CASE NO.:
Appeal (crl.) 185 of 2000

PETITIONER:
HASAN MURTZA

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 29/01/2002

BENCH:
N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

SANTOSH HEGDE, J.

The appellant has preferred this appeal against the judgment dated 31.3.1999 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.403-DB of 1997 confirming the conviction and sentence passed by the Additional Sessions Judge, Ambala, dated 25.2.1997 and 27.2.1997 convicting him of an offence punishable under Section 302 IPC and sentencing him to life imprisonment and to pay a fine of Rs.2,000/-, and in default of payment of fine the accused was further directed to undergo 6 months' RI.

Briefly stated, the prosecution case is that the appellant was married to one Ruksana Parveen for about 8 years and had two issues out of the said wedlock. The relationship between the husband and wife was not cordial and there used to be constant quarrels between the duo. It was also alleged by the prosecution that the appellant was a wavered person given to bad habits, therefore, his father in order to safeguard the monetary interest of the family, had purchased a house in the name of his wife, and also two cars, apart from investing money in certain FDs. for the benefit of the children which was also in the joint names of the father of the appellant and his wife, thereby excluding the appellant from handling the monetary affairs of the family. It is further stated that on 17.12.1993 there was a quarrel between the deceased and the appellant in regard to the sale of two cars registered in the name of the deceased and the purchase of a new car which was registered in the appellant's name. Because of the said quarrel, the appellant beat the deceased with a stick earlier on that day. It is further stated that at about 7 p.m. on the fateful day, the appellant came home and called the deceased to the bathroom where he splashed petrol on her which he had kept in a mug and lit the deceased with a candle consequent to which the deceased was engulfed in flames and she ran out of the house into the street and within minutes she was charred to death. The case of the prosecution primarily rested on the evidence of Smt. Nisha, PW-4, the mother of the deceased who, according to the prosecution, was visiting the deceased and the appellant for about a month prior to the date of the ghastly incident. According to PW-4, on the date of the incident, when she and her daughter were present in

the house at about 12'O clock, the appellant came to the house and gave beating to her daughter with a stick and left threatening that he will not spare her on that day and that she would be finished and that he would not get the vehicle transferred in her name. Subsequently, at about 6.30 p.m. he again came inside the house, called the deceased who was in her room, sprinkled petrol on her. At that point of time, PW-4 was stated to be on the roof of the house who on hearing the commotion, came down and saw the appellant lighting a candle with a matchstick and throwing the same on her daughter. It is stated that while she tried to help her daughter, her clothes caught fire and were partially burnt. It is also stated by her that her daughter while in flames, ran outside the house and fell down on the road in front of the house. At that time, the appellant fled from there threatening PW-4 that should she report the case to the Police, she will also be finished. It is the further case of the prosecution that on hearing the cries of PW-4, her elder son Babban came to the spot along with his teacher and both of them went and made a telephonic call to inform the Police. In the meantime, the deceased succumbed to her injuries.

Based on the evidence adduced before it, the trial court came to the conclusion that the appellant was a wavered person because of which his father had purchased a house two years after the marriage for Rs.8,50,000/- and two Maruti vehicles in the name of the deceased because of which the appellant was constantly fighting with the deceased and in view of the above marital discord, committed the offence of murder of his wife by dousing her with petrol and setting her ablaze. In this regard, it accepted the evidence of the prosecution, rejecting the contention of the defence that it was not safe to rely on the evidence of PW-4 because of the contradictions and improvements found in the evidence of the said witness on material facts. The trial court in regard to the charge of contradictions and improvements pointed out by the defence as to the evidence of PW-4, held thus :

"As regards the alleged improvements made by her i.e. complainant, I find that there is no material improvement in her statement. The statement recorded by the police is meant to be a brief statement and it is not expected to cover each and every matter and so if the witness gives detailed version in the court which he or she had not given in his/her statement to the police, it cannot be said that he or she had improvement upon his/her earlier statement made to the police. There is no material improvement in the statement of the complainant over the statement made by her to the police. Even to the police complainant Nisha had stated that as the accused had been beating her daughter and had been harassing her, she was living there to protect her and to look after her and that the accused had firstly beaten her daughter and threatened her that he would finish her and would not transfer the vehicle in her name and then he had returned at 6.30 P.M. and had sprinkled petrol by pulling her from the room and had then lighted the candle and had thrown that candle on her daughter. The complainant had stuck to that version even in her statement in the court and minor discrepancies are bound to appear even in the statement of a most truthful person."

