Harijan Bhala Teja vs State Of Gujarat on 27 April, 2016

Equivalent citations: AIR 2016 SC 2065, 2016 (12) SCC 665, 2016 CRI. L. J. 2565, AIR 2016 SC(CRI) 700, (2016) 2 GUJ LH 57, (2016) 2 CRILR(RAJ) 450, 2016 CRILR(SC MAH GUJ) 450, (2016) 2 ALLCRIR 2084, (2016) 95 ALLCRIC 482, 2016 CRILR(SC&MP) 450, (2016) 2 CRIMES 112, (2016) 2 DLT(CRL) 701, (2016) 64 OCR 374, (2016) 4 SCALE 397, (2016) 2 CURCRIR 252, (2016) 1 ALD(CRL) 931, (2016) 163 ALLINDCAS 172 (SC), 2016 (2) KCCR SN 155 (SC), AIR 2016 SUPREME COURT 2065, AIR 2016 SC (CRIMINAL) 700 2016 (2) ABR (CRI) 359, 2016 (2) ABR (CRI) 359

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Bench: Prafulla C. Pant, A.K. Sikri

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2031-2032 OF 2008

Harijan Bhala Teja … Appellant

Versus

State of Gujarat …Respondent

J U D G M E N T

Prafulla C. Pant, J.

1. These appeals are directed against the judgment and order dated 15.07.2008, passed by High Court of Gujarat in Criminal Appeal No. 411 of 1986, whereby the High Court has allowed the appeal filed by State of Gujarat, and set aside the judgment and order dated 31.12.1985 passed by Additional Sessions Judge, Bhuj in Sessions Case No. 26 of 1985, recording acquittal of Harijan Bhala Teja (appellant before this Court). The High Court has convicted the accused under Section 302 of Indian Penal Code (IPC). By separate order dated 21.07.2008, after hearing on sentence, the High Court has sentenced the accused to imprisonment for life and also directed to pay fine of Rs.100/-.

2. Prosecution story, in brief, is that Jivibai (deceased) was married to appellant Harijan Bhala Teja. They used to live in village Nani Chirai. The deceased was carrying pregnancy of eight months. The prosecution case is that she was murdered on 20.02.1985 between 08 hours to 12 hours by the appellant, by strangulating her, and burial was done without informing and waiting for arrival of any of relatives from the parental side of the deceased. On 01.03.1985, PW-1 Vaja Ala (father of the deceased) got information about death of his daughter, and suspected the foul play on the part of the appellant. He gave a report (Exh.-22) at Police Station, Bhachau. On this, PW-8 Sub- Inspector Hayatkhan, on instruction from in charge of the Police Station, went to the village and made inquiries. On 02.03.1985, Executive Magistrate of the area directed that the body be exhumed, on which in the presence of Panch witnesses body was taken out, and inquest report was prepared. Dead body was sent for post mortem examination. On 04.03.1985, PW-5 Dr. Gopal Karsan Hirani of G.K. General Hospital, Bhuj, conducted post mortem examination and prepared the autopsy report (Exh.-19). He opined that the deceased had died due to asphyxia on account of strangulation.

3. The investigation was conducted by PW-9 Sub-Inspector, Kalukha Kureshi, who, after interrogating the witnesses and on completion of investigation, submitted the charge sheet against the appellant for his trial and in respect of his offences punishable under Sections 302 and 201 IPC.

4. On committal of the case to the Court of Sessions, the charge was framed by Additional Sessions Judge, Kutch, Bhuj, on 30.11.1985 against the appellant relating to offences punishable under Sections 302 and 201 IPC, to which the appellant pleaded not guilty and claimed to be tried. On this, prosecution got examined PW-1 complainant Vaja Ala (father of the deceased), PW-2 Ramji (Sarpanch of village Nani Chirai), PW-3 Husen, PW-4 Devraj (a relative of the deceased and the appellant), PW-5 Dr. Gopal Karsan Hirani (who conducted post mortem examination), PW-6 Puna (uncle of the deceased), PW-7 Saiyadsha Mat (in charge of Police Station, Bhachau), PW-8 Sub-Inspector Hayatkhan (who made preliminary inquiries), and PW-9 sub-Inspector Kalukha (who prepared inquest report after the dead body was exhumed and investigated the crime).

