

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

(1) CRA-D-784-DB-2003 (O&M)

Narender

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

(2) CRA-D-897-DB-2003 (O&M)

Jagdish

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

Date of decision: 25.11.2019

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr.Ravinder Hooda, Advocate for the appellant(s)
in CRA-D-784-DB-2003.

Mr. Rakesh Nehra, Advocate for the appellant(s)
in CRA-D-897-DB-2003.

Mr. Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution story are that on 17.10.2002 at about 3.30 pm, complainant Manjit accompanied by his maternal uncle Jagdish went to the police station Meham and got his statement recorded with the police, stating therein that he was student of 8th class in S.D. High School, Pharmama. His father Jagdish (accused) has left home about five years earlier and had become a

Sanyasi 'Baba'. Jagdish was addicted to intoxicants and was a vagabond. He used to take away money from his wife Bimla (deceased), which was available with her as agricultural lease amount. Jagdish would do so to satisfy his addiction. After about 7-8 months of roaming here and there, he had returned home about 4-5 days earlier. On the fateful day i.e. on 17.10.2002 at 8.00 am, when complainant Manjit was getting ready to go to his school, he observed his father Jagdish accused sitting on a cot in the courtyard, talking with Narender @ Kala (accused No.2) son of Kapura. Jagdish was saying to Narender that his wife Bimla did not bother for him and did not give money for his expenses. Narender asked him to do away with her. At that time, Bimla had gone to offer water to the cattle. When complainant was going to school, Jagdish and Narender were still there in the house.

At about 11.00 am when complainant returned home, he found door of his house bolted from outside. He opened the door and went inside and observed his mother lying dead in the courtyard with injuries below her chin and head. A considerable amount of blood had oozed out. The complainant informed his maternal uncle Jagdish PW8 at Village Sultanpur, District Hansi telephonically. Jagdish arrived there. Jai Singh and Azad Singh also reached the place of incident. After leaving Azad Singh and Jai Singh near dead body of Bimla, complainant along with his maternal uncle Jagdish went to the police station to lodge report regarding the incident. The complainant had

stated that his father Jagdish in conspiracy with Narender @ Kala had killed his mother, by causing her injuries. That statement was signed by complainant Manjit. Signatures were attested by Inspector/SHO Inder Singh. On the basis of that statement, formal FIR for offences under Sections 302, 120-B read with Section 34 IPC was registered at 4.15 pm.

The matter was investigated. The police party accompanied by the complainant and Jagdish went to the spot. The Investigating Officer carried out inquest proceedings with regard to unnatural death of Bimla, preparing report Ex.PC in that regard. Blood stained earth and broken pieces of bangles of deceased were lifted from the spot and were converted into separate sealed parcels, which were taken into police possession, vide recovery memo. The Investigating Officer (for short 'IO') prepared rough site plan of the place of incident. He deputed Constable Harbhaj to get the post mortem examination conducted on the dead body of Bimla from the Government Hospital, Rohtak. The post mortem examination was accordingly conducted. The doctor had handed over to Constable Harbhaj a sealed parcel containing clothes of deceased, which he had submitted before IO. That parcel was taken into police possession, vide a recovery memo. Accused Jagdish was arrested in this case on 18.10.2002. Accused Jagdish had made extra judicial confession before Suraj Mal, Ex.Sarpanch of the village that he had killed his wife Bimla

all alone. Suraj Mal produced the accused before Inspector Inder Singh. Jagdish was interrogated, during the course of which, he suffered a disclosure statement that he had kept concealed a 'Mussal', with which he had killed his wife Bimla, about which, only he knew and could get it recovered. In pursuance of that statement, he had got mussal which was blood stained recovered from behind the door flank of his chaubara. It was converted into a sealed parcel and taken into police possession. Site plan of the place of recovery was also prepared. Report from FSL was received. Human blood was found in the blood stained clothes of the deceased and blood stained Mussal. Scaled site plan of the place of recovery was also got prepared by the IO.

After completion of investigation and other formalities, the challan against accused Jagdish was prepared, whereas, the other accused Narender @ Kala was found to be innocent. Challan against Jagdish was submitted in the Court of Sub Divisional Judicial Magistrate, Meham, who supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that the offence under Section 302 IPC was exclusively triable by the Court of Session, vide detailed commitment order dated 11.12.2002, committed the case to the Court of Sessions Judge, Rohtak, who assigned it to learned Addl. Sessions Judge, Rohtak.