Thus, it is seen that the trial court rejected the argument of the defence that the evidence of PW-4 was not trustworthy and based on the said evidence, the trial court came to the conclusion that the appellant was guilty of the offence punishable under Section 302 and convicted him to undergo

imprisonment for life.

In appeal, the High Court also rejected the contention advanced on behalf of the appellant that the statement of PW-4 is contradictory in material particulars and she being the sole eye-witness in the case as also being a person closely related to the deceased, her evidence should be scrutinised with great care and caution. The further argument of the defence that by applying the said standard, the evidence of PW-4 is liable to be rejected, was also discarded by the High Court, confirming the conviction and sentence imposed by the trial court.

Mr. K B Sinha, learned senior counsel appearing for the appellant, contended that the courts below erred in placing reliance on the sole testimony of PW-4 which is contradictory on material facts. He further pointed out that the High Court gravely erred in observing that the appellant has nowhere challenged the presence of PW-4 in his house at the time of the incident which according to the learned counsel was erroneous reading of the evidence which error has led to the miscarriage of justice. He further pointed out that it is highly improbable that PW-4 would have been staying with her daughter while her son was also staying in a nearby locality at Panchkula and her presence at the time of the incident was highly doubtful. It is his further contention that if each one of the contradictions and improvements found in the evidence of PW-4 is scrutinised with utmost care, it would clearly indicate that PW-4 was not staying with the son-in-law and was not stating the truth. If that be so, to convict the appellant on the evidence of such a witness would be hazardous. In support of this contention on behalf of the appellant, he took us through the evidence of PW-4 and pointed out the following improvements :

(i) That she had stated before the Police in her statement that the accused was not having good character and that he used to bring other ladies for illicit relationship. This statement of the witness which was marked as Ex. PC, have not been recorded in Ex.PC. (ii) That on earlier 6/7 occasions also she had visited the house of Ruksana (the deceased) at Panchkula and stayed with her for 2-3 days each time. This statement was found to have not been recorded in Ex. PC. (iii) That she had stated before the Police that the accused had called the deceased to the bathroom and the deceased had gone to the bathroom and at that time the witness was standing in front of the bathroom. Even this statement was not found in Ex. PC. (iv) That she had stated in her statement that the accused had poured kerosene upon the deceased which was contained in a jug lying in the bathroom. This statement also was not found in Ex. PC. (v) That she had stated before the Police that she had entered the bathroom to save her daughter Ruksana which statement was also not found in her previous statement Ex. PC. Based on these improvements which, according to the learned counsel, are very material for testing the veracity of the evidence tendered by PW-4, he contended that it is not safe to rely upon the evidence of such witness who had not stated in her previous statement to the Police the material facts which would go to cast a doubt as to her presence in the house at the time of incident. As noted above, the trial court brushed aside these improvements by holding that the previous statements need not be very elaborate and the said statements are not material improvements. According to the learned counsel, the High Court also committed similar errors. He contend that the High Court also committed a further error inasmuch as it noted in its judgment that the appellant has not challenged the presence of PW-4 in the cross-examination of that witness. For this purpose, he

pointed out to us that a specific question in this regard was put to the witness which is as follows : "It is incorrect to suggest that I was not present in the house No.803 at the time of occurrence and that I have not seen any incident." Learned counsel submitted that obviously the High Court has not noticed this material suggestion put to the witness which would impeach her evidence and if considered in the context of contradiction and improvements in her evidence would show that it was highly improbable that PW-4 would have been present in the house of the deceased at the time of the incident.

