

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-290-DB-2013(O&M)
Date of decision:-26.11.2018**

Paramvir and others

....Appellants

Versus

State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.R.S. Rai, Senior Advocate with
Mr.D.S. Brar, Advocate
for the appellants.

Mr.Anil Mehta, Deputy Advocate General, Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 21.3.2013 passed by the Court of learned Additional Sessions Judge, Special Court, Sonipat vide which accused Paramvir, Sudha, Yudhvir and Bhagwati @ Bhagwanti had been convicted for offence under Sections 302 read with Section 34 IPC and order dated 22.3.2013 vide

which they were sentenced as follows:

Under Section	Sentence Awarded
302 read with Section 34 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of six months.

However, learned Additional Sessions Judge, Sonipat acquitted co-accused Aruna.

The accused-convicts – Paramvir, Yudhvir, Sudha and Bhagwati @ Bhagwanti, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case as per prosecution version are that on 22.10.2009, a telephonic information was sent from Police Post, PGIMS, Rohtak to police post located in that premises regarding admission of one Poonam wife of Paramvir in the said medical institute as a case of consumption of some poisonous substance; that from there police of police station having jurisdiction was intimated; that HC Jaljit from the said police station proceeded towards PGIMS, Rohtak but could not reach there on account of non-availability of conveyance; that on the next day in the morning, SI Chandergupt went to PGIMS, Rohtak, obtained medical report and ruqa from the police post located in that premises; thereafter he obtained opinion of the attending doctor regarding fitness of the victim Poonam to make

statement, however, the doctor declared her unfit to do so; on that very day at about 2:40 p.m., a V.T. message was received in Police Station Sadar, Gohana that Poonam had expired, therefore, ASI Sukhvinder Singh went to PGI MS, Rohtak and he came across the complainant Ramesh Kumar son of Gopi Ram, a brother of the deceased, who got his statement recorded with the said police officer in which he stated that Poonam was married with Paramvir on 6.12.2000 and the couple was blessed with two daughters and a son. *Inter alia*, the complainant stated that Paramvir was having illicit relations with his sister-in-law(Bhabhi) Sudha to which Poonam used to object and for that reason she would be harassed and tortured by her mother-in-law Bhagwati, brother-in-law Yudhvir, sister-in-law Sudha (Bhabhi) and Babli (NANAD); that they would give beatings to her even; that on 21.10.2009 all the accused had given beatings to Poonam at village Bilbilan; though Babli, a sister-in-law (NANAD) of deceased was married at Gurgaon but she used to visit her parental home frequently and to instigate her family members to beat up the deceased. The complainant further stated that on coming to know that his sister Poonam had been given beatings by the accused, he went to her matrimonial home and found accused Paramvir, Poonam deceased besides Bhagwati accused to be present there; that in the meanwhile accused Sudha, Yudhvir and Babli also came there; the complainant counseled them and they assured him of their good behavior with the deceased in future, therefore, the complainant returned home; on 22.10.2009, all the accused forcibly administered celphos tablets to Poonam by threatening her; the accused then telephonically informed brother of complainant namely Raju about serious condition of the

deceased at which they rushed to PGIMS, Rohtak, where the deceased disclosed about those facts to them; that Poonam expired on 23.10.2009.

The Investigating Officer appended his endorsement below such statement of complainant and sent ruqa to police station, on the basis of which formal FIR for the offences under Sections 498-A and 306 IPC was registered at Police Station Sadar, Gohana. The Investigating Officer carried out the inquest proceedings with regard to unnatural death of Poonam. He (Investigating Officer) got post-mortem examination conducted on her dead body. During the course of investigation, the Investigating Officer recorded statements of various persons.

On completion of investigation only Paramvir accused was found to be the culprit, whereas remaining accused named in the FIR were found to be innocent, as such challan against Paramvir accused only was prepared and filed in the Court of Judicial Magistrate Ist Class, Gohana.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Gohana, he supplied copies of documents relied upon in the challan to the accused Paramvir free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 306 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Gohana vide his order dated 9.2.2010 committed the case to the Court of learned Sessions Judge, Sonipat from where it was entrusted to the Court of learned Additional Sessions Judge, Sonipat.

