

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

**CRA No.D-534-DB of 2010 (O&M)
Date of Decision: 31.10.2015**

Harpal @ Pale

...Applicant/Appellant

Vs.

State of Haryana

...Respondent

**CORAM:HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Ranjit Saini, Advocate for
for the applicant/appellant.

Mr. Naresh Kaushik, Additional Advocate General,
Haryana.

1. *Whether Reporters of local papers may be allowed to see the judgment ? (Yes/No)*
2. *To be referred to the Reporters or not ? (Yes/No)*
3. *Whether the judgment should be reported in the Digest? (Yes/No)*

RAJ MOHAN SINGH, J.

[1]. Appellant has assailed judgment of conviction dated 19.04.2010 and order of sentence dated 21.04.2010 passed by Additional Sessions Judge, Fatehabad, vide which he has been convicted and sentenced undergo rigorous imprisonment for life and pay fine of Rs.50,000/- under Section 302 of the Indian Penal Code (for short 'the IPC'). In default of payment of fine, appellant shall further undergo rigorous imprisonment for six months. The amount of fine on recovery has been ordered to be

paid to the widow of the deceased as compensation.

Prosecution case

[2]. FIR No.269 dated 21.08.2008 under Section 302 IPC, Police Station Sadar Fatehabad, District Fatehabad was registered at the instance of complainant Rohtash. The complainant alleged that on 21.08.2008 at about 10.00 a.m., he along with his brother Lilu Ram had gone to the house of his uncle Dhan Singh in connection with some personal work. At the time of their visit, their aunt Bhateri was cooking meal and his uncle was taking his food. Meanwhile appellant Harpal @ Pale came there and asked his uncle Dhan Singh to accompany him as he wanted to settle his dues. Dhan Singh told the complainant that he would join them shortly to discuss their problem and left the house on Harpal's motorcycle.

[3]. Dhan Singh did not return till 2.00 p.m. Complainant and his brother started worrying about Dhan Singh and came to Fatehabad in search of him. At the gate of Grain Market, they met their relative Anil Kumar, who told them that he had met Dhan Singh while he was moving in company of the accused/appellant Harpal @ Pale. He met Dhan Singh at Bighar Mor (turning point) and at that time Dhan Singh told him that the accused was taking him for some work towards village Bighar. On this, all the three i.e. complainant, his brother Lilu Ram and

Anil Kumar went towards village Bighar on the motorcycle of Anil Kumar in search of Dhan Singh.

[4]. At the bus stand of village Bighar, some persons were discussing that a body of an unidentified person was lying on the Dhand road. Complainant along with his brother Lilu Ram and relative Anil Kumar reached the site and saw that the dead body was of Dhan Singh. After leaving Lilu Ram and Anil Kumar on the spot/site, the complainant proceeded to report the matter to the Police. The complainant found ASI Krishan Kumar along with other police officials at Ambedkar Chowk, Fatehabad and informed them about the incident. The statement of the complainant was recorded by ASI Krishan Kumar and it was sent to Police Station for registration of FIR through Head Constable Bhajan Dass. Accordingly FIR (Ex.P-3) was registered by SI Roshan Lal on the basis of statement of the complainant.

[5]. As per FIR (Ex.P-3), the statement was recorded at 9.15 p.m. on the basis of information received in the Police Station at 8.25 p.m. Police file along with original ruqa (Ex.P-2) was sent to the Police Station through Head Constable at the spot and copies were sent to higher officers and Illaqa Magistrate through EHC Anil Kumar No.735.

Inquest Proceedings

[6]. ASI Krishan Kumar along with other police officials and complainant reached the spot. Inquest proceedings were conducted by him. Rough site plan was prepared where the dead body was lying. As per inquest proceedings, discovery of death was stated to be on 21.08.2008 at 08.15 p.m. Lilu Ram and Anil Kumar identified the dead body of Dhan Singh, who was wearing white shirt and pyjama and black colour rubber slippers in his feet. Eyes and mouth of the deceased were closed. Death pallor had prevailed and mouth was stained with blood. Three-four injuries were found on the head which were of grievous nature. Blood had oozed out from the head. The weapon used in the crime was stated to be a hammer. In the description of articles found near the dead body, iron hammer having a wooden *binda* (handle) was shown. A sketch was also prepared in the inquest proceedings with reference to spot 'A' where dead body was shown lying and spot 'B' where Jaanti tree was found engraved with number 41. Though iron hammer was pleaded in the inquest proceedings, but in the sketch plan it was not shown lying near the dead body.

[7]. As many as six persons namely Doulat Ram, Kikkar Singh, Raj Kumar S/o Ranjeet Singh, Vakil Chand, Sarpanch, Sukhdev Singh S/o Bahadar Singh and Davender Sngh were

found present near the dead body at the time of visit of the Police party. As per police proceedings during inquest, aforesaid persons were joined in the investigation. Photographer Raj Kumar photographed the site and had taken the snaps of the dead body.

[8]. Local examination of the dead body revealed that the head of the deceased was facing North, feet were facing South and it was lying on the footpath. Injuries on head were inflicted with hammer and the deceased was wearing kurta and pyjama of white colour. Police did inspection of the site and prepared the report. Mark 'A' in the site plan denoted the spot where the dead body was lying on the footpath, mark 'B' denoted the place where the Jaanti tree was found standing engraved with number 41. Distance between mark 'A' and mark 'B' was found to be 30-32 feet. One Nokia mobile and Rs.70/- were also recovered from the pocket of the deceased.

