

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

**1. Criminal Appeal No. D-470-DB of 2010**

**Savin**

**...Appellant**

**Versus**

**State of Haryana**

**...Respondent**

**2. Criminal Appeal No. D-571-DB of 2010**

**Asha**

**...Appellant**

**Versus**

**State of Haryana**

**...Respondent**

**Date of decision: 16.09.2015**

**Coram: Hon'ble Mr. Justice Hemant Gupta  
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By:** Shri Jasjit Singh Bedi, Senior Advocate with  
Shri Sunil Sihag, Advocate for the appellant.

Shri Deepinder Singh, Advocate for the appellant  
in CRA-D-571-DB-2010.

Shri Vivek Saini, Assistant Advocate General, Haryana  
for the respondent-State.

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**Raj Rahul Garg, J.**

These appeals are directed against the judgment dated 31.03.2010

rendered by learned Additional Sessions Judge, Rohtak whereby both the

appellants-accused were convicted for committing offence punishable under Section 302/34 IPC. Vide order dated 09.04.2010, each one of them is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- for the commission of aforesaid offence; in default of payment of fine, to undergo rigorous imprisonment for one year.

Brief facts of the case are like this; that on 02.07.2007, on receipt of VT message from the Control Room to the effect that in village Gandhra, in the house of Sansar singh, some unknown persons had caused injuries to his family members. On this information, SI/SHO Virender Singh reached village Gandhra along with other police officials. Before leaving for the village, he sent VT for summoning of Dog Squad, Photographer and FSL team. Sansar Singh met him at the spot and his statement was recorded as Ex. P-13 to the effect that he has a son and two daughters. Daughters are married. His son Sunil was serving in Delhi Police. For the last three days, he was at home. On 01.07.20007 at about 9.30 PM after taking meals, they all had gone to sleep. Sansar Singh along with his grand-daughter namely Mahi went to sleep in plot. At about 11.00 PM, light went off. His grand-daughter started weeping as she was feeling hot. So he left her with his wife Sheela. Sunil, his son, his wife Asha and their son Mayank were sleeping in their room. He came back in the plot.

On 02.07.2007 at about 5.30 AM, Santosh wife of his brother Dilbag woke him up and told that there was blood on the stair-case of the room of Sunil. When they reached there, they saw that the main gate of the house was closed. He opened the door and saw that his wife Sheela, smeared with blood, was lying dead on the ground. He saw in the room of Sunil and also found him lying on the

ground smeared with blood in unconscious condition. His grandson Mayank was standing in the room. He raised alarm. On hearing his shouts, Jaswant Singh, Randhir Singh and Kishan arrived at the spot. Sunil and his wife Asha were taken to PGIMS, Rohtak for treatment. As per complainant, the incident had taken place at 2/2.30 AM (at night). Nursing grudge by some unknown persons (assailants) have entered forcibly in the house at night and caused injuries with sharp-edged weapons to his wife Sheela and son Sunil and daughter-in-law Asha. As a result of injuries, his wife Sheela has died whereas Sunil and Asha were got admitted in the hospital for treatment. This statement was sent to the Police Station for registration of the case whereupon formal FIR, Ex. P-29, was recorded. Photographs of the spot, Ex. P1 to Ex. P-6, were obtained and the same were taken into police possession, vide Ex. P-22. Blood stained earth with the help of cotton was lifted from the room where the dead body of Sheela was lying. Some pieces of broken bangles and piece of pillow cover and curtain with blood stains were also taken into police possession. From the inner room also, blood stained earth with the help of cotton was lifted. All the aforesaid articles were converted into sealed parcels with the seal of 'VS' and taken into police possession, vide memo Ex. P-20. Rough site plan of the spot was prepared. Statements of witnesses were recorded. Inquest proceedings were completed. Thereafter, a message was received regarding the death of Sunil. Inquest proceedings were completed which is Ex. P-33. Thereafter, the dead body of Sunil was sent for post-mortem examination. PW-13 Dr. Naresh Dahiya, who conducted the post-mortem examination of Sunil Ex. P-33 and that of Sheela Ex. P-36, gave the cause of death as due to shock and hemorrhage due to multiple

stab injuries. On reaching the village, inquiries were made. Statements of Sansar Singh and Dharam Pal were recorded under Section 161 Cr.P.C. After post-mortem examination of Sheela and Sunil, their clothes in sealed parcel were handed over to Inspector Virender Singh and the same were taken into police possession, vide memo Ex. P-24. The same were deposited with MMHC of police station with seal intact.

