

## **Harbans Lal And Another vs State Of Haryana on 15 October, 1992**

**Equivalent citations: AIR1993SC819, 1993CRILJ75, 1992(3)CRIMES758(SC), II(1992)DMC506, 1992(3)SCALE21, 1993SUPP(4)SCC641, AIR 1993 SUPREME COURT 819, 1992 AIR SCW 3303, 1992 JT (SUPP) 7, 1993 (4) SCC(SUPP) 641, 1994 SCC(CRI) 130, (1992) 3 CRIMES 758, (1992) 2 DMC 506, (1993) EASTCRIC 109, (1993) 1 HINDULR 2, (1993) 1 MAHLR 90, (1992) 3 SCJ 362, (1992) 3 CURCRIR 399, (1993) 2 CHANDCRIC 132, (1992) 3 ALLCRILR 538**

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**Bench: G.N. Ray**

ORDER

K. Jayachandra Reddy, J.

1. This appeal is filed under Section 379 Cr.P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act against the judgment of the High Court of Punjab & Haryana in Criminal Appeal No. 350 DBA of 1980. There are two appellants. They were jointly tried by the Sessions Court, Ambala for the offence punishable under Section 302 read with Section 34 I.P.C. for causing the death of Smt. Santosh Rani alias Gulshan Rani wife of the first appellant and daughter-in-law of the second appellant and also for causing the death of baby child Sweetty aged about 9 months by sprinkling kerosene oil and setting fire. The Sessions Court, Ambala acquitted both the appellants. The State of Haryana preferred an appeal against the said order of acquittal and the Division Bench of the High Court of Punjab & Haryana interfered and convicted both the appellants under Section 302 read with Section 34 I.P.C. and sentenced each of them to undergo imprisonment for life. The facts and circumstances that gave rise to this appeal are as follows:

The deceased Santosh Rani was the daughter of P.W. 4 Diwan Chand. He got her married to the first appellant Harbans Lai two years prior to the occurrence. The second appellant Smt. Vidya Wanti is the mother of the first appellant Harbans Lai and mother-in-law of the deceased Santosh Rani. Soon after the marriage the two accused started harassing the deceased on the ground that she had brought lesser dowry. They used to abuse her and treat her in a cruel manner. One year prior to the occurrence P.W. 4 went to the house of the accused alongwith two elders and

persuaded the accused not to harass the deceased. The accused assured that they would abide by their request. But they did not change their attitude towards the deceased. Two or three months thereafter the two accused turned the deceased out of their house. She was pregnant by then. She stayed with her father P.W. 4 and delivered the baby child Sweety, the second deceased in the case. Eight months thereafter there were again negotiations. P.W. 4 went to the house of the accused along with the elders once again. According to P.W. 4 the first appellant Harbans Lai told him that he needed Rs. 20,000/- to make up the financial losses. P.W. 4 promised to give the money and later sent the deceased along with the child to the house of the accused with some cash. He could not give Rs. 20,000/- immediately. It is alleged that the accused again started ill-treating the deceased. On 16.7.1979 at about 245 P.M. P.W. 5 Nanak Chand, the cousin of the first deceased was informed, while he was in the fields, by one Avtar Singh, a villager that the deceased had been burnt by her in-laws. P.W. 5 went to the village and informed his uncle P.W. 6 Nihal Chand that the deceased had been, burnt by her husband and her mother-in-law inside the house by sprinkling kerosene oil on her and setting fire. Both P.Ws 5 and 6 came to the house of the accused in Village Barara on a bicycle. They enquired the deceased who was conscious and she told them that her husband and her mother-in-law had burnt her. They found the baby child Sweety already dead. Both of them took her in a tempo to the Civil Hospital, Ambala City. P.W. 3 Dr. R.K. Khosla admitted the deceased in the hospital at 6 P.M. and informed the S.H.O. Police Station, Ambala to make arrangements for getting her dying declaration recorded. Since the police did not make any arrangements till 6.45 P.M. and as the patient was getting serious P.W. 3 recorded her dying declaration Ex. P.E. in his own hand and it was attested by two more Doctors Dr. K.C. Gupta and Dr. N.S. Yadav who were also attending on her.

