

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGAH**

CRA-D No.976-DB of 2002 (O&M)

Date of decision: 10.04.2015.

Chameli Devi

..... Appellant.

Versus

State of Haryana

..... Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Sharma, Advocate, for the appellant.

Mr. Kuldeep Sharma, Deputy Advocate General, Haryana,
for the respondent.

S.S. Saron, J.

The criminal appeal has been filed by Chameli Devi (appellant) against the judgment of her conviction dated 29.11.2002 and order of sentence dated 30.11.2002 passed by the learned Additional Sessions Judge (*Ad hoc*), Hisar whereby she has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 ('IPC' - for short) and sentenced to undergo life imprisonment; besides, pay a fine of Rs.500/- and in default of payment thereof, undergo further rigorous imprisonment for six months. In terms of the same judgment dated 29.11.2002, other accused No.2 to 5, namely, Pana Devi, Jit alias Surjit, Luchman and Rajender Singh have been acquitted.

FIR (Ex.P8) in the case was registered on the statement (Ex.P7) of Chameli Devi (appellant) herself. She stated that she was a resident of village Dobhi, Police Station Sadar Hisar. Their fields were situated in the

area of village Dobhi. They constructed a 'dhani' (an outhouse in the fields) and they lived in it. From their 'dhani' at a distance of about 1½ - 2 'killas' (measurement of distance in acres), her father-in-law Hardayal (deceased in the case) son of Bhima Ram, resident of village Dobhi, aged about 65-70 years, had constructed his 'dhani' and he lived there. Her husband's younger brother ('devar'), namely, Rajender (accused No.5) was lodged in Hisar jail for the last 1½ years. The wife of Rajender, namely, Tulsha Devi lived with her father-in-law Hardayal (deceased). An illicit relationship, it is alleged, developed between one Ran Singh alias Kiru son of Mala Ram, resident of Dobhi and Tulsha Devi, the husband's younger brother's wife ('devrani') of the complainant about eight months back. Her father-in-law Hardayal (deceased) for this used to stop Ran Singh from coming to his 'dhani'. Ran Singh alias Kiru and Tulsha Devi on their own desire eloped from the house and they started living as vagrants. Her father-in-law used to remain in search of them. Both of them had held out threats to her father-in-law that he should not interfere between them otherwise they would finish him.

On the date of incident, i.e. 16.02.2002 at about 11:00 p.m., they heard noise of 'maar diya - maar diya' of her father-in-law Hardayal. Then the complainant and her husband Jit Singh (accused No.3) and her husband's younger brother's wife ('devrani') Pana Devi (accused No.2) rushed there and saw that Ran Singh alias Kiru Ram and Tulsha Devi wife of accused No.5 - Rajender were inflicting injuries with an iron 'gandasa' in the mustard fields. On seeing the complainant side, both of them ran away with their 'gandasa'. Then on reaching the 'dhani' of Hardayal, father-in-law of the complainant, they saw the grandson of Hardayal and the son of Rajender, aged about five

years, namely, Kheta Ram was sleeping on a cot. His clothes were stained with blood and there was blood on his bed. It was stated that Ran Singh alias Kiru and Tulsha Devi wife of accused No.5 - Rajender had inflicted injuries to Hardayal, the father-in-law of the complainant. Thereafter, when her father-in-law ran towards their 'dhani', he was inflicted injuries in the mustard fields. Then they laid a mat and put a quilt over her father-in-law. When they checked him, he had succumbed to his injuries. Due to night time and due to non-availability of any vehicle, they remained at their 'dhani' at the spot. They left Pana Devi (accused No.2) and Banwari son of Net Ram, resident of Kaimari, brother of the complainant (appellant), near the dead body while she along with her husband Jit Singh (accused No.3) were going to the police station to lodge a report. Near the school crossing of village Dobhi, the police party met them. The complainant got her statement recorded which she heard and accepted it as correct. She asked for the action to be taken.

Police proceedings (Ex.P7/A) were recorded below the statement of Chameli Devi (appellant) by Inspector Ram Rattan, SHO, Police Station Sadar Hisar on 16.02.2002 at 12:10 p.m. He mentioned that he along with other police officials were in a government vehicle driven by Constable Vinod Kumar in connection with patrolling. When the police party reached village Dobhi, then Chameli Devi (appellant) along with her husband Jit Singh (accused No.3) met them. She got her aforesaid statement recorded which was reduced into writing. The statement was read over to her verbatim. She admitted the same to be correct and signed it in Hindi which Inspector Ram Rattan attested. From the statement of the complainant, a case for the

commission of offence punishable under Section 302/34 IPC was found to be made out. A 'ruqqa' (short note) for registration of a case (FIR) was being sent to the police station through Constable Jaipal. After registration of the case, the number of the FIR was asked to be informed; besides, special reports were asked to be sent to the concerned officers. Inspector Ram Rattan Singh along with other police officials as also Chameli Devi (appellant) and her husband (accused No.3) in a government vehicle proceeded to the spot where the incident had occurred. The police proceedings were recorded near High School, Dobhi. At the police station, ASI Ram Kumar on receipt of the 'ruqa' (short note), registered case FIR No.117 dated 16.02.2002 for the offence punishable under Section 302/34 IPC.

Inspector Ram Rattan, the then SHO, Police Station Sadar Hisar has not been examined in the case. HC Mahender Singh (PW6) was posted at Police Station Sadar Hisar on 16.02.2002 and he has deposed regarding the investigation that was conducted. The dead body of Hardayal (deceased) was entrusted to him for the purpose of getting its post mortem examination conducted. He kept the dead body in the same condition till it was handed over to the doctor. The doctor after conducting post mortem examination gave one sealed parcel to him which he handed over to Inspector Ram Rattan in the same condition. A recovery memo (Ex.P6) relating to recovery of clothes of the deceased was prepared which was attested by HC Mahender Singh (PW6).