Finding a prima facie case, charge for offence under

Section 302 IPC was disclosed against accused Jagdish, to which, he pleaded not guilty and claimed trial.

After the prosecution had examined 07 witnesses, an application under Section 319 Cr.P.C. was moved by the prosecution to summon Narender @ Kala as an additional accused, which was accepted. Narender accordingly appeared. Both the accused were charge-sheeted for offences under Section 302 read with Section 34 IPC, vide order dated 24.07.2003. They pleaded not guilty and claimed trial. The case was fixed for evidence of the prosecution.

During the course of prosecution evidence, it examined as many as 10 witnesses i.e. Dr. Raman Shukla PW1, Constable Samit Kumar PW2, HC Hawa Singh PW3, Constable Jai Bhagwan, PW4, Constable Krishan Kumar PW5, Constable Harbhaj PW6, Complainant Manjeet PW7, Jagdish PW8, Suraj Mal PW9 and Inspector Inder Singh PW10.

After tendering in evidence FSL reports Ex.PR and Ex.PS, the evidence of the prosecution got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case.

During defence evidence, accused examined Randhir as

DW1.

After hearing arguments, learned Addl. Sessions Judge, Rohtak, convicted both the accused. Accused Jagdish was convicted for offence under Section 302 IPC, whereas, accused Narender @ Kala was convicted for offence under Section 302 read with Section 109 IPC and they were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- and in case of default of payment of fine, to further undergo RI for a period of three years, vide judgment of conviction and order of sentence dated 26.08.2003.

Both the accused/convicts were dissatisfied with their conviction and sentence and have filed separate appeals, notice thereof was given to the State.

We have heard learned counsel for the parties besides going through the record.

Firstly, taking up appeal i.e. CRA-D-897-DB-2003 filed by Jagdish who is the main accused. As informed by learned counsel for the appellant Sh. Rakesh Nehra, such appellant/accused has since expired. Sh. Vikrant Pamboo, DAG, Haryana has verified the death of such appellant/accused through police authorities and has also placed on record photocopy of communication received from Police Station Meham, verifying the factum of his death, which is taken on record as Mark 'A'. It being so, the appeal qua him has abated and is disposed of accordingly.

Next coming to the appeal filed by appellant/accused Narender bearing No.CRA-D-784-DB-2003 (O&M), we find that the judgment of conviction and sentence passed against him is not sustainable. There is no direct evidence of the incident, rather, it is based upon circumstantial evidence. Though, sufficient incriminating evidence was available against accused Jagdish, since the murder had taken place in his house and under Section 106 of the Evidence Act, it was for him to explain as to under what circumstances, Bimla had died; furthermore, there was a motive for him to commit her murder i.e. refusal/reluctance of his wife Bimla deceased to give him money for purchasing drugs. Thirdly, extra judicial confession of Jagdish was there before Suraj Mal, in which, he had stated that only he had committed murder of his wife Bimla. PW9 Suraj Mal had specifically stated so. Jagdish had stated that he was all alone at the time of committing murder of his wife. Then, Jagdish had got recovered blood stained Mussal, which was found to be stained with human blood, as per report of FSL, clearly connecting him with the incident. Therefore, the judgment of conviction and sentence passed against him could not be faulted but it is certainly so with regard to Narender @ Kala.

Narender had no motive to be a party to commit murder of Bimla. Whatever talks had taken place between Jagdish and Narender could not be taken to constitute abetment of murder or he being a co-conspirator with Jagdish or sharing a common intention with him to

kill Bimla. During the course of investigation, he was found to be innocent and it was only during trial, when an application under Section 319 Cr.PC. was filed that he was summoned as an additional accused.

From the facts and circumstances of the case, his involvement in the crime is not proved conclusively and affirmatively and he was wrongly convicted under Section 302 IPC read with Section 109 IPC and sentenced accordingly. Therefore, the impugned judgment qua conviction and sentence of appellant-Narender is not sustainable. The appeal i.e. CRA-D-784-DB-2003 filed by him has merit. The same is accepted. The judgment of his conviction and sentence is set aside and he is acquitted of the charge framed against him.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

25.11.2019

sumit.k

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No