On receipt of case in the Court, learned Additional Sessions

Judge, Sonipat, observing that prima facie charge for offences under Sections 498-A and 306 IPC was made out against accused Paramvir directed that the accused Paramvir be charge-sheeted accordingly. Charge was framed, to which, accused Paramvir pleaded not guilty and claimed trial.

It may be mentioned here that dissatisfied with the investigation carried out by the local police and forwarding of accused Paramvir only to face trial for the offences under Sections 306 and 498-A IPC, the complainant Ramesh Kumar had filed a private complaint against accused Paramvir, Yudhvir both sons of Ram Kumar, Sudha wife of Yudhvir, Bhagwati @ Bhagwanti wife of Ram Kumar and Aruna @ Babli daughter of Ram Kumar. After recording of preliminary evidence, all the accused were summoned to face trial for the offences under Sections 302 read with Section 34 IPC by Judicial Magistrate Ist Class, Gohana. The presence of all the accused was procured and then the criminal complaint case was committed to the Court of Sessions vide order dated 15.4.2011, which was entrusted to the Court of learned Additional Sessions Judge, Sonipat where the connected State case was pending. The complaint case was ordered to be clubbed with the State case. Fresh charge for the offence under Section 302 read with Section 34 IPC was framed against all the accused vide order dated 9.12.2011, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as 19 witnesses i.e. PW1 complainant Ramesh Kumar, PW2 Balraj Singh, PW3 Dr.Dimple, PW4 Dr.Randeep Kumar, PW5

Constable Purshotam, PW6 HC Brij Pal, PW7 Surender Singh, PW8 ASI Jaljeet Singh, PW9, Siya Ram, Clerk, IGP Office, Rohtak, PW10 Kailash Wati, PW11 ASI Ramesh Chand, PW12 Vikram Singh, JTO, PW13 EHC Rajesh, PW14 SI Sukhvinder, PW15 Dr.Dharmender Sharma, PW16 Deepak Kumar, PW17 SI Chandergupt, PW18 DSP Tula Ram and PW19 Dr.Saurabh Walia. FSL Report Ex.PX was also tendered in evidence.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to such accused but they denied the allegations contending that they are innocent and had been falsely involved in this case. Further in defence, accused Sudha, Babli @ Aruna and Yudhvir took the plea of alibi. Accused Paramvir claimed to have gone to his fields. Accused Bhagwati pleaded that on the day of occurrence, she was sitting in the house of one Sanjay further stating that she alongwith accused Paramvir had taken the deceased to Sharma Hospital, Farmana and then to PGIMS, Rohtak. Accused Aruna @ Babli took up the plea that on the day of occurrence, she was present in her school at Gurgaon, where she was serving as a Teacher.

In defence evidence, the accused examined Sunil Sethi, Senior Assistant, DAV Public School, Faridabad as DW1, Bhanwar Kaur, Clerk, Govt. High School, Gurgaon as DW2, Balwan Singh Rana as DW3, Ramdhan, an Official of PGIMS, Rohtak as DW4, Dr.Ashish Sehgal as DW5 and Sukhbir Singh, Nodal Officer, Vodaphone as DW6.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused Paramvir, Sudha, Yudhvir and Bhagwati @ Bhagwanti as mentioned above, which left them aggrieved and they have filed the present appeal, whereas co-accused Aruna had been acquitted of the charge framed against her.