On 03.07.2007, Virender Singh, Inspector recorded the statement of Asha (accused). On 04.07.2007, statement of EHC Naresh Kumar was recorded who handed over him parcel of clothes of Asha. The same were taken into police possession, vide memo Ex. P-48.

On 06.07.2007, Inspector Satpal Singh CIA, Rohtak received telephonic message from SP, Rohtak to take up the investigations of this case. As such, he inspected the file; reached the village and joined some respectables in the investigations of the case. Sansar Singh was also joined in the investigations. On 11.07.2007, Savin was again joined in the investigations but he had been changing his statements time and again. On that day, he produced before Satpal, Inspector CIA, three mobile sets and the same were taken into police possession, vide memo Ex. P-21. These mobile sets are Ex. P-21/1 to Ex. P-21/3. On 19.07.2007, Savin was taken to FSL, Madhuban for lie detection test. On the asking of Senior Scientific Officer, FSL, he prepared the questionnaire and the same was given to Savin. After the test, Savin torn the test report and he became hysterical. Thereafter, another print out was taken. On 30.07.2007, Santosh was interrogated and his statement under Section 161 Cr.P.C. was recorded. PW-2 Sansar Singh deposed that on 29.07.2007, Asha-accused had set herself on fire

inspite of the fact that they were keeping her nicely. Thus, from this conduct of Asha, complainant and his family members were confident that the murder of Sheela and Sunil was committed by Savin and Asha. The suggestion given to this incident is this that on account of false allegation of illicit relations between her and Savin, she attempted to commit suicide. Even upto 29.07.2007, accused were not arrested. Investigations were going on. Suspicion was very much on them. Polygraph test etc. were being conducted. Under those circumstances, the conduct of Asha to take steps to commit suicide is very natural and it also points towards guilt of Savin and Asha in this case. On 03.08.2007, statement of Mohinder Singh son of Ishwar Singh was recorded. On that day, Savin was arrested. On 04.08.2007, he was interrogated who suffered disclosure statement, Ex. P-14. On 05.08.2007, accused-Asha was arrested and interrogated. She also suffered disclosure statement, Ex. P-49. In the afternoon of 05.08.2007, Savin was interrogated in the presence of Wazir Singh and ASI Som Nath. He suffered disclosure statement to the effect that disclosure statement given by him on 04.08.2007 was false. The same was given due to fear. In reality, the screw driver, used in this crime, was kept concealed by him after the incident in the plot owned by his *Taau* Sansar Singh which has been purchased from Baljit Singh under waste/'Kura', after two or three days from the incident. Thereafter, he took out the screw driver from that place, cleaned it and kept concealed in a bucket lying in store of his house. He can give demarcation of that place and can get the same recovered. He further disclosed that before the occurrence, he had removed his clothes and worn the underwear. That underwear was stained with blood. He washed the same and had kept it concealed in his house by hanging the same on a

peg (Khooti) of Chobara, constructed in his house. He further disclosed that he had thrown the mobile phone in latrine constructed in his Gher. No one, thus, knows about it. He can get the same recovered by giving 'nishandehi'. In pursuance with this disclosure statement, accused-Savin took the police party to his house and got recovered screw driver from the aforesaid place. Rough sketch plan of the crew driver was prepared and same was taken into police possession, vide memo Ex. P-26, after converting it into a sealed parcel with the seal of 'SPS'. Rough site plan of the place of recovery was prepared. Red color underwear, Ex. P-28, got recovered by the accused, was also sealed into a parcel separately and then the same was taken into police possession, vide recovery memo Ex. P-26.

