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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-332-DB-2005 (O&M)
Date of Decision: 19.03.2025

Mahender Singh & othersAppellants

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sudhir Sharma, Advocate, for
Mr. Mohit Thakur, Advocate, for the appellants.

Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. Appellants, namely, Mahender Singh, Kamla and Sunita, who stand convicted for offences punishable under Sections 302, 201, 120-B IPC read with Section 34 IPC vide judgment dated 15.04.2005 passed by learned Additional Sessions Judge, Rewari, assail their conviction by way of filing instant appeal.
2. The matter pertains to homicidal death of Rajbala in her matrimonial home in respect of which FIR No.64 dated 23.05.2002 registered at Police Station Kasola, under Sections 304-B, 201, 120-B IPC lodged at the instance of her father Bhoop Singh. The translated gist of Bhoop Singh's



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statement (Ex.PL) on the basis of which formal FIR (Ex.PL/2) came to be lodged reads as under:

“I am resident of Village Jonaicha Khurd, District Alwar (Rajasthan). I have 4 sons and a daughter namely Rajbala, who was married to Mahender Singh son of Nathu Singh resident of Kanina on 26.01.1999. However, Mahender Singh is residing at village Garhi Bolni with his maternal grandfather Sajjan Singh of Village Garhi Bolni, as he had been adopted by his maternal grandfather. A son, presently aged about 2 ½ years, was born out of the wedlock and Rajbala was now also carrying a pregnancy of 7/8 months.

Madan Lal, elder brother of Mahender Singh, died in November, 2001. After his death, Madan Lal’s widow namely Sunita developed illicit relations with Mahender Singh and Mahender Singh wanted to keep Sunita as his second wife. Even Mahender Singh’s mother namely Kamla also wanted the same. Mahender Singh started harassing and beating Rajbala in order to pressurize her for keeping Sunita as second wife of Mahender Singh. I and my son had tried to convince Mahender Singh to give up his stubbornness for second marriage. However, Mahender Singh murdered Rajbala on the asking of his mother Kamla and Sunita at about 8.00 AM and that after murdering her (Rajbala), he set her dead body ablaze so as to destroy evidence.

I received this information through Dalip Singh son of Sheo Singh of Village Garhi Bolni. I alongwith my son Suresh and other co-villagers reached village Garhi Bolni. Yesterday i.e. on 22.05.2002 at about 10.00 AM, Mahender Singh had come from village Kanina. Mahender Singh had murdered Rajbala at the instance of his mother Kamla and *bhabhi* Sunita. Sd/- Bhoop Singh.”

3. The aforesaid statement was recorded by Inspector/SHO Rameshwar Dayal (PW-11) when the complainant Bhoop Singh met him at bus stand of village Garhi Bolni. After recording the aforesaid statement, the same



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was sent to police station for lodging a formal FIR, which was accordingly recorded. Inspector Rameshwar Dayal went to the house of the accused in Village Garhi Bolni where the dead body of Rajbala was found lying in the courtyard in burnt condition. Inquest proceedings were conducted. A rough site plan was prepared. A pair of slippers, clothes, soil, plastic can were taken into possession vide separate recovery memos. Statements of the witnesses were recorded. The dead body of Rajbala was sent for post-mortem examination.

4. Accused Mahender Singh was arrested on 24.05.2002, whereas accused Kamla and Sunita were arrested on 28.05.2002. Upon completion of investigation, challan was presented against all the three accused in the Court of Chief Judicial Magistrate, Rewari on 12.06.2002, who committed the case to the Court of Sessions vide order dated 16.07.2002. The Court of Additional Sessions Judge, Rewari, framed charges against all the three accused on 30.07.2002 for offences punishable under Sections 304-B, 201, 120-B IPC read with Section 34 IPC to which they pleaded not guilty and claimed trial. Subsequently, on an application moved by the prosecution for amendment of the charges, the charge in respect of offence under Section 304-B was altered to charge for offence punishable under Section 302 IPC on 04.02.2003.
5. The prosecution in order to establish its case examined as many as 11 witnesses. The gist of their statements is briefly referred to hereinunder:-



