

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

**CRA-D-574-DB-2003
Date of decision:06.04.2017**

Krishan Kumar @ Dasi

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Baljinder Singh, Advocate as
Legal Aid Counsel for
the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been filed against judgment and order dated 17.05.2003/19.05.2003 passed by the Court of Sessions Judge, Bhiwani vide which appellant-accused was convicted for offence under Section 302 IPC and sentenced, to undergo imprisonment for life and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo rigorous

imprisonment for six months.

The accused-convict by way of filing the present appeal submits that his appeal be accepted and the impugned judgment of his conviction and order of his sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated the prosecution story as it came out during the trial is that on 28.08.2000 a police party from Police Station, Sadar, Bhiwani led by ASI Siri Bhagwan was going to village Haluwas, Nimriwali in connection with patrolling and checking of crime, when it came across complainant-Ramesh Kumar son of Chiranji Lal, resident of Haluwas, aged 32/33 years, who got his statement Ex.PG recorded with the said ASI. Inter alia in the statement, he stated that he is labourer by avocation; that they were six brothers, he being the eldest followed by Rajbir, Kishan Lal, Balbir Singh, Pawan Kumar and Manjeet Kumar; that he and Rajbir are married and living separately whereas remaining brothers live with their parents; that his brother Kishan Lal was also married but his wife had expired; that Kishan Lal had been cultivating land in partnership of Vinod son of Ram Kumar, resident of Haluwas for last one year alongwith Krishan Kumar @ Dasi son of Bihari, an uncle in the brotherhood; that Kishan Lal and Dasi used to cultivate half portion of land each, situated near Brahminwala Johar, Krishan Kumar @ Dasi used to reside in a *KOTHA* situated in the fields alongwith his family and Kishan Lal. However, after harvesting the wheat crop a dispute had arisen between Krishan Kumar @ Dasi and Kishan Lal over some matter and they vacated the *KOTHA* and started living at Haluwas, both of them used

to go to the fields in the morning and would return home in the evening; that on previous day i.e. 27.08.2000 in the evening Kishan Lal did not return home, they thought he might have slept in the fields, however, on the next day, i.e. 28.08.2000 at 10 a.m. Balbir, younger brother of complainant went to the field alongwith breakfast for Kishan Lal, but he (Kishan Lal) was not found to be there, on search being launched, dead body of Kishan Lal was found lying under a *KIKAR* tree in the field of Jaswant Singh son of Panna Singh resident of the village. Balbir came back home and informed them accordingly. According to the complainant, thereafter, he alongwith his brother, Rajbir, Balbir, Vinod son of Ram Kumar (owner of the field), Rajender Singh, Sarpanch and other residents of the Mohalla went to the spot, where dead body of his brother was found lying on the ground having injuries on his head, face, mouth from which blood had oozed out in a large quantity; that they made inquiries from the persons having agricultural land in the neighbourhood and then Vijender son of Jagan Singh resident of the village disclosed to them that on the previous day i.e. on 27.08.2000 at about 12/1 p.m., he had seen accused Krishan Kumar @ Dassi going towards Dadri, the place of occurrence and after sometime Dasi was seen by him going back swiftly towards Dadri road. As such, inquiries about Krishan Kumar @ Dassi were made. Then Vinod told them that Krishan Kumar @ Dassi had come to his house in the afternoon and gone from his house at the same time by saying that he was going to Sirsa because his sister was under the effect of ill omens and he asked him to take care of his field. At that time he was perplexed. Complainant stated that he suspected

