

**(2013) 10 P&H CK 0182**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CRA No. 324-DB of 2002 (O and M)

Shanti Devi and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Oct. 24, 2013

**Hon'ble Judges:** Hemant Gupta, J; Fateh Deep Singh, J

**Bench:** Division Bench

**Advocate:** Kiran Bala Jain, for the Appellant; Shubhra Singh, DAG, Haryana, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Hemant Gupta, J.

The appellants namely Shanti wife of Hari Singh; Roopa Rani daughter of Hari Singh and Mohit Kumar @ Billa son of Hari Singh preferred the present appeal aggrieved against the judgment of conviction dated 15.03.2002 and order of sentence dated 18.03.2002 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari, whereby they were convicted for an offence punishable u/s 302 read with Section 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 3000/- each. In the event of default of payment of fine, the defaulters were ordered to further undergo rigorous imprisonment for three months each. The prosecution case was set in motion on the statement of PW-9 Narinder Kaur wife of Narinder Singh made to PW-13 ASI Des Raj, P.S. City, Jagadhri on 27.10.1998 at about 8.15 PM. In her statement (Ex. PG), Narinder Kaur stated that the house of Parkash Kaur i.e. Massi of her husband, is situated near their house. She stated that Parkash Kaur had gone to Jammu 6/7 months ago to visit her daughter. In her house, one Kiran Bala wife of Vicky Jhinwar resident of Jhinwaraon Wali Gali, Jagadhri had taken a room on rent one month earlier and she was residing with her daughter namely Sapna, aged about 41/2 years. Her husband used to work out station. She further stated that for the last 2/3 days, Kiran Bala's mother-in-law, sister-in-law and brother-in-law namely Shanti, Roopa and Billa respectively, residents of Jhinwaraon Wali Gali, were also

living with Kiran. She stated that today i.e. 27.10.1998 at about 4.30 PM, Kiran Bala's daughter Sapna came to her in her house and told that "her Bua, Grandmother & Uncle have given some poisonous substance in the mouth of her mother". On this, she came out from the house and saw those three persons along with their both the dogs i.e. black & white, running from that place. In the meantime, Rani wife of Madan Lal Gadaria, who used to reside in their neighbour, also saw these three persons running from there along with their dogs. Thereafter, she and Rani along with the girl namely Sapna went inside the room and found Kiran writhing on the bed and that froth was coming out from her mouth. Dr. S.K. Gupta was called, who after examination declared her (Kiran) dead. She stated that Kiran Bala's mother-in-law Shanti, sister-in-law Roopa and brother-in-law Billa administered her some poisonous thing and also killed her by pressing throat. On the basis of such statement, ruqa (Ex. PG/3) was sent to the Police Station for registration of an FIR. On receipt of ruqa, FIR (Ex. PG/1) was recorded at about 8.40 PM.

2. Thereafter, ASI Des Raj visited the spot and prepared rough site plan. He also took into possession some broken pieces of bangles; small packet of salt and some other article lying near the dead body after converting into separate sealed parcels. After completing the inquest proceedings, he sent the dead body of Kiran Bala for post mortem examination through Constables Sat Pal and Gurjit Singh. The post mortem examination on the dead body of Kiran Bala was conducted by PW-7 Dr. Mamta Goel and Dr. D.P. Singh on 28.10.1998 at about 10.45 AM.

3. After the arrest of the accused and on completion of necessary formalities, all the three accused were made to stand trial.

4. To prove its case, the prosecution examined PW-6 Sapna, daughter of the deceased Kiran Bala; PW-9 Narinder Kaur, author of FIR; PW-4 Ramesh Kumar, brother-in-law of the deceased, who identified the dead body and PW-13 ASI Des Raj, the Investigating Officer, apart from examining the other witnesses of formal nature and tendering the report of the Chemical Examiner (Ex. PL).

