among the deceased and her in-laws. The witness further stated that he was informed about the incident by his sister Guddi(PW-4) who came to his village, Ajit Gill, at about 9:00 am. From there, they proceeded to the GGSMC Hospital. However, before reaching to the hospital, they went to the village, Panj Grain Kalan, and observed the place where the incident occurred. The witness(PW-5) admitted in his cross-examination that accused Baldev Singh(A2) had been residing separately from his father and brother for the last 6-7 years and was running a separate kitchen. Baldev Singh(A2) was married to Karamjit Kaur(A4). The witness feigned ignorance to the suggestion that his sister(deceased) was got admitted to the GGSMC Hospital by her husband, Randhir Singh(A1).

18. Mohinder Singh(PW-6), a resident of village, Ajit Gill deposed about the panchayat meetings held a few years ago to resolve the strife between the deceased and accused. The witness stated that he went to the GGSMC Hospital along with the other relatives of the victim on the date of incident where Smt. Kuldeep Kaur(victim) made an oral dying declaration in their presence.

19. Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as the Executive Magistrate, deposed that he recorded the statement of

the deceased(Exhibit-PJ and PJ/1). In cross-examination, the witness stated that Surjit Singh, ASI(PW-11) had brought an order of the SDM for recording the statement of the victim. However, Surjit Singh, ASI(PW-11) did not tell him anything about the victim's condition. The witness moved an application to the doctor to seek an opinion about the fitness of the victim to give the statement. He also stated that, many persons including the relatives of the victim were present beside her when he visited the GGSMC Hospital.

20. Dr. Manjit Singh, SMO, Registrar Surgery posted in GGSMC Hospital was examined as PW-9. He stated that Smt. Kuldeep Kaur(victim) was admitted in the female surgical ward-I on 24th August, 1998 in a burnt condition having 85% burns. At 12:50 pm, upon police request, he certified that the victim was fit to give her statement. Thereafter, at 2:00 pm, upon a request by the Executive Magistrate, he gave another fitness certificate *vide* endorsement(Exhibit-P6) regarding the victim being fit to give statement. He stated that the victim expired on 27th August, 1998 at 8:20 pm.

21. Surjit Singh, ASI(PW-11) is the star witness of the prosecution. He testified that upon receiving

ruqa(intimation)(Exhibit-PA) from the hospital, he along with other officials went to the Civil Hospital, Kotkapura where information was provided that considering the gravity of the victim's condition, she had been shifted to GGSMC Hospital. At 9:30 AM, he moved an application(Exhibit-PF/1) seeking certificate of fitness of the victim on which, the doctor(PW-9) gave an opinion that the victim was not in a condition to make a statement. He moved another application(Exhibit-PG/1) on which the doctor certified that the victim was fit to make a statement. Pursuant thereto, he recorded the statement of the victim(Exhibit-PM) which was read over to her and her thumb impression was appended thereupon. He forwarded the statement(Exhibit-PM) to the police station on the basis whereof, an FIR (Exhibit-PM/2) was registered by Joginder Singh, ASI. He submitted an application(Exhibit-PH) to the SDO for recording the statement of the burn victim whereupon, Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as the Executive Magistrate was deputed for the task.

22. PW-11 further stated that Naib Tehsildar came to the hospital, and obtained the certificate of fitness from the doctor and thereafter, he recorded the statement of the victim(Exhibit-PJ). However, at the time of recording, PW-11 was not present at the

GGSMC Hospital. PW-11 also stated that he recorded the statement of the victim at 1:30 pm and at that time, all the relatives of the victim were present besides her. Initially, the victim was declared unfit for making statement by the doctor at 9:30 am, but later on, a certificate of fitness was given at 12:50 pm. He reached the office of the SDM, Faridkot at 1:35 pm. However, he did not narrate any facts to Ramesh Kumar Jain, Naib Tehsildar(PW-7). He gave him the application and the order of the SDM. Thereafter, he reached back to the hospital along with the Naib Tehsildar(PW-7) at about 1:55 pm.