On 06.08.2007, accused-Savin was interrogated whereupon he disclosed having concealed ornaments in the field of Man Singh and further told that he can get the same recovered as he alone knows about it. This disclosure is Ex. P-14. In pursuance with this disclosure statement, accused led the police party to the field of Man Singh and got recovered ornaments lying in a purse of goldsmith. Gold and silver ornaments weighing 23 grams and 363 grams, respectively, were converted into a sealed parcel with the seal of 'RS'. Before sealing the same, Sansar Singh identified the same and thereafter the ornaments were taken into police possession, vide memo Ex. P-15. After completion of necessary investigations, challan against the accused was filed.

Finding a prima-facie case against the accused for committing offence punishable under Section 302/34 IPC, both the accused were chargesheeted to which they did not plead guilty but claimed trial.

After taking prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded whereupon they denied each prosecution allegation appearing against them and pleaded their innocence. By way of defence accused Savin pleaded that he is innocent. He had no role to play. He was rather taking care of family of deceased after the occurrence. He remained present even at the time of taking of deceased to hospital. He was also examined under Section 175 of Code of Criminal Procedure, 1973 at the time of preparation of inquest proceedings of Sunil-deceased and his PMR. He also participated in the cremation of deceased. He was also regularly interrogated for number of days. Many other persons from neighbourhood were also interrogated. His house and other houses were also searched and even FSL team also visited his house. Dog squad was also pressed into service which went upto village pond. He was also subjected to lie detection test, but he was found innocent. The screw driver has been planted upon him. The ornaments in question about which there is no reference in FIR etc. have also been planted. There is no evidence to connect him with the crime and recovered ornaments. There is no detail of ornaments nor there is any proof of ownership nor the same are related to the crime in question. He had no motive to commit the crime. Sansar Singh and Dharam Singh, who are his uncles, have concocted a false story of his illicit relations with co-accused Asha. They concocted this story after due deliberations, in connivance with the police. His father had expired 16-17 years ago when he was too young. His share of agriculture land was admittedly in possession of Sansar Singh. He had been cultivating his share of land. They wanted to usurp his land and did not give him his share and on this he has been falsely implicated in

this case. Whereas Asha took the defence that she is innocent. Her name did not figure in FIR rather some injuries were caused to her by the unknown accused. Police recorded her statement Ex. DD in regard of injuries but after about one month she was falsely implicated by the complainant in connivance with the police just to deprive her from the benefit of GPF, gratuity, share of land and other benefits of her husband Sunil. In defence accused have examined Pawan Kumar as DW-1. He is uncle of Asha and deposed to the effect that he was never informed about the conduct of Asha, by her in-laws. Even matter of quarrel between Sheela, Asha and her husband Sunil were never reported to him. Asha's father had already expired. ASI Jagbir Singh from District Jail, Rohtak was examined as DW-2 and this very witness was again examined as DW-6 so as to prove that Santosh wife of Dilbag and Dharam Pal had gone to District Jail, Rohtak to see Savin-accused and further that Kamlesh wife of Dharam Pal and Dharam Pal had gone to District Jail, Rohtak to meet Asha. Copy of entry was tendered in evidence as Ex. DH. Dr. Sandeep Kumar from PGIMS, Rohtak was examined as DW-3 so as to prove the injuries on the person of Asha. Virender Kumar, MRC, PGIMS Rohtak as DW-4 brought the summoned record pertaining to ticket of Asha i.e. her short stay file. Dr. Sarvjit Singh, Asstt. Professor, Department of Ortho, PGIMS Rohtak was examined as DW-5 who treated Asha in Emergency Ward. He proved her admission on 02.07.2007 and discharge on 08.07.2007. He deposed that she was managed conservatively.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, learned Trial Court recorded the judgment of conviction and order on sentence against appellants-accused as

mentioned in the earlier part of this judgment.

We have heard Sh. Jasjit Singh Bedi, Senior Advocate with Sh. Sunil Sihag, Advocate for accused-Savin; Sh. Deepinder Singh Advocate for accused-Asha and Sh. Vivek Saini, Assistant Advocate General, Haryana for the State of Haryana besides going through the record of this case.