2. In the meanwhile Harbans Lai gave a report Ex. D.E, stating that his wife Santosh Rani, the deceased after serving meals to him went inside the room where the child was already sleeping. He then heard some shrieks coming from the room which was closed from inside. He managed to open the door by giving some pushes and inside she found Santosh Rani lying on the ground and being burnt by fire. He put some water on her for extinguishing the fire. The baby child Sweety was grasping and died soon thereafter. He sent Avtar Singh to bring the parents of the deceased. Thereafter he made arrangements to send the injured to Ambala. On the basis of this report, a case under Section 309 I.P.C. against Santosh Rani for attempting to commit suicide and also under Section 304 I.P.C. for having caused the death of her child Sweety, was registered. P.W. 9 A.S.I. Bhopal Singh after receipt of this report rushed to the place of occurrence. There he found P.Ws 4 to 6. He found the dead body of the child Sweety lying in the verandah. P.W. 4 gave a report Ex P.F./1 in which all the details of the earlier incident were mentioned. Then in the end it was stated that on reaching Village Barara on the day of occurrence he came to know that his daughter received bum injuries and the reason for suicide was the ill-treatment meted out to her by the accused. Having given the report P.W. 4 also went to the Hospital.

3. In Ex.P.E. the dying declaration recorded by P.W. 3 the Doctor, it is clearly stated by the deceased Santosh Rani that on the day of occurrence at about 2 P.M. her husband and her mother-in-law sprinkled kerosene oil on her and set her on fire and at that time she alongwith her nine months' old child were lying in the room and that the child died on the spot as a result of the burn injuries. P.W. 9 who was at the scene of occurrence held the inquest over the dead body of the child and according to him Sunder Lai Sarpanch of Village Barara handed over to him a recorded statement of the deceased Santosh Rani which is marked as Ex. P.H./1 wherein the deceased is alleged to have stated that she set fire on herself in the room bolting the door from inside and that her daughter also got burnt. The deceased Santosh Rani died at about 7.30 P.M. The Doctor P.W. 3 who was attending on her informed the local police. P.W. 7 A.S.I, held the inquest and Doctor P.W. 3 handed over the dying declaration Ex. P.E. to him. After the death an altered F.I.R. was issued. P.W. 2 Dr. K.L. Garg conducted the postmortem on the dead body of Santosh Rani. He noticed that clothes smelled of kerosene oil. On external examination he found that there were superficial as well as deep burns all over the body. The total burns were 80 to 90%. On internal examination he found that the pleura larynx, trachia, right both lungs and spleen were congested and he opined that the death was due to shock as a result of the burns. P.W. 2 also conducted the post-mortem on the dead body of the baby child Sweetie aged about 9 months and opined that her death was due to shock as a result of the burns. P.W. 9 who continued the investigation, recovered some material objects like burnt match box, bed-sheets and dupatta etc. During the investigation he also got the first appellant Harbans Lal medically examined. P.W. 10 Dr. Bimal Kumar Prinja who examined Harbans Lal, found a blister irregular in shape present on the proximal and of proximal phalanx of middle finger of the right hand and he also noticed the singeing of hair on the dorsum aspect of all fingers and dorsum on the right hand present. He also found another blister on the knuckle in relation to the root of the ring finger right hand on its dorsal aspect. The injuries were opined to be simple. The accused were arrested. After completion of the investigation, the charge-sheet was filed. The prosecution examined 10 witnesses and the accused denied the offence and stated that the deceased committed suicide by sprinkling kerosene and setting fire on herself.

4. The trial court rejected the evidence of P.Ws 4 to 6. It also held that the dying declaration Ex. P.E. recorded by the Doctor P.W. 3 is the outcome of the mutual consultations held amongst P.Ws 4 to 6 between 3.30 P.M. and 6.05 P.M. It is further observed that there is no tangible or satisfactory explanation as to why P.Ws 4 to 6 did not give the version now set out in the court regarding the murder to the A.S.I. P.W. 9 when he met them in the house of the accused. The trial court then proceeded to consider the two dying declarations Ex.P.E. and Ex.P.H./1 and observed that reliance has to be placed on Ex.P.H./1 which is earlier in point of time. In that view of the matter it acquitted the accused. The Division Bench of the High Court after a careful examination of the two dying declarations held that Ex.P.H./1 alleged to have been recorded by the Sarpanch does not stand proved and at any rate no reliance can be placed on that. The High Court, however, placed reliance on the dying declaration Ex. P.E. recorded by P.W. 3 the Doctor and convicted the accused. The High Court in arriving at such a conclusion disagreed with the findings of the trial court that Ex.P.E. was the result of tutoring after consultations amongst P.Ws 4 to 6.

5. Learned Counsel for the appellants submitted that there are telling circumstances which would go to show that it is a case of suicide. One of the circumstances relied upon is that if it is a case of

homicide namely that the accused forcibly sprinkled kerosene oil and set fire, the deceased must have raised hue and cry and many people would have heard and that there is no evidence of any once in the locality having heard such cries and absence of any such cries would support the theory of suicide. We are unable to see any force in this submission. The whole occurrence has taken place inside the room and it is quite possible that the cries if any raised by her could not have been heard by the neighbours. The next circumstance relied upon by the Learned Counsel is that there were no marks of violence found on the dead body and according to him some force must have been used by the accused before setting fire which should have left some marks of violence. Assuming that some force was used, in our view, that need not necessarily leave any marks of violence. At any rate in the instant case the Doctor found 90% burns and if there were any marks they would have disappeared. Yet another circumstance relied upon by the Learned Counsel in this context is that the door was bolted from inside. We must observe that the very fact that the accused according to their own version could open the door from outside itself indicates that the door could not have been bolted from inside in the manner alleged by the defence. Further there is no acceptable evidence to show that the deceased bolted the door of the room from inside. It is only a self-serving statement put forward by the accused that the deceased bolted the door from inside. P.Ws 5 and 6 who almost reached the scene of occurrence immediately found that the door was open and the deceased Santosh Rani was lying with burns and the baby child Sweety was already dead and on their asking the deceased Santosh Rani told them that her husband and her mother-in-law poured kerosene oil and set her on fire. Both of them took the deceased immediately to the hospital. Learned Counsel also very much relied on the circumstance namely presence of blisters on the right hand fingers and submitted that the plea of the accused Harbans Lai that he received blisters while putting off the fire has to be accepted. But this circumstance could be understood either way. He might have received these two simple injuries namely blisters while setting fire also and not necessarily while extinguishing the same. Lastly he placed greater reliance on Ex. P.H./1 the dying declaration purported to have been recorded by the Sarpanch and contended that this being the earlier dying declaration should be given greater weight and Ex.P.E. the dying declaration recorded by the Doctor. P.W. 3 should be discarded as the same was the result of consultations. In any event, according to the Learned Counsel, the view taken by the trial court is not unreasonable and the High Court in an appeal against acquittal ought not to have interfered even if it was possible to take another view.

6. In a case of this nature, it is but common for the accused to take the plea that the deceased committed suicide. The courts, however, have to examine various circumstances carefully and decide the question. Admittedly the deceased Santosh Rani and her baby child Sweety died because of burns. The positive case of the prosecution is that both the accused sprinkled kerosene oil and set fire. The motive is that the deceased did not bring sufficient dowry. P.W. 4 has given a clear and cogent evidence in this regard. There is absolutely no reason to doubt the same. His evidence establishes that the accused were ill-treating her in a cruel manner. Of course this by itself is not clinching for such treatment might have led her to commit suicide also. In appreciating the dying declaration this circumstance becomes highly relevant. Before we consider other circumstances we shall advert to the dying declaration Ex P.E. recorded by P.W. 3. He deposed that the injured Smt. Santosh Rani alias Gulshan Rani wife of the first appellant was admitted in the Hospital at 6 P.M. with extensive burns. He immediately informed the police that recording of a dying declaration

would be necessary. But since nobody came he proceeded to record the dying declaration in the presence of two other doctors. He further deposed that the injured was fully conscious while making the dying declaration. After recording the same he got appended her thumb impression and two other doctors signed the certificate Ex. P.E./1 where to P.W. 3 also appended his signatures. The injured breathed her last at 7.30 P.M. In the cross-examination P.W. 3 stated that the injured was brought to the Hospital by her relatives but they were sent out when he started recording the dying declaration and further the patient could not be treated in their presence. In the re-examination also he asserted that the relatives were not allowed to stay in the emergency room after the admission of the injured therein and before starting of treatment. We have gone through the evidence of P.W. 3, a respectable Doctor and we see absolutely no ground to doubt the same. Ex. P.E. alongwith Certificate Ex.P.E./1 read as follows:

Translation of Exhibit P.E. and P.E./1 Statement dated the 16th July, 1979 made by Smt. Gulshan w/o Harbans Lai, resident of village Barara.

Smt. Gulshan w/o Harbans Lai, resident of village Barara, made the following statement: On 16.7.1979, at about 2 P.M. my husband and my mother-in-law sprinkled kerosene oil on me and set me on fire. At that time, I alongwith my 9 months' old child was lying in the room. My child died at the spot as a result of bum injuries.

Q: What is reason for setting you on fire?

Ans: I was married two years ago. I did not bring money from my parents as a result whereof my husband and my mother-in-law set me on fire.

Sd/-Gulshan, (with her R.T.I.) Ex. P.E/1 Certified that this statement has been taken by me (Dr. R.K. Khosla) in the presence of 1. Dr. K.C. Gupta, M.C., Civil Hospital, Ambala City and 2. Dr. N.S. Yadav, M.O. Civil 5 Hospital, Ambala City. Certified that the patient is fully mentally alert and remained so till the making over her complete statement.

Sd/- N.S. Yadav, Dr. R.K. Khosla, M.O. C.H. Ambala M.O. Civil Hospital (In English) Ambala City, 16.7.79 at 6.45 P.M. Sd/- R.K. Khosla, (In English) 16.7.1979 at 6.45 P.M. This Statement has been recorded in my presence. is Sd/- K.C. Gupta, (In English) 16.7.79 at 6.45 P.M. Dr. K.C. Gupta, M.O., C.H. Ambala City.

7. It can be seen that the deceased had given all the details of the occurrence and the version is natural and there are no inherent infirmities. The declaration has been duly recorded by P.W. 3 and signed by himself and two other Doctors who were attending on the injured. There is also a certificate Ex.P.E./l appended that she was fully conscious and mentally alert and remained so till the recording of the statement was complete. This dying declaration is the most valuable piece of evidence in the case. The trial court, however, discarded the same on the ground that there is Ex. P.H./1 another dying declaration which is alleged to have been made by the deceased Santosh Rani

before one Jamail Singh Lamba at about 3 P.M. wherein she stated that she committed suicide. The same is said to have been reduced to writing by Jamail Singh Lamba in his own hand and was alleged to have been attested by Sunder Lai Sarpanch. It is also said that the statement bears the right hand thumb impression of the deceased Santosh Rani. Jamail Singh Lamba or Sunder Lai Sarpanch were not examined. The statement is in Hindi language and on being translated it reads as follows:

English Translation of the Statement of Santosh Rani, wife of Harbans Lai, Caste Khatri, Barara, Age 19/20 years.

I was married two or two-and-a-half years back. Since then there have been quarrels with my husband and mother-in-law. On account of the quarrels I remained away at my parental house for eight or nine months. I then thought that it was difficult to say at the parental house any more and now I have been staying here for the last five or six months. I used to be asked to go to my parental house. I used to tell them that I would rather die than go to the parental house. Today I served meal to my husband at noon and then taking a tin of kerosene from the kitchen and bolting the door of a room set fire. My daughter also got burnt.

R.T.I. of Santosh Rani Written by:

Sd/- J.S. Lamba 16.7.1979 3.30 P.M. Witness:

Sunder Lal, Sarpanch Gram Panchayat, Barara.

Seal Police Station, Mulana Initial, Sessions Judge, Ambala 21.12.1979 It must be noted that A.S.I. P.W. 9 introduced this document while being cross-examined. An objection was raised on behalf of the prosecution that the same can not be marked for want of proof. However, it was marked as Ex. P.H./1. Ex. P.H. is the inquest proceedings with regard to the death of baby child Sweety. There is no mention about the dying declaration Ex.P.H./1 in the said inquest report. However, after completion of the inquest proceedings P.W. 9 mentioned in a separate sheet of paper that Sunder Lal Sarpanch produced the said statement as being one made by the deceased Santosh Rani and recorded by Jarnail Singh Lamba. He simply attached this alleged statement to the said inquest proceedings. The High Court carefully examined all these documents. The occurrence took place round about 2 P.M. By about 3.15 P.M. Harbans Lai is said to have given his own report to P.W. 9. P.W. 9 proceeded to the spot and held the inquest on the dead body of the baby child Sweety at 3.20 P.M. By 3.30 P.M. P.Ws. 5 and 6 were at the scene of occurrence but before that this doubtful document Ex.P.H./1 is said to have been recorded and brought into existence which is highly unbelievable. In Ex. P.H./1 the time 3.30 P.M. is meticulously noticed as though it was recorded in an official manner. It must also be noted that by 5 P.M., P.W. 4 the father of the deceased gave a report to P.W. 9 on the basis of which the F.I.R. was registered. There is no reference to Ex.P.H./1 in that F.I.R. There are so

many suspicious features about Ex.P.H./1 and there is no knowing as to when it was brought into existence. At any rate the same has not been proved by any competent witness. We must observe that we are not throwing it out merely on this ground of want of proof alone. Suffice it to say that on the basis of such a suspicious and unproved document the dying declaration Ex. P.E. recorded by P.W. 3, the Doctor and attested by two other Doctors can not be discarded when the same satisfies all the other tests and requirements.

8. Learned Counsel further submitted that in Ex.P.F./1 the report given by P.W. 4 the father of the deceased, it is also mentioned that the deceased committed suicide. P.W. 4 deposed that he reached the Village Barara on the day of occurrence and came to know that the deceased received burn injuries and was on the verge of death. By then the accused also had been telling that the deceased committed suicide and that was the impression given by him to everybody. Therefore P.W. 4 believed that it was a case of suicide and under that impression he gave the report Ex.P.F./1. There is nothing to show that he talked to his daughter the deceased Santosh Rani before giving such a report. In his cross-examination, P.W. 4 has asserted that he did not talk to his daughter at all before giving the said report. Therefore no weight can be given to the said report and the same can not in any way affect the truthfulness of the dying declaration Ex.P.E. recorded by the Doctor, P.W. 3.

9. However there are certain other circumstances also which rule out the possibility of suicide. If the deceased Santosh Rani was committing suicide, she, as a mother, would be the last person not to save her daughter of tender age. The fact that the child also received burns and died would positively go to show that both of them were burnt to death at the hands of some others who can be none else than the two accused. This is a very telling circumstance and it completely rules out the theory of suicide. The trial court rejected Ex. P.E. the dying declaration recorded by P.W. 3 on the ground that it was result of tutoring. From the records it is clear that the father P.W. 4 was not with the deceased when she was taken to the Hospital. Only P.Ws 5 and 6 the relatives took her there. Then we have the evidence of P.W. 3, the Doctor that as soon as he admitted her and started treatment nobody was allowed inside and none was present thereafter with her and it was during that period the dying declaration was recorded. The evidence of P.W. 3 totally rules out any possibility of alleged tutoring. Even otherwise from the mere presence of the relatives who must have been anxious about the condition of the injured, it does not automatically follow that they would be interested in falsely implicating the accused and tutor the deceased and prevail upon her to make such a statement. In addition to that it is also necessary to bear in mind that the sanctity attached to the dying declaration is that a person on the verge of death would not commit the sin of implicating somebody falsely. Be that as it may after giving our anxious considerations, we are satisfied that the dying declaration Ex.P.E. duly recorded by P.W. 3 and attested by two other doctors is clear and fully implicates the two accused. Having subjected the dying declaration Ex. P.E. to a close scrutiny we are satisfied that it does not suffer from any infirmity whatsoever and further it is corroborated by other circumstances particularly by the evidence of P.Ws 5 and 6 as mentioned above. Therefore we see no ground to disagree with the findings of the High Court. The High Court has rightly set aside the order of acquittal as there is only one view possible namely that the accused and accused alone caused the death of the two deceased. Therefore we see no merit in this appeal and it is accordingly

dismissed.