Krishan Kumar @ Dassi having killed his brother Kishan Lal by inflicting injuries with some sharp edged pointed weapon; that after leaving Balbir Singh and other people of the village near the dead body he was going to Police Station, Sadar, Bhiwani to lodge report regarding the incident, on the way near railway bridge, Bhiwani, he came across police party and got his statement recorded. The statement was thumb marked by the complainant, which was attested by ASI Siri Bhagwan (hereinafter referred to as Investigating Officer/I.O.). The Investigating Officer appended his endorsement Ex.PG/1 below that statement and sent ruqa to Police Station through C. Ved Parkash on the basis of which formal FIR Ex.PF was recorded by MHC Dharam Chand. The police party then proceeded towards the spot. A photographer was called there, such photographer namely Dharmender, clicked photographs of the dead body. The Investigating Officer carried out inquest proceeding with respect to the dead body preparing report Ex.PC in that regard. He drafted an application Ex.PB and deputed police officials to get the post-mortem examination conducted on the dead body of the deceased. He took into possession blood stained earth from the place of occurrence. He further seized shirt Ex.P3 and pair of *CHAPPAL* Ex.P4 & Ex.P5 by converting those into a parcel taking that into possession vide recovery memo Ex.PL. The parcel was sealed with seal having inscription "SBP". ASI Siri Bhagwan had prepared rough site plan of the place of occurrence Ex.PS. SI Ram Bilas then posted as SHO Police Station, Bhiwani had also reached at the spot and he verified

facts from ASI Siri Bhagwan and then took over investigation of the case in his hands. After post-mortem examination, the doctor had handed over belongings of the deceased to C. Kailash, who in turn produced the same before SI Ram Bilas, who took those into possession vide recovery memo Ex.PT, attested by the witnesses. The said police officials searched for the accused but he was not available.

On 30.08.2000 the investigation of the case was entrusted to Inspector Dungar Singh, then working as Welfare Inspector, Bhiwani. Inspector Dungar Singh alongwith ASI Siri Bhagwan and C. Maha Singh went to village Haluwas in a private jeep and launched a search for the accused. Rajender Singh, Sarpanch of village produced accused before Inspector Dungar Singh. The Investigating Officer recorded statement of Rajender Singh, Sarpanch. Accused was arrested in this case and was interrogated, during the course of which he suffered a disclosure statement Ex.PM to the effect that he had kept concealed a *LATHI* in his field and could get the same recovered and except him nobody knew about it. Therefore, accused, while in police custody got the *LATHI* Ex.P1 recovered. It was converted into a parcel, sealed with seal having impression "DS" and was seized. Rough sketch of the *LATHI* had been prepared as Ex.PQ whereas rough site plan of the place of recovery of *LATHI* Ex.PR was also prepared. The Investigating Officer recorded statements of witnesses and on return to the police station put the accused in the lock up and deposited the case property with the MHC.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Bhiwani.

On presentation of *challan* in the Court of learned Additional Chief Judicial Magistrate, Bhiwani, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Sections 302 IPC is exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Bhiwani vide his order dated 17.11.2000 committed the case to the Court of Sessions Judge, Bhiwani.

When the case was received in the Court of learned Sessions Judge, Bhiwani finding a prima facie case, charge for offence under Sections 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as thirteen witnesses as detailed below:-

PW-1 Dr. Amrita Bhardwaj, Medical Officer, General Hospital, Bhiwani, stated that on 28.08.2000, she alongwith Dr. S.K. Anand had conducted post-mortem examination on the dead body of Kishan Lal who was brought there by C.Ved Parkash No.742 and C. Kailash Chand No.452 from Police Station, Sadar Bhiwani. The examination was conducted at about 5:30 p.m.. Length of dead body

was 5'11", neck was congested, body averagely built and nourished.

The observations were as follows:-

Wearing white *PYJAMA*, blue *KACHHA*, black thread in waist, black Kara in right forearm. In left forearm wrist watch yellow band. Rigor mortis present in right lower limb only. Eyes closed, mouth opened. Tongue clenched between teeth and clotted blood oozing out of both ear and mouth. Maggot running over mouth and nostril. Hair smeared with blood. Skin peeled off from whole of the body.

1. Face, neck, upper part of chest, congested on dissection, subcutaneous haematoma present.
2. Wound present over middle of lower lip, entering deep into mouth cavity, lower incisor teeth avulsed from its root. Lower multiple fracture present in lower jaw. Size of wound were 4 cm. in length and 2 cm. in breadth, edges oedematous.
3. On dissection of neck subcutaneous haematoma present. Thyroid bone fracture present. Mucosa of larynx blood present, blood present in the muscles of neck and congested.
4. On dissection of skull subcutaneous and deep haematoma present. No fracture of skull wound present.
5. Left upper first, second, third rib fracture

present.

