

State Of U.P vs Hari Mohan & Ors on 7 November, 2000

Equivalent citations: AIR 2001 SUPREME COURT 142, 2000 (8) SCC 598, 2000 AIR SCW 4012, 2000 ALL. L. J. 3032, 2001 (1) UJ (SC) 293, 2000 (10) SRJ 132, 2001 UJ(SC) 1 293, 2000 (2) JT (SUPP) 467, 2000 (4) LRI 1147, (2000) 29 ALLCRIR 2730, (2001) 1 EASTCRIC 259, (2001) 1 PAT LJR 68, (2000) 7 SUPREME 516, (2001) MAD LJ(CRI) 182, (2000) 4 CRIMES 234, (2001) SCCRIR 121, (2000) 4 ALLCRILR 590, (2000) 4 CURCRIR 209, (2001) 1 CAL HN 9, (2001) 20 OCR 218, (2000) 7 SCALE 348, 2001 ALLMR(CRI) 170, 2001 SCC (CRI) 49, 2000 CHANDLR(CIV&CRI) 372, (2000) 3 CHANDCRIC 184, (2001) 42 ALLCRIC 91, 2002 (1) ALD(CRL) 93

Bench: K.T. Thomas, R.P. Sethi

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
HARI MOHAN & ORS.

DATE OF JUDGMENT: 07/11/2000

BENCH:
K.T. Thomas, & R.P. Sethi,

JUDGMENT:

SETHI, J.

L...I...T.....T.....T.....T.....T.....T.....T..J Roop Devi, daughter of Bhagwan Sahai (PW1) was married to Shyam Mohan, respondent No.2 herein on 6.6.1973. Respondent No.1 Hari Mohan is the elder brother of respondent No.2. The other respondents are the relations/ friends of Shyam Mohan.

After receiving the letter on 18.3.1977 which is stated to have been written by Roop Devi, Bhagwan Sahai (PW1), her father, came to village Kurria Kalan on 19.3.1977 to inquire about his daughter. He was told by respondent No.1 Hari Mohan that Roop Devi had died due to Cholera on 15.3.1977. Apprehending some foul play PW1 lodged the FIR at Police Station Kanth on 20.3.1977 at about 1.30 p.m. On 22.3.1977 the dead body of Roop Devi, bundled in a gunny bag was found floating in a pond in Village Sahwapur, away from the house of the accused- respondents. On opening the gunny bag it

Not satisfied with the judgment of the trial court, the respondents preferred an appeal in the High Court which was allowed vide the judgment impugned in this appeal. The accused were acquitted on the assumption that "the possibility of a suicide of Smt.Roop Devi in the house also cannot be denied". As the occurrence was found to be that of a suicide, the conviction of all the accused persons under Section 201 IPC was held to be not maintainable.

Admittedly, there is no direct evidence connecting any of the accused with the commission of the crime. The case of the prosecution is based upon circumstantial evidence. It is often said that witnesses may lie but the circumstances cannot. To convict a person on the basis of circumstantial evidence all the circumstances relied upon by the prosecution must be clearly established. The proved circumstances must be such as would reasonably exclude the possibility of innocence of the accused. The circumstantial evidence should be consistent with the guilt of the accused and inconsistent with his innocence. The chain of circumstances, furnished by the prosecution, should be so complete as not to lead any reasonable ground for conclusion consistent with the innocence of the accused. Medical evidence in such a case may be an important circumstance giving assurance to the existence of the other circumstances alleged against the culprit. This Court has consistently held that when the evidence against the accused, particularly when he is charged with grave offence like murder consists of only circumstances, it must be qualitatively such that on every reasonable hypothesis the conclusion must be that the accused is guilty; not fantastic possibilities nor freak inferences but rational deductions which reasonable minds make from the probative force of facts and circumstances.

While appreciating the ocular testimony of witnesses and the circumstantial evidence in a criminal case, the criminal courts are expected to keep in mind the observations of this Court in *State of Punjab v. Jagbir Singh, Baljit Singh & Karam Singh* [1974 (3) SCC 277] wherein it was held:

"A criminal trial is not like a fairy tale wherein one is free to give fight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission

of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures."

This Court again in *State of Himachal Pradesh v. Lekh Raj & Sons* [JT 1999 (9) SC 43] reiterated the position of law and while reminding the criminal courts of their obligations held: "The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the Courts are required to adopt rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a Utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and the mankind."

Before appreciating the circumstantial evidence in the case, we are at pain to place on record our displeasure regarding the conduct of the investigation in the case. The investigating officer appears to have left no stone unturned to help the accused-respondents. It appears that the valuable evidence, though available, was not collected apparently for ulterior purposes. The conduct of the investigating officer SI D.P. Tiwari (PW7) was even noticed by the trial court. On 30th October, 1978 while recording his statement, the trial court observed that "it appears that the IO was negligent and an irresponsible investigating officer". It was noticed that "the witness giving aforesaid statement and it appears that he wants to damage the prosecution case". It is not disputed that during investigation it had come in evidence that respondent No.1 was possessed of a licensed gun which was stated to have been used by him on 15.3.1977, the alleged day of occurrence, yet no effort was made by the IO to seize the gun or get it examined by an expert to ascertain whether any shot was fired from its barrel. He also failed to have taken into custody the letter written by the deceased for a sufficiently long period though its mention was made by the PW1 in the FIR itself. However, the defective investigation cannot be made a basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against all the accused or anyone of them. It is unfortunate that no action can be taken against the IO at this stage who, in all probabilities, must have retired by now.

- While dealing with Circumstances 1 to 5, the trial court relied upon the testimony of PW3 and held: "Accused Hari@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ Mohan is the elder brother of accused Shyam Mohan. Their father was not alive at the time of the alleged murder. As such Hari Mohan was to discharge the duties and obligations of the head of the family. Somehow, the matter of dowry had taken an evil turn and since there is evidence that Smt.Roop Devi was not pulling with his mother-in-law and there was constant conflict and dispute, every possibility borders on certainly that Hari Mohan took the law into his hands and committed this murder callously and brutally."

[illegible]

On 13.3.1977 the deceased is proved to have written a letter to his father PW1, stating therein that she should be immediately taken back from the house of her in-laws otherwise her brother-in-law, respondent No.1, mother-in-law and the husband would kill her. The letter being in the hand-writing of deceased, as noticed earlier, stands proved by the testimony of PW4, her brother. No effort was made by the accused persons, if they doubted the authenticity of the letter, to get it compared with the admitted hand-writing of the deceased. The mere fact that the prosecution witness did not produce other letters allegedly written by the deceased, could not be made a basis to hold that they had made any attempt to suppress the evidence which the respondent could have utilised for the purposes of comparing the hand-writing of the deceased. In view of the positive evidence of PW4 we have no reason to hold that the letter Exhibit Ka 1 was not written by the deceased. The alleged discrepancy or over-writing on the top of the letter regarding its date in no way helps the accused persons. The false assertion by the respondent Hari Mohan that deceased had died due to Cholera on 15.3.1977 is such an important circumstance as would leave no doubt in the mind of the court that the death was neither natural nor suicidal but in fact homicidal. Making of contradictory statement on a fact which the accused knew well that it is a wrong statement on a very vital aspect concerning the death of the deceased can also be counted, among other circumstances, as a link in the chain of circumstances to connect the accused with the commission vide judgment in *Rajinder Kumar v. State of Punjab*[AIR 1966 SC 1322]. In that case the deceased was last seen with him and later the dead body was found buried in his own house, the court counted the contradictory statement made by the accused (that deceased had gone to the shop of one Baba to fetch a toast) as one of the links in the chain. There is no doubt in our mind that Hari Mohan accused in this case made a false statement about the deceased by telling her father that she had died due to cholera on 15.3.1977. If Roop Devi had died on 15.3.1977 due to Cholera, what prevented the accused persons to intimate her parents about the death. No explanation is tendered by the accused persons. The said

accused, however, has taken the contradictory plea in the court that the deceased was not at all living at their residence.

From the prosecution evidence it is established that:

- i) the deceased Roop Devi was married to respondent No.2 on 6.6.1973;
- ii) the relations between the deceased and her in-laws were strained on account of the demand of dowry;
- iii) two months prior to the incident she was sent to her in- laws' house in the company of accused Hari Mohan where she lived till her death;
- iv) the deceased wrote a letter Exhibit Ka 1 intimating her parents that she apprehended to be killed by the accused persons;
- v) on the date of occurrence gun shot was heard in the house of the accused;
- vi) respondent No.1 owned and possessed a licensed gun on the date of occurrence;
- vii) the dead body of Roop Devi packed in a gunny bag was found floating in a water tank away from the house of the accused;
- viii) Roop Devi was proved to have died after receiving gun shot injuries which could be fired from a distance of 4-6 ft which excluded the possibility of suicide;
- ix) Hari Mohan accused made a false statement to Bhagwan Sahai, the father of the deceased that Roop Devi had died on 15.3.1977 due to cholera.

On the basis of prosecution evidence led in the case and despite mis-handling of the case by the investigation officer, we are satisfied that the circumstances enumerated hereinabove have been fully established by the prosecution. The circumstances are a chain, complete in itself and inconsistent with the innocence of accused Hari Mohan. On the touchstone of the tests regarding appreciation of circumstantial evidence enumerated hereinabove, we have no doubt in our mind that prosecution had proved its case beyond any reasonable doubt that Hari Mohan, respondent No.1 had caused the death and thus committed the murder of Roop Devi. He was rightly convicted by the trial court under Section 302 of the IPC and wrongly acquitted by the High Court on erroneous considerations.

We are, however, of the opinion that the prosecution did not succeed in proving the case either under Section 302 read with Section 34 or Section 201 IPC against the other accused persons.

In the result the appeal is partly allowed by restoring the conviction passed by the trial court against respondent No.1 Hari Mohan for the offence punishable under Section 302 IPC and sentencing him

to undergo life imprisonment. Bail bonds of Hari Mohan stands cancelled. The First Additional Sessions Judge, Shahjahanpur, will take prompt steps to put Hari Mohan, the first accused, back in jail to undergo the sentence imposed upon him. The appeal against other respondents is dismissed and their acquittal by the High Court is upheld.