

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1226 OF 2009

Gobind Ram &amp; Anr. ...Appellants

Versus

State of Haryana ...Respondent

## O R D E R

1. This appeal has been preferred against the impugned judgment and order dated 6.2.2008, passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.628-DB of 2004 by which the High Court has partly allowed the appeal setting aside the conviction and sentence of the appellants under Section 498A of the Indian Penal Code, 1860 (hereinafter referred to as the IPC) passed by the learned Sessions Judge, Bhiwani dated 23.4.2004 in Sessions Trial No.48 of 13.3.2002 by which and whereunder the appellants had been convicted under Section 302 read with Section 34 IPC and under Section 498A IPC for causing the murder of Smt. Suman, wife of Gobind Ram, appellant no.1 and they had been awarded imprisonment for life and a fine of Rs.1000/- each under Section 302/34 IPC and a sentence of two years RI and to pay a fine of Rs.1000/- each under Section 498-A IPC.

2. Facts and circumstances giving rise to this appeal are:

A. That Suman, daughter of Urmila (PW.14) was married to Gobind Ram, appellant No.1 in the year 1994.

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been complaints/allegations of mal-treatment to Suman by the appellants on account of her parents' inability to fulfill their dowry demands.

There had

Panchayats had also been convened to resolve the dispute but in vain.

B. On 25.11.2001, 15-20 minutes before the incident, Suman went over to Jyoti (PW.13), a neighbour and informed her that she was being ill-treated by the appellants. Some time later, Suman, since deceased was spotted on the street while she was ablaze. Jyoti (PW.13) came out of her house after hearing hue and cry and extinguished the fire and in that process she also got her hand burnt. Gobind Ram, appellant no.1 also made an effort to put out the fire and also sustained burns.

C. Suman was taken to hospital in Bhiwani, however she was referred to the hospital in Rohtak where her dying declaration was recorded by Shri C.B. Sheoran (PW.3), the then Chief Judicial Magistrate, Rohtak, after getting a certificate from the doctor that she was fit to make the statement in spite of 100% burns. Suman made a categorical statement therein that her husband did not give her funds to run the house-hold and that both the appellants had been harassing her in spite of the fact that her father had given sufficient dowry.

D. In view of her dying declaration, an FIR was registered and the investigation commenced. After completion of the investigation, chargesheet was filed against the appellants. During the trial, prosecution examined 15 witnesses to prove its case. The version of the prosecution stood testified on oath by Urmila (PW.14, mother of deceased), Jyoti (PW.13) and various other witnesses.

Dr. R.S. Poonia (PW.2) had medico legally examined Jyoti (PW.13) and found superficial burns on her person. The said witnesses had also examined appellant no.1 and recorded the similar injuries.

E. Dr. R.P. Sharma (PW.4) had medico legally examined Suman and noticed that 100% superficial and deep burns were present all over her body and injuries had been received probably within a period of six hours from the time

of examination.

F. Post-mortem report revealed that she had died due to extensive burns and complications on account thereof.

The burns were described to be anti-mortem in nature and sufficient to cause death in ordinary course of nature.

G. In view of the aforesaid evidence, the appellants were convicted and sentenced by the learned Sessions Judge vide judgment and order dated 23.4.2004 as referred to hereinabove.

H. Aggrieved, the appellants preferred the appeal before the High Court which stood partly allowed, setting aside their conviction under Section 498-A IPC. However, their conviction under Section 302/34 IPC remained intact.

Hence, this appeal.

3. Shri Mahabir Singh, learned senior counsel for the appellants has submitted that Suman committed suicide and it

was not a case where the appellants were involved.

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She got

married in 1994 and incident occurred beyond a period of 7 years.

The deceased had a girl child and there had been no incident of mal-treatment by the appellants towards her.

The courts below erred in disbelieving the defence witness Smt. Santosh (DW.1) who had seen the entire incident being

the neighbour. Plea of alibi taken by appellant no.2 has wrongly been disbelieved. Dying declaration could not be

believed for the reason that her mother Urmila (PW.14) was present at the time of recording the said statement.

There

had been material contradictions in the depositions of the relevant witnesses. Harbans Lal (PW.15), the Investigating

Officer deposed on various facts in issue which had been ignored by the courts below.

There are lot of discrepancies in the evidence of recovery of gerican of kerosene oil.

More so, no explanation could be furnished by the prosecution as how the smell of alcohol was coming from the

mouth of Suman, deceased.

Thus, the appeal deserves to be

allowed.

4. Per contra, Shri B.S. More, learned AAG has opposed the appeal contending that there could be no reason to disbelieve the dying declaration. There had been a recovery of gerican of kerosene oil on being pointed out by the appellant no.1 which had been concealed in the latrine of their house. The appellants had been mal-treating the deceased as they were not satisfied with their dowry demands. Panchayats had been held to resolve the dispute but the same could not be resolved. The Investigating Officer had not conducted the investigation fairly and the Trial Court had commented on it. Even the defence witness Santosh (DW.1) though half-heartedly tried to help the appellants but her statement was not worth acceptance. In view of the above, the appeal is liable to be dismissed.

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5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The dying declaration recorded by the Chief Judicial Magistrate reads as under:

"Statement of Suman, wife of Gobind Ram, age 25 years, resident of Ram Nagan, Bhiwani, on SA - Stated that I was married to Gobind Ram in 1994. He never gave me any expenses and used to harass me. I have one daughter. Today at about 1-1/2 or 2 O'Clock, Gobind Ram, his father Prem Sagar poured kerosene oil put me on fire. My father has already given dowry then also they used to harass me."