6. Fracture of cervical vertebrae second and third present.

7. Both eyes blackening present all round and swollen. On opening of skull brain was congested. Abdomen was healthy. Peritoneum healthy, mouth pharynx and oesophagus as described earlier. Stomach empty and healthy. Small intestines healthy and empty. Large intestines healthy and empty. Liver healthy and pale. Spleen healthy and putrefying. Kidney healthy and putrefying. Bladder healthy and empty. Organs of generation healthy and shows signs of putrefaction. Walls, ribs and cartilages as described. Pleurae blood present in left pleural cavity. Larynx tracheae as described. Right lung putrefy. Left lung putrefying laceration present in upper part of lobe of lung. Pericardium healthy. Heart both chamber empty. Large vessels healthy and congested.

Cause of death in this case in their opinion was due to asphyxia, shock, haemorrhage due to injuries to the vital organs which were ante mortem in nature and sufficient to cause death in ordinary course of nature. As per opinion, the time elapsed between injuries and death was within few minutes and between death and post-mortem was 72 hours. This witness proved carbon copy of PMR as Ex.PA, stating that they had conducted post-mortem on the dead body on the police

application Ex.PB proving inquest report Ex.PC. The witness further stated that on police application Ex.PD, they gave their opinion Ex.PD/1 to the effect that injuries on the dead body could be caused by *LATHI* shown to them by the police. She proved *LATHI* Ex.P1, *PYJAMA* Ex.P2 and *KACHHA* Ex.P3 stating that those were the same which were removed by them from the dead body.

PW-2 Jai Bhagwan , Patwari, Halqa Devsar-I, District, Bhiwani, deposed that on 14.10.2000, he had prepared scaled site plan Ex.PE using the scale 40 *Karam* = 1 inch on the pointing out of Ramesh Kumar son of Chiranji Lal under his signatures and according to the revenue record.

PW-3 C. Maha Singh, stated that on 28.08.2000 he was posted at Police Station, Bhiwani and on that day, MHC Dharam Chand handed over to him the copies of FIR for delivering the same to the Illaqa Magistrate and to the higher Police Officer and accordingly he delivered the copy of FIR Ex.PF to the Illaqa Magistrate on 28.08.2000 at 5.30 p.m..

PW-4 HC Dharam Chand, stated that on 28.08.2000 he was posted at Police Station, Sadar, Bhiwani, on that day, he received ruqa i.e. statement of Ramesh Kumar-complainant Ex.PG with endorsement Ex.PG/1, on the basis thereof he had recorded formal FIR Ex.PF and dispatched the same to the Illaqa Magistrate through C. Maha Singh as special report of this case. The witness also submitted his affidavit Ex.PH stating that it be read as his evidence.

PW-5 C. Des Raj, a formal witness tendered into evidence his affidavit as Ex.PJ.

The Public Prosecutor tendered into evidence report of Forensic Science Laboratory Ex.PK and Ex.PK/1 while given up C. Ved Parkash and C. Kailash Chand as unnecessary.

PW-6 Ramesh-complainant, who had made statement to the police regarding the incident which formed basis for registration of the FIR, deposed in that regard and with respect to the investigation conducted in his presence.

PW-7 Rajinder Singh son of Gugan Ram, aged 42 years, Sarpanch of village Haluwas stated that on 30th day, however, month he could not tell, but it was 3/4 months earlier (statement of this witness was recorded in the Court on 02.03.2001). On a second thought the witness stated that it was the month of July, 2000 when Krishan Kumar @ Dassi-accused then present in the Court had come to him while he was present at his house; that he was afraid at that time and disclosed that he had committed murder of Kishan Lal and requested him to save him from police being Sarpanch of the village. According to the witness he took the accused to the police in the presence of Dungar Singh Inspector, Siri Bhagwan ASI and 2/ 3 other police officials and handed over the accused to the police. He stated that accused had told him that he committed murder of Kishan Lal with *LATHI*.

PW-8 Balbir Singh, a brother of the deceased supported the prosecution story on material aspects.

