

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

CRA-D-58-DB of 2010

Date of Decision: 28.11.2018

Ravi Kumar

.....Appellant

Versus

The State of Haryana

.....Respondent

**Coram: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Sanjeev Sharma, Advocate
as Legal Aid Counsel for the appellant.

Mr. Vikrant Pamboo, Deputy Advocate General
for the State of Haryana.

ARUN KUMAR TYAGI, J.

1. The convict-Ravi Kumar (hereinafter referred to as the accused) has filed the present appeal against the judgement of conviction dated 23.10.2009 and order of sentence dated 26.10.2009 passed by the learned Additional Sessions Judge, Faridabad in Sessions Case No. 68 of 2008 titled State Versus Ravi Kumar whereby the accused was convicted and sentenced to undergo life imprisonment and to pay fine of ₹1,000/- and in case of default in payment of fine to further undergo rigorous imprisonment for a period of 6 months under section 302 of the Indian Penal Code, 1860 (for short "the I.P.C.") and to undergo rigorous imprisonment for a period of 3 years and to pay fine of ₹500/- and in case of default in payment of fine to further undergo

rigorous imprisonment for a period of 3 months under section 201 of the I.P.C. Both the sentences were ordered to run concurrently.

2. Briefly stated, the case of the prosecution is that on 22.04.2008, Braham Singh, Inspector/SHO Police Station, Sarai Khawaja, along with Constable Jora Singh was present in Gypsy driven by EHC Rajesh on Sarai Chowk for VIP duty. Information was received by VT from control room that one dead body was floating in Ganda Nala(drain) (hereinafter referred to as "Ganda Nala") NTPC near Khadda Colony, Delhi in the area of village Basantpur, Faridabad. On receipt of the information, Braham Singh, Inspector/SHO along with the staff reached the spot where Police Post In-charge ASI Karamvir Singh along with the staff, Yogesh Verma and 8-10 persons met him.

Yogesh Verma made statement to Braham Singh Inspector/SHO that he is working as Civil Contractor. On 22.04.2008, at about 8:00 P.M., he was coming to his house i.e. H.No.D-147, Basantpur Colony, Basantpur, Faridabad through Khadda Colony Ganda Nala NTPC. When he was crossing on Ganda Nala, he saw naked young boy floating in dead condition in the water. In the meanwhile many persons gathered there. They took out the dead body from Ganda Nala. His neck was half cut from front side from which blood was oozing out. Out of the crowd, one person informed the police on telephone number-100. The boy was aged about 27/28 years. OM was written on his right

hand. His body was thin, face was long and length medium. Some unknown person had murdered him by cutting his neck with deadly weapon and dropped him in Ganda Nala so that his name and address could not be traced.

Since the statement revealed commission of offences punishable under sections 302 and 201 of the I.P.C., Braham Singh, Inspector/SHO sent ruqqa to Police Station, Sarai Khawaja on the basis of which FIR No. 105 dated 22.04.2008 was registered.

Braham Singh, Inspector/SHO investigated the case, got the post-mortem conducted on the dead body, conducted inquest proceedings, by making efforts got the dead body identified to be that of Nanu alias Krishan Nandan, and thereafter on finding sufficient evidence arrested the accused. During investigation, the accused made disclosure statement to Braham Singh, Inspector/SHO confessing his guilt and got the weapon of offence i.e. knife kept in iron almirah in his house and personal belongings of the deceased i.e. shirt, trouser, slippers and purse containing passport size photograph, copy of ration card and amount of ₹110/- made up by two currency notes of the denomination of ₹50/- and one currency note of the denomination of ₹10/- wrapped in a polythene kept in attache on the 'tand' (shelf) of his house recovered in accordance with his disclosure statement. The accused also identified the place of occurrence where-from blood stained earth was seized. The Investigating

Officer recorded the statements of Ramsakhi, mother and Uma Shankar and Raghunandan brothers of the deceased.