[9]. In joint inquiry the Police recorded that the persons found present on the spot informed that someone on account of grudge had committed the murder by giving hammer blows on the head of the deceased. Blood stained hammer, dried grass and herbs were taken in police possession vide separate memos. At this time HC Bhajan Dass after getting FIR registered had come present on the spot and produced the

police file before the Investigating Officer. After arranging the vehicle, dead body was brought to Civil Hospital, Fatehabad.

[10]. ASI Krishan Kumar handed over the parcels of blood stained dried grass, herbs and blood stained hammer duly sealed, to MHC of the Police Station. In the inquest proceedings (Ex.P-14) presence of Lilu Ram and Anil Kumar was shown and they are shown to be signatories of the inquest proceedings. Statements of Lilu Ram and Anil Kumar were recorded under Sections 175 Cr.P.C.

Postmortem Report

[11]. Postmortem of the dead body was conducted on 22.08.2008. As per postmortem report (Ex.P-15) rigor mortis was found present on the dead body. Multiple lacerated wounds of variable sizes were found over top and posterior right parietal area with multiple fracture of skull bone. Partially digested food particles were found in the stomach and intestines. Doctor opined that the cause of death was due to head injury which was ante mortem in nature and was sufficient to cause death in course of nature.

Police investigation

[12]. The police visited the house of the accused, but the accused was not found present. His father informed that he had not returned home. As per prosecution case, the accused was

produced by Pirthi Singh, Sarpanch of village Phullan on 23.08.2008 and was then formally arrested. The accused on interrogation allegedly confessed the guilt and disclosed the places where he had concealed the blood stained clothes worn by him and motorcycle used in commission of the crime. In pursuance to his disclosure statement, he got motorcycle and clothes recovered vide recovery memos. The clothes worn by the deceased were handed over to the police by the Doctor. The recovered parcels i.e. grass material, hammer and clothes worn by the accused and of deceased were sent to Forensic Science Laboratory, Madhuban. The report of FSL revealed that human blood was found on hammer, grass material, shirt of the accused and clothes of the deceased. However blood group could not be ascertained.

[13]. The photographs obtained by the photographer Ex.P-5 to Ex.P-10 revealed different postures of the dead body. In three of the photographs i.e. photographs No.2, 4 and 6, dead body was shown with head downward in the grass. A red cloth was shown near the footsteps of Police officials, who were standing towards the head of the dead body at some distance in photograph No.2. Photographs No.2, 4 and 6 did not show the presence of any hammer between head of the deceased and pink/reddish cloth. Photographs No.1, 3 and 5 showed dead

body with face upward. In photograph No.3, a hammer was shown lying between red cloth and head of the dead body. Perusal of the photographs revealed that the hammer was found lying only in photograph No.3 between head of the deceased and pink/reddish cloth lying on the spot at some distance from the head of the deceased.

[14]. The Police investigated the case and submitted challan. Copy of the same was given to the accused and after committal of the case the trial progressed. The accused was chargesheeted for the offence under Section 302 IPC. Accused pleaded not guilty and claimed trial.

Prosecution Evidence/witnesses

[15]. The prosecution examined PWI HC Mahabir Singh, who tendered his affidavit Ex.P-1 in respect of link evidence. On 21.08.2008, aforesaid Mahabir Singh was posted as MHC of Police Station Sadar Fatehabad and was incharge of Malkhana. On 21.08.2008 ASI Krishan Kumar deposited with him one parcel containing blood stained iron hammer having wooden *binda* (handle) and one parcel containing dried grass and herbs. On 22.08.2008, ASI Krishan Kumar deposited one parcel containing blood stained clothes of deceased Dhan Singh and on 25.08.2008, one parcel containing blood stained clothes of accused Harpal @ Pale was deposited by the ASI Krishan

Kumar in the Malkhana.

[16]. The witness further deposed that he took out the parcels from the Malkhana and handed over the same to EHC Kuldeep Singh No.844 vide R.C. No.576 dated 05.09.2008 for depositing the same with DFSL, Madhuban for analysis. EHC Kuldeep Singh deposited the same with DFSL, Madhuban on the same day and handed over the receipt on return. For ready reference paras No.2 and 3 of the affidavit of PW-1 HC Mahabir Singh are reproduced hereasunder:-

“2. That on 21.8.2008, in the aforesaid case, ASI Krishan Kumar No.95/FTB deposited with me in the Malkhana one parcel containing blood stained iron hammer having a wooden binda (handle) sealed with the seal of KK alongwith the sample seal and one parcel blood stained dry grass and herbs etc. sealed with the seal of KK alongwith the sample seal and on 22.08.2008 in the aforesaid case. ASI Krishan Kumar deposited one parcel containing blood stained clothes of the deceased one parcel containing blood stained clothes of the deceased Dhan Singh sealed with the seal of the doctor alongwith the sample seal and on 25.08.2008, one parcel containing blood stained clothes of accused Harpal alias Pala sealed with the seal of KK alongwith the sample seal was deposited with me in the Malkhana.