23. Ran Singh, Head Teacher(DW-1), Manminder Kaur, Teacher(DW-2) and Balwinder Singh, Teacher(DW-3) were examined in defence to prove the fact that Navjot Kaur and Parbhjot Kaur[daughters of Baldev Singh(A2)] were studying in a Government school at village Kaleke.

24. Kewal Singh(DW-5) stated that his house is situated on the southern side of the house of Randhir Singh(A1). He heard some cries and rushed to the house of Randhir Singh(A1) who was extinguishing his wife's fire. The lady stated to him that she suddenly caught fire. He also stated that the deceased categorically spoke that nobody had set her to fire. No significant cross-

examination was made from this witness(DW-5) by the prosecution and thus, his evidence virtually remained uncontroverted.

25. The prosecution incipiently prophesies upon the two dying declarations made by the deceased, one recorded by Surjit Singh ASI(PW-11), i.e. Exhibit-PM and the other recorded by Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as Executive Magistrate, i.e. Exhibit-PJ It may be stated that in the dying declaration, i.e. Exhibit-PJ, the victim did not take the names of any particular accused in the act of setting her on fire. Rather, she made a general and vague allegation that the people of her house had set her on fire, but she could not say who had lit the match box and set her on fire. On the contrary, in the dying declaration(Exhibit-PM), detailed allegations were set out regarding the manner in which the accused caught hold of her, poured kerosene on her body and then set her on fire.

26. Having taken note of the manifest contradictions in the two dying declarations, we now proceed to briefly recapitulate the consequential peculiarities as emerging from the evidence of the prosecution witnesses.

27. Dr. M.S. Sandhu, Medical Officer, Civil Hospital, Kotakpura(PW-1) stated that the victim was brought to the civil

hospital on 24th August, 1998 at 7:30 am by Randhir Singh(A1) and Baldev Singh(A2) with 80% burns. Apparently thus, it was the two accused who took the victim to the hospital in an attempt to get her treated for her burn injuries which is a strong circumstance pointing to their innocence.

28. Dr. Sarabjit Singh Sandhu(PW-3), Head Quarter Government Medical College, Patiala who conducted post mortem upon the dead body of the deceased, stated in her cross-examination that there were no burn marks on the head and shoulders of the deceased, however, her hair were singed. He admitted that if the victim was sitting and the assailants had poured kerosene oil on her body, then normally it would flow down from the head and shoulders downwards.

29. Guddi(PW-4), being the elder sister of the deceased stated that the accused had been making allegations on the character of the deceased. She also alleged that Randhir Singh(A1) was having illicit relations with his sister-in-law Karamjit Kaur(A4), wife of Baldev Singh(A2) and that the deceased had been admonishing Randhir Singh(A1) on that count upon which she was beaten by the accused Randhir Singh(A1). Guddi(PW-4) tried to become a direct witness claiming that on the date of incident she, along with

her husband Faqir Singh had gone to the village Panj Grain Kalan to see her sister(victim). They reached the matrimonial house of her sister at about 7:00 am and found that she was badly burnt and was crying. At that time, no family member of the victim was present at the spot. The witness(PW-4) also claimed that the victim made an oral dying declaration stating that at 5.00 am, while she was preparing tea, all the five accused persons were planning to murder her. At that time, Baldev Singh(A2) extorted that kerosene oil should be poured on her. Randhir Singh(A1) caught hold of her hair and poured kerosene oil on her and thereafter, Karamjit Kaur @ Pappi(A4) prompted that she should be burnt whereafter Surjit Kaur @ Seeto(A3) had put Smt. Kuldeep Kaur(victim) on ablaze with a matchstick. The victim, thereafter, came out and raised an alarm on which the neighbours came and extinguished the fire. She stated in her cross-examination that immediately upon seeing the condition of her sister, she and her husband proceeded to the village Ajit Gill for informing her brothers. It took them around one and half to two hours to reach the village Ajit Gill. She and her brother returned back to the village Panj Grain Kalan, but they did not find Smt. Kuldeep Kaur(victim) present at the spot. Then, they went to GGSMC Hospital, Faridkot and found that Smt. Kuldeep

