

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

CRA-D No. 746-DB of 2003 (O&M)

Reserved on : 2.7.2019

Date of decision : 4.7.2019

Jaipal and another

.... Appellant

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. P. C. Chaudhary, Advocate, for the appellants.

Mr. Gagandeep Singh Wasu, Additional Advocate General,
Haryana.

Rajiv Sharma, J.

1. This appeal is instituted against the judgment dated 30.4.2003 and order dated 2.5.2003, rendered by learned Additional Sessions Judge, Karnal, in Sessions Case No. 8 of 2003, vide which accused Jaipal and Ram Lal were charged with and tried for the offence punishable under Section 302 read with Section 34 IPC. They were convicted thereunder and sentenced to undergo life imprisonment and to pay fine of ₹ 1,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months.

2. The case of the prosecution, in a nutshell, is that Dharma Ram on 20.9.2001 lodged the complaint to the effect that on 18.9.2001 at about 4.30 P.M., while he was sitting in front of his house situated in village

Randoli, accused Ram Lal and Jaipal residents of his village came to the house of his son Ved Pal alias Vedu. They asked his son to accompany them for catching fish from river Yamuna. Ved Pal alias Vedu accompanied them after taking a bag and *kanta dori* (equipment to catch fish). In the night Ved Pal alias Vedu did not return. On 19.9.2001 enquiries were made from Jaipal. Jaipal told the wife of Ved Pal alias Vedu that Vedu was catching fish in Yamuna. Complainant's another son Baldev asked about Vedu from other accused Ram Lal. He told that Vedu had returned from Yamuna prior to them. At about 2.00 P.M., Ramesh son of Kishan resident of their village came to the house of the complainant and told that Vedu was lying unconscious in the *gohar* (passage) leading to village Kamalpur. The complainant, his son Baldev, one Jia Lal and wife of deceased Smt. Pasho Devi reached the spot and found Vedu lying unconscious there. Froth was coming out of his mouth and he was smelling of liquor. At that time the deceased was wearing only underwear. His trouser, shirt and bag were lying at some distance. They brought Vedu in tractor-trolley to the house. Thereafter, he was taken to P.H.C., Indri, where the doctors referred him to General Hospital, Karnal. Vedu died on the intervening night of 19/20.9.2001. According to the complainant, accused Jai Pal and Ram Pal made Vedu to consume excessive liquor or after mixing some poisonous substance in liquor. It was also stated that about 5-6 years prior thereto accused Ram Lal had levelled allegations on the deceased about his having molested his brother Radhu's daughter. The matter was compromised. Ram Lal was bearing grudge against him due to this incident. The dead-body was sent for post-mortem examination. The clothes of the deceased were also taken into possession. Viscera was also sent for chemical examination.

Investigation was completed and challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. Three witnesses were examined in defence. The accused were convicted and sentenced, as noticed above. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned trial Court.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Dr. Rakesh Girdhar had conducted the post-mortem examination on the body of deceased Vedu. According to him, the probable duration between death and post-mortem was within 24 hours. According to PW1 Dr. Rakesh Girdhar, the cause of death was Halogenated Hydrocarbons Compound Group insecticides as per the report of Chemical Examiner. In his cross-examination, he deposed that the congestion of the organs of the deceased was due to insecticide poison. The origin of the insecticide was not presented before him by the police at the time of seeking his opinion regarding cause of death. The level of alcohol mentioned was 46 milligram per cent.

7. PW8 Dr. Kuldip Singh examined deceased Vedu, when he was admitted in General Hospital, Karnal. The patient died on 20.9.2001 at 2.40

A.M. in the General Hospital, Karnal.

8. PW9 Dharma deposed that on 18.9.2001 his son Ved Pal alias Vedu was present in the house. Ram Lal and Jaipal, residents of his village, came to his house at about 4.30 P.M. They summoned his son Vedu for catching fish. Accordingly his son accompanied them. However, in the night Vedu did not return to his house. Next day, he sent Smt. Pasho wife of his son Vedu to the tubewell of accused Jaipal to enquire about Vedu. Accused Jaipal told her that her husband Vedu was still catching fish in the Yamuna river. At the same time, he had sent his son Baldev to the house of accused Ram Lal to enquire about his son Vedu. Accused Ram Lal informed him that Vedu had returned to his house prior to them. At about 2.00 P.M. on the same day, Ramesh came to their house and informed that his son Vedu was lying unconscious in the common path (*gohar*) in the area of village Kamalpur. Thereafter, he, his son Baldev and Smt. Pasho went to the *gohar*. Froth was coming from his mouth. They took him to the hospital in a tractor-trolley. He was referred to General Hospital, Karnal. He died in the night itself at about 3.00 A.M. There were allegations against his son Vedu that he had molested the daughter of Radhu, brother of accused Ram Lal. However, a panchayat was convened in the village and the matter was patched up about 5-6 years prior to the incident. His son was killed by the accused on account of enmity by administering poison in liquor to him. In his cross-examination, he deposed that his son Vedu was living separately from him for the last 15-20 years. His son Vedu was residing in a room adjacent to the room of his son Baldev. His son Vedu never accompanied the accused for catching fish prior to the incident. His son Vedu used to catch the fish for his personal consumption. In the panchayat, Radhu,

accused Ram Lal and Jetha Ram were present. The panchayat was convened in a temple at about 5.00 P.M.

9. PW10 Smt. Pasho Devi is the widow of deceased. She deposed that on 18.9.2001, her husband Ved Pal alias Vedu was present in the house. At about 4.00 P.M., both the accused Jaipal and Ram Lal came to their house. They summoned her husband Vedu for catching fish from the Yamuna river. Her husband then accompanied them after taking his bag. PW9 Dharma is her father-in-law. In the night her husband did not return to the house. Next day i.e. 19.9.2001 somebody informed her father-in-law that accused Jaipal was present at his tubewell. Her father-in-law had asked her to go to the tubewell of Jaipal to enquire about her husband Ved Pal alias Vedu. She went to accused Jaipal at about 9.00 A.M. He told that her husband Vedu was still catching fish. Then she came back to her house. However, at about 2.00 P.M. on the same day, one Ramesh of their village came to their house and informed that her husband was lying in the common path of village Kamalpur. The family members went to the spot. They noticed that Vedu was lying in the *gohar*. He was wearing an underwear and *banian*. Froth was coming out from his mouth. He was not speaking and was unconscious. He was taken to hospital. There was allegation against her husband Vedu that he had molested the daughter of Radhu, brother of accused Ram Lal. Her husband was killed by the accused due to this enmity by administering poison in liquor to him. In her cross-examination, she deposed that the accused used to come their house off and on. They had visiting terms. They were maintaining marriage ties. She did not attend the panchayat.

10. PW12 ASI Subhash Chander deposed that on 20.9.2001 he

went to General Hospital, Karnal. He recorded the statement, Ex.PG, of PW9 Dharma on the basis of which FIR, Ex.PG/2, was recorded. Dead-body was sent for post-mortem examination. He recorded the statements of the relevant witnesses.

11. PW13 Inspector Gulzar Singh deposed that he interrogated accused Ram Lal. He made a disclosure statement to the effect that on 19.9.2001 in the *Chan* of Raj Pal in the area of village Randoli, near Yamuna, he and accused Jaipal with their common intention mixed up insecticide in the liquor of deceased Ved Pal. Ved Pal died due to insecticide. Disclosure statement is Ex.PL. He also interrogated accused Jaipal. He made disclosure statement, Ex.PM, to the effect that he along with accused Ram Lal kept concealed insecticides in the *Chan* of one Raj Pal of village Randoli near Yamuna river and could get the same recovered. He recorded the statements of witnesses under Section 161 Cr.P.C. Thereafter, they went to the *bandh* of river Yamuna. Both the accused denied having concealed the insecticide bottle.

12. According to Chemical Examiner report, Ex.PC/1, contents of exhibit nos. 1, 2 and 3 gave positive test for halogenated hydrocarbon compound group of insecticides and ethyl alcohol estimated as 46.0 mg per cent in exhibit no.3. Contents of exhibit no.4 gave positive test for saline only.

13. The cause of death according to PW1 Dr. Rakesh Girdhar was Halogenated Hydro Carbons Compound Group insecticides as per the report of Chemical Examiner dated 18.12.2001.

14. Amir Chand was produced as DW1.

15. DW2 Ramesh Chander deposed that he knew the complainant and the accused. He never came to the house of PW10 Pasho Devi and PW9 Dharma to inform about the incident in question. Vedu, deceased, was alcoholic. He did not know anything about the case. The police had not recorded his statement.

16. DW3 Jetha Ram deposed that he knew Vedu son of PW9 Dharma. Vedu was alcoholic. No incident in their village ever took place regarding molesting the niece of Ram Lal. Panchayat was never convened in this regard.

17. Precisely the prosecution case is that on 18.9.2001 Ved Pal alias Vedu was called by accused Ram Lal and Jaipal for catching fish. He did not return. Next day Smt. Pasho wife of Vedu enquired about her husband Vedu from accused Jaipal, who told that he was still catching fish in the Yamuna river. She came back to her house. Thereafter, one Ramesh informed that Vedu was lying unconscious in the common path (*gohar*) in the area of village Kamalpur. The complainant party took him to the hospital in a tractor-trolley. He was referred to General Hospital, Karnal. He died. There was allegation against Vedu that he had molested the daughter of Radhu, brother of accused Ram Lal. A panchayat was convened in this regard in the village where the matter was patched up about 5-6 years prior to the incident. Vedu was killed by the accused on account of enmity by administering poison in liquor to him.

18. According to PW9 Dharma, on 18.9.2001 accused took away his son Ved Pal alias Vedu to catch fish from river Yamuna. Vedu did not return to his house. He sent his daughter-in-law Smt. Pasho to the tubewell of accused Jaipal to enquire about Vedu, who told her that her husband

Vedu was still fishing in Yamuna river. At the same time, he had sent his son Baldev to the house of accused Ram Lal to enquire about his son Vedu. Accused Ram Lal informed him that Vedu had returned to his house prior to them.

19. Similarly PW10 Smt. Pasho Devi deposed that she had gone to the tubewell of Jaipal to enquire about her husband Ved Pal alias Vedu. Accused Jaipal told that her husband Vedu was still catching fish in river Yamuna and she came back to her house. It is not believable that Ved Pal alias Vedu was catching fish throughout the night.

20. It has come in the statement of PW9 Dharma that they did not try to trace Vedu in the night itself. They did not enquire from the families of the accused persons whether they had returned or not. PW9 Dharma also admitted that neither he nor anybody had seen the accused and his son Vedu while taking the drink together. He also admitted that his son Vedu never accompanied the accused for catching fish prior to the incident. According to PW9 Dharma and PW10 Smt. Pasho Devi, when the incident about molestation of daughter of Radhu was taken place, a panchayat was convened. However, no record of the panchayat was produced in evidence. The prosecution has failed to prove the motive in this case. Nobody has seen the deceased drinking with the accused.

21. The conduct of PW9 Dharma complainant, father of the deceased, and PW10 Smt. Pasho Devi, wife of the deceased, is unusual. According to PW10 Smt. Pasho Devi, she went to accused Jaipal on 19.9.2001 at about 9.00 A.M. He told that her husband Vedu was still catching fish. Then she came back to her house. It is not believable that deceased was catching fish even during night since he had gone on

18.9.2001 at about 4.00 P.M.

22. As per DW2 Ramesh Chander, he knew the complainant and the accused. He never went to the house of the complainant party to inform about the incident in question. Vedu deceased was an alcoholic. He did not know anything about the case. The police had not recorded his statement. The case of the prosecution is that Ramesh Chander had told PW9 Dharma about Vedu lying on the common passage.

23. Similarly, as per DW3 Jetha Ram, deceased Vedu was an alcoholic. No incident in their village ever took place regarding molesting the niece of Ram Lal. No panchayat was convened in this regard.

24. It has also come in the statement of PW9 Dharma that his son Vedu was residing separately from him for the last 15-20 years. He was residing in a room adjacent to the room of his son Baldev.

25. According to the FIR, Jaipal had levelled allegations against Vedu regarding misbehaving with the daughter of his brother Radhu. However, in the statements made by PW9 Dharma and PW10 Smt. Pasho Devi, it has come on record that Vedu had misbehaved with the daughter of Radhu, brother of accused Ram Lal.

26. The case of the prosecution is also that daughter of Radhu, brother of accused Ram Lal, was molested by deceased Vedu. Even Radhu was not cited as a witness to prove this fact.

27. The case is based on circumstantial evidence. The chain is not complete. The police has not recovered any insecticide substance.

28. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed and the judgment dated 30.4.2003 and order dated 2.5.2003 are set aside. The

appellants are acquitted of the charges framed against them. The appellants are on bail. Their bail bonds are discharged.

(Rajiv Sharma)
Judge

4.7.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No