3. That after having taken out the aforesaid parcels duly sealed alongwith the sample seals from the Malkhana of the Police-Station, the same were

handed over to EHC Kuldeep Kumar No.844 vide R.C. No.576 dated 5.9.2008 for depositing the same with DFSL, Madhuban for analysi and the EHC concerned deposited the same with DFSL, Mahduban on the same day and handed over the receipt to me on return.”

[17]. SI Roshan Lal has been examined as PW-2, who on receipt of ruqa Ex.P-2 recorded the FIR Ex.P-3. Special report was sent to Illaqa Magistrate by him at about 9.30 P.M.

[18]. PW-2 Constable Anil Kumar has been examined in the context of handing over three envelopes by SI Roshan Lal to him containing special reports on 21.08.2008 and he had delivered the same to Illaqa Magistrate at about 10.30 p.m. on the same day.

[19]. Draftsman Balwant Singh has been examined as PW-4, who had prepared scaled site plan Ex.P4 of the place pointed out by the ASI Krishan Kumar (Investigating Officer).

[20]. EHC Raj Kumar, Photographer has been examined as PW-5, who has proved photographs Ex.P-5 to Ex.P-10 of the deceased. The witness has stated that the deceased was lying on the grass and he had reached the spot at about 8.00/8.30 p.m. on 21.08.2008.

[21]. EHC Prem Kumar appeared as PW-6. He had deposed that on 27.08.2008, ASI Rajesh Kumar had taken out the

accused out of police lock-up in his presence and got recovered one motorcycle bearing registration No.HR-22-C-5916 from the fields of Mewa Singh son of Ranjit Singh, resident of village Miran and the motorcycle was taken into police possession vide recovery memo Ex.P-11. He brought the motorcycle from the place of recovery to the Police Station.

[22]. EHC Kuldeep Singh has been examined as PW-7, who has tendered his affidavit Ex.P-12. Paras No.2 and 3 of the affidavit are reproduced hereasunder:-

“2. That on 5.9.2008, Mahavir Singh MHC of the Police Station handed over to me the parcels of the present case i.e. one parcel containing iron hammer which is fitted in a wooden handle (Binda), one parcel containing dry grass and herbs etc. sealed with the seal of KK, after taking out the same from the Malkhana of the Police-Station, vide R.C. No.576 dated 5.09.2008 for depositing the same to DFSL, Madhuban.

3. That I deposited that aforesaid parcels sealed with the seal of KK alongwith the sample seal with DFSL, Madhuban on 25.9.2008 and handed over the receipt to the MHC of the Police-Station on return, which is attached with the record.”

Para No.2 of the aforesaid affidavit does not contain any recital of parcel containing clothes of deceased and the accused carried by the witness to DFSL Madhuban.

[23]. Dr. Naresh Satsangi has been examined as PW-8 who

has deposed that he was posted as Medical Officer in Government Hospital, Fatehabad on 22.08.2008. On the application of Police Ex.P-13 along with inquest proceedings Ex.P-14, he conducted the postmortem of the dead body. Rigor mortis was present on the dead body. Multiple lacerated wounds of variable sizes were present over top and posterior right parietal area with multiple fracture of skull bone of deceased. Brain matter was exposed and lacerated over multiple sides. Clotted blood was present both in extra and intradura matter. Stomach and small intestines were containing partially digested food particles. Cause of death was opined to be head injury which was ante mortem in nature and was sufficient to cause death in natural course of nature. The doctor gave his opinion Ex.P-18/1 on Ex.P-18 to the effect that the possibility of injuries being caused by such type of hammer cannot be ruled out. Ex.P-16 and Ex.P-17 i.e. kurta and pyjama of the deceased were handed over by doctor to the Police and were found to be the same. Post mortem report Ex.P-15 has been proved by the doctor, who has deposed that the rigor mortis in summer season starts setting within 12 to 18 hours after the death. The doctor further deposed that the deceased must have taken his last meal 3-4 hours prior to his death.

[24]. Addl. SHO Yogesh Kumar has been examined as PW-

9, who prepared the report under Section 173 Cr.P.C., after completion of investigation.

[25]. ASI Chhatarpal Singh has been examined as PW-10 who remained associated with SHO Balbir Singh and other police officials on 23.08.2008 when search of the accused was being made. The accused was not found present in the house at the time of raid and was later arrested on 23.08.2008 vide arrest memo Ex.P-22. The accused made disclosure statement Ex.P-23, confessing his guilt at the time of interrogation for about one hour while sitting on cemented slab. No public person had come during that period. The witness has admitted that proceedings were carried out till 10.00 p.m., at the bus stand of Phullan and no recovery was effected in his presence.

