A HARBANS LAL

v.

STATE OF PUNJAB

JANUARY 23, 1996

B [DR. A.S. ANAND AND S.B. MAJMUDAR, JJ.]

Penal Code, 1860 :

S. 302/34—Murder of wife by husband and two sons—Trial Court convicting all the three accused and sentencing them to life imprisonment—High Court giving benefit of doubt to the two sons but maintaining the conviction and sentence of the husband of the deceased—On appeal held conduct of eye-witnesses belies the possibility of their presence and various infirmities in their evidence renders it unsafe to rely upon their testimony—Appreciation of evidence not proper—Benefit of doubt to other two accused not given to the appellant-accused—Same yardstick should have been applied—Hence miscarriage of justice—Prosecution not proved case against appellant—Accused beyond reasonable doubt—Hence entitled to benefit of doubt—Conviction and sentence of appellant—Accused set aside—Evidence Act—Appreciation of Evidence.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 38 of 1983.

From the Judgment and Order dated 6.10.82 of the Punjab & Haryana High Court in Crl. A. No. 449-DB of 1982.

F K. Madhavan (A/C) for the Appellant.

Ranbir Yadav for R.S. Suri for Respondent.

The following Order of the Court was delivered :

G The appellant along with his two sons Pawan Kumar and Dial Ram were sent up for trial in connection with the murder of Punni Devi-wife of the appellant mother of Pawan Kumar and Dial Ram on the night intervening 16/17 October, 1981. The trial court convicted all the three accused for offences under Section 302/34 IPC vide its judgment dated 15.6.1982 H and sentenced them to undergo life imprisonment. On appeal, the High

Court gave benefit of doubt to Pawan Kumar and Dial Ram and acquitted them. The conviction and sentence of the appellant was, however, maintained.

By special leave, the appellant has called in question his conviction and sentence.

We have heard learned counsel for the parties and examined the record.

That Punni Devi died as a result of burn injuries on the night intervening October 16/17, 1981 in the house of her husband Harbans Lal appellant, is not in dispute. The question, however, is whether the prosecution has been able to establish that the appellant committed the crime.

The prosecution examined PW-11 Kartar Singh and PW-12 Karnail Singh - grandson of PW-11, as the two witnesses of the occurrence. The High Court while considering the submissions relating to the evidence of Kartar Singh PW-11 found that the criticism of his evidence "was not without force" but went on to say that even if the evidence of that witness was 'ignored', the fact remains that the deceased was found dead in her own house where she was residing with the appellant and that it was not a case of suicide and therefore the appellant must have burnt her to death. Thus, the High Court appears to have relied upon that circumstance to uphold the conviction and sentence of the appellant.

With a view to satisfy our judicial conscious, we have perused the evidence of PW-11 Kartar Singh and PW-12 Karnail Singh but their evidence does not inspire confidence. PW-11 Kartar Singh deposed that on the night in question, while passing through the house of Harbans Lal he peeped through a window of the house and saw that the appellant had kept his foot on the neck of Punni Devi deceased while Pawan Kumar had caught hold of her arms and Dial Ram of her legs. Why PW 11 had to peep through the window is not explained by him, particularly when it is not his case that the deceased was shouting or raising an alarm ? Karnail Singh PW-12 deposed that after PW-11 had peeped through the window, he did likewise and noticed that Pawan Kumar was sprinkling kerosene oil on the body of Punni Devi while Harbans Lal had put his foot on her abdomen, and he (i.e. Harbans Lal) set her on fire with a match stick. Thus, these two witnesses deposed about two stages of the occurrence they had seen

A through the window. Their evidence appears to be rather artificial. These two witnesses appear to us to be got up witnesses. They saw a gruesome murder being committed with their own eyes and yet for reasons best known to them, they did not raise any alarm but went their way and did not disclose about the occurrence to anyone, not only that evening but even
B till the third day after the occurrence. Their conduct was thus, most unnatural. This creates a serious doubt about their credit worthiness. From the evidence of DW-4 and DW- 5 it transpires that PW-11 did not even have a ration card in that ward and even his name was not entered on the voters list of that area. His presence in the area is therefore, doubtful. The evidence of both these witnesses, PW-11 and PW-12, has not
C impressed us. The High Court also does not appear to have found them reliable witnesses. Their conduct belies the possibility of their presence and various infirmities in their evidence, renders it unsafe to rely upon their testimony. The only other piece of evidence relied upon by the prosecution is the recovery of the dead body with extensive burns from the house of
D the appellant. That circumstance, however, is not sufficient to hold the appellant guilt. It is not conclusive in nature and is not compatible only with the guilt of the appellant and wholly incompatible with his innocence. This circumstance can only create suspicion about the complicity of the appellant but suspicion cannot be allowed to take the place of proof. The High Court, after having dis-believed PW-11 and given benefit of doubt to
E Pawan Kumar and Dial Ram by accepting their statements that they were living separately fell in error in convicting the appellant only on the *supposition* that the appellant was living with the deceased, ignoring the statement of the appellant recorded under Section 313 Cr.P.C. to the effect that on account of his strained relations with his wife, he used to sleep at
F the shop and not in the house and that after he learnt about the death of his wife at about 10/11 A.M. on 17th October, 1981, he sent information to the relations of his wife. The prosecution did not lead any evidence to show that the appellant was living in the house and not in the shop. Since, the High Court accepted the statements of Pawan Kumar and Dial Ram recorded under Section 313 Cr.P.C. that they were living separately and
G gave them the benefit of doubt, we are at loss to understand as to why the same yardstick was not applied while appreciating the evidence in so far as the appellant is concerned.

There is yet another serious lacuna in the prosecution case. The
H failure of the High Court to notice, let alone consider and discuss, the

evidence of ten defence witnesses, besides the court witness Shri G.S. Bhullar, S.S.P., was highly improper and in our opinion, the failure to appreciate the defence evidence had resulted in mis-carriage of justice and the appellant has been seriously prejudiced. A

The evidence on the record in our opinion fails to connect the appellant with the crime and the prosecution has not proved the case against the appellant beyond a reasonable doubt. The appellant is entitled to the benefit of the doubt. The conviction of the appellant under the circumstances cannot be sustained. We, accordingly, accept this appeal and set aside the conviction and sentence of the appellant. The appellant is on bail. His bail bonds shall stand discharged. B C

G.N. Appeal allowed.