

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

358

**CRA-S-1005-SB-2004 (O&M)**

**Reserved on 16.11.2022**

**Date of Decision: 22.11.2022**

Hari Om and others

...Appellants

Versus

State of Haryana

... Respondent

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Nikhil Ghai, Advocate  
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

**N.S.SHEKHAWAT, J. (Oral)**

The present appeal has been preferred against the impugned judgment of conviction dated 05.05.2004 and order of sentence dated 06.05.2004 passed by the Court of learned Additional Sessions Judge (Fast Track Court), Bhiwani, whereby, the present appellants had been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 1,000/- and in default of payment of fine, they were further sentenced to undergo simple imprisonment for four months. The appellants had also been convicted under Section 328 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 1,000/- and in default of payment of fine, they were further sentenced to undergo simple imprisonment for four months. However, the appellants had been acquitted under Section 498-A IPC.

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The FIR in the instant case was got registered by Bala Devi wife of Hari Om by alleging that her marriage was solemnized with Hari Om son of Vijay resident of village Kharak Kalan about eight years ago and her father Devi Ram had given dowry beyond his capacity. Her mother-in-law Bimla is alive whereas her father-in-law had died. She had four sisters-in-law (Nanad), namely, Sarita, Lali, Poonam and Chiku. Sarita and Lali are both married to Brijesh and Mahesh sons of Ram Niwas, respectively and the younger two sisters-in-law are unmarried. Mahesh, husband of Lali used to live mostly in village Kharak Kalan. The complainant had two daughters and one son. The daughters were aged five and three years whereas son was aged about eight months. Her mother-in-law, namely Bimla and her husband Hari Om used to harass her for bringing less dowry. Even on birth of her son Naveen, her father had given several gifts to them but still her husband and mother-in-law were not happy with the gifts. Mahesh, husband of the sister-in-law used to say that she should be killed and he would get her husband married to another beautiful lady. On 03.11.2000, her husband, mother-in-law and husband of sister-in-law had beaten her up in the night. Even on 04.11.2000 at about 10/11 o'clock in the morning, all these three accused had beaten her up and thereafter her husband Hari Om and husband of her sister-in-law, namely, Mahesh had caught her whereas her mother-in-law Bimla had forcibly put some poisonous medicine in her mouth and thereafter,

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she raised the noise. On this her husband and neighbours brought her to the hospital and got her admitted. Her father, her brother Narender and sisters Babli and Santosh had also reached there and she had told them also about the poisonous medicine and all these accused had forcibly administered some poisonous medicine to her. On the basis of said FIR, the investigation formally commenced against the three accused, namely, Hari Om, Bimla and Mahesh. However, the during the course of investigation Bimla and Mahesh were found to be innocent and were summoned under Section 319 Cr.P.C. by the learned trial Court.

During the course of trial, the prosecution examined 12 witnesses to prove the charge.

The prosecution examined PW1 Subhash Chander who brought the bed head ticket of Bala Devi. PW2 ASI Vijay Singh obtained the opinion from the doctor by moving the application Ex.PA with regard to the fitness of the patient to make the statement. After getting the opinion of the doctor, the statement of Bala Devi Ex.PA/2 was recorded in the presence of the doctor, who attested the said statement. He made endorsement on the statement on the basis of the same, the formal FIR Ex.PB was recorded by ASI Maha Singh. He admitted in his cross-examination that according to the MLR, Hari Om accused had brought the patient to the hospital. However, when he recorded the statement of Bala Devi, Hari Om was not present. The

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prosecution further examined PW3 Dr. Ranbir Singh, who medico-legally examined Bala Devi on 04.11.2000. She was admitted with alleged history of ingestion of insecticide spray and vomiting. On the strength of chemical examiner report Ex.PC he submitted that both the samples were positive for organ phosphorous compound group of insecticides. He sent ruka to the police and he gave opinion Ex.PF/1, according to which, the report from chemical examiner showed organ phosphorous poison in both the samples. In his cross examination, he admitted that the patient was brought by Hari Om. In his deposition PW3 Dr. Ranbir Singh did not refer any injury suffered by the complainant Bala Devi. HC Ramesh Parkash was examined as PW4, who brought the samples and handed over the same to ASI Vijay Singh. PW5 ASI Dharam Chand is a formal witness. PW6 Dr. N.K. Garg, gave his opinion on 05.11.2000 with regard to the fitness of the patient to make the statement. However, in his cross-examination, he admitted that it took about 20 minutes in recording the statement of the complainant. He could not tell whether any relative was present beside the injured or not. He however admitted that many persons were present around her, when the police officials had recorded her statement Ex.PH/1. The prosecution further examined PW7 Narender Kumar, brother of Bala Devi. He stated that on inquiry, his sister Bala Devi had informed her that she was beaten up by her in-laws and her husband Hari Om and Mahesh caught hold