The aforesaid dying declaration was recorded after obtaining the Medical Certificate of fitness of the maker.

7. This version got fully supported by Urmila (PW.14), Jyoti (PW.13) as well as by the medical evidence. Jyoti (PW.13) in her statement stated that Suman tried to enter her house and she extinguished the fire by putting jute bag on her and in that process she also received the burn injuries on her left hand. Suman had told her that she had been burnt by her husband and father-in-law. She was

crying to save herself. About 15-20 minutes earlier to the incident Suman had come to her with the complaint that she was being beaten by the appellants. The said witness suffered a grilling cross-examination but nothing useful to defence could be elucidated.

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8. Harbans Lal (PW.15), the Investigating Officer deposed that on 28.11.2001 he had interrogated Gobind Ram, appellant no.1 and on whose disclosure statement the gerican of kerosene oil was recovered from the latrine of his house which was sealed and sent for FSL. However, he made various statements which made the case of prosecution doubtful. He deposed that on reaching the place of occurrence on 27.11.2001 he received the information from the children that Suman had ablaze herself in the street in front of house of Santosh and Jyoti and this version was corroborated by Santosh (DW.1).

9. So far as the statement of Santosh (DW.1) is concerned it is very hazy as the relevant part thereof reads as under:

"Suman came from the side of her house..... Suman ablaze herself with match sticks. After seeing this I went inside. I do not know as who had extinguished the fire."

It is quite unnatural for the next door neighbour to see a young woman burning and without any sufficient cause the defence witness entered her house adopting a indifferent attitude altogether. Thus, her deposition is not worth reliance.

10. A specific finding of fact has been recorded by the courts below that the facts and circumstances were adequate to negate the suggestion of suicide.

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11. Both the courts below disbelieved the plea of alibi taken by Prem Sagar - appellant no.2 that he had been in Bombay at the relevant time as he was getting the treatment for heart ailment as he failed to produce any documentary or ocular evidence to substantiate the said plea.

12. Urmila (PW.14) had deposed that earlier also being aggrieved of the ill-treatment by the appellants the panchayats were held and a case was filed in Women's Cell at Delhi in this regard. She also deposed that dying declaration was recorded by the Chief Judicial Magistrate, Rohtak. The Judicial officer and the Medical officer involved in recording the dying declaration were independent witnesses who had no reason to make a false certification or prepare a false record.

13. The allegation that Suman made the dying declaration on being tutored by Urmila (PW.14) as the defence even did not put any suggestion to Dr. Jitender Kadiyan or Mr. C.B. Sheoran, CJM that mother of Suman was present there at the time of recording the dying declaration.

14. On the conduct of the Investigating Officer, the Trial Court had made serious remark as under:

"A perusal of the entire file and the discussion being made hereunder would indicate that the role

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of the investigating officer, namely, Sub-Inspector Harbans Lal PW.15 was partisan. He did not act fairly. His role was liable to be deprecated on all counts."

15. No explanation could be furnished by the appellants in respect of recovery of gerican of kerosene oil.



For Respondent(s) Mr. B.S. Mor, Adv.  
Ms. Naresh Bakshi, Adv.

Mr. Kamal Mohan Gupta, Adv.  
Ms. Suparjita Pattanaik, Adv.  
Ms. Nupur Choudhary, Adv.

UPON hearing counsel the Court made the following  
O R D E R

We do not find any force in the submissions made by learned counsel for the appellants. The appeal lacks merit and is accordingly dismissed in terms of the signed order.

Both the appellants have been enlarged on bail by this court vide orders dated 8.4.2011 and 18.11.2011. Appellants are directed to surrender forthwith to serve out the remaining part of the sentence, failing which the learned Sessions Judge, Bhiwani, Haryana shall ensure to take them in custody and send them to jail to serve out the unserved part of the sentence. A copy of the judgment and order be sent to the learned Sessions Judge, Bhiwani for information and compliance.

(DEEPAK MANSUKHANI) (M.S. NEGI)  
Court Master Assistant Registrar  
(Signed order is placed on the file)

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ITEM NO.107 Court No.2 SECTION IIB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 1226 OF 2009

GOBIND RAM & ANR. Appellant (s)

VERSUS

STATE OF HARYANA Respondent(s)

(With office report)

Date: 15/05/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE A.K. SIKRI  
(VACATION BENCH)

For Appellant(s) Mr. Mahabir Singh, Sr. Adv.  
Mr. Daya Krishan Sharma, Adv.  
Dr. Shiva Sharma, Adv.  
Mr. Aman Singhal, Adv.

For Respondent(s) Mr. B.S. Mor, Adv.  
Ms. Naresh Bakshi, Adv.  
Mr. Kamal Mohan Gupta, Adv.  
Ms. Suparjita Pattanaik, Adv.  
Ms. Nupur Choudhary, Adv.

UPON hearing counsel the Court made the following  
O R D E R

We do not find any force in the submissions made by learned counsel for the appellants. The appeal lacks merit and is accordingly dismissed in terms of the signed order.

Prem Sagar - appellant no.2 has been enlarged on bail by this court vide order dated 8.4.2011. Appellant no.2 is directed to surrender forthwith to serve out the remaining part of the sentence, failing which the learned Sessions Judge, Bhiwani, Haryana shall ensure to take him in custody and send him to jail to serve out the unserved part of the sentence. A copy of the judgment and order be sent to the learned Sessions Judge, Bhiwani for information and compliance.

(DEEPAK MANSUKHANI)

Court Master

(M.S. NEGI)

Assistant Registrar

(Signed order is placed on the file)

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