Kaur(victim) was in the hospital and was writhing in pain. She admitted that her brother Thana Singh(PW-5) was working in the police department. She further stated that her sister was conscious in the hospital and was narrating about the incident to all persons including her brothers. She feigned ignorance regarding the visit by police to the hospital. She admitted that she and her brothers remained present with the victim till her death and that the police came to the hospital only after her sister had expired.

30. Apparently, the above version of Guddi(PW-4) is full of falsities and embellishments. Guddi(PW-4) claimed that she and her husband had visited the matrimonial home of the victim while she was still lying there in a burnt condition. On the contrary, the statement of Dr. M.S. Sandhu, Medical Officer(PW-1) would clearly establish that the victim had already been brought to the Civil Hospital, Kotakpura by accused Randhir Singh(A1) and Baldev Singh(A2) at 7:30 am. We feel that if at all Guddi(PW-4) and her husband had seen the victim lying abandoned at her matrimonial home in a burnt condition, the first reaction and natural conduct of these persons would have been to provide medical aid to the victim by taking her to the hospital. However, Guddi(PW-4) and her

husband neither made any effort to take the victim to a hospital nor did they call upon anyone to provide any first aid to the victim. They also didn't inform the police about the incident. Instead, both chose to travel to the village Ajit Gill to inform the brothers about the said incident which almost consumed three hours of valuable time. Apparently thus, the evidence of Guddi(PW-4) to the extent, she claimed to have seen the victim in a burnt condition at her matrimonial home is false and cooked up.

31. Thana Singh(PW-5) being the brother of the Smt. Kuldeep Kaur(victim) stated that after the marriage of his sister to Randhir Singh(A1), all the accused persons started misbehaving with her casting aspersions on her character. She tolerated the said ill behaviour for some time but later, made complaints to them. Thereupon, a panchayat meeting was convened wherein, the accused agreed that they would not quarrel with the victim, but soon thereafter, they re-indulged in the harassment and misbehaviour towards the victim. He came to know from his sister, Guddi(PW-4) that Smt. Kuldeep Kaur(deceased) had been set on fire by the accused. On receiving this information, he along with other relatives went to the GGSMC Hospital where his sister, Smt. Kuldeep Kaur was lying on the bed in a burnt condition. This

version of Thana Singh is in total contrast to the evidence of Guddi(PW-4). PW-5 also stated that Smt. Kuldeep Kaur(deceased) made an oral dying declaration in presence of all the relatives. PW-5 also made an amelioration that his sister(deceased) also told him that Babu Singh(A5) was standing nearby her with dang in his hand during the alleged incident of crime.

32. In cross-examination, PW-5 admitted that Baldev Singh(A2) had been residing separately from his father and brother for the last 6 to 7 years and was having separate residence and kitchen. Karamjit Kaur(A4), wife of accused Baldev Singh(A2) is resident of village Kaleke. He, however, denied the suggestion that Baldev Singh(A2) and Karamjit Kaur(A4) were residing at village Kaleke with Balwinder Kaur(mother of Karamjit Kaur). PW-5 feigned ignorance to the question as to whether his sister was got admitted in the GGSMC Hospital for treatment by her husband Randhir Singh(A1).

33. Mohinder Singh(PW-6), resident of Village, Ajit Gill stated that a panchayat was convened in connection with the maltreatment meted out to Smt. Kuldeep Kaur(victim) by her husband, Randhir Singh(A1), father-in-law, Babu Singh(A5) and mother-in-law, Surjit Singh @ Seeto(A3). In the Panchayat, an

issue was raised about Smt. Kuldeep Kaur(victim) being denied permission to live in the matrimonial home by her in-laws. The panchayat convinced Randhir Singh(A1), his father Babu Singh(A5) and mother Seeto(A3) to take back Smt. Kuldeep Kaur(victim) with them to the matrimonial home. The witness(PW-6) also claimed that he too went to the GGSMC Hospital, Faridkot where Smt. Kuldeep Kaur(victim) was admitted in a burnt condition. He also deposed regarding the so-called oral dying declaration made by the victim. He, however, denied that the police had recorded her statement.