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- PW-1** Dharampal, who had prepared the scaled site plan, proved the same as Ex.PA.
- PW-2** MHC Laxman Singh, who is a formal witness, tendered into evidence his affidavit Ex.PB, wherein he deposed that being the custodian of Malkhana, Police Station Kasola, four parcels duly sealed had been deposited with him by SI/SHO Rameshwar Dayal on 29.05.2002. He further deposed that on the same day, he had handed over the three parcels to Constable Ranjit Singh for the purpose of depositing the same in the office of FSL Madhuban, Karnal, which were accordingly deposited on 30.05.2002 and that as long as the case property remained in his possession, the same was not tampered with.
- PW-3** Constable Ranjit Singh, who is also a formal witness, tendered into evidence his affidavit Ex.PC, wherein he deposed that on 29.05.2002, MHC of the Police Station had handed over to him the case property for depositing the same in the office of FSL, Madhuban, Chandigarh, which he accordingly deposited on the same day and that as long as the case property remained in his possession, the same was not tampered with.
- PW-4** Constable Ashok Kumar stated that on 23.05.2002, he had delivered the special reports to the Illaqa Magistrate and to other senior officers.
- PW-5** HC Bhagat Singh stated that on 23.05.2002, after post-mortem examination had been conducted on the dead body, he was entrusted with a parcel, which he handed over to the SHO.
- PW-6** Vinay Kumar, photographer, stated that he had visited the place of occurrence and had taken photographs Ex.PD/1 to Ex.PD/8 and proved negatives thereof as Ex.PD/9 to PD/14.



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PW-7 Sajjan Singh stated that on 23.05.2002 at about 8.00 AM, when he was present in his house and was sitting in courtyard, he saw that Rajbala, who was married to his maternal grandson Mahender Singh, had been caught hold of by Sunita and Kamla, whereas Mahender Singh was strangulating Rajbala. He stated that when he tried to intervene, Mahender Singh gave him a push and he fell down and thereafter all three of them set ablaze the dead body of Rajbala by pouring kerosene oil. He further stated that upon seeing the flames, his brother Dalip Singh, nephew Ramesh Chand and one Satpal came at the spot, but by that time, Rajbala's body had been burnt extensively. PW-7 further stated that Rajbala had been killed by the accused as Mahender Singh was having illicit relations with his *bhabhi* Sunita and wanted to keep Sunita as his wife. He further stated that his daughter Kamla had also talked to him in this regard as she also wanted Sunita as wife of Mahender Singh, but he refused for the same. He further stated that he had 2 children i.e. his daughter Kamla, whereas his son has expired in the year 1976 and thereafter, he had adopted his maternal grandson Mahender Singh as his son. He further stated that initially relations between Mahender Singh and Rajbala were cordial, but subsequently, became strained when Mahender Singh started having extra marital relations with Sunita and that although he had tried to reason out and persuade Mahender Singh not to indulge in the same, but to no avail and rather Mahender Singh started harassing Rajbala in this regard. He further stated that he informed the family of Rajbala through Dalip Singh and Ramesh.

PW-8 Dr. Ashok Kumar Baghoria, Medical Officer, General Hospital, Rewari, stated that on 23.05.2002, he alongwith Dr. Ashok Kumar Saini and Dr. Sharda Dabas had conducted post-mortem examination on the dead body of Rajbala. He stated that as per the opinion of the Board, the cause of death was asphyxia as a



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result of throttling and the burns were post-mortem in nature. He also proved the post-mortem report as Ex.PJ.

PW-9 Bhoop Singh (complainant) stated in tune with his version, which he had got recorded to the police on the basis of which FIR came to be lodged, which has already referred in the earlier part of the judgment.

PW-10 Shri A.K.Singhal, JMIC, Rewari, stated that on 28.05.2002, he had recorded the statement of Sajjan Singh in terms of provisions of Section 164 Cr.P.C., which he proved as Ex.PI.

PW-11 SI/SHO Rameshwar Dayal, who is the Investigating Officer in the present case, stated in detail with regard to the investigation right from the lodging of FIR upto the presentation of challan. He proved various documents and memos prepared during the course of investigation.

6. Upon closure of the prosecution evidence, statements of all the three accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the case of prosecution and pleaded false implication. Accused Mahender Singh stated that his adoptive father Sajjan Singh had made a statement against him under pressure to save himself and that he was not present at his house on the date and time of occurrence. Accused Kamla stated that it was only pursuant to receipt of telephonic information on the morning of 23.05.2002 from his father regarding death of Rajbala that she alongwith her husband and others rushed to village Garhi Bolni in a Tata Sumo where they reached at about 11.00 AM. She further stated that her son Mahender Singh had been adopted by her father Sajjan Singh since long and he was not even on visiting terms with her. Accused Sunita in



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her statement stated that shortly after the death of her husband, she had started residing with her parents at village Nahar and that she used to go to village Kanina occasionally to enquire about the well being of her mother-in-law and father-in-law and also to facilitate meeting of her son with his grandparents. She further stated that she had never visited village Garhi Bolni nor was having any illicit relations with Mahender Singh and that allegations of illicit relations was a concocted story.