[26]. Complainant Rohtash has appeared as PW-11 and proved his statement Ex.P-2 on the basis of which the FIR Ex.P-3 has been registered. The witness has deposed that on 21.08.2008 at about 10.00 a.m., he was in the house of Dhan Singh along with his brother Lilu Ram. Dhan Singh was taking meal and his wife was cooking food for him. In the meanwhile accused Harpal @ Pale came present and asked his uncle Dhan Singh and took him along with him. His uncle Dhan Singh had told them that he will return back soon after an hour. The witness waited for his uncle till 2.00 p.m. and thereafter he

alongwith his brother Lilu Ram started for Fatehabad and reached Grain Market where Anil Kumar met them and he disclosed about Dhan singh having been seen by him along with the accused at Bighar road. All the three went to the village Bighar. At the bus stand of village Bighar many persons were discussing that a man has been murdered and his dead body was lying on the road. He along with his brother Lilu Ram and Anil Kumar went to the spot and found that the dead body was of his uncle Dhan Singh. After leaving Lilu Ram and Anil Kumar with the dead body, he went to Fatehabad and met the Police party at Ambedkar Chowk. He gave his statement to the Police which was duly thumb marked by him. In the cross-examination the witness has admitted that the Anil Kumar told him the registration number of the motorcycle, but he could not tell it being illiterate. When he gave the statement he was not aware of the registration number of the motorcycle used by the accused Harpal @ Pale. Whereas registration number of the motorcycle was shown in the statement Ex.P-2 and he was confronted with the same.

[27]. A shop transaction was stated to be the bone of contention between accused Harpal @ Pale and deceased Dhan Singh. The accused owed some money to deceased Dhan Singh. The witness further admitted that when Dhan Singh

left the house, he also returned back to his house. He came to Fatehabad city initially on a tractor and then by bus and reached there at about 2.15/2.30 p.m. at Fatehabad. Anil Kumar met them at the gate of Grain Market at about 2.30 p.m. Bus stand of village Bighar is at a distance of 5 k.m. from Fatehabad. Dead body was found at a distance from 1-1/2 km from the Bighar on Dhand Road. They reached at the spot where dead body was lying at about 3.30 p.m and stayed there for about 10 minutes. The witness used bus for going to Fatehabad from Bighar bus stand. He found police party present at Ambedkar Chowk and left the Ambedkar Chowk at about 5.30 p.m. and reached the spot at 6 p.m. Police stayed at the spot upto 6.30/6.45 p.m., and dead body was sent in private vehicle to Government Hospital, Fatehabad at about 6.30/6.45 p.m. Police also accompanied the dead body to the Hospital.

[28]. Lilu Ram has appeared as PW-12 who has testified that he went alongwith his brother Rohtash (complainant). This witness deposed that one hammer was lying there alongwith the dead body of Dhan Singh. The witness had not furnished the registration number of the motorcycle to the Police and was confronted with Ex.D-1 where it is so recorded. The witness had also left the house of Dhan Singh after Harpal @ Pale and Dhan Singh left. When police came to the spot, the sun was about to

set. People were gathered when police visited the spot and police had interrogated public persons, but nobody could tell the time since when the dead body was lying on the road. The witness has also admitted that the Police had already lifted the hammer when the photographs of the body were taken.

[29]. Anil Kumar has appeared as PW-13 who had also deposed on broad aspect of the prosecution case. This witness admitted that he met Dhan singh and Harpal @ Pale on motorcycle. They stopped him and informed him that they are going to village Bighar. Rohtash and Lilu Ram met him at the gate of Grain Market and all the three went in search of Dhan Singh. Motorcycle was being driven by Harpal @ Pale and Dhan Singh was the pillion rider. When they reached near bus stand of Bighar, some persons were already gathered there and were discussing that a dead body of man was lying on Dhand road. When all the three reached Dhand road, they found that the Dhan Singh, father-in-law of his brother was lying dead. One blood stained hammer was also lying by the side of the dead body. In cross-examination, witness admitted that the deceased was the father-in-law of his brother Dharambir. His village is stated to be at a distance of about 18 kms., from Fatehabad on the Bhuna road. He visited village Phullan only once at the time of marriage of his brother Dharambir about 7/8 years ago.

Except Dhan Singh he did not know anybody in village Phullan. Witness stayed at the house of his 'Bua' till 3.10 p.m. and left along with Lilu Ram and Rohtash from Grain Market, Fatehabad at about 3.30 p.m. Nobody told him that Dhan Singh and Harpal Singh would be found at Bighar road. The witness has also told that sun was about to set when Rohtash returned back with the police officials at the site.

[30]. Kuldeep Singh appeared as PW-14 and stated that the accused met him in the village at distance of 1-1/2 acre from his house. Nobody was present at that time. Accused told him that he had killed Dhan Singh. Since Police was after him, therefore, accused requested him to produce him before the Police. The witness showed his helplessness and asked accused to contact the Sarpanch of the village. The witness told the accused that since he had committed murder, therefore, he will disclose this fact to the Police. Thereafter accused ran away from there. The witness made his statement before the Police on the same day in the evening vide Ex.P-21.

[31]. Extra-judicial confession of the aforesaid witness i.e. Ex.P-21 revealed that he got his extra-judicial confession recorded to the effect that the accused came to his house and confessed the murder of Dhan Singh. Accused requested to the witness to produce him before the Police and the witness frankly

told the accused that since the occurrence is related to his community, therefore, he should take help of Sarpanch. This extra-judicial confession was witnessed by SHO Balbir Singh and ASI Chhatarpal Singh. The witness further admitted that Rohtash and Lilu Ram are his uncle and he was never elected Panch or Sarpanch of the village. Dhan Singh was his grandfather and Police came to the village on 21.8.2008 in the evening and the witness had disclosed the aforesaid fact to Lilu Ram and Rohtash on 23.08.2008.