Chameli Devi (appellant) in the presence of HC Mahender Singh (PW6) was interrogated by Inspector Ram Rattan on 23.02.2002. She made a disclosure statement (Ex.P7) (sic. - has been wrongly numbered twice) that on

the intervening night of 15/16.02.2002 she, her husband's younger brother's wife ('devrani') Pana Devi (accused No.2) and her husband Jit Singh (accused No.3) in collusion with each other had committed the murder of Hardayal. At the time of committing the murder she had a 'gandasa' which she had concealed under the cotton sticks ('banchhati') lying in a room without roof in the 'dhani' of Hardayal (deceased). Only she knew about its location. By getting demarcation, she could get the same recovered. Chameli Devi (appellant) put her right hand thumb impressions on her disclosure statement (Ex.P7) which was witnessed by HC Mahender Singh (PW6) and Lady Constable Nirmala Devi.

Pana Devi (accused No.2) was also interrogated by Inspector Ram Rattan and she made a disclosure statement (Ex.P8) (sic. - has been wrongly numbered twice). She disclosed that on the intervening night of 15/16.02.2002 she and her husband's elder brother's wife ('jethani') Chameli Devi (appellant) and her husband's elder brother ('jeth') Jit Singh (accused No.3) in collusion with each other had committed the murder of Hardayal. She had a 'gandasi' at the time of committing the murder. After washing the 'gandasi' with water, she had concealed it in the fodder ('turi') lying in the 'katcha kotha' (temporary hutment without bricks) in the 'dhani' of Hardayal (deceased) and only she knew about it. By getting the demarcation, she could get the same recovered. Pana Devi (accused No.2) put her right hand thumb impressions below her disclosure statement (Ex.P8) which was attested by HC Mahender Singh (PW6) and Lady Constable Nirmala Devi.

Then both of them, i.e. Chameli Devi (appellant) and Pana Devi led the police to the place where the 'gandasa' and 'gandasi' had been

concealed. On the way, they first went to the 'dhani' of Jit Singh (accused No.3) where Chameli Devi (appellant) produced the clothes that she was wearing at the time of committing the murder. Her clothes had blood stains though they had been washed. A jumper (pull over) and 'salwar' was produced by Chameli Devi (appellant). These were made into a parcel and sealed and taken in possession vide recovery memo (Ex.P9). Pana Devi (accused No.2) also produced the clothes, i.e. a jumper (pull over) and a 'salwar', which she was wearing at the time of murder. These had also been washed and they were of 'badami' (light brown) colour. The clothes still had blood stains on them. The jumper (pull over) and 'salwar' were made into a parcel and taken in possession in pursuance of recovery memo (Ex.P10). Recovery memos were attested by HC Mahender Singh (PW6) and Lady Constable Nirmala Devi. Then they went to the 'dhani' of Hardayal (deceased). Pana Devi (accused No.2) got recovered 'gandasi' from the chaff ('turi') lying in the 'kacha kotha' (temporary hutment without bricks) in front of 'dhani' of Hardayal. It had been washed. A sketch (Ex.P11) of the same was prepared. It was made into a parcel and sealed and taken in possession in pursuance of recovery memo (Ex.P12). Chameli Devi (appellant) led the police to the place where the 'gandasa' had been concealed by her. It was got recovered by her. It had blood stains. A sketch (Ex.P13) of the 'gandasa' was prepared. It was made into a parcel and sealed and taken in possession in pursuance of recovery memo (Ex.P13), which was attested by HC Mahender Singh (PW6) and Lady Constable Nirmala Devi.

SI/SHO Kartar Singh (PW7) was posted at Police Station Sadar Hisar on 06.03.2002. On that day, he arrested Rajender (accused No.5). Ram

Sarup Patwari, Dobhi-II Circle, Tehsil and District Hisar (PW8), on the pointing out of Inspector Ram Rattan, on 06.03.2002 prepared the scaled site plan (Ex.P6).

After completion of investigation, police report ('challan') was filed in the Court of learned Additional Chief Judicial Magistrate, Hisar on 05.04.2002 against Chameli Devi (appellant) as also against Pana Devi, Jit alias Surjit, Luchman Sing and Rajender (accused No.2 to 5).

The learned Magistrate observed that the police report against the accused had been presented for the offences punishable under Sections 302, 120-B and 34 IPC. Since the offence punishable under Section 302 IPC was exclusively triable by the Court of Session, the case was, therefore, committed to the said Court vide order dated 17.04.2002. The accused were directed to be produced before the learned Sessions Judge, Hisar.

The learned Additional Sessions Judge, Hisar, to whom the case was assigned on 20.05.2002, charge-sheeted all the five accused on the allegation that on 28.12.2001 in the area of Hisar Chameli (appellant) and Rajender (accused No.5) hatched a conspiracy to commit the murder of Hardayal and thereby they both committed an offence punishable under Section 120-B IPC. Secondly, in the month of February 2002 in the area of village Dobhi, Chameli (appellant), Jit Singh (accused No.3), Pana Devi (accused No.2), Rajender (accused No.5) and Luchman Singh (accused No.4) hatched a conspiracy to commit the murder of Hardayal and thus they thereby all committed an offence punishable under Section 120-B IPC. Thirdly, during the intervening night of 15/16.02.2002 in the area of village Dobhi, Chameli Devi (appellant), Jit Singh (accused No.3), Pana Devi (accused

No.2), Rajender (accused No.5) and Luchman (accused No.4) in furtherance of their common intention committed the murder of Hardayal by intentionally causing his death and thereby they all committed an offence punishable under Section 302 read with Section 34 IPC. It was directed that all the accused be tried by the Court of learned Additional Sessions Judge, Hisar for the above charges. The charges were read over and explained to the accused in simple Hindi.