5. The documentary and oral evidence was put to the appellant on 30.12.1985 in reply to which he stated that the evidence adduced against him is not true. However, he did not lead any evidence in defence. The trial court, after hearing the parties, acquitted the accused holding that the prosecution

has failed to prove charge. Aggrieved by said judgment and order dated 31.12.1985, passed by Additional Sessions Judge, Bhuj, in Sessions Case No. 26 of 1985, the State of Gujarat filed the appeal before the High Court. The High Court, on 06.08.1986, granted the leave, and admitted the appeal.

6. The High Court after re-examination the evidence on record found that the order passed by the trial court was perverse and against the evidence on record. It further held that charge of offences punishable under Sections 302 and 201 IPC is proved on the record, and convicted the accused, and sentenced him to imprisonment for life and directed him to pay fine of Rs. 100/- under Section 302 IPC. (It appears that High Court has not awarded any sentence under Section 201 IPC).

7. Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of the appellant, submitted that the prosecution has failed to establish that Jivibai died of strangulation. In this connection, our attention was drawn to the statement of PW-5 Dr. Gopal and it is contended that he is not sure that the deceased has died of strangulation. As to the fracture of hyoid bone it is submitted by learned counsel for the appellant that the same could have been fractured as the body of the deceased was buried and some stones with the soil might have fallen on it.

8. On behalf of the appellant it is pointed out that PW-4 Devraj has not corroborated the story suggested by the prosecution. It is further submitted that PW-4 Devraj, in his deposition, gave a statement to the police that the deceased had died after consuming some drug which discredit the theory of strangulation.

9. Thirdly, it is submitted that there was no motive on the part of the appellant to kill his wife. In this connection, it is argued that statements of PW-1 Vaja Ala and PW-6 Puna Ala are vague, and PW-6 Puna Ala has admitted that he did not enquire as to what has actually happened before filing the complaint.

10. Lastly, it is submitted that the acquittal of the appellant recorded by the trial court was based on appreciation of the evidence on record. As such, in view of the settled position of law that when two views are possible, the High Court should not have interfered with the order of acquittal passed by the trial court.

11. We have considered all the above arguments and perused the record of the case.

12. No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused. In the present case, the High Court, after re-appreciating the evidence on record, has held, in paragraph 20, that the findings of the trial court were found perverse and not supported by the evidence on record.

13. Now, we come to the evidence on record examined by us. Admittedly, the deceased was wife of the appellant. It is also not denied that the appellant and the deceased were living together in the house when the death of appellant's wife occurred. It is also not disputed fact that no post mortem examination was got done, nor any information was given to the police regarding the death of the deceased, by the appellant. Of course, in the case of natural death there is no such necessity. However, even in the case of natural death, the normal conduct on the part of a husband would be to inform the relatives of parental side of the deceased wife, and then to perform the last rites. It is evident from the record that the appellant, who used to live with his wife (deceased) did not bother to inform his father-in- law or any one in his family. In reply to question Nos. 24 and 37 recorded by the trial court under Section 313 of the Code of Criminal Procedure, the appellant has stated that his wife died during delivery, but record would show otherwise

14. Now, we come to the medical evidence on record. PW-5 Dr. Gopal, who conducted post mortem examination on 4.3.1985 (after the dead body was exhumed on 2.3.1985) has recorded following external and internal injuries on the body of the dead body in the autopsy report (Ext. 19):

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External injuries:

a) Half round dark-like green coloured injury of size 14cm x 2 cm on front side of neck.

b) On the left side flank-in iliac and lumber region there was one cut of 20cm x 6 cm from which intestines had come out.

c) Fracture of hyoid bone on right side. Internal injuries:

a) Fracture in Hyoid bone 1cm away from the central line of neck.

b) Uterus with placenta had come out. There was a cut of 15cm x 3 cm near uterus.

15. An attempt was made on behalf of the appellant to explain that it is customary in the society of the appellant that where there is pregnancy, after death of a woman, foetus is cut and removed at the time of cremation to bury it separately. Assuming that be true, we are not satisfied with the explanation given by the appellant regarding ante mortem external injuries found half round neck with fracture of the hyoid bone which suggests only strangulation.

16. Modi's Medical Jurisprudence and Toxicology on strangulation explains that strangulation can be defined as the compression of the neck by a force other than hanging. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. On internal injuries Modi's Medical Jurisprudence says that it should be noted that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation.