[32]. HC Jagdish Chander, Police Line, Fatehabad appeared as PW-15. In his presence accused was interrogated and the accused disclosed that he had kept concealed clothes worn by him at the time of occurrence in cotton sticks lying near the 'dhani' of Ashok Kumar. Disclosure statement Ex.P-22 was reduced into writing and the same was attested by witness. The accused led the Police to the place of concealment and got recovered the clothes wrapped in black coloured polythene from underneath the cotton sticks and one dark brown track suit trouser and black coloured shirt. The case property was taken into police possession vide recovery memo Ex.P-23.

[33]. ASI Rajesh Kumar, In-charge Computer Office, Fatehabad appeared as PW-16. He stated that on 26.08.2008, he took the accused out from the police lock-up and

interrogated him. The accused disclosed that he had kept concealed the motorcycle at 'dhani' of Sunita wife of Naresh at village Biran. Pursuant to his disclosure, he got recovered a motorcycle from the fields of 'jawar' crop belonging to Mewa Singh son of Ranjeet Singh. Motorcycle was taken into police possession vide Ex.P-11.

[34]. DSP Balbir Singh, appeared as PW-17. He stated that he had conducted the raid in the house of the accused. Father of the accused told him that accused had not returned back. Thereafter he went to Harijan Chopal of village Kullan and found 8-10 persons there. Surinder Kumar and Kuldeep Singh told him about the confession made by the accused before them in respect of present crime. Statements of Surinder Singh and Kuldeep Singh were recorded as Ex.P-20 and Ex.P-21. Extra-judicial confession Ex.P-20 of Surinder Singh is also to the same effect as that of Kuldeep Singh Ex.P-21. As per extra-judicial confession Ex.P-20, the accused met Surinder Kumar at about 10.00 a.m. Whereas as per extra-judicial confession Ex.P-21 the accused met Kuldeep Singh at 11.00 a.m. on the same day i.e. 23.08.2008.

[35]. The witness thereafter went to bus stand of village Phullan where Pirthi Singh, Sarpanch met him and accused was produced by Pirthi Singh, Sarpanch at about 9.00 p.m. Accused

was interrogated at the bus stand of village Phullan, where he made a disclosure statement Ex.P-23. Witness reached the house of accused at about 4.15 p.m. and spent about 20-25 minutes at the house of the accused. Thereafter he reached Harijan Chopal at about 6.00 p.m, where both Kuldeep Singh and Surinder Singh made extra-judicial confessions Ex.P-20 and Ex.P-21. He stayed at Harijan Chopal for about 1-1/2 hour and thereafter Pirthi Singh produced the accused at about 9.00 p.m. He interrogated the accused for about 45 minutes at the bus stand.

[36]. Sanjay, shopkeeper has been examined as PW-18, who has stated that he is running business of selling various tools in his shop. On 21.08.2008 a person came to his shop and purchased a hammer from him against bill Ex.P-25. He did not identify the accused, who had purchased hammer Ex.P-25 from his shop. This witness was declared hostile.

[37]. ASI Krishan Kumar has been examined as PW-19, who besides deposing all particulars of the case also deposed that he along with Police party was present at Ambedkar Chowk at about 8.30 p.m. when the complainant Rohtash met them at about 8.15 p.m. The statement of Rohtash was recorded at Ambedkar Chowk. Rohtash stayed at Ambedkar Chowk for about 15/20 minutes and they reached at the spot in a private

vehicle at about 9.00 p.m. There were about 20-25 persons present at the spot. Lilu Ram and Anil Kumar were present at the spot when the police party reached the spot. Other persons belonged to the village Bighar. Dead body was lying on the footpath. Motorcycle was also lying adjacent to dead body at some distance. Photographer was called and he reached at the spot at about 9.05 p.m. Team of Scene of Crime along with Dog Squad reached at the spot at about 9.10 p.m. Proceedings under Section 174 Cr.P.C., were started at 08.15 p.m. and were completed about 10.00 p.m. No one from the family of the deceased came there except one relative namely Suresh who had come to the spot. The hammer was lying near the head of the deceased. Witness remained at the spot till 10.15 p.m. Till such time name of the person involved in the crime was not within the knowledge of the police party.

Plea in Defence

[38]. The prosecution closed its evidence. Thereafter statement of the accused was recorded under Section 313 Cr.P.C.

[39]. The accused denied the incriminating material in the statement and claimed his innocence. In the last election of Sarpanch Pirthi Singh was candidate of Sarpanch and his family supported him. Complainant had opposed Pirthi Singh in the

election. There was some altercation between them. With that motive a false case had been planted upon him.

Defence Evidence

[40]. The accused led evidence in his defence in the form of producing Pirthi Singh, who stated that he is the Sarpanch of the village. He saw accused at the flour mill which is in front of his house on 21.08.2008 at about 10.30 a.m. Accused again visited the flour mill for taking grinding wheat at 4.00 p.m. The accused was taken by the Police on 22.08.2008. He did not produce the appellant/accused before the police on 23.08.2008 and later on he came to know that accused had been implicated in the murder case of Dhan Singh. The witness was cross-examined, but in the context of Ex.P-22 i.e. arrest form and his signature appearing on that form were not put to him in his cross-examination. The signature of Pirthi Singh appearing on his statement as DW-1, if perused with the alleged signature appearing on Ex.P-22 has its own answer inasmuch as that even with naked eyes words are distinctly shown in vernacular as Pirthi Singh and Prithvi Singh. Even the signature are not presumed to have been made by the same person.