In her statement, Ramsakhi alleged that on 21.04.2008, as usual her son had gone in the morning on work. At about 10:00 P.M. he came back and told her that the contractor had given him ₹300/- for him and ₹700/- for accused Ravi Kumar, which he had to go and give him. She asked him to first have meals, but he asked her to serve meals as he will come back shortly. She waited for her son whole night but he did not return. In the morning, she enquired from her other sons. She along with her son Raghunandan reached the house of accused Ravi Kumar and enquired from him about her son Nanu alias Krishan Nandan, but accused Ravi Kumar told her that Nanu alias Krishan Nandan had gone from his residence at about 11:00 P.M. and he did not know his whereabouts. Thereafter, she and her family members searched for Nanu alias Krishan Nandan. On that day i.e. 24.04.2008 when she and her son Raghunandan were searching for him, they saw the poster fixed at the three wheeler stand, Khadda Market and some person standing by also informed about recovery of dead body on which her son Raghunandan telephoned him (Braham Singh Inspector/SHO) and saw the dead body kept in the mortuary of B.K.Hospital, Faridabad, which was identified by her and her son Raghunandan. She informed her sons Dev Shankar and Uma Shankar, daughter Savitri and contractor Ram Karan and other family members who also

identified the dead body. She had firm belief that accused Ravi Kumar had murdered her son Nanu alias Krishan Nandan by cutting his throat after removing his clothes due to grudge of altercation which had taken place between them 3-4 days back and had thrown the dead body in Ganda Nala NTPC with the intention that nobody could identify him. Uma Shankar and Raghunandan, brothers of the deceased also made similar statement to the Investigating Officer.

On completion of usual steps of investigation, Braham Singh Inspector/SHO Police Station, Sarai Khawaja filed charge-sheet against the accused.

3. After supplying copies of the charge-sheet and documents enclosed therewith to the accused, case was committed to the Court of Sessions by learned Judicial Magistrate 1st Class, Faridabad. On finding prima facie case, charges under sections 302 and 201 of the I.P.C. were framed against the accused by learned Additional Sessions Judge, Faridabad to which the accused pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined PW-1 Draftsman Sarwan Kumar; PW-2 EHC Rajender Singh; PW-3 ASI Hariom; PW-4 Constable Jallandhar Singh; PW-5 Head Constable Sant Ram; PW-6 Dr. Sushil Kumar, Medical Officer, B.K. Hospital, Faridabad; PW-7 Head Constable Yash Pal; PW-8 Uma Shankar; PW-9 Ramsakhi; PW-10 Raghunandan; PW-11 Inspector Braham Singh and PW-12 Yogesh Verma and produced Ex.PA Scaled

site plan of the place of occurrence; Ex.PB Copy of FIR No.105 dated 22.04.2008, P.S. Sarai Khawaja; Ex.PC Affidavit of Constable Jallandhar Singh; Ex.PD Affidavit of Head Constable Sant Ram; Ex.PE Affidavit of Dr. Sushil Kumar, Medical Officer, B.K. Hospital, Faridabad; Ex.PE-1 Copy of post-mortem report of deceased Krishan Nandan; Ex.PE-2 Inquest proceedings; Ex.PF Seizure memo of clothes, slippers and purse of the deceased; Ex.PG Recovery memo of knife; Ex.PH Seizure memo of blood stained earth; Ex.PJ Report of Forensic Science Laboratory, Madhuban; Ex.PK Statement of Uma Shankar; Ex.PM Sketch of the knife; Ex.PN Disclosure statement of the accused; Ex.PO Memo of identification of the place of recovery of clothes; Ex.PP Memo of identification of the place of recovery of knife; Ex.PQ Memo of identification of the place of recovery of the dead body; Ex.PR Statement of Yogesh Verma recorded by the investigating officer; Ex.PS Rough site plan of the place of occurrence; Ex.PT Rough site plan of the place of recovery of blood stained earth and Ex.PU Site plan of the place of recovery of knife. On closing of the prosecution evidence by the Public Prosecutor for the State, statement of the accused under section 313 of the Code of Criminal Procedure, 1973 (for short the Cr.P.C.) was recorded. In his statement under section 313 of the Cr.P.C. the accused denied commission of charged offences and pleaded false implication in the case. The accused produced Ex.DA Statement under Section 175 Cr.P.C. of Smt. Ramsakhi wife of Sh. Ram

Lakhan, the mother of the deceased in his defence. However, the accused did not produce any other defence evidence.