It is a case of double murder. The parties are near relatives. Sunil-deceased is the son of Sansar Singh-complainant (PW-2). He was working in Delhi Police. Asha is the wife of Sunil. Sheela-deceased is the wife of Sansar Singh and mother-in-law of Asha. Savin is the son of Dilbag, brother of Sansar Singh. Their house is adjoining the house of complainant. Savin is employed in Haryana Police. He got compassionate appointment after the death of his father Dilbag. Complainant party was having cordial relations with Savin. Sunil had asked Savin many times to bring or to leave Asha at her parents' house because he was having faith in him. Under these circumstances, Savin and Asha developed illicit relations and fell in love with each other. As Sheela asked Asha not to talk to Savin; and 15-20 days to the present occurrence a quarrel had taken place between Sheela and Asha, therefore, Asha had gone to her parental house. Only 3-4 days prior to the present occurrence, Sunil had brought Asha to his house. On 01.02.2007, again a quarrel had taken place between Sheela and Asha and between Sunil and Savin. Therefore, Savin in connivance with Asha had committed the present crime. Complainant Sansar Singh as PW-2 deposed about the aforesaid relations of Savin and Asha and also about the quarrels and circumstances available at the house of complainant in this regard. Suman, PW-3, complainant's married daughter, also deposed about the relationship of Savin and

Asha. On this aspect, learned counsel for the appellants-accused assailed the statements of PW-2 and PW-3 contending that all the story is an afterthought. Had there been truth in this story; it would have seen the light of the day at the time of getting FIR registered but so has not been done in this case. At the time of getting FIR recorded, complainant did not express any suspicion on Savin and Asha. Even at the time of supplementary statement of complainant Sansar Singh, which was recorded on 02.07.2007 at 5.00 PM, he did not express any suspicion on the accused. His case was that some unknown persons have committed murder of Sheela and Sunil. Savin remained present right from the beginning i.e. in the hospital and at the time of cremation etc. Had he been involved in this crime, his natural conduct would have been to run away. It was also contended by learned counsel for the appellants-accused that Suman is introduced witness. She was present in the house on 02.07.2007 itself and thereafter she came at the time Kiriya ceremony but she did not depose anything about the illicit relations of Savin and Asha. Her statement was recorded by the police on 29.07.2007 which clearly points towards made up story. In fact, accused have been falsely implicated in this case. Savin's father Dilbag had died 7-8 years ago. The land of Savin is under cultivation of complainant and now after getting him involved in this murder case which has been committed by some other persons, complainant wants to grab the land of Savin. By implicating Asha in this murder case, complainant wants to deprive her of the retiral benefits which Asha was entitled to get after the death of Sunil.

The above contention of learned counsel for the appellants-accused is devoid of any force. It looks absurd that a father-in-law who had lost his wife

Sheela and a young son Sunil would stoop so low to implicate falsely his own daughter-in-law only in order to usurp the retiral benefits. Sunil has left behind son Mayank of the age of four years and daughter Mahi of the age of two years. Nobody on this earth would like to deprive the aforementioned children of tender age from their mother by involving her falsely in the murder case of her own husband. Savin is serving in Haryana Police. Complainant is already cultivating his land. There is nothing on record to show that Savin ever had a dispute on this point with complainant; he ever demanded back his land from the complainant to which he refused and further that at any point of time any Panchayat was convened or any case was filed in the court of law for the purpose. In the absence of these, simply because Savin is involved in this case under aforesaid circumstances, the plea of Savin regarding his false implication on account of grabbing of his land by the complainant is not sustainable.

It is a case of circumstantial evidence. There is no eye-witness to this occurrence. In the presence of Asha-accused this occurrence had taken place. Asha and Sunil were sleeping in the same room. As such, it is the Asha who can explain the circumstance under which this occurrence had taken place. But Asha could not satisfactorily explain the facts relating to the occurrence within her special knowledge.

Section 106 of the Indian Evidence Act is the exception to the general rule of burden of proof. The normal rule is that the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt. This section does not affect this rule in any manner that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

In the case *Shunmugasundram vs. State by Deputy Superintendent of Police Erode Town, 1997 Criminal L.J. 499 (Madras) DB*, the husband and deceased wife when alive were found together in the house in which deceased was found dead. Immediately after occurrence, accused absconded. Accused failing to offer any explanation, whatever, as to how the occurrence had happened. He never thought to offer an explanation about the crime or even claimed that he was not present at the time of the incident, more so when other prosecution witnesses had seen him together with his wife fairly late on the earlier night which was held that in view of Section 106, facts relating to said occurrence being within his special knowledge, he was bound to offer explanation and in absence of any explanation, the only possible inference was that the accused had participated in the crime. Now coming to the case in hand, it is not disputed that Asha-accused was present in the house at the relevant time. She was sleeping in the same room in which Sunil sleeping. Her son Mayank was also sleeping in the same room. Asha also received injuries in this very incident, (MLR Ex. D-1). But she did not choose to give any satisfactory explanation regarding circumstances or manner in which the incident had taken place. She herself did not appear as witness nor offered herself for cross-examination. Appellants simply put statement Ex. DD, to Investigating Officer during his cross-examination by putting a question as to if the same was correctly recorded. This statement, Ex. DD, was recorded on 03.07.2010. It cannot be read as evidence. It can be used only for the purpose of contradicting the witness. Even otherwise, for the sake of arguments, Ex. DD, is vague statement and goes to show that right from the beginning till end, she avoided to make a mention of

true facts and tried to give this incident a color of murder with robbery by some unknown persons. Her conduct in keeping quiet and not raising alarm at the time or after the commission of crime clearly points towards her complicity in commission of this crime. There was lot of blood at the spot. With the killing of two persons in the house, it is not understandable that she would not be knowing anything about it. Bangles of Sheela had also broken at the spot. The deceased must have also offered resistance. But Asha-accused did not take any step for raising '*Raula*' or calling anyone from the vicinity. Injuries on the person of Asha, vide MLR Ex. D-1, are neither serious nor dangerous to life. Doctor opined that possibility of these injuries with friendly hands cannot be ruled out. As such, obtaining of these injuries by Asha in order to show this incident as the case of murder with robbery and further to save herself from the clutches of law; can also be not ruled out. Thus, the facts relating to the occurrence are within special knowledge of Asha which she was bound to offer explanation and in the absence of any explanation, the only possible inference is that she has participated in the crime by way of conniving with Savin-accused.

Dharam Pal, PW-4, deposed that on the day of occurrence, itself, he saw Savin-accused coming out from the house of complainant and was wearing a red underwear. Later on, in pursuance with this disclosure statement Ex. P-24, he got the underwear recovered, vide memo Ex. P-26. As per disclosure statement of Savin, this underwear was washed by him. However, when this underwear was sent to FSL for test, traces of blood stains were found on the same, as per report Ex. PX. Of course, serological report Ex. PY says that the material was disintegrated, yet, blood stains were found on the underwear of accused. Savin

has committed this murder in a pre-planned manner. In order to give this murder a color that it was committed by some Kachcha Gang, he wore kachcha at the relevant time.

Savin is a dare-devil person. After committing such a heinous crime, he had the guts to stand with it. He had taken Asha to hospital by his car. Dr. Sandeep Kumar, DW-3, deposed that he medico-legally examined Asha, brought by Savin Kumar. Undisputedly, he also attended the cremation and did not abscond. But the fact of not absconding from the scene; does not go to prove the innocence of the accused.

Dharam Pal, PW-4, is brother of complainant. He deposed that on the day of occurrence, he woke up at 3.30 AM. He had gone to pass urine in the street where he noticed that accused Savin was coming out of the house of Sansar Singh. He was wearing red underwear only. He called him by his name but he started walking fast and went towards road. Thereafter, he came back and slept. He gave this statement to the police on 02.07.2007. It has been exhibited as Ex. DC by the accused. Learned counsel for the State contended that only thereafter the police joined Savin in the investigations of this case and interrogated him. Under these circumstance, it cannot be said that Dharam Pal did not see Savin coming out of the house of Sansar Singh at 3.30 AM on the fateful day. In fact, Savin is closely related to complainant. Asha is the daughter-in-law of complainant. There may be dispute between Sunil and Savin; Sheela and Asha on account of illicit relationship of Asha with Savin, yet, nobody would think that for that very reason Savin would commit murder of Sunil as well as that of Sheela. Even before naming them, they would think thousand times. Dharam Pal,

PW-4, might have seen Savin coming out of the house of deceased on the fateful day, yet, no one would be sure that he is the only one who has committed this crime. Particularly, when he remained present in the hospital as well as the house of deceased. There were two deaths in the family. Family members must have been busy in getting the bodies after post-mortem and then their cremation etc. Even the state of mind of the complainant can also be worth considerable. Under those circumstance, directly naming the kins is very difficult and no one would do that. In this case, Dharam Pal, Pw-4, who is in no way inimical to the accused stated before the police on 02.07.2007 itself that he has seen Savin coming out of the house of the deceased at 3.30 AM. In spite of the fact that he called out Savin but he did not stop and went towards the road. Thus, this is very strong circumstance available on the file pointing towards the guilt of the accused-Savin. This very circumstance coupled with the no satisfactory explanation afforded by Asha as to under what circumstances this crime has taken place particularly when she was very much present in the house; further proves the prosecution case clearly establishing that only in connivance with Asha Savin has committed this crime.

In this case, polygraph test of Savin was also conducted. Report in this regard is Ex. P-52. Satpal, PW-17, deposed that on 19.07.2007, Savin was taken to FSL, Madhuban for lie detection test. He prepared a questionnaire on the asking of Senior Scientific Officer, FSL, Madhuban and the same was given to him. But after the test, Saving torn the test report and he became hysterical. Thereafter, another print out was taken. As per polygraph test report, the answers to the questions put to him, given by the accused, appear deceptive at certain

issues and inconclusive on other issues. His becoming hysterical and tearing of the test report is also a circumstance which goes against the accused.

Apart from above, at the instance of accused-Savin, ornaments were recovered and also the screw driver and red color underwear of accused-Savin. Screw driver was also blood stained and the traces of blood, too small for serological analysis, were detected on it. We should not forget that this screw driver was also washed by the accused. In spite of that when sent to FSL, traces of blood were found on it which also connect the accused with this crime.

The contention of learned counsel for the appellants-accused that with this screw driver two deaths cannot be caused as the injuries on their persons are incised wounds which can be the result of sharp edged weapons; is again devoid of any force. After seeing the screw driver, opinion of Dr. Naresh Dahiya, PW-13, was obtained. As per opinion of this doctor, which is Ex. P-39/A, the injuries on bodies of Sheela and Sunil being caused by the shown weapon cannot be ruled out. This very doctor has specifically given the cause of death, in this case, as due to shock and hemorrhage due to multiple stab injuries. Stab injuries with screw driver can always be there. As such, it cannot be said that with the screw driver, death of Sunil and Asha could not be caused. We may like to say that in this case police acted with utmost carelessness and did not take due precautions in conducting the investigations. As per settled proposition of law, for the defective investigations, no benefit can be given to the accused.

Learned counsel for the appellants-accused cited some judgments ***“Chet Ram vs. State of Uttarakhand, 2014 (13) SCC 105”***, ***“Kagen Bera and another vs. State of West Bengal, 1994 AIR (SC) 1511”***, ***“Deepak Kumar vs.***

***Ravi Virmani and another, 2002 (2) SCC 737.*** But these judgments are not applicable to the facts and circumstance of this case. These are quite distinct from the present case.

For the reasons recorded above, if we take all the circumstance cumulatively altogether, they lead only to the irresistible conclusion that accused alone are the perpetrators of the crime. As such finding no merit in these appeal, the same are dismissed.

**(Hemant Gupta)**  
**Judge**

**(Raj Rahul Garg)**  
**Judge**

**16.09.2015**  
*Waseem Ansari*