

State of Haryana Vs Hari Singh and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 5, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 107, 108, 120A, 302, 306

Citation: (2014) 1 Crimes 533 : (2013) 3 RCR(Criminal) 1035

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Gourav Verma, AAG, Haryana, for the Appellant; Lokesh Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The compendium of the facts, material & evidence, unfolded during the course of trial, culminating in the

commencement, relevant for disposal of the instant appeal and emanating from the record, as claimed by the prosecution, is that, on the intervening

night of 17/18.2.1999, Sushila (deceased) wife of Partap Singh (PW 6) had consumed some poisonous substance and was admitted in Civil

Hospital, Narnaul. On receipt of information (Ex. PA/2) from Dr. R.S. Sharma (PW 1), SI Seva Ram (PW 10) reached the hospital and moved

an application (Ex. PA/3) with regard to her (deceased) fitness to make statement. The doctor opined, vide opinion (Ex. PA/4) that the patient

was fit to make statement. Thereafter, PW 10 moved an application (Ex. PF) to the Area Magistrate for recording her statement. Consequently,

Sh. Sundeep Singh, JMIC (PW 7) passed an order (Ex. PF/1), obtained the opinion (Ex. PF/2) of concerned medical officer with regard to the

fitness and recorded the statement (Ex. PF/3) of Sushila. She, in her statement, has stated that she had consumed one tablet of sulphas as she

wanted to die. She was fed up with her life. Her parents-in-law used to harass and beat her. However, no dowry was being demanded by her in-

laws, but they used to quarrel with her. She did not know the cause of quarrel. Leveling a variety of allegations and narrating the sequence of

events, in all, the prosecution claimed that on 17.2.1999, Sushila committed suicide and consumed a tablet of Sulphas, culminating into her death.

Accused Hari Singh and his wife Kaushlya Devi (her parents-in-law) (for short ""the accused"") abetted the commission of the crime. In the

background of these allegations and in the wake of her statement (Ex. PA/1), the present case was registered against the accused, by way of FIR

No. 48 dated 18.2.1999 (Ex. PJ/7), on accusation of having committed the offences punishable u/ss. 498-A and 306 read with section 34 IPC by

the police of Police Station City Narnaul in the manner depicted here-in-above.

2. After completion of the investigation, the final police report (challan) was submitted against the accused by the police to face the trial for the

indicated offences.

3. Having completed all the codal formalities, the accused were charge-sheeted for the commission of an offence punishable u/s. 306 read with

section 34 IPC by the trial Judge. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution.

4. The prosecution, in order to substantiate the charge framed against the accused, examined PW 1 Dr. R.S. Sharma, who has opined vide his

report (Ex. PA) and opinion (Ex. PA/1) that Sushila was fit to make statement. He sent information (ruqqa) (Ex. PA/2) to the police. He has also

given his opinion (Ex. PA/4) on police request (Ex. PA/3). PW 8 Dr. Anil Mathur conducted the post mortem examination on 19.2.1999 on the

dead body of Sushila Devi, by virtue of post mortem report (Ex. PG) and maintained that the deceased had died due to ingestion of aluminium

phosphide, which was a kind of poison.

5. Sequelly, PW 2 Constable Kuljeet Singh has testified that on 18.2.1999, SI Seva Ram Investigating Officer had taken into possession the

sealed parcel and sample seal, vide recovery memo (Ex. PB) attested by him. PW 9 Constable Attar Singh has handed over a sealed parcel of

viscera and envelope containing the papers to the Investigating Officer, which were taken into possession, vide recovery memo (Ex. PH). PW 10

SI Seva Ram, Investigating Officer, has testified his entire pointed investigation. PW 3 Inspector Virender Kumar is a formal witness, who has

prepared the final police report against the accused. PW 11 ASI Mahavir Parshad and PW 12 Raj Kumar UGC have tendered their affidavits

(Ex. PK & Ex. PL) respectively.

6. Likewise, PW 4 Smt. Ramphal Devi and her husband PW 5 Banwari Lal (parents of the deceased), have maintained, on oath, that having

received the information on 18.2.1999, they reached the Civil Hospital, Narnaul on 19.2.1999 and came to know that their daughter Sushila had

died as she had committed suicide by taking Sulphas tablet. They have categorically stated that her in-laws kept her nicely and she had never

complained of any, ill-treatment meted out by the accused or her husband. They confirmed that her two brothers were convicted and sentenced

u/s. 302 IPC and on that account, she used to remain in depression and tremendous mental pressure.

7. The next to note is the testimony of PW 6 Partap Singh, husband of the deceased, who has also deposed that on the fateful day, he had gone to

market for some purchases. When he returned from the market, he found his wife in an unconscious condition. He shifted her to General Hospital,

Narnaul, where she died on 19.2.1999. He did not know as to why she has committed suicide. He has also confirmed that she used to remain in

tremendous pressure on account of conviction of her two brothers in a murder case.