The prosecution, in order to establish its case, examined fifteen witnesses; besides, tendered documents in evidence including the FSL report Ex.P37 and the results of serological analysis of blood Ex.P38.

The learned Additional Sessions Judge, Hisar, after considering the evidence and material on record, has convicted Chameli Devi (appellant) for the offence punishable under Section 302 IPC and sentenced her to undergo life imprisonment; besides, pay a fine of Rs.500/- and in default of payment thereof, undergo further rigorous imprisonment for six months. However, the other accused, namely, Pana Devi, Jit alias Surjit, Luchman and Rajender Singh (accused No.2 to 5) have been acquitted of the offences for which they were charge-sheeted for want of evidence against them.

Chameli Devi (appellant) aggrieved against her conviction and sentence has filed the present appeal.

Learned counsel appearing for the appellant has submitted that there is no evidence on record whatsoever against the appellant which would in any manner show her involvement in the case and the learned Additional Sessions Judge, Hisar has convicted her on mere conjectures and surmises. The prosecution witnesses, namely, Jaibir Singh (PW1), Rajesh (PW2) and

Inder Singh (PW15), it is submitted, have not supported the prosecution case. They were declared hostile and cross-examined by the learned Public Prosecutor; however, nothing favourable for the prosecution could be brought out. The only evidence against the appellant, it is stated, is of the police officials whose statements are discrepant and in conflict with each other. The disclosure statement of Chameli Devi (appellant) is similar to that of Pana Devi (accused No.2), who has been acquitted; therefore, her disclosure statement was not liable to be relied upon. It is also submitted that motive in the case has not been proved and there was no reason for the appellant to commit the murder of her own father-in-law. The origin of the blood could not be determined, i.e. whether it was human or not, from the results of the serological analysis of blood (Ex.P38) on the alleged 'gandasa' and clothes stated to have been recovered from Chameli Devi (appellant). Therefore, it is submitted that the appellant is liable to be acquitted.

In response, learned counsel for the State submits that the prosecution has established its case against the appellant in all material aspects. The learned trial Court, it is submitted, recorded cogent and convincing reasons for convicting and sentencing Chameli Devi (appellant) for the offence committed by her. It is submitted that the learned trial Court had rightly relied on the FSL report (Ex.P37) which showed presence of blood stains on the 'gandasa' and lady's shirt recovered from Chameli Devi (appellant) and, therefore, drew a presumption that 'gandasa' was used for committing the murder of Hardayal by the person, who was wearing the lady's shirt at the time of occurrence. The order of the learned trial Court, it is submitted, in the circumstances is liable to be sustained and upheld.

We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance perused the records.

Jaibir Singh (PW1) was a witness before whom the accused Chameli Devi, Pana Devi and Jit Singh were stated to have made an extra-judicial confession. His statement Ex.P1 was recorded by the police during investigation. In his deposition in Court as PW1, he stated that Chameli Devi (appellant), Pana Devi (accused No.2) and Jit Singh (accused No.3) had never come to him and they had never confessed their guilt about any murder. The police never met him in connection with the case. His statement was never recorded by the police. At the said stage, learned Public Prosecutor made a request for his cross-examination for which permission was granted. In cross-examination, he stated that he had heard statement Ex.P1. He did not make any such statement to the police. It is stated as incorrect to suggest that Pana Devi, Chameli Devi along with Jit Singh had come to him and they had confessed having murdered Hardayal. It is stated as incorrect to suggest that all the three accused had one by one separately confessed their guilt and told him about their role in the murder. He never presented the accused before the police. It is stated as incorrect to suggest that he had been won over by the accused and was deposing falsely.

Rajesh (PW2) was a witness of the conspiracy and in his statement Ex.P2 before the police, he alleged that he had seen Jit Singh, Chameli Devi, Pana Devi and Luchman talking to each other while sitting in their 'dhani'. Chameli Devi had addressed Luchman Singh that their elder Hardayal did not give them money and was contemplating for selling the land. Chameli Devi had discussed this with Rajender (accused No.5) when

she met him in the jail and he had said that Hardayal be finished. While appearing in the Court as PW2, he stated that he did not know about this case. At the said stage, learned Public Prosecutor stated that he wanted to cross-examine him because he was trying to conceal the truth. Permission was granted by the learned Court. In cross-examination, he stated that the police never met him. His statement was not recorded by the police. He heard the statement Ex.P2 and he stated that he never made such a statement to the police. It is stated as incorrect to suggest that in the first week of February 2002 Chameli Devi (appellant), Pana Devi (accused No.2) and Luchman (accused No.4) neither had a conversation that the old man was not giving money nor talked of selling the land. It is stated as incorrect to suggest that they were talking of finishing Hardayal as otherwise he would sell the land. It is stated as incorrect to suggest that he overheard all this. It is stated as incorrect to suggest that he had been won over by the accused and was deposing falsely.

Constable Wazir Singh (PW3) tendered in evidence his affidavit Ex.P3. The same was to the effect that on 16.02.2002 he was posted at Police Station Sadar Hisar. ASI Ram Kumar, on that day, handed over to him the special reports of the present case for sending the same to the concerned officers and the 'Illaqa' Magistrate. He submitted the aforesaid special reports to the 'Illaqa' Magistrate, the SP and the DSP, Hisar on that very day.