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of her whereas her mother-in-law administered poisonous medicine to her. After hue and cry, so raised by his sister, the neighbours gathered there and took her to the hospital. Similarly, PW8 Babli, sister-in-law of the complainant stated that on 05.11.2000 she came to G. H. Bhiwani to meet her sister Raj Bala and on inquiry, her sister told her that accused Mahesh and Bablu (her husband) caught hold of her and her mother-in-law had put poisonous medicine in her mouth. PW9 Santosh sister of Raj Bala also deposed on similar lines. PW10 Partap Singh Inspector prepared the report under Section 173 Cr.P.C. PW11 Constable Lila Ram was a formal witness, whereas PW12 Kanwar Pal, Draftsman, prepared the scaled site plan Ex.PJ on the demarcation of Bala Devi. However, he admitted in his cross-examination that he had obtained the signatures of Bala Devi on Ex.PJ.

After the prosecution evidence was closed, the statement of the accused Hari Om was recorded under Section 313 Cr.P.C. He stated that a false case has been planted against him. His wife was working in the fields and she consumed poisonous substance accidentally there and from there she was brought to the village by the neighbours of their fields. He alongwith his mother brought her to the hospital. However, at the instance of her father, the complainant involved them in a false case. Even Mahesh was not even present in the village. Bimla co-accused also made a statement on similar lines.

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Mahesh also stated that he was resident of a different village and he rarely visited Kharak Kalan. His father was suffering from cancer and he used to attend him and he was not in village Kharak Kalan on the day of occurrence.

To prove his innocence, the accused examined DW1 Sanjay son of Vijay Singh. He is the neighbour of the accused Hari Om in the fields. At about 04.11.2000 Manoj came and told him that some person was weeping in the fields of Hari Om. Thereafter he alongwith Manoj went to the fields of Hari Om and Bala Devi and found that Bala Devi was weeping there. Bala Devi told them that she had taken something. They called Ashok son of Ram Kumar and took the wife of Hari Om in a bullock cart to the village and on the way Dharampal met them having a tractor and they took her to the hospital. He stated that Hari Om and Bimla were not present in the fields at the time when the occurrence had taken place. Constable Bal Kishan was examined as DW2, who had brought summoned complaint No. 4441 PG dated 14.12.2000 of Smt. Bimla and its finding.

After hearing the learned counsel for the parties, learned trial Court acquitted the appellants under Section 498-A IPC, however, all the appellants were convicted and sentenced as mentioned above.



I have heard learned counsel for the parties and with their able assistance, I have marshalled the evidence.

Learned counsel for the appellants vehemently argued that they have been falsely implicated in the instant case. Even after the registration of the present case, Raj Bala @ Bala Devi had expired and they have been falsely implicated in a murder case. However, after the trial, they were acquitted also. Learned counsel for the appellant further contends that there was considerable delay in registration of the FIR. The occurrence is stated to have taken place on 04.11.2000, whereas statement of the complainant was recorded on the next day. Even in the instant case, it is apparent that false roles have been assigned to the present appellants. It has been falsely alleged that Hari Om and Mahesh caught hold of the complainant whereas Bimla administered some poisonous substance to the complainant. The said version is highly improbable and unbelievable. Even Mahesh and Bimla were found innocent during the course of investigation and were summoned under Section 319 Cr.P.C. The learned Court below failed to appreciate that there was no evidence against Bimla and Mahesh. Still further, the statement made by the complainant Raj Bala @ Bala Devi was not admissible in the instant case as she had also died and could not appear as prosecution witness. Still further, the testimonies of PW7 Narender Kumar, PW8 Babli and PW9 Santosh were hearsay evidence and were not admissible in evidence. Still

further, the prosecution story with regard to the administering organ phosphorous compound to the injured is unbelievable as MLR does not show any injury on the person of the complainant. Even otherwise, organ phosphorous compound has a very pungent smell and could not be administered forcibly to anyone without there being circumstances to suggest some struggle by the victim to resist the administration of such substance. The learned counsel further submitted that the statement made by DW1 Sanjay was liable to be believed as he stated that the complainant had told him that she had taken the poisonous substance accidentally and on her request, he removed Raj Bala to house of her husband Hari Om. Still further, the appellant himself shifted her to the hospital. Had the appellants administered poison to the complainant, they would have never taken her to the hospital.

The submissions made by the learned counsel for the appellants have been vehemently opposed by Ms. Sheenu Sura, DAG, Haryana appearing for the State. She submits that specific allegations have been levelled against all the three accused and they have been rightly convicted by the learned trial Court. She submits that Mahesh and Hari Om had caught hold of the deceased whereas Bimla had forcibly administered the poisonous substance to her and the said fact has been proved by the report of the chemical examiner as well as the testimony of PW3 Dr. Ranbir Singh. Learned State counsel further



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submits that keeping in view the testimonies of various prosecution witnesses, the findings recorded by the learned trial Court are liable to be upheld by this Court.

First of all, this Court shall consider the fact as to whether the FIR was lodged with promptitude or there was unexplained delay in registration of the same. The complainant alleged in her statement, i.e. the FIR that she was beaten up at about 10/11.00 a.m., on 04.11.2000 and was administered poisonous substance forcibly by the accused. The record further shows that she was immediately shifted to the hospital by her husband Hari Om and as per MLR Ex.PE, the date and hour of arrival of the patient is shown to be 11.30 a.m., on 04.11.2000. Even as per the MLR, she was conscious, her pulse was 108/minute, B.P. was 120/80 and there was alleged history of vomiting only. The MLR Ex.PE does not reveal any serious complication or injuries on the person of the complainant Bala Devi. Even the police was informed by the doctors, still the statement of the complainant was recorded on 11.40 a.m., on 05.11.2000. Still further, on receipt of ruka, the police had reached the General Hospital, Bhiwani and the opinion of the doctor was sought with regard to the fitness of Smt. Bala Devi. Again Dr. N.K. Garg, PW6 opined on the said application that the patient was fit to make the statement and, thereafter, the statement was recorded. Consequently, it is apparent that the FIR was got registered by the complainant

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Smt. Bala Devi after a delay of about 25 hours and that too after the arrival of her family members, who were present with her at the time of recording of her statement. The prosecution offered no explanation to explain the above said inordinate delay, even till the conclusion of the trial.

As per the averments made by the complainant in the FIR, she was married to Hari Om accused about 08 years ago. Her father had performed her marriage with Hari Om accused at village Kharak Kalan after spending a huge amount beyond his capacity. Even two daughters and a son had born out of the above said nuptial knot and were staying with the couple. It was alleged in the FIR that her mother-in-law and her husband Hari Om used to harass her for bringing insufficient dowry. Even on the birth of her son Naveen her father had given sufficient articles, but all the accused were not happy. On 03.11.2000, her husband Hari Om, her mother-in-law Bimla and Mahesh had given beatings to her. Again on 04.11.2000, all the three accused had beaten her up and ultimately Hari Om and Mahesh caught hold of her and her mother-in-law administered some poisonous substance to her. It is highly unbelievable that the complainant was harassed even after 08 years of her marriage in connection with demand of dowry. She was blessed with three children and all the children were living with the couple. Even in the last 08 years prior to the alleged incident, the matter was never

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reported with regard to the allegations of demand of dowry. Even, the prosecution led no evidence to show that prior to the alleged occurrence, the complainant was subjected to cruelty and harassment in connection with demand of dowry. There was no allegations that any Panchayat or gathering had taken place with regard to the harassment of the complainant, in connection with the demand of dowry. Even, the mother-in-law is an old lady and it is unimaginable that she would demand dowry after 08 years of marriage of the complainant. Similarly, Mahesh is the husband of sister-in-law (Nanad) and is resident of a different place. He being a relative of the husband, would not be the beneficiary of demand of dowry by any stretch of imagination. Still further, even during the course of investigation, Bimla, mother-in-law and Mahesh, husband of sister-in-law (Nanad), both appellants were found to be innocent during the course of investigation and were ordered to be summoned under Section 319 Cr.P.C.

Still further, learned counsel for the appellants submitted that complainant was tutored by her relatives to make a complaint against them and the conduct of the appellants would clearly suggest that they had not administered poisonous substance to her. In fact, to prove the charge, the prosecution placed heavy reliance on the testimony of PW2 ASI Vijay Singh, who had obtained opinion of the doctor and, thereafter, recorded the statement of Bala Devi,

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complainant, on the basis of which, the formal FIR Ex.PB was recorded by ASI Maha Singh. PW2 ASI Vijay Singh clearly stated that according to the MLR, Hari Om, husband of the complainant, accused had brought the patient to the hospital. Similarly, PW3 Dr. Ranbir Singh admitted in his cross-examination that the patient was brought by Hari Om. Thus, it is evident that the complainant was shifted to the hospital by her husband and others. Had there been any ill intention on behalf of her husband Hari Om, he would not have taken her to the hospital. Still further, the opinion with regard to the fitness of patient Bala Devi Ex.PA/1 was rendered by PW6 Dr. N.K. Garg. He also admitted that many persons were present around her, when the police officials had recorded statement of Bala Devi, Still further, even PW7 Narender Kumar brother of Bala Devi admitted that on 05.11.2000, they had reached the hospital. Similarly, the other witnesses, i.e., the family members of the complainant had also reached the hospital on 05.11.2000. Thus, the possibility of tutoring of the complainant by her family members cannot be ruled out in view of the evidence led by the prosecution itself. Apart from that, the testimony of PW6 Dr. N.K. Garg, clearly suggests that many persons were present around Bala Devi, when the police had recorded her statement. This clearly establishes that the testimony of the complainant Bala Devi was not free from external influence and is liable to be viewed with suspicion by this Court.

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Still further, the complainant had alleged that she was beaten up by her husband Hari Om, Bimla mother-in-law and Mahesh, husband of her sister-in-law (Nanad) on 03.11.2000. Again on 04.11.2000, she was beaten up by the three accused. After beating her up, Hari Om and Mahesh caught hold of her and her mother-in-law had administered some poisonous substance. Surprisingly, immediately after beating her up and administering poison forcibly, she was shifted to the hospital by Hari Om himself alongwith others. On reaching the hospital at about 11.30 a.m., on 04.11.2000 her MLR Ex.PE was drawn and no injuries were found on her person. It is unbelievable that the complainant/injured Bala Devi was beaten up on two different dates, i.e. 03.11.2000 and 04.11.2000, continuously, but she did not even suffer a bruise. Still further, the complainant/injured Bala Devi was aged 24 years and was a rustic. Even, while she was allegedly beaten up on 03.11.2000 and 04.11.2000 and was forcibly administered poisonous substance on 04.11.2000 by the three accused, she must have offered some resistance but during investigation, no such evidence was found at the spot, which reflected any kind of resistance on the part of the complainant Smt. Bala Devi. Apart from that, it is apparent that she was caught hold by two persons, namely, Mahesh and Hari Om but she did not suffer any injury on her hands or other parts of the body. Thus, the prosecution story appears to be doubtful that she was beaten up for two days and

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was forcibly administered poisonous substance. Rather it appears that she had taken some poisonous substance herself intentionally or accidentally and later on, after the arrival of her family members, she made a statement against her in laws.

Still further, the record further reveals that after the registration of the present case, the complainant Raj Bala expired and the accused were arrayed as accused for the murder of Bala Devi. However, the prosecution could not succeed in proving that Bala Devi was murdered by any of the accused and they were ordered to be acquitted by the competent Court. Due to this Bala Devi could not appear as a witness in the present trial and the case of the prosecution rested on the testimonies of her other family members. PW7 Narender Kumar, her brother, PW8 Babli and PW9 Santosh both sisters of the complainant. I find force in the arguments raised by the learned counsel for the appellants that the statement of complainant Bala Devi was not admissible in evidence as she was not examined as a witness as she has already died before the trial had begun. The complainant got her statement Ex.PA/2 recorded to PW2 ASI Vijay Singh on the basis of which, the formal FIR was registered in the instant case. The statement of Bala Devi can never be held to be substantive evidence in view of the embargo of Section 162 of Cr.P.C. The contents of the FIR could have been used for the purpose of corroborating or contradicting Bala Devi if she had been examined, but under no



circumstances as a substantive piece of evidence. Even, the findings recorded by the learned trial Court are contradictory in this regard. At one place, the learned trial Court places reliances on the statement of Bala Devi, whereas, in the later part of the judgment, the learned trial Court also did not place reliance on the testimony of Bala Devi in view of the provisions of Section 162 Cr.P.C. Still further, even, the statement of the complainant cannot be treated as a statement under Section 32 of the Evidence Act. Section 32 of the Evidence Act is an exception to the general rule of explanation of hearsay evidence. The statement of a witness, written or verbal of relevant fact made by a person who has died or cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense are deemed relevant facts under the circumstances specified in sub sections (1) to (8). Section 32(1) clearly provides that when the statement is made by the person as to the cause of his death or as to any circumstances of the transaction which resulted in his death, being relevant fact, is admissible in evidence. Such statements are commonly known as dying declarations. Such statements are admitted in evidence on the principle of necessity. However, such statements are admissible only to the extent of proving the facts and circumstances of his death. Consequently, in the instant case also, the said provisions of law would not be applicable to make the statement of Smt. Bala Devi to

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be admissible and no reliance could be placed on the statement made by Bala Devi at the time of registration of the FIR.

Still further, the prosecution places heavy reliance on the testimonies of PW7 Narender Kumar, PW8 Babli and PW9 Santosh. The said witnesses are brother and sisters of Bala Devi complainant and are apparently interested witnesses. The law is well settled that the testimonies of said witnesses cannot be brushed aside only on the ground that they are related to the injured, however, it is equally well settled that the statements of such witnesses need to be scrutinized by the Court with utmost care and circumspection. A perusal of the statement of PW7 Narender Kumar clearly shows that it does not help the case of the prosecution. The said witness claimed that his sister had disclosed the incident to him, however, there is no reference to the alleged beatings dated 03.11.2000 by him. Still further, he states that his sister was beaten up and was forcibly administered poison by her in-laws, however, in his statement, he has not mentioned any reason as to why his sister was beaten up or forcibly administered poison. Similarly, PW8 Babli also could not state with regard to the incident dated 03.11.2000. She stated in her cross-examination that her sister also disclosed to her that due to dark complex, they wanted to kill her and they wanted Hari Om to remarry. However, she was confronted with her statement Ex.PA where no such thing was recorded. Even, she did not state that her sister had disclosed that she

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was being harassed in connection with demand of dowry. The said three witnesses did not state a word with regard to the harassment of Raj Bala for the demand of dowry. Even a perusal of the statement of the said three witnesses establishes that the said statements lack in material particulars with regard to the occurrence in question and did not inspire confidence.

Still further, the testimonies of PW7 Narender Kumar, PW8 Babli and PW9 Santosh are hearsay evidence and are not admissible in evidence. It can never be stated that the statements made by the complainant to PW7 Narender Kumar, PW8 Babli and PW9 Santosh falls under the exception to Section 6 of the Evidence Act as it did not form part of *res gestae*. The statement of the complainant could not be established to be contemporaneous with the act which constitutes the offences or trial immediately thereafter. It is established that there was an interval between the occurrence and the statement, which was allegedly made before the prosecution witnesses by the complainant, the statement of the complainant was not part of the *res gestae*. Reliance has been placed by the learned counsel for the appellants in this regard on the law laid down by the Hon'ble Supreme Court in the matter of **Sukhar Vs. State of U.P.** **1990 (9), SCC, 507** as follows:-

*6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes*

*admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of res gestae, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:*

*"Under the present exception [to hearsay] and utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued."*

*7. Sarkar on Evidence (15th Edn.) summarises the law relating to applicability of Section 6 of the Evidence Act thus:*

*"1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous*

*or subsequent thereto unless such facts are part of a transaction which is continuous.*

*2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.*

*3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot & c the declarations of all concerned in the common object are admissible.*