8. The last to mention is the testimony of PW 7 Sundeep Singh, JMFC, who has testified that he recorded the statement (Ex. PF/3) of the

deceased after obtaining the opinion (Ex. PF/2) and report (Ex. PF/4) from the concerned medical officer. The prosecution has also tendered the

police request (Ex. PG/1), opinion (Ex. PG/2) regarding cause of death, reports (Ex. PG/3 & Ex. PGM) of chemical examiner, application (Ex.

PG/5) for conducting the post mortem, information (Ex. PJ), application (Ex. PJ/1) for supplying copy of statement of deceased, endorsement (Ex.

PJ/1), information regarding sending the special report (Ex. PJ/2), ruqqa (Ex. PJ/3), information (Ex. PJ/4) about the deposit of sealed parcel &

sample seal, death report (Ex. PJ/5) and receipt (Ex. PJ/6) regarding dead body in documentary evidence. This is the entire evidence brought on

record by the prosecution.

9. After the close of the prosecution evidence, the statements of the accused were recorded. The entire incriminating material/evidence was put to

enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.P.C. However, they have denied the

prosecution evidence in its entirety and pleaded false implication. They did not opt for defence evidence.

10. Taking into consideration the entire evidence on record, the trial Judge has acquitted the accused, by means of impugned judgment of acquittal

dated 19.1.2000.

11. Aggrieved thereby, the appellant State of Haryana has preferred the instant appeal. That is how I am seized of the matter.

12. What cannot possibly be disputed here is that all the cogent cardinal fundamental principles and basic rules of criminal law/jurisprudence, have

to be kept in focus while deciding such criminal cases. Some of these are that the absolute onus is always on the prosecution to prove its case

beyond any reasonable doubt. The accused cannot possibly be convicted without any substantive evidence as the evidence is essential element in

the criminal proceedings, notwithstanding the seriousness of the allegations alleged against him. The criminal proceedings require strict proof of

guilt. It is the legal evidence, on the basis of which, the decision of a criminal court is based and is the legal requirement of criminal justice.

Otherwise, in the absence of cogent substantive evidence, the Courts have no option, but to record an order of acquittal howsoever painful the

same may be.

13. At the same time, it is well settled principle of law that in case of judgment of acquittal, the appellate Court should give proper weightage and

consideration to the views of the trial Judge as to the credibility of the evidence, the presumption of innocence in favour of the accused, particularly

when he was acquitted by the trial Court and his rights of benefit of any doubt. The appellate Court should be slow in disturbing a finding of fact

arrived at by the Judge, who had the advantage of observing the conduct & demeanor of the witnesses in the Court, the appellate court can only

interfere, in case the judgment of acquittal is palpably wrong, totally ill-founded, wholly misconceived, based on erroneous analysis of evidence, no

existent material demonstratively unsustainable, perverse and on very substantial and compelling reasons. Reliance in this regard can be placed on

the judgment of Hon"ble Apex Court in case Ghurey Lal Vs. State of U.P., .

14. As discussed here-in-above, in the present case, the prosecution claimed that Sushila had committed suicide and the accused have abetted the

commission of crime punishable u/s. 306 IPC, which postulates that ""If any person commits suicide, whoever abets the commission of such suicide,

shall be punished therein."" The abetment of a thing has been defined u/s. 107 IPC to mean that a person abets the doing of a thing, who instigates

any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the

doing of that thing.

15. Sequelly, Section 108 IPC posits that a person abets an offence, who abets either the commission of an offence, or the commission of an act

which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the

abettor. The criminal conspiracy has been defined in section 120-A IPC.

16. A conjoint and meaningful reading of these provisions would reveal that in order to attract the penal provisions of section 306 IPC, there

should be a positive evidence on record that appellants have intentionally hatched a conspiracy or actually/actively aided and abetted in such a

manner, leaving no option for Sushila to commit suicide. It cannot possibly be disputed here is that each person's sensitivity and suicidability

pattern is different from the others. Each person has his own idea of self esteem and self-respect. Without a positive act on the part of the accused

to instigate or aid in committing suicide, there cannot be any abetment and conviction on that count.

17. That means, there has to be a clear mens rea, active participation or direct act and intention to provoke, incite or encourage to do an act by the

accused, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a grave

position that he committed suicide. The knowledge, intention, mens rea, positive active participation leaving no option and compelling a person to

commit suicide, inter-alia, are the essential ingredients to convict a person u/s. 306 IPC in this relevant connection.

18. Likewise, there can hardly be any dispute with regard to the proposition of law that the conviction of the accused can be based solely on the

basis of dying declaration without any corroboration if it actually inspires confidence of the Court.

19. Such thus being the legal position and evidence on record, now the short & significant question, though important, that arises for determination

in the instant appeal is, as to whether the dying declaration (Ex. PF/3) is sufficient to convict the accused or not?

20. Having regard to the rival contentions of learned counsel for the parties, to me, the answer must obviously be in the negative, as the

prosecution has miserably failed to prove its case beyond reasonable doubt.

21. As is evident from the record that the marriage of Sushila (deceased) was solemnized with Partap Singh (PW 6) according to Hindu rites &

ceremonies five years prior to the present occurrence. She had given birth to two children. Banwari Lal (PW 5), father of the deceased, was

working in Hayat Hotel and was residing at Delhi with his wife Ramphal Devi (PW 4). On 18.2.1999, they received a telephonic message that

their daughter Sushila was admitted in Civil Hospital, Narnaul. On that day, they could not reach Narnaul. However, they reached the hospital on

the next day i.e. 19.2.1999, on which, she had died due to poison. PW 4 and PW 5 are the parents of the deceased. They have specifically stated

that she (Sushila) was kept very nicely by the accused and her husband. She never made complaint of any ill-treatment. She was under depression

on account of conviction of her brothers in a murder case. PW 5 further maintained that she voluntarily committed suicide without any cause. The

statement of PW 6 Partap Singh, husband of the deceased, is also to that effect.

22. Therefore, neither the parents of the deceased nor her husband has raised any accusing finger towards the accused. Instead of supporting, they

have totally demolished the prosecution version in its entirety. They were declared hostile and nothing could be elicited in their searching cross-

examination by the PP against the accused. That means, the prosecution is relying on the solitary statement/dying declaration (Ex. PA/1) of Sushila,

which is as under:-

My name is Sushila. Name of my husband is Partap. I have consumed one tablet of sulphas. I want to die. Therefore, I have consumed it. I am

fed-up with my life. My mother-in-law Kaushalya harasses me. My mother-in-law (named above) and father-in-law (accused Hari Singh) beat me.

Marriage was solemnized five years back. Two children were born out of the wedlock. No dowry is demanded. They quarrel with me. I do not

know why they quarrel with me.

23. Although in the dying declaration, the deceased has mentioned that she was fed up with her life, wanted to die, she consumed one tablet of

sulphas, her parents-in-law used to harass and beat her, but at the same time, to my mind, most important factors are also depicted in it i.e. her

marriage was solemnized about five years ago, two children were born out of the wedlock, no dowry is demanded and she did not know why they

(accused) quarrel with her. In other words, no dowry was ever demanded. The reason of harassment was not known to her. On the contrary, PW

4 and PW 5 are none else, but are parents of the deceased, who have categorically maintained that she was kept very nicely by the accused. She

never made complaint of any ill-treatment by them.

24. In this manner, the broad statement of facts made by the deceased in the dying declaration is deeply at a variance with the other evidence

brought on record by the prosecution in respect of same matter of harassment. If what the prosecution has proved by other evidence

controverts/contradicts the facts mentioned therein, in that eventuality, to me, it will render the dying declaration as un-trustworthy and suspicious.

Hence, no implicit reliance can be placed on such dying declaration and it would not be prudently safe to base the conviction of the accused in this

relevant connection.

25. There is yet another aspect of the matter, which can be viewed entirely from a different angle. If the dying declaration is believed to be true as

such, even then, no offence as envisaged u/s. 306 IPC is made out. There is not an iota of evidence on record even to suggest remotely and it

remained unfolded mystery that how, when and in what manner, the accused had the knowledge intention/mens rea or they have actually abetted to

drive her to commit suicide. They immediately informed her parents, which indicate their bona fide intention and innocence. The vague dying

declaration is not at all sufficient in this regard, particularly when her parents have otherwise stated that she was kept nicely by them. In the absence

of such cogent evidence on record, to my mind, the trial Court has rightly acquitted the accused, as all the indicated essential ingredients are totally

lacking in this case. Hence, the ratio of law laid down by Hon"ble Supreme Court in a recent judgment in case M. Mohan Vs. The State

represented by The Deputy Superintendent of Police, Recent Apex Judgments (R.A.J.) 161 : 2011 (3) SCC 626 ""mutatis mutandis"" is applicable

to the facts of this case and is the complete answer to the problem in hand.

26. Therefore, taking into consideration the vagueness of dying declaration, insufficient cogent evidence on record, the fact that the parents of the

deceased (PW 4 & PW 5) did not support the prosecution version and totality of the facts & circumstances emerging out of the record as

discussed here-in-above, to me, the trial Judge has correctly acquitted the accused.

27. Meaning thereby, the trial Judge has examined the matter, appreciated the evidence in the right perspective and recorded the cogent grounds in

this behalf. The learned State counsel did not point out any material, much less cogent, so as to warrant any interference in the impugned judgment

of acquittal. Such articulated impugned judgment of acquittal, containing valid reasons, cannot possibly be interfered with by this Court, unless and

until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned State

counsel, so, the impugned judgment of acquittal deserves to be and is hereby maintained in the obtaining circumstances of the case.

28. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties. In the light of aforesaid

reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.