

(2006) 08 P&H CK 0225

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 332-MA of 2005

Dayala Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Aug. 17, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Virender Singh, J; A.N. Jindal, J

Bench: Division Bench

Advocate: None, for the Appellant; Sunil Katyal, DAG for respondent No. 1 and A.S. Virk, for the Respondent

Judgement

A.N. Jindal, J,

1. This appeal is directed against the judgment of acquittal dated 8.2.2005 passed by Sessions Judge, Kurukshetra, whereby the accused were acquitted in a complaint case u/s 302 read with Section 34 IPC.

2. Dayala Ram-complainant (hereinafter referred to as "the complainant") and Sunder Lal both sons of Sukhia are the residents of Soodpur. On 3.5.2002, when Sunder Lal was standing at the bus stand of village Soodpur, then Karan Singh and Sanju accused met him. Sunder Lal was to owe some money to them. They took Sunder Lal to their house for settling the accounts with him. On reaching the house, he saw that family members of the accused were taking drinks. The accused also consumed liquor and served it to Sunder Lal also. In the meanwhile, the accused hatched a conspiracy with each other and administered some poisonous substance to him in a glass of liquor and pushed him out of their house.

3. Consequently, when the deceased reached his house, his condition became precarious. He told his wife Jasmero and son Raj Pal in the presence of the

complainant and Deepa that the accused had administered some poisonous substance to him in the liquor and he was suffering pain in his stomach on that account. Consequently, complainant and others took Sunder Lal to the hospital at Shahbad where he was declared as dead by the doctors. On receipt of the telephonic message, Raj Kumar, Station House Officer, Police Station Shahbad came to the house of the deceased and inspected the dead body. He did not take any action but obtained signatures/thumb impression of the complainant and other family members on the pretext that he wanted to complete the formalities for arresting the accused. He also directed the complainant and his family members not to touch the dead body as he wanted to get conducted autopsy thereon. Consequently on 4.5.2002, he got conducted the autopsy on the dead body of Sunder Lal at LNJP Hospital, Kurukshetra, thereafter, he refused to proceed further into the matter. The complainant also came to know that Raj Kumar SHO had forged some documents on the signed blank papers about which the complainant and other villagers also complained to the Superintendent of Police, Kurukshetra but to no effect. On 7.5.2002, the complainant and other villagers again moved an application to the Deputy Commissioner and Superintendent of Police, Kurukshetra. The complainant further alleged that since the police failed to proceed into the matter, therefore, he filed the complaint.

4. It will be significant to mention here that on the earlier complaint filed by the complainant on 1.6.2002 a case was registered against the accused. Investigation was conducted. However, later on it resulted into cancellation in the Court. Then he filed another complaint on 13.3.2003. On filing of the present complaint, the Court tagged the cancellation report along with the complaint. After recording some evidence, accused were summoned under Sections 302/34 IPC to which they pleaded not guilty and claimed trial.

5. In order to secure conviction of the accused, the prosecution examined Dr. Mrs. Sarah Aggarwal (PW-1) who in the company of Dr. Vivek Aggarwal conducted the post mortem examination on the dead body of Sunder Lal deceased on 4.5.2002. Dayala Ram (PW-2) is the complainant, Deep Chand (PW-3) is the other material witness to the occurrence. ASI Narender Singh (PW-4) handled the case property and he in turn handed over to Pawan Kumar Constable (PW-5) for handing over the same to the Chemical Examiner, Karnal. ASI Ram Dutt (PW-6) got conducted the post mortem examination on the dead body of Sunder Lal at LNJP, Hospital, Kurukshetra on 4.5.2002. Raj Pal (PW-7) is the son of the deceased before whom the deceased allegedly made dying declaration.

6. After examining the aforesaid witness, the prosecution closed its evidence. In their statement u/s 313 of Cr.P.C., the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in this case. In their defence, the accused examined Ram Parsad (DW-1) and Ram Kishan (DW-2) shop keepers from bus stand Soodpur, Dharam Singh (DW-3) brother of

accused Karan Singh, Raj Kumar Sub Inspector (DW-4), Rattan Singh retired Inspector (DW-5), Daljeet Singh Sub Inspector (DW-6) and Banwari Lal Sub Inspector (DW-7).

7. On conclusion of the trial, the trial Court observed that the accused did not have any motive for the crime. The deceased was not in a position to make dying declaration before the witnesses. While further holding that there was no evidence worth the name to prove the charge against the accused, acquitted them in the complaint. Hence the complainant has sought special leave to appeal against the impugned judgment.

8. We have heard the rival contentions and have scrutinized the record of the case.

9. The case of the complainant from the very inception is that the deceased owed some money to the accused, therefore, they administered poison to him. Presuming that the deceased owed some money to the accused then it cannot be digested that they will kill their own debtor and loose money which they were expected to receive from him.

10. Thus, the motive part for commission of the crime stands vanished. The prosecution has set up a case that the accused after taking the deceased to their house administered aluminum phosphate tablets to the deceased by mixing the same in the liquor, thereafter deceased came to the house and explained about the occurrence to the complainant. But this plea does not sound to the reason because Dr. Mrs. Sarah Aggarwal (PW-1) opined that death of Sunder Lal was on account of consuming of aluminum phosphate and that aluminum phosphate is available only in the tablet form and it gets converted into phosphate in blood. She further explained that aluminum phosphate could not be administered by dissolving it in liquid because according to her aluminum is a fumigant and it does not dissolve in liquid and it could only be given in a tablet form. Even if, it is believed that aluminum phosphate could be dissolved in liquor or mixture of liquor, even then it was too bitter to consume it unless the deceased is dead drunk. If he was dead drunk and poison was given to him while he was dead drunk then he was unable to reach home and make a dying declaration and plead that the aluminum phosphate was administered to him without his knowledge.

11. The prosecution has also not set up the case that the poison was administered to him when he was dead drunk.

12. Besides the other factors, there is no written dying declaration on the record and the witnesses have not disclosed as to in what exact words the deceased made the dying declaration. They have made statements in the Court about dying declaration in their own words as to what Sunder Lal had stated to them. Dayala Ram complainant (PW-2) has stated that Sunder Lal told them that the accused met him at the bus stand of the village. They were under the influence of liquor and they forced him to their house on the pretext that they wanted to settle accounts with

him. He has further stated that when the deceased went to the house of Karan Singh in the company of the accused, then liquor was already being served there. Sunder Lal was served the liquor first and thereafter he was administered some poisonous substance through the said liquor and then he was pushed out of the house. To the contrary Deep Chand (PW-3) has stated that Karan Singh and Sanju took the deceased to their house in order to settle the account and then they compelled him to take liquor and they administered some poisonous substance through the liquor. Raj Pal (PW-7) to the contrary has stated that his father Sunder Lal told him that when he was returning from the bus stand of village Soodpur then the accused came across Sunder Lal and took him to their house where they served liquor excessively to him. Thereafter they administered some poisonous substance and that when his condition became critical, he was turned out of the house, whereas the other witnesses have stated that after administering poisonous substance, Sunder Lal deceased was turned out of their house. Report of the Forensic Science Laboratory is also contrary to the ocular version. The contents of visra, as per FSL report, indicate the presence of ethyl alcohol and when aluminum phosphine comes in contact with the blood it chokes the system. On the other hand, Deep Chand (PW-3) stated that the deceased did not disclose him about the administering of the poison to him by the accused. The accused had no motive to kill Sunder Lal. Though Dayala Ram (PW-2) has admitted that there were some dealing between Karan Singh accused and Sunder Lal deceased but he tried to turn the table when during cross-examination he expressed his ignorance if he owed some money to Karan Singh accused.

13. The delay in lodging the complaint create doubt over the presence of the witnesses at their house when Sunder Lal went to his house. These factors which create doubt over the genuineness of the prosecution version.

14. On re-scanning of the evidence, we are of the affirmed opinion that the trial Court elaborately dealt with all the points while passing the order of acquittal. It is well settled, by now, that on reappraisal of the evidence, if two views are possible, one favourable to the prosecution and the other to the accused, then the later view shall prevail and benefit would go to the accused.

15. After order of acquittal has been made the presumption of innocence is further reinforced by that order and that being so, the trial Court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons. It was observed in case [Sanwat Singh and Others Vs. State of Rajasthan](#), that:

(1) An appellate court has full power to review the evidence upon which the order of acquittal is founded;

(2) the principles laid down in Sheo Swarup and Others vs. King Emperor (2) afford a correct guide for the appellate court's approach to a case in disposing of, such an

appeal; and

(3) the different phraseology used in the judgments of this Court such as (i) "substantial and compelling reasons", (ii) "good and sufficient cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.

16. Having re-scanned the evidence, the entire prosecution case rests solely on the oral dying declaration. Testimonies of Dayal Ram (PW-2), Deep Chand (PW-3) and Raj Pal (PW-7) are quite contradictory and full of discrepancies. In these circumstances, evidence of these witnesses who were closely related to the deceased cannot be placed reliance.

17. Consequently, we do not find any ground to grant special leave to appeal against the impugned judgment, therefore, the same is hereby declined.