Constable Kawal Singh (PW4) tendered in evidence his affidavit Ex.P4 which was to the effect that he was posted at Police Station Sadar Hisar on general duty on 01.03.2002. On that day, Bhanwar Lal, M/MHC, Police Station Sadar Hisar handed over to him two separate parcels containing iron

‘gandasi’ duly sealed with the seal of ‘MS’; besides, a parcel containing clothes, i.e. ‘salwar-kameej’ of Pana Devi (accused No.2) and a parcel containing ‘salwar-kameej’ of Chameli Devi (appellant). Both were separately sealed with the seal of ‘MS’. A sample of the same was also given to him. Constable Kawal Singh (PW4), after taking them from the ‘malkhana’ in an intact condition, deposited the same in the office of D/FSL, Madhuban. After depositing the parcels along with sample seals in the office of D/FSL, Madhuban, on return on that day itself, he handed over the receipt to the M/MHC, Police Station Sadar Hisar. Till the parcels and sample seals remained with him he did not tamper with them nor did he allow anybody else to tamper with the same.

Constable Bhanwar Lal (PW5) tendered in evidence his affidavit Ex.P5. He was posted as M/MHC, Police Station Sadar Hisar on 16.02.2002. He deposed that on the said date Inspector/SHO Ram Rattan had deposited a parcel containing clothes of deceased Hardayal, duly sealed with the seal of the doctor along with sample seal; a parcel containing blood stained earth duly sealed with the seal of ‘MS’ along with sample seal; a parcel containing ‘kameej’ (shirt) of Kheta Ram (grandson of Hardayal and son of Rajender) duly sealed with the seal of ‘MS’ along with sample seal; a parcel containing piece of quilt and mattress duly sealed with the seal of ‘MS’ along with sample seal; a parcel containing piece of quilt and ‘dari’ (mat) duly sealed with the seal of ‘MS’ along with sample seal. These were handed over to him in the ‘malkhana’ of the police station in the present case. He on 20.02.2002 handed over the aforesaid parcels duly sealed along with the sample seals to Constable Bhuru Singh (PW13) after taking them out of the ‘malkhana’ of the

police station in an intact condition vide RC No.254 dated 20.02.2002 for depositing them in the office of D/FSL, Madhuban. He (PW13) after depositing the aforesaid parcels duly sealed along with sample seals with D/FSL, Madhuban on that very day, on return, had given the receipt to him. Inspector/SHO Ram Rattan on 23.02.2002 deposited with him in the 'malkhana' of the police station a parcel containing 'gandasa', a parcel containing 'gandasi', a parcel containing 'salwar-kameej' of accused Pana Devi, a parcel containing 'salwar-kameej' of Chameli Devi (appellant) sealed with the seal of 'MS' along with sample seals in the present case. The said parcels duly sealed along with sample seals were handed over to Constable Kawal Singh (PW4) after taking them from the 'malkhana' of the police station in an intact condition on 01.03.2002. These were to be deposited in the office of D/FSL, Madhuban. Constable Kawal Singh (PW4) after depositing the aforesaid parcels in the office of D/FSL, Madhuban on that very day, on return, handed over the receipt to him. Till the aforesaid parcels remained with him along with sample seals he did not tamper with them nor did he allow anybody else to tamper with the same.

HC Mahender Singh (PW6) has proved investigation in the case and the disclosure statements made by accused Chameli Devi (appellant) and Pana Devi (accused No.2). SI Kartar Singh (PW7) stated that he arrested Rajender (accused No.5) on 06.03.2002 as he was in judicial custody in some other case. Ram Sarup, Patwari, Dobhi-II Circle, Tehsil and District Hisar (PW8) prepared scaled site plan Ex.P6. The marginal notes were correctly recorded by him. The scale used was 1" is equal to 14 'karams'. In cross-examination, it is stated that there were no residential houses near the 'dhani'

in question. It is stated as incorrect to suggest that there were other houses near the 'dhani'. The 'dhani' of Darya Singh, it is stated, is the nearest 'dhani'. It is four 'killas' (measurement of distance in acres) away from this.

ASI Ram Kumar (PW9) stated that on receipt of the statement (Ex.P7) of Chameli Devi (appellant), i.e. the statement on the basis of which FIR was registered, and the endorsement Ex.P7/A, he recorded formal FIR (Ex.P8) correctly on 16.02.2002. He was working at Police Station Sadar Hisar. In cross-examination, it is stated that the writing etc. came to him at about 01:00 p.m. on that day. It is stated as incorrect to suggest that it was ante timed.

Dr. Jaibir Sharma, Medical Officer, PHC Bass (PW10) deposed that he was posted at General Hospital, Hisar on 16.02.2002. On police request (Ex.P9) which was supported by inquest report (Ex.P10), he conducted the post mortem examination on the dead body of Hardayal. The dead body was identified by Hanuman and Vinod. The following injuries were noticed on the dead body:-

- “1. Incised wound on the right side face. Maxillary area size was 10 cm x 1.5 cm x 3.2 cm.
2. Incised wound on the right angle of mandible which was fractured and cut by the weapon size was 9.6 x 2.5 x .25 cms with clotted blood present.
3. Incised wound on right parietal area 4.8 inch x 1.2 cm bone deep.

4. Incised wound on the left parietal area bone was cut underlying brain matter was coming out with clotted blood present with brain fluid was seen.
5. Incised wound on the left hand dorsal size and seen 2 x 0.5 x 0.5 cms.
6. On examination further mouth was containing clotted blood depose of the injuries described on face.”