Judgement by the trial Court

[41]. Trial Court proceeded to convict the accused/appellant for the offence under Section 302 IPC vide impugned judgment

of conviction and order of sentence. The present appeal came to be filed by the accused/appellant.

Consideration by this Court

[42]. The entire prosecution story hinges upon circumstantial evidence to link the alleged culpability of the accused on the basis of last seen evidence of complainant Rohtash PW-11, Lilu Ram PW-12 and Anil Kumar PW-13. Secondly on the basis of motive on the part of the accused to commit crime in view of transaction of shop involving Rs.4,000/-. Thirdly on the basis of alleged recovery of incriminating articles viz. Hammer, motorcycle, blood stained clothes and lastly on the basis of extra-judicial confession of the accused before Surinder Singh and Kuldeep Singh PW-14.

[43]. In order to convict the accused on the basis of circumstantial evidence, there should be well-knitted circumstances so as to give irresistible conclusion of guilt by over ruling any other hypothesis. Evidence of extra-judicial confession is a weak type of evidence. Its credibility can only be judged by the time when confession was made and the credibility of witness who speaks the same. The circumstances of the present case which led to the time as confession was allegedly made do not inspire confidence even as per the findings recorded by the trial Court.

[44]. Admittedly Kuldeep Singh PW-14 had never been a Panch or Sarpanch of the village, nor was he holding any profile post or having relations with the Police. There was no occasion for the accused to repose any faith or confidence in PW-14 for making such confession. The confessions can be received in evidence subject to proving the same like other facts. It should not be involuntary. Confession would be involuntary if the inducement:-

- (a) does not refer to the charge against the accused persons.
- (b) It does not proceed from a person in authority.
- (c) It is not sufficient to give the accused the grounds which would appear to him reasonable for supporting that by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Since extra-judicial confession is a weak type of evidence, therefore, the Court should be circumspect in relying upon the same with great care and caution. The evidentiary value of such evidence is based on the veracity of evidence adduced. It should be voluntarily made and should be truthful. It should inspire confidence. It attains greater credibility and

evidentiary value, if it is supported by a chain of cogent circumstances and further corroborated by other prosecution evidence for making it basis for conviction. It should not be suffering from any material discrepancy and inherent probabilities. In any case it has to be proved like any other fact in accordance with law. The proposition held in **Tejinder Singh @ Kaka vs. State of Punjab, 2013(3) RCR (Crl.) 572 (Supreme Court)** can be relied in the present context.

[45]. The trial Court itself has found that extra-judicial confession allegedly made in the present case is not worth reliance and cannot be relied upon. Secondly the evidence of last seen by Rohtash (Complainant) PW-11, Lilu Ram PW-12 and Anil Kumar PW-13 has to be tested with reference to evidence on record and its veracity and evidentiary value.

[46]. Perusal of statements of PW-11 and PW-12 reveal that the deceased was a close relative i.e. uncle of the witnesses. The entire statement of PW-11 divulges/imports that the complainant waited for deceased Dhan Singh till 2.00 p.m. Thereafter they proceeded to Fatehabad where Anil Kumar met them. Then they went to village Bighar and found the dead body of Dhan Singh lying on the road side at about 3.30 p.m. The complainant remained there for ten minutes and thereafter he proceeded to Fatehabad and ultimately met the police party at

Ambedkar Chowk at about 5.30 p.m. The police party reached the spot at about 6.00 p.m. and stayed there upto 6.30/6.45 p.m. and the dead body was shifted to Government Hospital, Fatehabad at about 6.30/6.45 p.m. The witness has narrated the time schedule with reference to sequence of events right from his departure from the village at about 2.00 p.m. and reaching Fatehabad at about 2.15/2.30 p.m. and then contacting Anil Kumar at the gate of Grain Market at about 2.30 p.m. and ultimately reaching village Bighar and detecting the dead body at about 3.30 p.m. The time schedule has been duly supplemented by PW-12 which was duly coincided with the timings of detecting the dead body and arrival of the police party on the spot. Even the 3rd witness Anil Kumar has also endorsed the timings of departure from Fatehabad to village Bighar.

[47]. The lodging of FIR at 9.25 p.m. basing the visit at the spot at 8.15 p.m. is apparently proved to be beyond time schedule proved by the witness who had last seen Dhan Singh. Anil Kumar is also found to be a close relative of the deceased. Deceased Dhan Singh was father-in-law of brother of Anil Kumar. The last seen evidence is revolving around testimonies of interested witnesses. In the entire testimony of Rohtash PW-11 presence of hammer at the site was not pleaded in the statement. Witness further stated that after departure of

accused and Dhan Singh, he also returned back to his house. Question of waiting for Dhan Singh till 2.00 p.m. has not been proved once the witness had left home after departure of Dhan Singh along with accused. Lilu Ram PW-12 also admitted this fact that he had also left for his house after leaving Dhan Singh with Harpal @ Pale. The arrival of Police party at the spot when sun was about to set has been pleaded by this witness which makes the time schedule pleaded by these witnesses to be prior to 8.15 p.m. as suggested by the prosecution. The lodging of FIR at about 9.25 p.m. is proved to be delayed inordinately particularly when series of events have come in between the time pleaded by the complainant and negated by the official evidence.