We have heard learned counsel for the appellants – accused - convicts Paramvir, Sudha, Yudhvir and Bhagwati @ Bhagwanti, learned Deputy Advocate General for the State of Haryana besides going through the record and we are of the view that the impugned judgment of conviction and order of sentence for the offence under Section 302 read with Section 34 IPC are not sustainable, though offence under Section 306 IPC on the part of accused Paramvir stands established. The reasons for arriving at such conclusion are as follows:

There is no direct evidence of the incident since nobody had seen accused administering poison to the deceased. The case is based upon circumstantial evidence. The law is well settled that in such an eventuality, the chain of evidence/events must be complete and if any vital link in the chain is missing, then the prosecution cannot succeed. Furthermore, a strong motive must be there in a criminal case, which is sought to be proved by circumstantial evidence. In the instant case, the prosecution is heavily relying upon the oral dying declaration said to have been made by deceased Poonam before his brother Ramesh Kumar but it is not established on the record that the deceased while in fit state of mind had made such statement with regard to the circumstances leading to her death and the persons responsible for the same before her brothers PW1 – Ramesh Kumar and PW2 Balraj.

From the medical evidence, which is available on the record, it becomes highly unlikely that deceased could have made such type of statement to her brother. No such statement of deceased was recorded by any doctor/police officer or a Magistrate. In a landmark authority on the subject **Laxman Versus State of Maharashtra, 2002 Cri.L.J. 4095**, the Apex Court has dealt with such subject in detail summing up the position as under:

- (1) Dying declaration is accepted on the theory that person on death bed will speak the truth - But great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth.
- (2) Since the accused has no power of cross-examination, the court should insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness.
- (3) Court should also see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination.
- (4) Court further satisfy that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant.
- (5) Statement of eyewitnesses that deceased was fit and conscious to make the declaration will prevail over medical opinion.
- (6) A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or

otherwise will sufficient provided the indication is positive and definite.

(7) When dying declaration is recorded on oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available.

(8) There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording.

(9) What evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.

(10) Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution.

In the instant case, considering that PW1 Ramesh Kumar and PW2 Balraj are near relations of the deceased and considering the facts and circumstances of the case, we do not find it safe to rely upon the statements of PW1 and PW2 with regard to the dying declaration said to have been made by the deceased before them. We are not fully satisfied about truthfulness and correctness of deceased having made such type of

statement coming within the purview of Section 32 of the Evidence Act before such PWs. The trial Court fell in error in placing reliance upon the alleged dying declaration of deceased when there was a strong element of doubt regarding its existence.

The trial Court has noted down several lapses in the investigation in para No.17 of the judgment, which include failure of the police to reach PGIMS, Rohtak on 22.10.2009 when intimation regarding cremation of deceased had been sent there on that very day at 5:45 p.m.; the explanation given that it was on account of non-availability of conveyance being unsatisfactory; the police not making any effort for getting statement of deceased recorded through some doctor or Magistrate on 22.10.2009; it having been found doubtful as to whether the Investigating Officer had gone to PGIMS, Rohtak on 23.10.2009 and sought opinion of doctor regarding injured to make statement and it transpiring that opinion of doctor had in fact been taken on 24.10.2009 and not on 23.10.2009; the failure of the Investigating Officer to approach the family members of the deceased on 22.10.2009 or 23.10.2009 from 9:20 a.m. till her death; that as per challan report call details of mobile phones of accused Yudhvair, Sudha and Aruna were obtained in terms of which Aruna was found to be present at Gurgaon, whereas accused Yudhvair and Sudha were found to be at Faridabad on 22.10.2009 but those call details were not made part of the challan though the same was the evidence amounting to big lapse on the part of the investigating agency.

Although as per the prosecution story, the deceased was given beatings and then administered celphos tablet but then no mark of

injury was found on her body, which falsify the version of the deceased having been given beatings and then administered celphos tablets.

Here it is to be taken note of that it were the accused, who had informed the police/family of the deceased regarding she being hospitalized as a case of poisoning and that after Poonam had consumed celphos tablets, she had been taken to a doctor by the accused Paramvir and his mother and then she was referred to PGIMS, Rohtak, where she was admitted. If they in fact wanted to murder her then, they would not have taken her to a doctor or hospital rather insured her death at the spot without providing any medical aid to her and in addition would not have informed her parental family.

In cross-examination of PW10 Kailash Wati, a sister-in-law(Bhabhi) of deceased, she stated that Shruti daughter of Paramvir accused and deceased was/is studying at Faridabad and residing with Yudhvire and Sudha for last six years. Her statement was recorded in the Court on 10.9.2012. Thus it comes out that Yudhvire and Sudha had been residing separately at Faridabad and Shruti daughter of Paramvir and deceased had been residing with them. It is unlikely that accused Paramvir residing at village Bilbilan would maintain illicit relations with wife of his brother residing at Faridabad and if any such illicit relations were there then deceased would not have allowed Yudhvire a brother of her husband and his wife Sudha to have custody of her daughter and their said daughter residing with them for last about 6 years getting education in a school at Faridabad.

It may be mentioned here that after registration of the FIR, the investigation in the case started, during the course of which

involvement of Paramvir accused only was found in the crime, whereas remaining accused were given clean chit and they were not challaned. The investigating agency had found it as a case of abetment to suicide under Section 306 IPC and maltreatment and harassment of a married woman i.e. Poonam by her husband Paramvir. Though on a private complaint having been filed by the complainant all such persons had been summoned and made to face trial. The trial Court had found involvement of accused Aruna @ Babli to be doubtful, as such, had acquitted her of the charge framed against her. During their defence evidence, accused had examined DW1 Sunil Sethi, Senior Assistant, DAV Public School, Faridabad, who from the record brought by him had stated that Shruti d/o Paramvir and Abhinav son of Paramvir, residents of 2123-C, Sainik Colony, Faridabad were got admitted in their school on 20.4.2006 and both the children are studying in their school. Both the children were got admitted by Yudhvir Singh Malik.

DW2 Bhanwar Kaur, Clerk of Govt. High School, Gurgaon village, Gurgaon had brought the record regarding Aruna Kumari, Sanskrit Teacher proving attendance register Ex.D6 and certificate of the Principal regarding presence of Aruna Kumari in the school Ex.D7, which goes to show that Aruna Kumari was on duty in Govt. High School, Gurgaon on the day when she along with other co-accused had allegedly administered poison to the deceased.

DW3 Balwan Singh Rana, Addl. S.P., Mewat proved inquiry report dated 6.4.2010 with respect to this case stating that he had investigated the case, joining several persons and then submitted report after personal verification finding four accused to be innocent.

The situation as it emerges is that accused Paramvir along with his wife Poonam and mother had been residing in the matrimonial house at village Bilbilan and Poonam had committed suicide by consuming poison in the form of celphos tablets and her husband had abetted that suicide by maltreatment, harassment and misbehavior with the deceased driving her to the wall, resultantly she was compelled to end her life. The incident had taken place in the matrimonial home and under Section 106 of the Evidence Act, accused Paramvir has got the special means of knowledge as to how and under what circumstances his wife Poonam ended her life. He has failed to render any reasonable or plausible explanation for the same clearly leading to the inference that he is responsible for abetting her suicide. His mother Bhagwati is not shown to have played any part.

From the facts and circumstances of the case, in light of the evidence adduced by the prosecution, pleas taken by the accused in their statements under Section 313 Cr.P.C., it certainly does not come out to be a case of murder. Rather we are of the considered view that it is a case of suicide by a young married woman and her husband is guilty of abetment of the same. We find that the trial Court has based conviction of accused for offence under Section 302 read with Section 34 IPC on the basis of conjectures, guesswork and inadmissible evidence. Rather the evidence has been misappraised and law misinterpreted in the process.

Therefore, the prosecution having failed in its endeavour to prove its charge against accused Yudhvair, Sudha and Bhagwati @ Bhagwanti, they are acquitted of the charge framed against them.

Whereas regarding accused/appellant Paramvir, his conviction is altered to for offence under Section 306 IPC and he is sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of six months. The conviction order is modified accordingly.

The appeal stands partly allowed.

Necessary intimation be sent to the quarter concerned.

26.11.2018
Brij

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No