The cause of death in the opinion of the doctor was head injury, which had already been described and was ante mortem in nature and sufficient to cause death in the ordinary course of nature. The time between injuries and death, it is stated, was variable. The carbon copy of the post mortem report was Ex.P11. He handed over to the police well stitched dead body along with ‘chaddar’ (sheet) Ex.P12, white ‘kurta’ (shirt) Ex.P13, jersey Ex.P14, underwear Ex.P15, ‘khakhi’ pair of socks Ex.P16 and Ex.P17. The articles shown to him in Court were the same. In cross-examination, he stated as incorrect to suggest that he came to a wrong conclusion.

Dhoop Singh, Finger Prints Expert (PW11) stated that in this case, he examined the disputed thumb impressions Mark ‘Q’ in the register of Central Jail, Hisar at serial No.16 dated 28.12.2001 and compared the same with sample thumb impressions of Chameli Devi (appellant). It is stated that the right and left sample thumb impressions were sent to Madhuban for comparison. In his opinion, the disputed print marked ‘PQ’ was sufficiently faint and partly superimposed and was unfit for comparison. As such, no opinion could be given about the thumb impressions Mark ‘Q1’ appearing against serial No.16 in the register of Central Jail. He had also seen the

original register brought by Mahender Singh, Record Keeper from the Central Jail, Hisar. The register was returned to him. His report in this regard was Ex.P18. It was complete in all respects. The sample thumb impressions were Ex.P19 to Ex.P22. The photographs for comparison were Ex.P23. He had brought the negative Ex.P24.

Mahender Singh, Record Keeper, Central Jail, Hisar (PW12) had brought entry No.16 of 28.12.2001 relating to confinement of Rajender (accused No.5) son of Hardayal in Central Jail, Hisar and Chameli Devi (appellant) wife of Surjit and Surjit Singh son of Hardayal who had come to meet Rajender in the Central Jail, Hisar. It is stated that a visitor had to sign or put his thumb impressions in the visitors' register. According to the entry in the register, this was the meeting in the evening. In cross-examination, he stated that he could not say whether Tulsha ever came to meet Rajender (accused No.5) because he would have to go through the whole record to reply to the question. Without going through the whole record, he could not say about previous visit of Chameli Devi (appellant) in the central jail.

Constable Bhuru Singh (PW13) tendered in evidence his affidavit Ex.P25 which was regarding taking a parcel containing clothes of deceased Hardayal; a parcel containing blood stained earth duly sealed with the seal of 'MS'; a parcel containing shirt of Kheta Ram duly sealed with the seal of 'MS'; a parcel containing pieces of quilt and mattress sealed with the seal of 'MS' and a parcel containing pieces of quilt and 'dari' (mat) sealed with the seal of 'MS'; besides, sample seal for depositing them with D/FSL, Madhuban vide RC No.254 dated 20.02.2002. These were taken out in an intact condition from the 'malkhana' of the police station and were handed

over to him by Bhanwar Lal, M/MHC. He deposited all the above mentioned parcels duly sealed along with sample seals with the D/FSL, Madhuban and after depositing on return he handed over the receipt to M/MHC, Police Station Sadar Hisar. Till the parcels duly sealed and the sample seals remained in his custody, he did not tamper with them nor did he allow anybody else to tamper with them.

Ved Parkash, Photographer (PW14) deposed that he went to the spot on 16.02.2002 and he took five snaps. The negatives were Ex.P26 to Ex.P30 and positives were Ex.P31 to Ex.P35. He did not do any touching etc. to any negative of the positive. In cross-examination, he stated that he reached village Dobhi at about 01:00 or 01:30 in the afternoon. Inspector Ram Rattan had come to take him to the place of occurrence. He had gone in police vehicle. Many persons were present and there was some crowd. Some women were also there. It is also stated as incorrect to suggest that he was deposing falsely.

Inder Singh (PW15) was produced by the prosecution to show that on 15.02.2002 in the morning at 10:00 a.m. he was going to village Dobhi and when he reached near the 'dhani' of Jit Singh, he saw that Jit Singh, his wife Chameli Devi, Pana Devi and Hardayal (deceased) were quarrelling and abusing each other. Then on that very day at about 11:00 p.m. when he was going back to his 'dhani' from village Dobhi and when he reached near the 'dhani' of Jit Singh, then Chameli Devi, Pana Devi and Jit Singh were going towards the 'dhani' of Hardayal (deceased). Chameli Devi was holding a 'gandasa', Pana Devi had a 'gandasi' in her hand and Jit Singh was empty handed. Then he went to his 'dhani' and slept there. In the

morning, he went in his relation. Then he had come back and he came to know that on the intervening night of 15/16.02.2002, Hardayal had been murdered. His statement Ex.P36 was recorded by the police. However, while appearing in Court as PW15, he stated that he did not see any occurrence relating to this case. At the said stage, learned Public Prosecutor made a request for his cross-examination. In cross-examination, he stated that he never made any statement to the police. He heard the statement Ex.P36. It is stated as incorrect to suggest that he had seen all the five accused quarrelling with the deceased on 15.06.2000. It is further stated as incorrect to suggest that Chameli Devi was seen by him having 'gandasa' in her hand and Pana Devi with a 'gandasi'. It is stated as incorrect to suggest that he had been won over by the accused and was deposing falsely.

The FSL report Ex.P37 and the results of serological analysis of blood Ex.P38 were tendered in evidence.

The statements of the accused including Chameli Devi (appellant) were recorded in terms of Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' - for short). The substance of the evidence appearing against her was put to her. In her defence, she stated that she was innocent and it was a false case. No evidence was led by the accused in defence.

The entire sum and substance of the evidence on record does not show any motive for Chameli Devi (appellant) to commit the murder of her own father-in-law. The motive that was sought to be made out by the prosecution was that Hardayal (deceased) was not giving the accused any money and also wanting to sell the land for which they hatched a conspiracy

to kill him. Chameli Devi had visited her husband's younger brother ('devar') in the Central Jail, Hisar, where he was lodged and discussed this with him. He is stated to have said that Hardayal be finished. However, no evidence in this regard has been led to prove the said conspiracy. In fact, even the learned trial Court held that the motive in the case is not proved.