17. In Mandhari v. State of Chattisgarh[1], while appreciating somewhat similar facts, this Court observed as under: -

> "4. ..... The post-mortem report prepared on autopsy conducted by Dr P.C. Jain (PW 8) shows that there was ligature mark on the neck of the deceased which was ante-mortem. The opinion of the doctor is clear and definite that such ligature mark of 5 cm width in horizontal position cannot be caused by hanging but could have been caused by strangulation. Medical evidence, therefore, completely falsifies the case of the appellant that on his return from the field to his house he had found his wife hanging and thus she had committed suicide. The conduct of the accused is also not natural. When he found his wife hanging by the neck, he neither raised any hue and cry nor called any villagers living nearby. He all alone brought down the body hanging from the roof. He thereafter did not report the matter immediately. When villagers collected, he took a plea that she had committed suicide. He also did not report the matter on his own but, as is deposed by Dilboodh (PW 2), Kotwar, it is on his insistence and of the Sarpanch that he reported the matter to the police. These witnesses also stated that the wife had complained in the past to the Panchayat that the appellant was ill-treating her and was not providing her food.
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> 5. After hearing learned counsel appearing and on going through the record, we find no ground to take a different view of the evidence. The accused in his examination under Section 313 CrPC had admitted that he was in the house and on hearing a sound had rushed to find his wife hanging by the neck. His defence that his wife committed suicide has been found to be false and the same is not corroborated by medical evidence. The above facts coupled with the circumstances that they were not leading a congenial marital life, the unnatural conduct of the accused subsequent to the incident, the spot map (Ext. 7) showing the rafter of the roof to be at such height as was unapproachable for committing suicide — cumulatively lead only to one irresistible conclusion that the accused alone was the author of the crime and had taken a false defence that he had seen the deceased to have committed suicide by hanging herself."

18. In the present case, the appellant has got hurriedly buried body of his wife before anyone from the parental side of his wife could reach. On going through copy of the post mortem report in the record of the case it reveals that apart from the injuries mentioned above, regarding the condition of the body, the Medical Officer PW-5 Dr. Gopal, who conducted post mortem, has observed that the tongue of the deceased was protruded from mouth from teeth inside the mouth, which further corroborates homicidal death of the deceased.

19. Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death.

20. PW-1 Vaja Ala, father of the deceased, has stated that when he reached to the village of his daughter on 1.3.1985, the appellant told him that Jivibai (deceased) has died by poisoning. He further disclosed that before three-four months of the incident, he had been to the village Nani Chirai with his relatives Bhana Ala, Puna Ala, Kanya Ala, Hira Ratan and Palu Chainda, to settle the dispute between the appellant and daughter of the complaint (PW-1). He further told that with the help of the Sarpanch the matter was attempted to be settled, and the appellant promised that he would not quarrel in future. PW-2 Ramji, who was Sarpanch of village Nani Chirai, corroborating the above statement has narrated that Vaja Ala (PW-1), along with five-six others, came to the village from Gandhidham and told about the problem between Jivibai (deceased) and her husband (appellant), and further told that they agreed to live amicably. However, as to the cause of death, the witness states that he has no knowledge as to how Jivibai died. PW-3 Husen is the witness of exhumation of the dead body and preparation of inquest report (Ext. 8). PW-4 Devraj (who happened to be relative from the side of the appellant as well as from the side of Vaja Ala) has corroborated that before few months of the incident the appellant had beaten Jivibai on which he had sent message to Vaja Ala (PW-1) that his daughter was being beaten. He further corroborated the settlement made by Sarpanch Ramji. However, this witness did not say anything as to how the deceased died on the date of the incident. PW-6 Puna Ala, brother of PW-1, has stated that Devraj gave information to him regarding death of Jivibai.

21. Having gone through all the above statements and the medical evidence on record, we are in complete agreement with the High Court that charge as against the appellant stood proved beyond all reasonable doubts that he committed murder of his wife, and attempted to destroy the evidence by hurriedly getting buried the body.

22. We have also examined the matter as to whether two views were possible in the present case from the evidence on record. The trial court, in our opinion, has taken a view which was not possible from the evidence on record. The trial court has unnecessarily emphasized on the point that there is no direct evidence to connect the accused with the crime. In the facts and circumstances of the case, there was no possibility of direct evidence to be on the record.

23. For the reasons, as discussed above, we are not inclined to interfere with the conviction and sentence recorded by the High Court against the appellant. Therefore, the appeals are dismissed.

.....J. [A.K. Sikri] .....J. [Prafulla C. Pant] New Delhi;

April 27, 2016.

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[1] (2002) 4 SCC 308