34. A very consequential fact can be culled out from the evidence of PW-4, PW-5 and PW-6 that none of them stated about any dying declaration of the deceased having been recorded by either Surjit Singh, ASI(PW-11) or Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as Executive Magistrate after taking the fitness certificate from the duty doctor. These grave contradictions, creates a doubt on the very presence of these witnesses at the GGSMC Hospital until the time, the two dying declarations were recorded. However, we shall delve into this aspect of the case in the later part of the discussion.

35. Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as Executive Magistrate recorded the statement(Exhibit-PJ) which has already been reproduced *supra*.

36. Dr. Manjit Singh, SMO(PW-9) testified regarding the issuance of the fitness certificates verifying the condition of the victim to make a statement. He also made an endorsement on the statement(Exhibit-PJ) recorded by Ramesh Kumar Jain, Naib Tehsildar(PW-7). However, no such endorsement was made on the dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11).

37. Surjit Singh, ASI(PW-11) claimed to have recorded the dying declaration of the victim(Exhibit-PM) after taking a fitness certificate from the duty doctor. However, this dying declaration does not bear any certification/endorsement of the doctor. PW-11 stated in his cross-examination that the certificate of fitness was issued by the doctor at 12:50 pm. Thereafter, he proceeded to the office of SDM, Faridkot at 1:35 pm. However, he did not tell Ramesh Kumar Jain, Naib Tehsildar(PW-7) that he had already recorded the statement of the victim. PW-11 stated that he came back to the hospital with Ramesh Kumar Jain, Naib Tehsildar(PW-7) at 1:55 pm whereafter Naib Tehsildar recorded the statement of

the victim. A pertinent suggestion was given to the witness(PW-11) by the defence that there were certain infirmities in the statement(Exhibit-PJ) recorded by Ramesh Kumar Jain, Naib Tehsildar(PW-7) acting as Executive Magistrate and that is why, he later concocted and fabricated the dying declaration(Exhibit-PM) of the victim and antetimed the same.

38. Ran Singh(DW-1) stated that Navjot Kaur, daughter of accused Baldev Singh(A2) was a student of Government Primary School, Kaleke, District Moga from 1st to 4th standard and she continued to study there. Similar statements were given by Manminder Kaur(DW-2) and Balwinder Singh(DW-3) about the daughters(Navjot Kaur and Prabhjot Kaur) of Baldev Singh(A2). All these witnesses proved factum of education of the daughters of Baldev Singh(A2) at the Government Primary School, Kaleke based on the Government record.

39. From an overall appreciation of the evidence available on record, the following indisputable conclusions can be culled out: -

- (i) That there is no allegation whatsoever of the prosecution witnesses that the deceased was harassed or humiliated in the matrimonial home on account of any demand of dowry, etc.

(ii) The prosecution witnesses have given divergent statements regarding the cause of harassment meted out to the deceased. Guddi(PW-4) and Thana Singh(PW-5) alleged that the deceased was being harassed because Randhir Singh(A1) was carrying an illicit affair with his sister-in-law Karamjit Kaur(A4). To the contrary, Mohinder Singh(PW-6) stated that a panchayat was convened for the reason that the deceased was being denied entry into her matrimonial home by the in-laws. Thus, clearly before the panchayat, no such grievance was raised that the harassment of the deceased was on the account of the illicit affair of her husband(A1) and sister-in-law(A4). If at all, the cause of this strife was the so-called illicit relation between the accused Randhir Singh(A1) and Smt. Karamjit Kaur(A4), there could not have been any possibility that the accused Baldev Singh(A2) would have supported Randhir Singh(A1) because that would directly tantamount to his approving illicit relations between his wife and his brother. Thus, the prosecution story is totally unnatural and unbelievable.