The witnesses of the extra-judicial confession, namely, Jaibir Singh (PW1) and the witness of conspiracy being hatched, namely, Rajesh (PW2) have not supported the prosecution case. Besides, Inder Singh (PW15) the witness who per chance while he was crossing the 'dhani' of Jit Singh in the morning at about 10:00 a.m. on 15.02.2002 is said to have seen Jit Singh, his wife Chameli Devi and Pana Devi as also Hardayal quarrelling and abusing each other and on the same day in the night at about 11:00 p.m. had seen Chameli Devi (appellant) carrying a 'gandasa', Pana Devi (accused No.2) carrying a 'gandasi' and Jit Singh (accused No.3) empty handed, also did not support the prosecution case while appearing as PW15. Despite their cross-examinations by the learned Public Prosecution, nothing favourable for the prosecution could be brought out. Jaibir Singh (PW1) in his statement Ex.P1 before the police had stated that Chameli Devi (appellant), Pana Devi and Jit Singh came to him on 22.02.2002 and disclosed that all of them in collusion with each other had murdered Hardayal on the intervening night of 15/16.02.2002 and they had blamed Ran Singh alias Kiru and Tulsha wife of accused No.5 - Rajender for his murder. However, the said statement (Ex.P1) is not supported by him while appearing in Court. Rajesh (PW2) in his statement (Ex.P2) before the police had stated that about 13-14 days earlier to his making statement to the police, i.e. on 22.02.2002, he had gone to Jit

Singh. Luchman Singh (accused No.4) happened to come to his 'dhani'. He overheard Jit Singh, Chameli Devi, Pana Devi and Luchman talking with each other. Chameli Devi had addressed Luchman Singh that their elder Hardayal did not give them money and used to talk of selling the land. Chameli Devi then said that she had a talk with Rajender when she met him in the jail. He said that Hardayal should be finished and only then their land could be saved. On hearing the whole conversation, Luchman Singh in collusion with Chameli Devi (appellant), Pana Devi and Jit Singh, according to him, had made a plan to murder Hardayal. However, Rajesh (PW2) also completely resiled from the said statement (Ex.P2). Inder Singh (PW15) made a statement Ex.P36 before the police. He stated that on 15.02.2002 at about 10:00 a.m. he was going to village Dobhi. When he reached near the 'dhani' of Jit Singh, then Jit Singh, his wife Chameli Devi (appellant) and Pana Devi wife of Dariya; besides, Hardayal were quarrelling and abusing each other. On that very day in the night at about 11:00 p.m., when he reached the 'dhani' of Jit Singh, then Chameli Devi (appellant), Pana Devi and Jit Singh were going towards the 'dhani' of Hardayal. Chameli Devi (appellant) was holding a 'gandasa', Pana Devi was having a 'gandasi' in her hand and Jit Singh was empty handed and thereafter he went towards his 'dhani' and slept. In the morning, he (PW15) had gone in his relations and he had come back on the day he was making his statement, i.e. on 19.02.2002. When he (PW15) came back, he came to know that on the intervening night of 15/16.02.2002 Hardayal had been murdered. However, Inder Singh (PW15) while appearing in Court completely resiled from the said statement (Ex.P36).

The statements of witnesses made before a police officer during the course of investigation can only be used to contradict their said statements while the witnesses appear in the witness box and for no other purpose. In the circumstances, the fact that Jaibir Singh (PW1), Rajesh (PW2) and Inder Singh (PW15) have resiled from their statements made during investigation and they do not support the prosecution case, then the case rests on the circumstantial evidence on record. In case of circumstantial evidence, the chain of events is to be so complete so as to leave no room whatsoever for any other hypothesis except that Chameli Devi (appellant) was responsible for the death of Hardayal. The other witnesses, who have been examined in the case, are formal or official witnesses and their evidence is more in the nature of corroborative evidence. The same by itself would not help the prosecution case.

The FSL report (Ex.P37) and the results of serological analysis of blood (Ex.P38) may be noticed. The FSL report (Ex.P37) mentions that laboratory examinations were carried out to detect the presence of blood on the exhibits. The blood thus detected was subjected to serological tests to determine its species of origin. Based upon these examinations the results obtained were given below:-

- “1. Exhibit-1a (Shirt) and exhibit-1b (Chadra) were stained with numerous large and small blood stains.
2. Exhibit-1c (Sweater) was stained with few medium and small blood stains.
3. Blood was detected in exhibit-2 (Blood Stained Earth).

4. Exhibit-3 (Kurta) was stained with numerous large and small blood stains.
5. Exhibit-4a (Razai piece); exhibit-4b (Gadda piece); exhibit-5a (Razai piece) and exhibit-5b (Dari piece) were stained with blood stains.
6. Blood was detected on exhibit-6a (lady's Shirt).
7. Blood could not be detected on exhibit-6b (Salwar); exhibit-7a (Lady's Shirt); exhibit-7b (Salwar) and exhibit - 8 (Gandasi).
8. Blood was detected on exhibit-9 (Gandasa)."

According to the results of serological analysis of blood (Ex.P38), it is mentioned as follows:-

<u>"Sr. No. Name of exh.</u>	<u>Origin</u>
1a. Shirt	Human
1b. Chadra	Human
1c. Sweater	Human
2. Blood Stained Earth	Human
4a. Razai piece	Human
4b. Gadda piece	Human
5a. Razai piece	Human
5b. Dari piece	Human
6a. Lady's Shirt	Material disintegrated
9. Gandasa	Material disintegrated"

The above results of serological analysis of blood (Ex.P38) shows that human blood was detected on shirt, 'chadar' (sheet), sweater,

blood stained earth, piece of quilt, piece of mattress, piece of quilt and piece of mat. However, material had disintegrated on the lady's shirt (exhibit-6a) and 'gandasa' (exhibit-9).