7. The accused in their defence examined two witnesses. **DW-1** Ved Parkash Yadav, resident of Village Kanina, who stated that on 23.05.2002, he had received a telephonic message from Sajjan Singh of village Garhi at about 8.30 AM and Sajjan Singh had requested him to call Kamla. He further stated that since Sajjan Singh was sounding perturbed, he enquired from him about the same upon which Sajjan Singh told him that Mahender Singh's wife had been burnt and had died. He further stated that he immediately called Kamla from her house and that Kamla talked to her father Sajjan Singh over the telephone in his presence. He further stated that thereafter, he, Master Dalip Singh, Nathu Ram and his wife Kamla, Mahavir Singh and his wife went to village Garhi in a Tata Sumo where they reached at about 11.00/11.30 AM.
8. **DW-2** Dalip Singh Yadav son of Balbir Singh stated that on 23.05.2002 at about 7.30 AM/8.00 AM, Kamla and her husband Nathu came to his house and told him that they had received a telephonic message from Sajjan Singh that Mahender Singh's wife had died due to burns. He stated



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that Kamla and Nathu requested him to accompany to village Garhi and accordingly they hired a Tata Sumo vehicle in which, he alongwith Nathu Singh, his wife Kamla, Mahavir Singh, his wife Sushila, Ved Parkash and Hazari Lal Lamberdar went to village Garhi where they reached at about 10.00 AM and that several persons had already gathered there. He further stated that Sunita used to reside in village Nahar after the death of her husband.

9. The learned trial Court, upon appreciating the evidence on record, held that the charges framed against the accused stood duly established and while holding them guilty of having committed offence punishable under Sections 302, 201, 120-B IPC read with Section 34 IPC, sentenced them as under:

Under Section - To undergo rigorous imprisonment for life and to pay
302/120-B/34 a fine of Rs.1000/- each and in default of payment of
IPC fine to undergo further RI for six months.

Under Section - To undergo rigorous imprisonment for seven years
201/120-B/34 and to pay a fine of Rs.500/- each and in default of
IPC payment of fine to undergo further RI for three
months

10. It may here be mentioned that appellant Kamla expired on 19.09.2014 and as such, proceedings qua her stand abated.
11. Learned counsel for the appellants while assailing the impugned judgment submitted that accused have been falsely implicated by the complainant, as he suspected that his son-in-law (Mahender Singh) was having illicit relations with his sister-in-law (Sunita). It has been submitted that in fact the medical evidence is not clear as to whether it is a case of death by



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strangulation or by burns. Learned counsel further submitted that admittedly the complainant was not even present at the spot when the occurrence had taken place and the prosecution mainly banks upon the statement of PW-7 Sajjan Singh, who was an old man, aged about 80 years, and had been pressurized by the police into making statement in favour of the prosecution. It has been submitted that the statement made by PW-7 Sajjan Singh is in conflict with his statement made under Section 161 Cr.P.C. and as such, is not a reliable witness. Learned counsel further submitted that in any case admittedly the accused Kamla and Sunita are not even residing in the house where the occurrence had taken place and were residing in different villages and had no role whatsoever to play in the alleged murder of deceased Rajbala. Learned counsel has, thus, prayed for acceptance of appeal and setting aside of the impugned judgment.

12. On the other hand, learned State counsel, while opposing the appeal, submitted that it is a case where the deceased had died an unnatural death in her matrimonial home and in respect of which no justifiable explanation is forthcoming. It has further been submitted that the star witness of the prosecution is none else but PW-7 Sajjan Singh, who is maternal grandfather and adoptive father of accused Mahender Singh and who was residing in the same house and had witnessed the occurrence. Learned State counsel submitted that under these circumstances, the findings of the trial Court as regards guilt of the accused do not call for any interference.