(iii) Guddi(PW-4), Thana Singh(PW-5) and Mohinder Singh(PW-6) claimed to be present besides the victim from about 11:00 am till the time of her death which occurred on 27th August, 1998. However, they did not utter a word that any dying declaration of the victim was recorded either by Surjit Singh, ASI(PW-11) or by Ramesh Kumar Jain, Naib Tehsildar(PW-7). They also intentionally concealed the fact that the victim was brought to the hospital by Randhir Singh(A1) and Baldev Singh(A2). All these witnesses are close family members of the deceased and thus, their evidence must be viewed with a greater degree of circumspection. They apparently gave a false narrative on material aspects of the case. Their evidence is definitely of dubitable character apart from being partisan in nature.

(iv) That none of the doctors examined by the prosecution stated that they sensed the smell of kerosene from the body of the victim after she had been admitted in the hospital. This fact assumes significance when we consider the admission as appearing in the evidence of Dr. Sarabjit Singh Sandhu(PW-3) who stated that no burn injuries

were noticed on the head and shoulders of the deceased. Thus, there are well-founded reasons for this Court to hold that the allegation of the prosecution that kerosene oil was poured on the body of the victim and then she was set on fire is neither established nor corroborated by any independent or reliable piece of evidence.

40. In view of the admission as appearing in the evidence of Thana Singh(PW-5) read with the evidence of Ran Singh(DW-1), Manminder Kaur(DW-2) and Balwinder Singh(DW-3), it is clear that Baldev Singh(A2) and Karamjit Kaur(A4) were residing at the village Kaleke where their daughters were also studying. Therefore, the presence of Baldev Singh(A2) and Karamjit Kaur(A4) in the house at the village Panj Grain Kalan where the incident took place is absolutely unbelievable, more so when the incident took place at around 4:00 to 5:00 am. The prosecution has not come out with any concrete motive which could have incited the accused to put the victim on fire.

41. The deceased while making the statement(Exhibit-PJ) stated that she was trying to prepare tea when people of her house set her on fire. She also stated that after she had caught fire, she raised an alarm whereafter people of her house and neighbours

extinguished the fire. Her husband brought her to the hospital and got her admitted.

42. The above dying declaration is also corroborated on some aspects by the statement of Kewal Singh(DW-5) who deposed on oath that he heard the cries coming from the house of the deceased and upon reaching there, he saw Randhir Singh(A1) extinguishing the fire of his wife. The witness(DW-5) also mentioned that the victim spoke out that she had caught fire suddenly and nobody had set her ablaze. Thus, the probability of the victim having caught accidental fire while preparing tea is higher rather than the theory set up by prosecution witnesses that it is a case of intentional immolation.

43. The dying declaration(Exhibit-PM) recorded by Surjit Singh, ASI(PW-11) is apparently a post-investigation document and seems to have been prepared under the influence of Thana Singh(PW-5), brother of the deceased who was also employed in the police department.

44. There is no corroborative evidence to persuade the Court to hold that any such dying declaration was actually recorded. As per the dying declaration(Exhibit-PJ) recorded by the Ramesh Kumar Jain, Naib Tehsildar(PW-7) apparently the victim did not

take the name of any particular accused holding him/her responsible for the incident.

45. In this background, the conviction of the accused was rightly interfered by the High Court while accepting the appeals against conviction. The impugned order dated 17th July, 2014 rendered by the Division Bench of the High Court is based on an *apropos* appreciation of evidence available on record and hence, does not warrant any interference in these appeals against acquittal preferred by the State of Punjab.

46. Consequently, the appeals fail and are dismissed.

47. Pending application(s), if any, shall stand disposed of.

.....J.
(ARAVIND KUMAR)

.....J.
(SANDEEP MEHTA)

New Delhi;
July 09, 2024