PW-9 ASI Siri Bhagwan, who had carried out the investigation in this case to some extent deposed regarding his part.

PW-10 SI Ram Bilas, who had carried out the investigation in this case to some extent deposed in that respect.

PW-11 Vijender Singh son of Jagan Singh, aged 44 years, cultivator, resident of village Haluwas, Bhiwani, deposed that about a year back (statement of this witness was recorded in the trial Court on 30.07.2001) he was grazing buffalo in the noon time, when he had seen son of Bihari, though the witness did not name him but at asking of Public Prosecutor he had stated that accused present in the Court on that day was the person who was present in the crop of *BAJRA* and he had seen him going from the fields. He stated that he does not know anything except that. On the next day he came to know that a person was murdered and police had recorded his statement.

PW-12 Inspector Dungar Singh, who had carried out investigation in this case from 30.08.2000 onwards testified in that regard.

PW-13 Dharmender son of Krishan Kumar, photographer, Sanni Studio, Gaushala Market, Bhiwani, deposed that on 28.08.2000 he had reached the place of occurrence and taken five snaps of the dead body of the deceased Ex.P7 to Ex.P11 and negatives Ex.P12 to Ex.P16. He stated that photographs bear the seal of his studio.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him, but he denied all the allegations submitting that he is innocent and has been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused-Krishan Kumar @ Dassi as mentioned above.

We have heard learned counsel for the appellant-convict and learned Assistant Advocate General for the State besides going through the record and we are of the firm view that the impugned judgment of conviction and impugned order of sentence are not sustainable and are liable to be set aside by way of acceptance of appeal. The reasons for arriving at such conclusion are as under:-

It is a case which is based on circumstantial evidence with no person coming forward claiming to have seen the incident himself or herself. The law is well settled that in such an eventuality the chain of evidence must be complete leading to only one hypothesis, that it was the accused and the accused alone who had committed the crime. However, if the vital links in the chain are missing that gives rise to a strong doubt in the mind about truthfulness of prosecution story. In such a case motive also plays an important role. In the present case the medical evidence does not corroborate the prosecution story inasmuch as according to PW-1 Dr. Amrita Bhardwaj, who alongwith another doctor had conducted post-mortem examination on dead body of the deceased Kishan Lal had given cause of death in their opinion due to

asphyxia, shock, haemorrhage due to injuries to the vital organs which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. It comes out that the main reason for the death comes to be asphyxia but then no ligature marks around the neck of the deceased were observed to be present there.

Secondly the post-mortem is said to have been conducted on 28.08.2000 at about 5:30 p.m. whereas according to prosecution story accused had gone missing on 27.08.2000. As stated by PW-1 Dr. Amrita Bhardwaj the time that elapsed between injuries and death was within few minutes and between death and post-mortem was 72 hours, which means that death could have occurred possibly on 27.08.2000 and even earlier on 26.08.2000, which creates a doubt in the mind about truthfulness of the prosecution case.

Thirdly, as per prosecution story the accused had made an extra judicial confession before Rajender Singh on 30.08.2000. But PW-7 Rajender Singh in his statement though gave the date as 30th, could not tell the month when the accused had come to him as per prosecution story for the purpose of confessing his guilty before him; on a second thought he said that it was 3/4 months earlier (statement of this witness was recorded on 02.03.2001). If one goes back by 3/4 months, then the month comes out to December 2000 or November 2000. The witness again changed his stance stating that it was in month of July, 2000 when the accused had come to him. The incident is dated 27.08.2000, it being so it is improbable that accused would go to

Rajender Singh, Sarpanch and confess his guilty of having committed a crime which had not happened by that time. In his cross-examination the witness stated that he came to know about death of Kishan Lal on 28.07.2000 when as a matter of fact the incident is stated to be on 27.08.2000. Again it is impossible that the witness would come to know on 28.07.2000. Although he stated that he had taken accused to police in the presence of Dungar Singh, Inspector, Siri Bhagwan ASI and 2/3 other police officials but interestingly in respect of the documents prepared by the police with respect to arrest of the accused his suffering disclosure statement getting, recovery effected etc. do not bear signatures of this witness.

The claim of the witness that it was he who had produced the accused before the police is further belied when PW-8, brother of deceased stated in his cross-examination that his brother Ramesh accompanied the police and he pointed out the police about the accused Krishan Kumar @ Dassi sitting in the *DHABA*. The accused was arrested from the *DHABA* which is situated in front of his village on Dadri Bhiwani road. Whereas PW-9 ASI Siri Bhagwan had something else to state inasmuch as he in his examination-in-chief deposed that Rajender Singh, Sarpanch had produced accused before the police. Then he was formally arrested. In that way a big question-mark is put over creditability of PW-7 Rajender Singh and it becomes doubtful as to whether accused had approached him and made any extra judicial confession before him.

Then as regards the recovery of *LATHI* got effected by the accused in pursuance of the disclosure statement made, it was stated to have been sent to Forensic Science Laboratory and with regard to report received therefrom Ex.PK, a perusal thereof goes to show that it was found to be stained with faint brown stain towards broader end and the result given was "*blood was detected thereon*". However, though regarding *CHAPPALS*, blood stained earth and *PYJAMA*, the opinion given is that those were stained with human blood but with regard to the *LATHI*, no such opinion is there, rather it is mentioned material disintegrated. Therefore, keeping in view the fact that the *LATHI* is branch of a tree, which is easily available and with no definite opinion that it was stained with human blood. It is difficult to arrive at a conclusion that it was used in the incident by the accused for causing injuries to deceased. Therefore, prosecution story suffers on that account also.

Furthermore, the motive suggested in the incident is quite weak i.e. some dispute having arisen between accused and the deceased as stated by complainant-Ramesh Kumar in his statement to the police. Neither there are clear and specific allegations constituting a strong motive made by the prosecution nor any cogent and convincing evidence has been brought on file to prove the same. Though the motive is not of much importance in a case where direct evidence of the crime is available but it does assumes significance when it is not so and case is based upon circumstantial evidence. As per prosecution story

itself the deceased and accused used to work and reside together though later on they had started residing separately. There might have arisen some difference between the two but normally no person goes to the extent of committing murder of the other, that too, related to him in brotherhood, without a big reason for the same. Here the prosecution has not been able to establish that there was any strong motive for the accused to commit murder of the deceased. Therefore, prosecution story suffers a jolt on that account.

Furthermore, the dead body of the deceased was found to be in vacant fields visible from distance of one acre as stated by PW-6 Ramesh in his cross-examination, he had further stated that in those days women folk used to visit fields for collecting green fodder. It is highly unlikely that murder of Kishan Lal would not have come to knowledge of the persons passing nearby or having agricultural land near to that soon after it was committed.

PW-11 Vijender Singh, claimed to have seen accused coming from crop of *BAJRA* and then going from field stated that on the next day he came to know that person was murdered (statement of the witness was recorded in the Court on 30.07.2001), if we go back by one year the date comes out to 30.07.2000, whereas according to prosecution story the incident had taken place on 27.08.2000. This witness did not claim to have seen accused committing murder of the deceased or accused and deceased going together towards the fields and thereafter hearing any hue and cry and thereafter only accused coming

out of fields. The witness was confronted with the statement made to the police and he was found to have made material improvements. Much reliance cannot be placed on such type of witness, therefore, testimony of this witness is also not much incriminating against the accused.

Therefore, the prosecution has been unable to complete the chain of evidence and to prove its charge against the accused beyond a shadow of reasonable doubt that it was accused Krishan Lal @ Dasi who on 27.08.2000 in the area of village Haluwas, committed murder by causing the death of Kishan Lal son of Chiranjit Lal. Rather a reasonable doubt arises in the mind about guilt of the accused. As per law, benefit of doubt has to be given to the accused. The trial Court by misappraisal of evidence and wrong interpretation of law came to erroneous conclusion that the charge against the accused stood proved conclusively and affirmatively, whereas it was not so.

The impugned judgment and order of sentence are not sustainable, they are set aside by way of acceptance of the appeal. Resultantly, the accused is acquitted of the charged framed against him.

Necessary direction in that regard be issued to the quarter concerned.

06.04.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |