

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-332-DB-2003

Date of decision: 04.02.2016

Bashir @ Chhotu

..... Appellant

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Deepak Bhardwaj, Advocate
for the appellant.

Mr. Dhruv Dayal, DAG, Haryana.

RAMENDRA JAIN, J.

Appellant-Bashir @ Chhotu, has preferred this appeal against the judgment dated 14.11.2002 holding him guilty for commission of offence under Section 302 of the Indian Penal Code (IPC) and order of sentence of even date, sentencing him to undergo rigorous imprisonment for life, passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

2. Briefly stated, on 15.07.2000, appellant-Bashir @ Chhotu and Ram Nath (deceased) were engaged by complainant-Rakesh Kumar

as labourers to remove weed from his crop. Around 2.00 P.M. on 16.07.2000, complainant-Rakesh Kumar after fetching food for his above labourers called them for lunch from a distance of 30-40 feet from his tube well room. He saw the appellant coming out of his tube well room with a spade in his hand. On seeing the complainant, the appellant ran away by leaving the spade at the spot. On entering the tube well room, the complainant found Ram Nath lying dead having injuries on his neck. The complainant ran towards village to inform the villagers about the murder of Ram Nath. Panch Ram Pal met him on the way to whom he disclosed the entire episode besides other co-villagers. The complainant reported this matter to the police vide his statement Ex. PJ recorded at the bus stand of village Bherthal. Accordingly, FIR Ex. PJ/1 was recorded by SI Rajinder Singh. During investigation, spade Ex. P-1 was taken into possession, after preparing its sketch Ex. PL/1. Inquest proceedings were conducted and post-mortem examination on the dead body of Ram Nath was also got conducted. The appellant was arrested on 24.07.2000. After completion of the necessary formalities, final report under Section 173 Cr.P.C. was filed against the appellant in the Court.

3. Since the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the Area Magistrate committed the case for trial to the Court of Session.

4. On commitment of the case by the learned Area Magistrate, to the Court of Session, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, vide order dated 07.12.2000 on finding a *prima facie* case charge-sheeted the appellant under Section 302 IPC, to which he

pleaded not guilty and claimed trial.

5. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court convicted and sentenced the appellant as indicated above in the opening part of this judgment.

6. Learned counsel for the appellant argued that in his initial statement Ex. PJ, the complainant is stated to have seen the appellant causing spade blows to deceased Ram Nath and on seeing him, his fleeing from the spot by leaving the spade in the tube well room. Contrary to it, complainant as PW-9 before the trial Court did not depose so. Meaning thereby, the complainant had not seen the appellant causing any injury with the spade to deceased Ram Nath. He further contended that since PW-10 Mange Ram had not witnessed the occurrence, therefore, his statement is of no avail. Panch Ram Pal, to whom the complainant had informed about the alleged occurrence at the first instance has not been examined by the prosecution for the reasons known to it, thus, it is a case of no evidence. The entire case of the prosecution is based on circumstantial evidence. The learned trial court has erred in convicting the appellant without any eye-witness account and if any, the same is contradictory.

7. On the other hand, learned State counsel vehemently opposed the above arguments of learned counsel for the appellant.

8. After giving our thoughtful consideration to the submissions made by learned counsel for the parties, we find the instant appeal completely devoid of any merit for the reasons to follow:-

- (i) The occurrence took place on 16.07.2000, whereas the appellant was arrested on 24.07.2000. Had he been innocent, he would not have fled away from the spot. His above conduct and further his arrest after 8 days of the occurrence is sufficient to draw an adverse inference against him that he had fled away from the spot being guilty in his mind of murdering his co-labourer Ram Nath.
- (ii) The defence taken by the appellant in his statement under Section 313 Cr.P.C. that the complainant had murdered Ram Nath on account of some money dispute has rightly been discarded by the learned trial Court, because the same has no legs to stand in the absence of any narration of the quantum of money for which there was alleged dispute in between the complainant and deceased Ram Nath. The appellant and Ram Nath (deceased) were engaged by the complainant on 15.07.2000 i.e. one day prior to the date of occurrence @ ₹ 70/- per day as stated by PW-9 the complainant. Hence, the alleged dispute at the most in between the complainant and deceased Ram Nath would not have been more than ₹ 70/-. It does not appeal to reason that the complainant would have murdered Ram Nath for such a petty amount, more particularly when he could have prolonged such a

petty payment at least for a week or month. From the solitary statement of the complainant (PW-9), the prosecution has been well able to prove its case against the appellant.

- (iii) The appellant and deceased-Ram Nath, were residents of Bihar and that too of the same locality. There may be some dispute in between them over money or for some other reason. The complainant was not knowing the appellant or deceased Ram Nath, one day prior to the date of occurrence. Hence, the complainant cannot be attributed any motive for murdering Ram Nath, rather it appeals to the reason that the appellant must have murdered his co-labourer Ram Nath on account of some money dispute or otherwise with him.
- (iv) The discrepancy pointed out by learned counsel for the appellant in the statement of complainant before the police and as PW-9 before the Court is in fact no discrepancy in the eyes of law, because he was the solitary eye-witness to the occurrence. Even otherwise the same relates to insignificant aspect of the case. In his initial version Ex. PJ, the complainant categorically stated that he had seen the accused coming out of the tube well room having a blood stained spade in his hand after causing injuries to deceased Ram Nath. He had further stated that on

seeing him, the appellant had fled away from the spot by leaving the spade at the spot. Recovery of spade from the spot by the police itself corroborates the statement of complainant. Hence, no other conclusion can be drawn except that it was the appellant only who had committed the murder of Ram Nath, because at that time, no other person was present in the tube well room.

9. No other point was urged before us.

10. The instant appeal is completely devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 04, 2016

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