*4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated."*

*8. This Court in Gentela Vijayavardhan Rao v. State of A.P. Considering the law embodied in Section 6 of the Evidence Act held thus: (SCC pp. 246-47. para 15)*

*"15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue 'as to form part of the same transaction' that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under*

*Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae."*

*9. In another recent judgment of this Court in Rattan Singh v. State of H.P. this Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus: (SCC p. 167, para 16)*

*"The aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus:*

*(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.'*

*(emphasis supplied)*

Thus, the statements of PW7 Narender Kumar, PW8 Babli and PW9 Santosh are also not admissible in evidence and the trial Court committed grave error in placing reliance on the testimonies of the said witnesses.



The complainant in the instant case alleged that Mahesh and Hari Om, both the accused had caught hold of her and her mother-in-law Bimla had administered poisonous substance to her. The sample of gastric lavage and blood were sent to the chemical examiner Haryana for analysis and the chemical examiner submitted the report Ex.PC and the contents of both the exhibits gave positive test for organ phosphorous compound group of insecticides. I find force in the argument raised by the learned counsel for the appellants that organ phosphorous is a poison of pungent smell and could not be administered forcibly to anyone without there being circumstance to show some struggle by the victim to resist administration of such poison.

It has been held by this Court in the matter of **Sanjay Mittal Vs. State of Haryana 2002(3) RCR, Criminal, 127** as follows:-

*“The medical evidence i.e. the statement of Dr. P.S. Ahuja, PW1, unmistakably confirms that organo phosphorous is a poison of pungent smell. It has to be administered, if at all, in some liquid. In the circumstances, if the poison has a very pungent odour, no person is likely to take it from another unless he takes the same on his own to commit suicide. It the poison was of such a nature, a person is not likely to accept or take it*

*from anybody. It can either be administered forcibly to cause the death of the person but in such circumstances there has to be some struggle by the victim to resist the administration of such a poison with such a pungent smell being unwholesome to take. Even it if be taken that the poison was administered against the will and consent of the appellant, no mark of struggle on the body or clothes of the deceased were noticed at the time of post mortem. The police did not recover nor took into possession any glass or utensil which could be used to drink the poison mixed with some material. Nor there is any evidence if the same was administered in alcohol. The report of Chemical Examiner does not mention if viscera also contained alcohol. In the circumstances, possibility cannot be ruled out that the deceased may have taken his life himself”.*

In the instant case also, it is not established by the prosecution that the complainant/injured had offered any kind of resistance, while she was being forcibly administered poisonous substance by the three accused. Even surprisingly, she did not suffer any injury, while she was caught by two persons and was forcibly administered the poisonous substance by her mother-in-law. Thus, the prosecution story is highly doubtful and is liable to be disbelieved.

The learned trial Court wrongly disbelieved the testimony of DW1 Sanjay. The statement of a defence witness cannot be rejected on the ground that said witness has been produced by the accused. In fact, DW1 Sanjay clearly stated that on 04.11.2000 at about 9.00 a.m., Manoj came to him and told that some person was weeping in the fields of Hari Om. He alongwith Manoj went to the fields of Hari Om and found that Raj Bala wife of Hari Om was there and she was weeping. On their inquiry, she disclosed that she had taken something. They called Ashok son of Ram Kumar and took Hari Om's wife in bullock cart and on the way Dharampal met them having a tractor and they shifted Bala Devi in that tractor. At bus stop of Kharak Kalan Hari Om and his mother met them and thereafter they took them to the hospital. Hari Om and his mother were not present in the fields, when Raj Bala had consumed some poisonous substance on her own. Still further, the said witness DW1 Sanjay was subjected to incisive cross-examination, but he withstood the test of cross-examination and the testimony was wrongly rejected by the learned trial Court.

In view of the observations made above, the appeal succeeds and the impugned judgment of conviction dated 05.05.2004 and order of sentence 06.05.2004 passed by the Court of learned Additional Sessions Judge (Fast Track Court), Bhiwani are set-aside

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and the appellants are ordered to be acquitted of the charges so framed.

All the pending miscellaneous applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with in accordance with law after the expiry of the period of limitation.

The trial Court record be transmitted back.

22.11, 2022

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(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No  
Whether reportable : Yes/No

सत्यमेव जयते