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13. We have considered the rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
14. Since it is a case where the deceased was alleged to have been strangled and then her dead body was said to have been set on fire, it is apposite to refer to the medical evidence in this regard. The dead body of Rajbala had been subjected to post-mortem examination, which was conducted by a board of three doctors including PW-8 Dr. Ashok Kumar Baghoria, who has proved the post-mortem report as Ex.PJ. Some of the relevant extracts from the statement of PW-8 Dr. Ashok Kumar Baghoria are reproduced hereinunder:

“.....There were superficial burns all over the body, except on dorsum of left hand, bi-lateral armpit and groin with peeling of skin at places. Air filled bullae present at few places. The underlying skin was leathering, parchment like dry.....

On further dissection of neck, haemorrhage in the subcutaneous tissue seen. Right cornu of thyroid bone was found fractured. On slit opening of trachea, blood stained frothy fluid was present.....

In the opinion of the board, the cause of death was asphyxia as a result of throttling and the burns were post-mortem in nature.

The duration between injury and death was within few minutes and duration between death and post-mortem examination was 6 to 36 hours.”

(...emphasis supplied)



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15. Although the witness i.e. PW-8 was cross-examined at length on behalf of the accused, but nothing substantial could be elicited during the course of cross-examination so as to either doubt the veracity or his opinion. The opinion as regards cause of death could not be shattered on any count. Under these circumstances, this Court has no hesitation in holding that it is a case of homicidal death, wherein the deceased had been strangled to death and thereafter her dead body was set on fire.
16. Role of accused - Mahender Singh: It is the case of prosecution that Mahender Singh had been adopted by his maternal grandfather Sajjan Singh during his childhood and had been residing with him in village Garhi Bolni. The dead body was found lying in the house of Mahender Singh in the courtyard i.e. house belonging to his maternal grandfather Sajjan Singh in village Garhi Bolni. PW-7 Sajjan Singh has stated in unambiguous terms that the deceased had been strangled to death by Mahender Singh and that her dead body was set on fire. It needs to be emphasized that Sajjan Singh is none else, but adoptive father of accused Mahender Singh and both were residing in the same house in Village Garhi Bolni. Under these circumstances, he is the most natural witness to the occurrence. His statement was also recorded in terms of Section 164 Cr.P.C. on 28.05.2002, which is also consistent with the version put-forth by him while in the witness-box.
17. Apart from the factum of aforesaid statement of PW-7 Sajjan Singh, the fact that the dead body was found lying in the matrimonial home of



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accused Mahender Singh leaves much to be explained by Mahender Singh as regards cause of death. A burden lay heavy on Mahender Singh accused, who is none else but husband of the deceased to explain the circumstances regarding death and recovery of dead body from his own house. The accused has, however, not come out with any explanation in this regard. In this context, a reference may be made to provisions of Section 106 of Indian Evidence Act, 1872. Section 106 of Indian Evidence Act is in the nature of an exception to general rule enshrined in Section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts the existence of such fact. Section 106 in the Indian Evidence Act, 1872 reads as follows :-

“106. Burden of proving fact especially within knowledge. –

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

18. In a judgment reported as (2012) 1 SCC 10, Prithipal Singh v. State of Punjab, the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. It was further held therein that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special



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knowledge regarding such facts, offers any explanation which might drive the court to draw a different inference. Thus, it was held that Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

19. The Hon'ble Apex Court, in another judgment reported as (2009) 6 SCC 61, Narendra v. State of Karnataka, where a woman was done to death in the bedroom of the matrimonial home and the accused raised a plea of alibi that he had gone to another place for purchase of milk and was therefore not involved with the crime, upheld conviction of accused wherein the plea of alibi was rejected, while resorting to provisions of Section 106 of the Indian Evidence Act.
20. The Hon'ble Apex Court in (2016) 12 SCC 665, Harijan Bhala Teja v. State of Gujarat in somewhat identical circumstances where the dead-body had been found in the house of the accused affirmed the judgment of the High Court reversing acquittal of accused. The relevant extract from cited judgment is reproduced below for the sake of ready reference:

“Section 106 of the Evidence Act, 1872 provides that when any fact is special within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly when the prosecution has successfully proved that she died homicidal death.”