The learned trial Court has placed reliance on the disclosure statement (Ex.P7) of Chameli Devi (appellant) and has relied upon the deposition of HC Mahender Singh (PW6) to prove the recovery of 'gandasa' from Chameli Devi (appellant) and also the fact that she produced the clothes which she was wearing at the time of committing the murder and these were having stains of blood though they had been washed. The learned trial Court further relied on the FSL report (Ex.P37) which shows blood stains on the lady's shirt (exhibit - 6a as marked in the FSL report) and also 'gandasa' (exhibit - 9 as marked in the FSL report). It is mentioned that the lady's shirt found with blood stains was the same which was produced by Chameli Devi (appellant) before the police. Besides, the 'gandasa' on which blood stains were found was also got recovered from Chameli Devi (appellant) in pursuance of recovery memos (Ex.P9 and Ex.P14). It was said that blood having been found on one of the two clothes got recovered by Chameli Devi and on the 'gandasa', the presumption would be that the 'gandasa' was used for murdering Hardayal by the person, who was wearing the lady's shirt at the time of occurrence. This, according to the learned trial Court, meant that Chameli Devi (appellant) was one of the assailants and it is because of this that blood was found on her shirt and 'gandasa'. It was observed that the accused Chameli Devi (appellant) made the disclosure statement (Ex.P7) and got recovered the 'gandasa' and her clothes and she stood connected with the crime.

The lady's shirt (exhibit-6a) and 'gandasa' (exhibit-9) have, therefore, been linked by the learned trial Court with Chameli Devi (appellant); however, the origin of the blood on them as to whether it was human blood or not has not been determined which though has been determined in respect of the other articles. In respect of the said two articles, the material, it is stated in the results of the serological analysis of blood (Ex.P38), had disintegrated. Therefore, the said analysis is of no help to the prosecution case as it is not established on record that human blood was detected on the 'gandasa', which was the weapon of offence that is stated to have been used and it was also not detected on the clothes that were worn by the assailant. Besides, the conclusion reached at by the learned trial Court is based on presumption inasmuch as it is mentioned that the presumption would be that the 'gandasa' was used for murdering Hardayal by the person, who was wearing this lady's shirt at the time of occurrence. This, according to the learned trial Court, meant that Chameli Devi (appellant) was one of the assailants and it is because of this that blood was found on her lady's shirt and 'gandasa'. It was found that accused Chameli Devi (appellant) made the disclosure statement (Ex.P7) and got recovered the 'gandasa' and the clothes and she stands connected with the crime.

In a criminal trial, it is well known that the guilt of an accused is to be proved beyond shadow of reasonable doubt and it cannot be held to be proved on the basis of presumptions or preponderance of probabilities. Even otherwise, the FSL report (Ex.P37), referred to above mentions exhibit-6a to be a printed lady's shirt on which blood was detected. However, exhibit-7a is also a blue printed lady's shirt on which blood could not be detected. A lady's

shirt was recovered from Chameli Devi (appellant) as also from accused Pana Devi (accused No.2).

The learned trial Court has connected the lady's shirt exhibit-6a with Chameli Devi (appellant) and the lady's shirt exhibit-7a with Pana Devi. The FSL report (Ex.P37) does not in fact make a mention from which of the accused the lady's shirts in question were recovered. Besides, Constable Bhanwar Lal (PW5) deposed his affidavit Ex.P5 stating that he was M/MHC at Police Station Sadar Hisar on 16.02.2002 on which date Inspector/SHO Ram Rattan deposited a parcel containing clothes of deceased Hardayal, duly sealed with the seal of doctor along with sample seal; one parcel containing blood stained earth duly sealed; one parcel containing 'kameej' (shirt) of Kheta Ram duly sealed; a parcel containing piece of quilt and mattress duly sealed; a parcel containing piece of quilt and 'dari' (mat) duly sealed in the 'malkhana'. He handed over the aforesaid parcels on 20.02.2002 to Constable Bhuru Singh (PW13) after taking them out from the 'malkhana' for depositing them in the office of D/FSL, Madhuban. He after depositing them gave him the receipt on the same day. Constable Bhanwar Lal (PW5) further states that Inspector/SHO Ram Rattan on 23.02.2002 deposited with him in the 'malkhana' one parcel containing 'gandasa', one parcel containing 'gandasi', one parcel containing 'salwar-kameej' of accused Pana Devi, one parcel containing 'salwar-kameej' of Chameli Devi sealed with seal of 'MS' along with sample seal. These parcels on 01.03.2002 after taking them out from the 'malkhana' were handed over to Constable Kawal Singh (PW4) for depositing them in the office of D/FSL, Madhuban who after depositing them on that very day on return handed over the receipt thereof to him.