5. On perusal of the material on record and consideration of the submissions made by the learned Public Prosecutor for the State and the learned Defence Counsel, the learned Additional Sessions Judge, Faridabad held that the prosecution had proved beyond reasonable doubt by circumstantial evidence that the accused had committed the murder of Nanu alias Krishan Nandan and with an intention to screen himself from the course of law, had tried to destroy the evidence of offence and accordingly, convicted and sentenced the accused under sections 302 and 201 of the I.P.C.as mentioned above.

6. Feeling aggrieved, the accused has filed the present appeal.

7. We have heard Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused and Mr.Vikrant Pamboo, learned Deputy Advocate General for the State of Haryana and have gone through the record.

8. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has argued that the accused has been roped in a blind murder case on the basis of false, frivolous and unfounded story. There is no direct evidence as to murder of Nanu alias Krishan Nandan by the accused and the prosecution

has sought to prove its case by way of circumstantial evidence, but miserably failed to do so.

9. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has further argued that the prosecution has claimed that the accused murdered Nanu alias Krishan Nandan due to grudge of altercation which took place between them about 3-4 days before the occurrence. To prove the said motive, the prosecution has examined PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan, who have deposed that there was an altercation between the deceased and the accused a few days before the occurrence, but PW-8 Uma Shankar, PW-9 Ramsakhi have admitted that they were not present at the time of hot exchange. The prosecution has not examined the witness to such altercation between the deceased and accused. Consequently, the alleged motive on the part of the accused for murder of the deceased is not proved.

10. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has further argued that PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan have deposed as to the deceased having last visited the accused, but their testimony is contradictory as to the time and occasion of the visit, the deceased was not last seen with the accused by anyone. Therefore, the prosecution has failed to prove that the accused and the deceased were seen together and no inference as to the murder of the deceased by the accused could be drawn.

11. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has further argued that the prosecution has claimed that the accused made disclosure statement Ex.PN to Braham Singh Inspector/SHO in the presence of Raghunandan and HC Yash Pal, but PW-10 Raghunandan has not deposed as to interrogation of the accused and making of disclosure statement Ex.PN by the accused to Inspector Braham Singh in his presence. On the other hand, PW-10 Raghunandan has in his cross-examination categorically deposed that the accused was neither interrogated by the police nor he had suffered any disclosure statement Ex.PN in his presence and the articles recovered were traced out by the police. In view of the deposition of PW-10 Raghunandan, the prosecution version as to making of disclosure statement by the accused Ex.PN and recovery of personal belongings of the deceased i.e. clothes, slippers and purse Ex.P2 and the knife Ex.P1 from his possession in consequence of the information given by him is rendered highly doubtful and wholly unreliable.

12. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has further argued that the prosecution has failed to produce any cogent and reliable evidence to prove that the clothes allegedly recovered from the house of the accused were of the deceased. The knife Ex.P1 allegedly recovered from the house of the accused is not proved to be having blood stains of the blood group of the deceased. Therefore, the recovery of

personal belongings of the deceased Ex.P2 and knife Ex.P1 from the house of the accused fails to prove commission of the subject offences by the accused.

13. Mr. Sanjeev Sharma, learned Legal Aid Counsel for the appellant-accused has further argued that the circumstantial evidence produced by the prosecution does not meet the legal requirements and fails to satisfy the essential conditions for sustaining conviction on the basis thereof. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Therefore, impugned judgment of conviction and order of sentence may be set aside and the accused may be acquitted of the charges against him.

14. These arguments of the learned Legal Aid Counsel for the appellant-accused have been vehemently controverted by Mr.Vikrant Pamboo, learned Deputy Advocate General for the State of Haryana. Mr.Vikrant Pamboo, learned Deputy Advocate General for the State of Haryana has argued that the prosecution has proved its case against the accused by circumstantial evidence which satisfies all the essential ingredients meant for proving the charge by circumstantial evidence. By testimony of PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan, it is proved that altercation took place between the accused and the deceased about 3-4 days before the occurrence due to which the accused harboured a grudge and had the motive to murder and accordingly murdered Nanu alias Krishan Nandan. PW-8

Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan have testified that the deceased had gone to the house of the accused to pay the amount of cash given by Contractor Ram Karan and when they enquired from the accused, he admitted that the deceased had come to him and paid the amount of ₹700/- to him, but expressed ignorance about his whereabouts. Since the deceased was last seen with the accused, it was for him to explain as to how and under what circumstances the deceased suffered the injury and died. Further, personal belongings of the deceased and the blood stained knife Ex.P1 used as weapon of offence were recovered from possession of the accused in accordance with his disclosure statement Ex.PN. Moreover, the accused also identified the place of commission of the offence from where blood stained earth was seized. As per FSL report Ex.PJ, the blood was detected on blood stained earth and the knife Ex.P1 and the blood detected on blood stained earth was of human origin, although the origin of blood detected on the knife Ex.P1 could not be ascertained as the material had disintegrated. The motive for the commission of the offence, the last seen evidence, the recovery of personal belongings of the deceased Ex.P2 and the weapon of offence i.e. knife Ex.P1 from the custody of the accused and identification of the place of occurrence by the accused complete the chain of circumstantial evidence which is compatible only with the hypothesis of the accused having committed the subject offences. The prosecution

has proved the guilt of the accused beyond reasonable doubt. The accused has been rightly convicted and sentenced and the impugned judgement of conviction and order of sentence do not suffer from any illegality or irregularity. Therefore, the appeal may be dismissed.

15. Now these arguments may be adverted to for determination of the questions involved on the basis of the evidence produced in the case and also in view of the findings of the learned Additional Sessions Judge, Faridabad.

16. In the present case, PW-11 Inspector Braham Singh and PW-12 Yogesh Verma have proved recovery of dead body of Nanu alias Krishan Nandan in naked condition from Ganda Nala, NTPC in the area of village Basantpur, Faridabad with cut on his neck with sharp edged weapon.

17. PW-6 Dr. Sushil Kumar, Medical Officer, B.K. Hospital, Faridabad, who conducted post-mortem on the dead body of Nanu alias Krishan Nandan, has proved that he found an incised wound of size 8 inches X 3 ½ inches with clear margins over neck starting from left angle of mandible anteriorly to right side cutting through bilateral carotid vessels thyroid oesophagus. He has also proved his opinion given in the post-mortem report Ex.PE-1 that the cause of death in this case is shock and haemorrhage as a result of injury as described. The injury was ante-mortem in nature and sufficient to cause death in ordinary course of nature.

18. It may be observed here that in the present case there is no direct evidence as to commission of murder of Nanu alias Krishan Nandan by the accused and the prosecution is seeking to prove the guilt of the accused on the basis of circumstantial evidence. It is now well settled that circumstantial evidence in order to sustain conviction has to satisfy the following tests:-

- (i) the circumstances from which inference of guilt is sought to be drawn must be cogently and firmly established;
- (ii) those circumstances should be of a conclusive nature and definite tendency unerringly pointing towards guilt of the accused;
- (iii) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (iv) the circumstantial evidence must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence. (See **Padala Veera Reddy versus State of Andhra Pradesh, 1990 (2) Recent Criminal Reports 26 (SC); Sharad Birdichand Sarda Vs. State of Maharashtra AIR 1984 SC 1622**).

19. The question which arises is whether the circumstantial evidence produced by the prosecution to prove the guilt of the accused satisfies the above referred legal parameters.

20. In the present case, on consideration of the testimony of PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan, the learned Additional Sessions Judge, Faridabad held that the prosecution has proved that the accused had the motive to murder the deceased due to grudge of altercation with him. Even though PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan have deposed that a few days before the murder of Nanu alias Krishan Nandan there was an altercation between the accused and the deceased but they have admitted in their cross-examination that the altercation did not take place in their presence. PW-9 Ramsakhi has also stated that the altercation took place on the work place of the deceased. The prosecution has not examined any of the persons alleged to have witnessed the altercation and has not given the requisite details as to date, time, place and cause of the altercation which could be said to have animated the accused to harbour a grudge to murder the deceased. In these circumstances the prosecution evidence as to the accused having motive to murder the deceased is wholly unreliable and liable to be discarded. In a case resting upon circumstantial evidence motive plays a vital role and constitutes one of the important links in the chain of the circumstantial evidence. Reference in this regard may be made to **Raj Kumar**

versus State of Haryana 2005 (2), Judicial Reports (Criminal) 478 (Punjab and Haryana High Court). Since in the present case the accused is not proved to have the motive to murder the deceased one of the links in the chain of circumstantial evidence is missing.

21. The learned Additional Sessions Judge, Faridabad has held that by the testimony of PW-9 Ramsakhi, which is supported and corroborated by PW-8 Uma Shankar and PW-10 Raghunandan the prosecution has been successful to prove that on the last occasion the deceased left his home to meet the accused and on next day morning when PW-9 Ramsakhi visited the accused, the accused had admitted the fact that the deceased had come to him on the last night, and that he had delivered a sum of ₹700/- to him but the accused stated that the deceased had left his residence at about 11:00 P.M. and expressed ignorance as to his whereabouts. Strictly speaking, this evidence cannot be regarded as falling in the category of evidence of last seen together as the deceased was not actually seen by anyone going to the house of the accused and the accused and the deceased were not seen together by anyone. The possibility of the deceased not having gone to the house of the accused and having gone to some other place could not be ruled out. It may also be observed here that the deceased was stated to have gone to the house of the accused for handing over to him the money given by the contractor Ram Karan. The accused is alleged to

have left the employment of contractor Ram Karan. Altercation also allegedly took place between the accused and the deceased on his workplace. In the facts and circumstances of the case contractor Ram Karan was a material witness and his examination was essential to explain the reasons for which he had given the money to be handed over to the accused, who was working as a labourer with him and the urgency for paying the amount to the accused in the night itself. However, the Investigating Officer did not join and the prosecution did not examine contractor Ram Karan as a witness and his non-examination goes to adversely affect the credibility of the prosecution version as to the deceased having been last seen together with the accused.

22. In any case evidence as to last seen together itself cannot be a ground for forming an opinion that it is only the accused, who had committed the offence. The prosecution has to prove the fact of last seen together with the other connecting circumstances warranting the inference that except the accused no other person could commit the offence. Evidence of last seen together is inherently a weak kind of evidence and the same requires strong corroboration by independent evidence in material particulars. Reference in this regard may be made to **Dev Parkash versus State of Madhya Pradesh 2004 (3) Recent Criminal Reports 443 (Madhya Pradesh High Court)**.

23. On consideration of the testimony of PW-7 Head Constable Yash Pal, PW-10 Raghunandan and PW-11 Inspector

Braham Singh the learned Additional Sessions Judge, Faridabad has held that the prosecution has proved that the accused made disclosure statement Ex.PN to PW-11 Inspector Braham Singh in the presence of PW-7 Head Constable Yash Pal and PW-10 Raghunandan and the accused got personal belongings of the deceased, i.e. shirt, trouser, slippers and purse of the deceased Ex. P2 and the weapon of offence i.e. knife Ex.P1 recovered from his house and identified the place of occurrence vide memo Ex.PQ, from where blood stained earth was seized. However, it may be observed here that the evidence produced by the prosecution in this regard suffers from material contradictions/discrepancies. PW-11 Inspector Braham Singh has stated in his cross-examination that PW-10 Raghunandan informed him (regarding dead body being that of his brother Nanu alias Krishan Nandan) on 24.04.2008 at about 10:30 A.M. but PW-10 Raghunandan has stated in his cross-examination that he and his mother saw the poster at three wheeler Market Khadda Colony on 24.04.2008 at 02:00 P.M. and PW-10 Raghunandan could not, therefore, inform PW-11 Inspector Braham Singh on 24.04.2008 at 10:30 A.M. as deposed by him. PW-7 HC Yash Pal and PW-11 Inspector Braham Singh have stated in their cross-examination that the accused was arrested on 24.04.2008 on identification of PW-10 Raghunandan but PW-10 Raghunandan has not deposed about arrest of the accused on his identification. Further, PW-7 HC Yash Pal has stated in his cross-examination that the accused was arrested on 24.04.2008 at 07:30 P.M. but PW-11 Inspector Braham Singh has initially stated in his cross-examination

that disclosure statement of the accused Ex.PN was recorded at bus stand and at about 11:30 A.M. they left for residence of accused but thereafter stated that the accused was arrested on 24.04.2008 at about 02:30 P.M. PW-11 Inspector Braham Singh has testified that the accused made disclosure statement Ex.PN to him in the presence of PW-7 HC Yash Pal and PW-10 Raghunandan, but PW-7 HC Yash Pal and PW-10 Raghunandan have not deposed as to making of disclosure statement by the accused Ex.PN to PW-11 Inspector Braham Singh in their presence. PW-10 Raghunandan was declared hostile and was cross-examined by the learned Public Prosecutor for the State. In his cross-examination by the learned Public Prosecutor for the State PW-10 Raghunandan not only denied the suggestion as to making of disclosure statement by the accused Ex.PN in his presence but specifically and categorically stated that the accused was not interrogated in his presence and the accused did not make disclosure statement Ex.PN in his presence and the articles recovered were traced out by the police. These contradictions/discrepancies could not be and have been wrongly brushed aside lightly as minor/unimportant contradictions/discrepancies. On the other hand, these contradictions/discrepancies, being as to the material aspects of the case, adversely affect the credibility of these prosecution witnesses and make their testimony unreliable. In these circumstances, the prosecution evidence as to making of disclosure statement by the accused and recovery of the personal belongings of the deceased and knife from his house and identification of the place of

occurrence by him is intrinsically untrustworthy and cannot be relied upon. Consequently, personal belongings of the deceased Ex.P2 and the alleged weapon of offence i.e. knife Ex.P1 cannot be said to have been recovered in consequence of the information given by the accused in his alleged disclosure statement Ex.PN made to Inspector Braham Singh and the disclosure statement Ex.PN cannot be said to be admissible in evidence.

24. Even if the prosecution version as to recovery of the shirt, trouser, slippers and purse from the house of the accused be accepted, even then the prosecution was required not merely to prove recovery of the above said personal belongings of the deceased but also the fact that the deceased was wearing the above said clothes and slippers and having the purse at the time when he left for the house of the accused. The case of the prosecution in this regard also is not free from doubt. In their statements made to Inspector Braham Singh, PW-8 Uma Shankar, PW-9 Ramsakhi and PW-10 Raghunandan did not mention about the clothes and slippers which the deceased was wearing and the purse which the deceased was carrying at the time when he last left his house for visiting the accused. The shirt, trouser, slippers and purse were identified by PW-10 Raghunandan as belonging to the deceased at the time of recovery but admittedly PW-10 Raghunandan was living separate from the deceased and could hardly have any opportunity to see the clothes which the deceased was wearing at the time of leaving

his house. The shirt, trouser, slippers and purse were not got identified from PW-9 Ramsakhi, mother of the deceased, who was living with him and had seen him before he left for the house of the accused, during investigation or even during trial. In the absence of such evidence, recovery of the personal belongings of the deceased from the house of the accused falls short of incriminating the accused for the commission of murder of the deceased.

25. Further, if the accused had cut the throat of the deceased while the deceased was wearing the clothes and had thereafter removed his clothes, then the clothes of the deceased as well as the clothes of the accused would have been stained with blood. If the accused had cut the throat of the deceased after removing deceased's clothes, then the clothes of the accused would have been stained with blood. The clothes of the deceased, allegedly recovered from house of the accused in accordance with his disclosure statement Ex.PN, did not have any blood stains. No recovery of blood stained clothes of the accused was made from his house or anywhere else. The prosecution has tried to explain absence of blood stains on the clothes of the deceased by reference to alleged disclosure statement of the accused Ex.PN, wherein the accused had stated that he served liquor to the deceased at his (accused's) house and at the place of occurrence and when the deceased lied down in the state of intoxication, he removed his clothes and then cut his throat. This explanation

offered by the prosecution is not supported by any other evidence. No recovery of any wine bottle or glass was made from the place of occurrence or house of the accused. In the post mortem report the deceased was not mentioned to have consumed any alcohol. No sample was taken for detection of alcohol in the blood of the deceased and no chemical report has been produced to prove that the deceased had consumed alcohol before his death.

26. No doubt, as per FSL Report Ex.PJ blood was detected on Exhibit-1 (blood stained earth) and Exhibit-2 (knife) and as per serological analysis of blood, blood detected on Exhibit-1 (blood stained earth) was found to be of human origin but the origin of blood detected on Exhibit-2 (knife), could not be ascertained as the material had disintegrated and the report was inconclusive. In **Kansa Behera versus state of Orissa AIR 1987 Supreme Court 1507** where recovery of blood stained clothes was made from the accused and in the report of serologist, it was mentioned that clothes were stained with human blood, but blood group was not indicated it was held that evidence of blood group is only conclusive to connect blood stains with the deceased and in the absence of such evidence, no inference as to guilt of the accused could be drawn from recovery of blood stained clothes. In **Malkiat Singh versus state of Punjab, 1997 (1) Criminal Court Judgements 232 (Punjab and Haryana High Court)** where recovery of weapon of offence was made from possession of the accused, but serologist/chemical examiner gave report that

blood stains on recovered articles were disintegrated and their origin could not be determined, it was held that recovery of weapon of offence could not be connected with crime. In the present case absence of evidence as to blood stains on the knife Ex.P1 being of human origin and also matching the blood group of the deceased, recovery of blood stained knife Ex.P1 does not incriminate the accused and connect him with the subject offences.

27. It may also be observed here that the knife Ex.P1 was also not shown to the Doctor who conducted the post-mortem examination on the body of the deceased to seek his opinion as to whether the same could be possible weapon of offence and the injury on the body of the deceased could be caused with the same. This circumstance also makes the connectivity of the knife with the crime doubtful.

28. The learned Additional Sessions Judge, Faridabad has relied upon identification of the place of occurrence by the accused and recovery of blood stained earth there-from as lending corroboration to the case of the prosecution and assuring the Court as to the credibility of the prosecution version. Where the place of occurrence is already known to the police, the same cannot be said to have been discovered in consequence of the information given by the accused so as to make his disclosure admissible under section 27 of the Indian Evidence Act, 1872 and the same will, therefore, be of no evidentiary value. Reference in

this regard may be made to **Satbir Singh alias Nanha Versus State of Haryana, 2012 (2) Recent Criminal Reports 595 (Punjab and Haryana High Court); Charat Alias Sunda Versus State of Haryana 2005 (2) Recent Criminal Reports 8 (Punjab and Haryana High Court) and Vinod Kumar Vaidh Versus State 1992 Criminal Law Journal 3674 (Delhi High Court).** In the present case, a perusal of the site plan of the place of occurrence shows that the place of occurrence alleged to have been identified by the accused was about 10 to 15 feet away from the place in the drain where the dead body of the deceased was lying. The accused was alleged to have cut the throat of the deceased and then thrown the dead body in the drain. The police must be considered to have knowledge of the place of occurrence, as it seems highly doubtful that the place so close by was not found earlier by the Investigating Officer, particularly when there would have been visible marks of dragging of the body for throwing the same in the drain. In the very nature of things, the place of occurrence, being within knowledge of the police, cannot be said to have been discovered in consequence of the information allegedly given by the accused in his disclosure statement Ex.PN. Therefore, alleged identification of the place of occurrence by the accused vide memo of identification of place of occurrence Ex.PQ is not of any evidentiary value.

29. In these circumstances, last seen together evidence and falsity of the answer given by the accused in his statement

under section 313 of the Cr.P.C. do not warrant drawing of inference as to murder of Nanu alias Krishan Nandan by the accused.

30. It is thus evident that in the present case the prosecution has failed to cogently and firmly establish the circumstances from which inference of guilt is sought to be drawn. The circumstances established by the prosecution are not of a definite tendency and do not unerringly point towards the guilt of the accused and do not form a chain so complete as to lead to the only conclusion that within all human probability the crime was committed by the accused and none else. The hypothesis as to innocence of the accused and guilt of anyone else is not negated by the same. Hearsay conjectures, surmises or suspicion cannot take place of legal proof and cannot suffice to warrant or justify conviction. (See **Bhugdomal Ganga Ram and others versus the State of Gujarat, 1983 Criminal Law Journal (SC), 1276**). In **Dhan Raj @ Dhand v. State of Haryana 2014 (3) Recent Criminal Reports 888 (SC)**, Hon'ble Apex Court observed that a court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction.

31. Since, the prosecution has failed to prove commission of offences punishable under sections 302 and 201 of the I.P.C. by the accused beyond reasonable doubt, the impugned judgment of conviction and order of sentence are liable to be set-aside.

32. Accordingly, the appeal is allowed, impugned judgement of conviction and order of sentence are set-aside and the accused is acquitted of the charges framed against him. The accused is, accordingly, ordered to be set at liberty in this case.

(T.P.S. MANN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

28.11.2018
Vinay

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No