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21. The accused Mahender Singh having failed to explain the circumstances under which the dead body of deceased was found in his house though a burden lay on him in terms of provisions of Section 106 of Evidence Act, is a fact which points towards complicity of the accused.
22. In view of the above referred statement of PW-7 Sajjan Singh and also given the fact that provisions of Section 106 of the Evidence Act would also come into play, we do not find any infirmity in the findings recorded by the trial Court as regards guilt of Mahender Singh for having murdered Rajbala and having set her on fire in order to destroy the evidence. The said findings qua Mahender Singh, as such, are affirmed.
23. Role of accused - Sunita: It is the case of prosecution that Kamla (since expired) and Sunita held Rajbala (deceased) from her arms while Mahender Singh had strangulated Rajbala. However, it is a case where the factum of aforesaid Kamla (since expired) and Sunita residing separately is evident on record. In fact, PW-7 Sajjan Singh has clearly stated that it was he, his adopted son Mahender Singh, Rajbala and Rajbala's minor son only who were residing in the house. PW-11 SHO Rameshwar Dayal has also stated that during his investigation, it had come to his knowledge that Sajjan Singh, Mahender Singh (accused), Rajbala and Rajbala's son were the only person residing in the house. The witness examined on behalf of the accused i.e. DW-1 Ved Parkash Yadav, resident of village Kanina, stated that he had received a telephonic call on the morning of 23.05.2002 from Sajjan Singh, who had informed



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him about the fate of Rajbala and had requested him to call Kamla so as to tell her about the incident and that he (Ved Parkash Yadav) had accordingly called Kamla so as to enable her to speak to her father over the telephone. He further stated that it was subsequently that he alongwith Kamla, Nathu Ram, Master Dalip Singh, Mahavir Singh and his wife went to village Garhi in a Tata Sumo vehicle where they reached at about 11.00/11.30 AM. DW-2 Dalip Singh Yadav son of Balbir Singh, who had also accompanied Ved Parkash Yadav also stated identically. DW-2 Dalip Singh has further stated that Sunita used to stay at her village Nahar. In view of the aforesaid evidence, we find that there is some element of doubt as regards presence of Sunita and Kamla (since expired) in the house where the murder was committed in the early hours of the day.

24. Still further, when the statement (Ex.DA) of star witness PW-7 Sajjan Singh had been recorded on the day of occurrence in terms of Section 161 Cr.P.C., he did not state that Kamla and Sunita had caught hold of deceased when she was strangulated to death by Mahender Singh. The relevant extract from said statement (Ex.DA) is reproduced herein under:

“My daughter’s son Mahender had illicit relations with Sunita. He started harassment and beating with Rajbala at the instance of Sunita and his mother Kamla. Time and again pressurised to keep Sunita as his second wife. My brother Dalip had tried to persuade Mahender to be adamant in this regard. Today Rajbala telephonically gave message that asked to her father to reach to her. I alongwith the son of my daughter's son had gone to the bus stand but could not be contacted and when I reached at my home then Rajbala was found burnt at about 8 AM She



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was dead. She was in the court yard of the house. That Mahender had murdered Rajbala and so as to remove the marks of beating etc. from the body of Rajbala, he had set her on fire by pouring kerosene oil on her body. The message regarding the death of Rajbala was sent through my brother Dalip then Bhoop Singh, his son Ajit, Suresh and other villagers came there. My daughter's son Mahender yesterday i.e. on 22.05.2002 at about 10 o'clock had reached from Kanina to Garhi. Who at the instance of his sister-in-law (Bhabhi) Sunita and mother Kamla murdered Rajbala and then after pouring kerosene oil, set her body on fire. You have recorded my statement which I have heard and It is correct.”

25. Keeping in view the fact that Kamla and Sunita were residents of different villages and that PW-7 in his statement (Ex.DA) merely stated that deceased had been done to death at the instance of Kamla and Sunita and is conspicuously silent as regards attributing any overt act to them, their presence at the spot in the early hours of day is rendered doubtful. It also needs to be mentioned that the complainant (Bhoop Singh) in his statement made to the police also did not allege any overt act to Kamla and Sunita and had simply got it recorded that Mahender Singh had killed Rajbala at the instance of Kamla and Sunita. Thus, while extending benefit of doubt in favour of appellant Sunita, her conviction deserves to be set aside.
26. As an upshot of the discussion made above, while the appeal qua appellant No.1 - Mahender Singh is dismissed and his conviction is upheld, the appeal qua appellant No.3 – Sunita is accepted and she is acquitted of all the charges framed against her.



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27. A copy of this judgment be sent to the quarters concerned for necessary compliance.

(GURVINDER SINGH GILL)
JUDGE

19.03.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**