[48]. Lilu Ram PW-12 has revealed that the hammer was lying near the head of the dead body of Dhan Singh. Police had already lifted the hammer when photographs of dead body were being taken. This fact stands negated in view of presence of hammer in one of the photograph i.e. photograph No.3. Photographs No.1, 3 and 4 of the dead body are with the face of deceased shown upward. In photograph No.3 hammer is lying in between dead body and a pinkish cloth lying towards head of the deceased. In Photograph No.2 this pinkish cloth is shown near the feet of Police official but the head of the dead body was

shown upward.

[49]. The presence of hammer only in one photograph, change of position of dead body with reference to head upwards in three photographs and upward in remaining three photographs are suggestive of the fact that there is apparent tampering in the scene of crime and creation of evidence with reference to placement of hammer in one of the photograph.

[50]. Statement of PW-12 further aggravated the prosecution story that there was a hammer at the site, but the same was removed by the police before photographs of the dead body were taken by the photographer. Keeping in view the close proximity of the witnesses with the deceased, ambiguity in the time schedule pleaded by the complainant-party and denial by the official witnesses and tampering with the scene of crime, placement of dead body on the site and placement of hammer in only one of the photograph make the things doubtful which equally casts doubt on the veracity of allegations made by the alleged witnesses on the aspect of last seen.

[51]. The motive as alleged by the prosecution is a very weak motive. Only a paltry amount of Rs.4,000/- has been pleaded for such a gruesome murder. Particulars of shop with reference to any rental or otherwise are conspicuously silent in prosecution story. Whether the amount was claimed or offered

for settling the account was payable at the instance of the accused through some agency is also conspicuously silent in the prosecution case. No witness has been examined in that context.

[52]. The inquest proceedings were only signed by Lilu Ram and Anil Kumar though six persons were found present at the time of preparation of inquest proceedings and these persons were even joined in the investigation. The witnesses so joined in the investigation at the time of inquest proceedings were reputed persons of the village and their non-examination at trial creates serious doubt in the prosecution story. Even in the inquest proceedings, hammer was pleaded, but while preparing sketch plan in column No.24 hammer was not shown. Mark 'A' and mark 'B' have been shown with reference to the placement of dead body and the situation of Jaanti tree engraved with No.41 at mark 'B'. Non-mentioning of hammer in sketch plan, absence of this hammer in five of the photographs, statement of PW-12 Lilu Ram in the context of hammer being taken away by the Police before taking photographs of the site of occurrence make out a case of tampering by the prosecution before making inquest proceedings and collection of evidence.

[53]. Further the postmortem report of the deceased showed multiple lacerated wounds of variable sizes over top and

posterior right parietal area with multiple fracture of skull bone. If these injuries are caused by hammer blow then there must be some depressed injury/fracture on the person of the deceased. No depressed fracture injury was found on the person of the deceased. Stomach and large intestine of the deceased were containing partially digested food. Admittedly the deceased took his meal at 10.00 a.m. The doctor has admitted that deceased must have taken his last meal about 3-4 hours prior to his death. Presence of partially digested food in the stomach of the deceased rules out the possibility of the deceased having died in the manner as suggested by the prosecution particularly with reference to timings in which he started from his house at 10.00 a.m. after consuming meal and found dead at about 3.30 p.m according to complainant story and was found dead about 8.15 p.m. as per police story.

[54]. Rigor mortis was found settling over the dead body which according to the opinion of the doctor starts setting of in summer season within 12 to 18 hours after the death. The lacerated wounds on the person of the deceased of variable sizes are also suggestive of the fact that the occurrence may have the background of some accident on the road side. Since there was no eyewitness to the occurrence, only circumstances are being knitted in order to make out a case of circumstantial

evidence. Therefore, nature of injuries found on the person of the deceased do not coincide with the story as propounded by the prosecution.

[55]. The extra-judicial confessions in the context of statements of PW-14 and Surinder Kumar i.e. Ex.P-20 and Ex.P-21 do not inspire confidence and further the production of accused by Pirthi Singh on 23.08.2008 is equally discrepant in view of arrest memo Ex.P-22 prepared by the Police and the statement of Pirthi Singh while appearing as DW-1. Ex.P-22 arrest form of the accused bears alleged signature of Pirthi Singh Sarpanch in vernacular of Hindi. The signature as appearing on this document reads 'Pirthi Singh' whereas while appearing as defence witness Pirthi Singh Sarpanch denied that he produced accused before the Police. No question was asked from him. No suggestion was given to him in respect of arrest memo Ex.P-22. The signature of Pirthi Singh as appearing on his statement as DW-1 does not tally with the statement appearing on Ex.P-22. The witness was never confronted with any such document. The signature appearing in the statement is 'Prithvi Singh' and is different than the tenor of writing the words in Ex.P-22 i.e. the arrest memo.

[56]. Even the statement of photographer PW-5 EHC Raj Kumar duly endorsed the time schedule as projected by the

complainant. When photographer reached at the site at about 8.30 p.m. the Police was already there and he was called by the Police along with Dog Squad.

