

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.134 OF 2019

(Arising out of SLP (Criminal) No. 1705/2015)

Dev Wati and Ors.

...Appellants

Versus

The State of Haryana and Anr.

...Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. This appeal is directed against the judgment dated 16.10.2014 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision No. 3135/10 (O&M) upholding the judgment dated 09.11.2010 passed by the Sessions Court, Faridabad in Sessions Case No. 54/2010.

3. By the impugned judgment, the application under Section 319 of the Code of Criminal Procedure (for short 'the Cr.P.C.') filed by the complainant was allowed and consequently the appellants herein were summoned by the Sessions Court to face trial in Sessions Case No. 54/2010.

4. The brief facts arising out of this appeal are that a missing complaint came to be lodged by the brother of the deceased (PW-9, Harkesh). After two days of such complaint, the dead body of the deceased Suraj was found. Accused Rajpal @ Rajua, Prem Pal and Devender @ Deven were put to trial for the commission of the offence under Section 302 read with Section 34 of the Indian Penal Code (for short 'the IPC'), apart from other offences. When the evidence was being recorded, PW-9, Harkesh deposed before the Sessions Court implicating the appellants herein, i.e. Appellant No.1, Smt. Dev Wati, the wife of the deceased, Appellant Nos. 2 and 3, Surinder Singh and Badan, her brothers, Appellant No. 4, Smt. Amarwati, her sister and Appellant Nos. 5 and 6, Raju and Kalu, two sons of her sisters. Thereafter, an application came to be filed by the complainant under Section 319 of the Cr.P.C. before the Sessions Court, which came to be allowed on the ground that on the insistence of

Raju and Kalu, the deceased had gone along with them on their motorcycle on being told that the appellants herein and one Omi (being the wife of the deceased and her relatives) had called him for a compromise in the matrimonial litigation pending between the deceased and his wife. It is relevant to note here that the deceased had allegedly been threatened by his wife and some of her relatives with respect to the ongoing matrimonial dispute. Maintenance proceedings under Section 125 of the Cr.P.C. as well as a complaint for the offences punishable under Sections 498-A and 506 of the IPC were also pending against the deceased. The said proceedings were initiated by the wife of the deceased. In addition to the same, two other criminal cases were also lodged for the offences punishable under Sections 323, 324 and 504 of the IPC. Be that as it may, in short it can be said that there was a serious dispute between the deceased and his wife in which the wife's relatives were supporting her.

5. We have perused the deposition of PW-9, Harkesh to satisfy our conscience, as the Courts have issued summons to the appellants based on his deposition. The deposition of PW-9 clearly mentions that Appellant Nos. 5 and 6, Raju and Kalu had come to the residence of the deceased wherein the complainant

was also present, and had taken the deceased along with them on their motorcycle claiming that Appellant Nos. 1 to 4 and one Omi (to recall, the wife of the deceased and some of her relatives), had called him for a compromise in the ongoing matrimonial dispute.

6. The version in the FIR (P-7) lodged by Harkesh is practically the same. On registration of the FIR, though the police had arrested three persons, namely, Rajpal @ Rajua, Prem Pal and Devender @ Deven, the investigation report did not contain the names of the appellants herein as accused. It is also to be noted that the post-mortem report reveals that it is a case of homicidal death inasmuch as the cause of death was shock and haemorrhage due to injuries to vital organs, including the brain and lungs.

7. Section 319 (1) of the Cr.P.C. empowers the Court to proceed against other persons who “appear” to be guilty of an offence, though not accused before the Court. A Constitution Bench of this Court in the case of *Hardeep Singh v. The State of Punjab* [(2014) 3 SCC 92] has ruled that the word “appear” means “clear to the comprehension”, or a phrase near to, if not synonymous with “proved”, and imparts a lesser degree of probability than

proof. Though only a prima facie case is to be established from the evidence led before the Court, it requires much stronger evidence than a mere probability of the complicity of the persons against whom the deponent has deposed. The test that has to be applied is of a degree of satisfaction which is more than that of a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, may lead to conviction of the proposed accused. In the absence of such satisfaction, the Court should refrain from exercising the power under Section 319 of the Cr.P.C. In our considered opinion, the impugned judgment has been passed by the High Court keeping the aforementioned principle in mind, though the said judgment has not been cited before the High Court.

8. On considering the deposition of PW-9, we do not find any valid ground to take a different view from that of the High Court and the Sessions Court. Additionally, though the advocate for the appellants raised certain issues on facts, the same cannot be considered at this stage, inasmuch as such factors will have to be considered by the Sessions Court while deciding the matter before it on merits.

9. In view of the above, we decline to interfere with the impugned judgment. Accordingly, the appeal stands dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
JANUARY 24, 2019.