The learned counsel for the State in his reply tried to support the case of the prosecution based on the findings of the courts below.

We have heard learned counsel for the parties and perused the records. While it is true that there is material to show that the relationship between the appellant and his deceased wife was not cordial and their marital life was marred by frequent quarrels, we are unable to sustain the conviction and sentence awarded to the appellant by the courts below, based on the fact that there was marital discord between the couple and also based on the evidence of PW-4 which, according to us, does not inspire confidence to base a conviction. As noticed by us hereinabove, PW-4 has made material improvements in her evidence to prove her presence in the house where the incident in question took place. Admittedly, PW-4 is not a permanent resident of Panchkula. She is a resident of State of Uttar Pradesh and, according to her, she frequently visited her daughter only because there were quarrels between the husband and wife. She had stated in her evidence that at the time of the incident, she was residing with her daughter in the house where the appellant was also residing, for about one month prior to the date of the incident. At the same time, it has come in evidence that her son Babban who was once residing with the appellant in his house, was thrown out of the house by the appellant for his interference in the dispute between the appellant and his wife. Therefore, it is highly improbable that the appellant would have permitted PW-4 to reside in his house while he was not willing to keep PW-4’s son in his house. It is also highly improbable that PW-4 would have stayed with the appellant and deceased for about one month when her son who was working independently was residing at a nearby place in Panchkula itself. The conclusion of ours is further strengthened by the fact that the incident in question is supposed to have taken place at about 7 p.m. but according to evidence on record her statement was recorded only at 10 p.m. after her son had informed the police and this delay also contributes to our doubt as to the presence of PW 4 at the time of incident.

Our doubt as to PW 4’s presence is further compounded by the fact that the incident in question took place in a house where a tenant was living in one portion of the house and there were other houses nearby which were all occupied. Still the prosecution has not been able to cite any one of these persons to support its case or at least to show that the incident in question took place at a time when PW-4 was present at the scene of occurrence. The fact that PW-4 suffered no injury in the process of protecting her daughter from burning to death, further enhances the suspicion as to her presence at the time of the incident. In such a situation, in our considered view, it is not safe to rely upon the sole testimony of PW-4 to base a conviction on the appellant.

It is true from the evidence brought on record by the prosecution that the appellant was not a person with whom the finances of the family could be trusted with. We say this from the material on record which shows that the appellant's own father when he purchased the house, he purchased the same in the name of the deceased and not in the name of the appellant. Even the FDs. made for the benefit of the children were made in the name of the deceased and not in the name of the appellant. This itself goes to show that even the father of the appellant did not trust the appellant with the monies which he wanted to contribute for the benefit of the family, more particularly for that of the children, unfit as he is to look after his family. Even then the mere fact that the appellant is proved to be not a good husband or father would not ipso facto lead to the conclusion that he would commit the murder in question. No person other than PW-4 claims to have seen the appellant at the scene of occurrence. No incriminating evidence e.g. any material like burns or even soot from the burning of the body to which the appellant must have suffered standing close, was noticed in the person or the clothes of the appellant. In the absence of any such material which would corroborate the evidence of PW-4, we think it highly unsafe to rely on the sole testimony of PW-4 to convict the appellant, as has been done by the two courts below. The courts below totally lost sight of these vitally material aspects which completely undermines the credibility of the prosecution case in its entirety.

For the reasons stated above, we are unable to place reliance on the evidence of PW-4. If the said evidence is eschewed then we do not find any other material to base a conviction. The improvements found in the evidence of PW-4 being material, the courts below erred in relying upon the same to convict the appellant. For the afore reasons, this appeal succeeds and the same is allowed. The conviction and the sentence imposed by the courts below are set aside. The appellant shall be set at liberty forthwith, unless required in any other case.

.....J.
(N. Santosh Hegde)

.....J.
January 29, 2002. (Doraiswamy Raju)