5. All the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded u/s 313 Cr.P.C. In her statement, Shanti pleaded false implication and stated that the case has been planted against her due to revengeful act since 1996. She stated that a property dispute is pending between her and the in-laws of Kiran-deceased and also a criminal case under Sections 324, 452, 506 & 307 IPC, which is a cross-case between her and deceased Kiran and her husband since 20.06.1996. She also stated that Kiran Bala-deceased also consumed poison twice before this occurrence, as there was dispute between her and her husband and not only she, her mother, elder sister, elder brother and even the younger sister consumed the poison and due to poison, all expired except the younger sister Bindu. She further stated that due to pendency of civil and criminal cases, there is no occasion for them to visit the house of Kiran Bala and live with her. Similar are the statements of Roopa Rani and Mohit Kumar @ Billa. In their

defence, the accused examined DW-1 Dharampal, Ahlmad in the Court of Mrs. Anita Dahiya, Additional Civil Judge (Sr. Dn.), Jagadhri, who has brought the case filed titled as "Parkasho Devi Vs. Hari Singh" and proved certified copies of plaint and written statement as Exs. DA and DB respectively. DW-2 Jai Singh, Ahlmad in the Court of Shri V.K. Bakshi, Additional Sessions Judge, Jagadhri has brought the case files titled "State Vs. Hari Singh" u/s 324, 307 & 452 IPC and "State Vs. Naresh" under Sections 324 read with 34 IPC. In his cross-examination, he stated that in the case titled "State Vs. Naresh Kumar etc.", there are two accused namely Naresh Kumar son of Ranjit Singh and Parkash wife of Ranjit Singh and the complainant is Roopa Rani daughter of Hari Singh, whereas in case titled "State Vs. Hari Singh etc.", there are four accused namely Hari Singh son of Nathu Ram, Dharam Pal son of Hari Singh, Shanti wife of Hari Singh and Roopa Rani daughter of Hari Singh. He stated that both the cases are the outcome of FIR No. 240 of 1996 and are cross-cases. DW-3 is Dr. Ramesh Kumar, who medico legally examined Kiran wife of Naresh Kumar on 20.03.1998 at about 1.25 PM. He stated that Kiran was alleged to have taken 1/2 tablet of sulphos poison with water. DW-4 is Dr. Kamal Sharma, Sharma Hospital, Jagadhri, who could not produce the record dated 03.07.1995, as the same was not available in his hospital because he did not preserve the record of such case for more than two years.

6. After considering the entire evidence on record, the learned trial Court convicted and sentenced the appellants, as mentioned above.

7. Before considering the arguments on merits, it may be noticed that during the pendency of present appeal, appellant Nos. 2 & 3 namely Roopa Rani and Mohit Kumar @ Billa, filed an application bearing number Cr.M. No. 15450 of 2011 pointing out that having born on 10.08.1981 and 19.10.1982, they (Roopa Rani and Mohit Kumar @ Billa respectively) were less than 18 years of age on 27.10.1998 i.e. the date of occurrence, therefore, the present appeal qua them be disposed of by treating them as juvenile.

8. On such application, this Court on 21.03.2011 directed the learned Sessions Judge, Yamuna Nagar to conduct an enquiry in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine the date of birth of appellant Nos. 2 & 3. In such enquiry, learned Additional Sessions Judge, Jagadhri, recorded the statements of AW-1 Deepak Kumar, Computer Clerk, who has brought the summoned record from Municipal Corporation, Jagadhri regarding birth of a baby child to Hari Ram and Shanti on 19.10.1982; AW-2 Gurpal Singh, Clerk, Municipal Corporation, Ambala, who deposed that the record of Municipal Corporation, Ambala pertaining to the date of birth of Roopa Rani is not available, as the same had been destroyed due to fire during anti Mandal agitation; AW-3 Hari Singh, father of Roopa Rani, who deposed that his marriage took place in April, 1978 with Shanti and after two years of their marriage, his elder son namely Dharampal was born, who died in the year 2009, his daughter namely Roopa was born on

10.08.1981 at Ambala Cantt and thereafter his son namely Mohit was born on 19.10.1982 at Jagadhri. In his cross-examination, he stated that Roopa was born at home and not in hospital and that she did not attend any school. He stated that he does not have any other record of date of birth of his daughter. AW-4 is Shanti, who deposed in the same lines as deposed by AW-3 Hari Singh, her husband. She denied the suggestion that her daughter was more than 18 years of age at the time of occurrence. On the basis of such evidence, learned Additional Sessions Judge, Jagadhri in his report dated 30.05.2011 concluded that one son was born to Hari Singh and Shanti in the year 1980, whereas daughter Roopa is stated to have born on 10.08.1981, as the first son stated to have born after two years of marriage i.e. in the month of January or February 1980. Therefore, it was found that there is nothing to disbelieve that Roopa was not born on 10.08.1981. Mohit Kumar has also born on 19.10.1982 on the basis birth certificate (Ex. A1) issued by the Registrar (Birth & Death) & Secretary, Municipal Committee, Yamuna Nagar (Jagadhri).

9. A perusal of the record shows that in Cr.M. No. 23054 of 2005 filed by Shanti Devi and Roopa Rani for suspension of sentence on 28.04.2005, the age of Roopa Rani is stated to be 22 years. There are two affidavits executed by Hari Singh son of Nathu Ram in respect of date of births of his daughter Roopa as 10.08.1981 and son Mohit Kumar as 03.02.1982 on record though it is not made out as to who has produced such affidavits. Both the affidavits were sworn on 16.03.2011 i.e. before the filing of Cr.M. No. 15450 of 2011 for treating appellant Nos. 2 & 3 as juvenile. There is also on record a school leaving certificate of Mohit Kumar, as a student of Government Senior Secondary School, Jagadhari, wherein his date of birth was mentioned as 03.02.1982 and that he remained a student from 17.04.1996 to 16.04.1998. Though there is no reference of such documents in the application filed, but since the documents are supported by affidavits of the father of the appellants, the same are taken on record as Exs. C-1, C-2 and C-3 respectively.

10. The affidavit and the school leaving certificate in respect of Mohit Kumar contradict the birth certificate (Ex. A1) issued by the Registrar (Birth & Death) & Secretary, Municipal Committee, Yamuna Nagar (Jagadhri). But even with date of birth as 03.02.1982, Mohit Kumar was less than 18 years of age on the date of occurrence i.e. 27.10.1998 and, thus, was a juvenile on the day of occurrence.

11. We find that if Mohit Kumar had born on 03.02.1982, the date of birth of Roopa Rani as alleged i.e. 10.08.1981 is impossible. It may be noticed that during proceedings before the learned trial Court at the time of framing of charge on 07.04.1999, the age of Roopa Rani was stated to be 21 years, whereas in the statement recorded u/s 313 Cr.P.C. on 24.08.2001, her age was said to be 21 years. Roopa Rani has disclosed her age as 22 years on 18.03.2002, when her statement on the point of quantum of sentence was recorded. Later, in an application for suspension of sentence filed in the year 2005, it has been stated that she was 25 years of age. In Ex. DC i.e. charge-sheet dated 20.03.1997, Roopa Rani is one of the

accused and said to be of 17 years of age and is a student. The assertion that Dharmpal, the eldest child, was born in the year 1980 is not supported by any documentary evidence. If the marriage was solemnized in the year 1978, the possibility of the child having born in the year 1979 cannot be ruled out. Such fact is possible keeping in view the birth of third child as 03.02.1982. Therefore, she is proved to be born in somewhere in the year 1980. Thus, she would be more than 18 years of age on the date of occurrence i.e. 27.10.1998. The findings recorded by the learned Additional Sessions Judge are based on conjectures and are, thus, not sustainable.

12. In view of the above discussion, we find that on the date of occurrence i.e. 27.10.1998, appellant Roopa Rani was not a juvenile.

13. Now coming to the merits of the case, it may be noticed that Nathu Ram had two sons namely Hari Singh and Ranjit Singh. Shanti is wife of Hari Singh, whereas Roopa Rani and Mohit Kumar @ Billa are the children of Hari Singh. Naresh Kumar is son of Ranjit Singh from his wife Parkasho. In the FIR Ex. PG/1, PW-9 Narinder Kaur has stated that Kiran Bala-deceased was the wife of Vicky i.e. Dharmapal. She has not been confronted with such statement. In the post-mortem report Ex. PF, Kiran Bala-deceased is described as wife of Dharmapal @ Vicky. Her dead body was identified by PW-4 Ramesh Kumar, brother-in-law of the deceased. It has also come on record that Kiran Bala since deceased was earlier married to Naresh Kumar. Reference may be made to the cross-examination of PW-13 ASI Des Raj, the Investigating Officer and also the statement of PW-6 Sapna, daughter of the deceased. Even such fact is apparent from the document Ex. DD produced by the accused in their defence. Therefore, it stands proved that Kiran Bala was married to Naresh Kumar and that Sapna is daughter of Kiran from her wedlock with Naresh Kumar. It has also come on record that the deceased was living in a room rented out by her as wife of Vicky i.e. Dharmapal.

14. While appearing in the witness-box, PW-9 Narinder Kaur, author of the FIR, has deposed that Kiran Bala along with her daughter Sapna, aged about 4-5 years, was residing in the house of Parkash Kaur i.e. Massi of her husband. Kiran Bala's mother-in-law Shanti, sister-in-law Roopa and brother-in-law Billa were also staying there for the last 2-3 days. There is no cross-examination to the said witness regarding the relationship deposed by her though she has been declared hostile as she has not supported the first version given by her identifying the three accused. PW-9 Narinder Kaur is a Teacher. She deposed that on 27.10.1998, when she returned from the school at 3.00 PM, Sapna daughter of Kiran deceased was making noise and she told her that her father's sister (Bua) and two others, who are present in court as accused, gave some poisonous thing to her mother. Thereafter, she went towards Kiran's house and through window, she saw that she (Kiran) was lying on her bed and she was moving her hands and legs with faster speed and that she had seen from quite some distance some persons going, but she cannot say whether the

accused present in court were those persons. In her cross-examination by the Public Prosecutor, she admitted that she told to the police that Sapna came and told her that her father's brother, sister and mother had administered something to her mother, but she had not stated that she told that the thing was poisonous. In the cross-examination on behalf of the accused, no question has been asked about the relations of the accused with the deceased or that they were not staying in the room of the deceased for two or three days.

15. On the other hand, PW-6 Sapna, daughter of Kiran Bala-deceased, deposed that Shanti is her grandmother and the name of her father's sister is Roopa and that of uncle is Billa. She identified the accused standing in Court. She stated that they poisoned her mother. She stated that her grandmother gave the poison to her mother in spoon, whereas her father's sister caught hold of her hand and her uncle had caught hold of her legs. Thereafter, all the three accused ran away from that place. She further deposed that she told about this to a lady, who lives in another house and that house is near their house. In her cross-examination, when she stated that his father has no brother and father's mother is dead. The said statement is with reference to Naresh Kumar. RoopaRani and Billa, the appellants herein are none others, but first cousins of his father, therefore, she is called them as father's sister and uncle. She further stated that her father did not tutor her to say these things, which she said today here. She admitted that the house of the accused is away from their house. She denied the suggestion that the accused did not come to their house to poison her mother. She has categorically stated that poison was administered. She stated that quarrel between the accused and her father took place and at that time her mother was alive and after that quarrel, they had not come to their house earlier nor they had gone to their house. She denied that she has deposed on account of tutoring.

16. The question required to be examined is; whether Kiran Bala-deceased was living with Dharampal at the time of occurrence and/or that the appellants were living with the deceased 2-3 days prior to the occurrence.

17. There is no categorical evidence to the fact that the deceased has divorced Naresh Kumar, but the inferences to said fact can be drawn from the cross-examinations of PW-13 ASI Des Raj, the Investigating Officer and PW-4 Ramesh Kumar. Even if Kiran Bala and Naresh Kumar have not divorced, the fact that she was living with Dharampal is amply proved by the testimony of PW-9 Narinder Kaur, author of FIR. She has so stated in the FIR and also stood by that stand while appearing in the Court. There is no iota of cross-examination regarding that fact. But, the child namely Sapna, who is stated to be 4 years of age at the time of giving of her statement, has categorically identified the accused and their relations with her. There is no cross-examination on her that relationships given by her are not correct. Kiran Bala was said to be wife of Dharampal @ Vicky, when PW-4 Ramesh Kumar identified her in the post mortem report. Therefore, at the time of

occurrence, it is proved that the deceased was living as wife of Dharampal and that the appellants were staying with her for at least 2-3 days prior to occurrence.

18. Learned counsel for the appellants was at pains to argue that in view of the previous litigation, it is impossible for Dharampal @ Vicky to live with Kiran Bala. Such argument is based upon inferences. The direct evidence does not support such contention. Ex. DA is the plaint of the suit for injunction filed by Parkasho widow of Ranjit Singh. There is no reference of Kiran Bala in the said suit. Ex. DB is the written statement to the said suit filed by Hari Singh on 25.02.1995. There is no reference to Kiran Bala in the said written statement. Ex. DC is charge-sheet dated 20.03.1997 framing charges against Hari Singh, Dharampal, Shanti and Roopa Rani on a complaint filed by the deceased. In another suit Ex. DE filed by Ram Singh son of Nathu Ram on 15.03.1995, Dharampal and Mohit Kumar are described as minor sons of Hari Singh whereas the defendants are Parkasho widow of Ranjit Singh, Ram Kishan and Naresh, both sons of Ranjit Singh. Such disputes on account of possession of a joint house after the death of Nathu Ram are the basis of the argument raised by learned counsel for the appellants that it is impossible to imagine that Dharampal was staying with Kiran Bala-deceased, who has launched prosecution against them. The two warring factions of the family were in litigation. But that does not mean, that the relations cannot improve or that the deceased could not start living with Dharampal.

19. Learned counsel for the appellants has vehemently argued that the previous civil and criminal litigation is a strong motive for the family of Kiran Bala to involve the appellants in this case. However, we do not find any merit in the said argument. The present prosecution has not started on the basis of statement of any relation of Kiran Bala, but on the statement Ex. PG made by her neighbourer PW-9 Narinder Kaur based upon the information given by a child of 4-5 years. The said child while appearing in the Court as PW-6 has supported the prosecution case in its entirety. The child of 4-5 years has no animosity to depose against the appellants nor Narinder Kaur is said to have any animosity to depose against the appellants.

20. Narinder Kaur is only a neighbourer and has deposed in respect of the relationship given to her at the time of renting the premises and the conduct of the parties.

21. Another argument raised was that the deceased has suicidal tendency inasmuch as she attempted suicide in the year 1995 and later in March, 1998. There is no evidence of any attempted suicide in the year 1995, as no record could be produced. But in respect of incident happened in March, 1998, DW-3 Dr. Ramesh Kumar, Medical Officer, Civil Hospital, Jagadhri has admitted in his cross-examination that word "Poisoning" appearing in the MLR has been written with a different ink at point A in Ex. DD. He admitted that word "poisoning" was written later on and after preparation of the report may be after a month or more. Such previous conduct, even if relevant, is not conclusive of any fact in issue in the present trial. Such report

is not relevant to consider the cause of death in the present case, which is based upon the eye-witness account deposed by PW-6 Sapna, daughter of Kiran Bala-deceased, which is substantially corroborated by PW-9 Narinder Kaur.

22. In view of the above, we do not find any merit in the present appeal. The same is dismissed. However, in respect of appellant Mohit Kumar @ Billa, who is proved to be juvenile on the date of occurrence, he having undergone more than 3 years of actual imprisonment, is ordered to be set at liberty treating him to be a juvenile, if not required in any other case.