The articles recovered from Chameli Devi (appellant) were deposited by Inspector/SHO Ram Rattan with Constable Bhanwar Lal (PW5) on 23.02.2002. It is mentioned that one parcel contained 'salwar-kameej' of Chameli Devi (appellant) and another parcel contained the 'salwar-kameej' of Pana Devi (accused No.2). These were deposited with him and then were given to Constable Kawal Singh (PW4) for depositing them in the office of D/FSL, Madhuban. However, it is unclear as to whether the parcels were marked as to which contains the clothes of Chameli Devi (appellant) and which contains the clothes of Pana Devi (accused No.2). The FSL report (Ex.P37) mentions the description of articles which were contained in the various parcels. Parcel No.VI, it is mentioned that it contained exhibits-6a and 6b. Exhibit-6a is a printed lady's shirt and exhibit-6b is a printed lady's 'salwar'. Further, parcel No.VII mentions that it contained exhibits-7a and 7b. Exhibit-7a is mentioned as one blue printed lady's shirt and exhibit-7b is mentioned as one blue printed 'salwar'. These parcels containing the lady's clothes do not mention as to which of the lady, i.e. Chameli Devi or Pana Devi, do the clothes relate to. In the recovery memo (Ex.P10) of Pana Devi (accused No.2), it is mentioned that she produced 'badami' (light brown) colour 'butidar' (flower/floral design) 'salwar' and jumper (pull over). In the FSL report (Ex.P37), the parcels exhibits-7a and 7b have been mentioned as blue printed lady's shirt and blue printed 'salwar' respectively. These, therefore, may relate to Chameli Devi (appellant) as from Pana Devi (accused No.2) 'badami' (light brown) colour 'salwar' and jumper were recovered and not blue colour. Therefore, the parcels exhibits-6a and 6b which contain the printed lady's shirt and a printed 'salwar' which the learned trial Court has

connected with Chameli Devi (appellant) may not belong to her. Therefore, a doubt is there and has been created inasmuch as the parcel exhibit-6a which the learned trial Court has connected with Chameli Devi (appellant) may not be the correct position. The benefit of the said doubt is to go to the appellant.

Therefore, it cannot be said to be conclusively established that the blood on the lady's shirt exhibit 6a and on the 'gandasa' exhibit-9, as marked by the FSL, stand connected with Chameli Devi (appellant). This is for the reason that the origin of the blood on the lady's shirt (exhibit-6a) and the 'gandasa' (exhibit-9) as to whether it was human or not has not been established as the material had disintegrated. Besides, the parcel exhibit-6a cannot with definiteness be said to be connected with Chameli Devi (appellant) as parcel (exhibit-7a) which also contained a blue colour lady's shirt is not connected with Pana Devi (accused No.2) as she had got recovered a 'badami' (light brown) colour 'salwar' and jumper (pull over). The parcel containing the lady's shirt (exhibit-7a) may, therefore, connect with Chameli Devi (appellant) as there is no other lady who is accused. This creates serious doubts of connecting the lady's shirt (exhibit-6a) with Chameli Devi (appellant). As regards the 'gandasa' and the 'gandasi' which were stated to have been used and which contained the blood stains, it is not absolutely clear as to whether Chameli Devi (appellant) was indeed holding a 'gandasa' which has been marked as exhibit-9 by the FSL. Inder Singh (PW15) according to his statement Ex.P36 made before the police mentions that at 11:00 p.m. on 15.02.2002 he saw that Chameli Devi was holding a 'gandasa' and Pana Devi was holding a 'gandasi'. However, as already noticed, he did not support this statement (Ex.P36) while appearing in Court as PW15. Therefore, it cannot be

said with certainty as to who was holding the 'gandasi' and as to who was holding the 'gandasi'. The recovery memo (Ex.P14) relates to recovery of 'gandasa' from Chameli Devi (appellant) which she got recovered from the cotton sticks lying in the 'kotha' constructed in the front along the 'dhani' of Hardayal. The recovery memo (Ex.P12) relates to recovery of 'gandasi' from Pana Devi (accused No.2) which she got recovered from the chaff ('turi') lying in the 'kotha' constructed along the 'dhani' of Hardayal. However, both these recovery memos Ex.P14 of 'gandasa' and Ex.P12 of 'gandasi' are witnessed by HC Mahender Singh (PW6) and Lady Constable Nirmala Devi. There is no independent witness to these recoveries. Besides, according to HC Mahender Singh (PW6), Chameli Devi (appellant) and Pana Devi (accused No.2) had made disclosure statements Ex.P7 and Ex.P8 respectively regarding concealment of 'gandasa' and 'gandasi'. He then states that they were going to the place for effecting recovery of these weapons that on the way they first went to the 'dhani' of Jit Singh (accused No.3) from where the clothes worn by Chameli Devi (appellant) and Panna Devi (accused No.2) were recovered. The disclosure statements Ex.P7 and Ex.P8 were recorded by Inspector/SHO Ram Rattan, who has not been examined. The reason why they first went to effect recovery of clothes from the 'dhani' of Jit Singh has not been brought out. Inspector/SHO Ram Rattan, the investigating officer of the case, has not been examined who would be in a position to clarify this aspect. This is more so for the reason that it is not mentioned in the disclosure statement (Ex.P7) of Chameli Devi (appellant) or in the disclosure statement (Ex.P8) of Pana Devi (accused No.2) that the clothes which they were wearing at the time of occurrence were in their house and they could get these

recovered. As such, it is difficult to understand as to why while they were going for effecting recovery of 'gandasa' and 'gandasi' in pursuance of the aforesaid disclosure statements they made recoveries of the clothes allegedly being worn by them during the crime.

In the circumstances, it cannot be said that there is clinching evidence on record which establishes the guilt of Chameli Devi (appellant) beyond shadow of reasonable doubt. The evidence and material on record is highly discrepant and the benefit having been given to the other accused, it would be just and expedient to give the benefit of doubt to her as well.

The appeal is accordingly allowed and the judgment and order passed by the learned Additional Sessions Judge (*Ad hoc*), Hisar is set aside to the extent that Chameli Devi (appellant) has been convicted. She is acquitted of the offences for which she was charged. At present, she is on bail and the bail bonds furnished by her shall stand discharged.

(S.S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

10.04.2015
Ramesh/A.Kaundal