[57]. It is necessary to test the prosecution story on the threshold of link evidence. PW-1 HC Mahabir Singh was posted as MHC with whom ASI Krishan Kumar deposited one parcel containing blood stained iron hammer with wooden *binda* (handle) with the seal of KK along with sample seal, one parcel containing blood stained dry grass and herbs sealed with the seal of KK along with sample seal, one parcel containing blood stained clothes of deceased Dhan Singh sealed with the seal of Doctor along with sample seal and one parcel containing blood stained clothes of accused Harpal @ Pale sealed with the seal of KK along with sample seal. Apparently these four parcels were deposited with MHC in Malkhana. The witness handed over these parcels to EHC Kuldeep Singh No.844 vide R.C. No.576 dated 05.09.2008 for depositing the same with DFSL, Madhuban for analysis. The witness has stated these facts on oath. The relevant paragraphs have already been reproduced in preceding para of the judgment. EHC Kuldeep Singh appeared as PW-7 and has also deposed his affidavit Ex.P-12. In his affidavit in para No.2 the witness has deposed on oath that on 05.09.2008, MHC Mahabir Singh had handed over one parcel

containing iron hammer fitted with wooden *binda* (handle), one parcel containing containing dry grass and herbs sealed with seal of KK after taking out the same from Malkhana vide R.C. No.576 dated 05.09.2008 for depositing the same to DFSL Madhuban. The witness deposited the aforesaid parcels on 25.09.2008 (i.e. the date beyond 20 days) with further recital that he handed over the receipt to MHC of the Police Station.

[58]. Both the aforesaid affidavits are conspicuously silent about remaining two parcels containing clothes of the accused as well as the deceased. The report of FSL Madhuban shows that all the four Exhibits were tested and were dispatched vide RC No.576 dated 05.09.2008 through EHC Kuldeep Singh No.844. Though as per FSL report all the four Exhibits were received in the FSL, but so far as link evidence of handing over two parcels containing clothes is concerned, those are not forthcoming in the affidavit of EHC Kuldeep Kumar PW-7. Serological analysis of the blood though found the origin to be of human, but blood group remained inconclusive. From the analysis also it cannot be culled out that the blood appearing on hammer and on the clothes of the deceased as well of the clothes of the accused was of the same person for want of proper grouping.

[59]. The recovery of motorcycle pursuant to disclosure

statement of the accused has not been witnessed by any independent witness. The statement of PW-6 EHC Prem Singh remained self-serving statement and no effort was made to join any independent person despite being available in abundance in day time. The statement of witnesses cannot be believed that only women folk were present in the 'dhani' at the relevant time. PW-9 Additional SHO Yogesh Kumar is only a formal witness who prepared the report under Section 173 Cr.P.C. So far as ASI Chhatarpal Singh PW-10 is concerned, he is a witness of arrest and interrogation of the accused. The accused was interrogated by the SHO Balbir Singh. This very witness did not narrate anything about the production of accused by Pirthi Singh except the statement of Surinder Singh and Kuldeep Singh in the context of extra-judicial confessions, rather he went on to say that Sarpanch was summoned at that time, but he was not present.

[60]. The manner in which accused was arrested is unclear and the statements of these witnesses runs contrary to statement of Balbir Singh the then SHO who has been examined as DSP as PW-17. The weapon of offence i.e. hammer and its presence at the site is conspicuous by its absence in the sketch of inquest proceedings, photographs except one and in the statement of PW-11. Even PW-12 Lilu

Ram has stated that this hammer was removed by the police before arrival of the photographer. Purchase of this hammer from the shop of Sanjay PW-18 does not prove the prosecution case as the witness did not identify the accused, and rather became hostile when he was cross-examined, but nothing incriminating could be brought on record.

[61]. The statement of Investigating Officer Krishan Kumar is to the effect of showing that he remained present on the site at about 10.15 p.m. and till that time the police party was not in the knowledge of accused. This fact itself suggests that a case of blind murder had been planted upon the accused. Police was not sure till 10.15 p.m. as to who had killed the deceased, whether it was a murder or was an accidental death? By that time, statement of the complainant was very much available with the Police. The Investigating Officer while appearing as PW-19 has categorically stated that the appellant did not have knowledge of the accused till 10.15 p.m.

[62]. Since the case involves circumstantial evidence, therefore, the circumstances are not well-knitted and absence of one of the knot would entail in breaking of entire series of alleged circumstances and there cannot be any uniform hypothesis which can bring culpability of the accused to the hilt. There cannot be any such irresistible conclusion on the

basis of alleged circumstances. Last seen has not been proved with reference to unimpeachable testimonies of independent witnesses, nor motive has been proved to the hilt and neither the link evidence has been proved in the case, establishing the guilt of the accused/appellant. Narration of circumstances in which prosecution has tried to fill the gaps in a way go to create doubt in respect of veracity of allegations raised by the prosecution against the accused.

[63]. In entirety of facts and circumstances, benefit of doubt has to be given to the accused/appellant in view of inherent lacunae in the prosecution story in all the fronts of circumstantial evidence viz. last seen, extra-judicial confessions, motive, link evidence and recovery of weapon of offence.

Conclusion

[64]. Resultantly, this appeal is accepted. Impugned judgment of conviction dated 19.04.2010 and order of sentence dated 21.04.2010 passed by Additional Sessions Judge, Fatehabad is set aside. Applicant/appellant is acquitted of the charges.

(S.S. SARON)
JUDGE

October 31, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE