

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

Crl. Appeal No.D-859-DB of 2016 (O&M)

Date of Decision: March 03, 2020

Vikram @ Rajbir

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate
for the appellant.

Mr.Sukhdeep Parmar, Deputy Advocate General, Haryana
for the respondent-State.

Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for the complainant.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 06.09.2016 and order of sentence dated 12.09.2016 passed by learned Sessions Judge, Narnaul, vide which appellant was held guilty and convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹1,00,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

The background facts in nutshell are, as follows:-

That, complainant Vijay Kumar is resident of Village Sujapur,

P.S. Ateli. On 03.12.2014, there was lagan ceremony of Sonu s/o Ombir r/o village Bochariya. In the said lagan ceremony, family of the complainant was invited for dinner. At about 8.00 p.m., complainant himself along with his uncle Bani Singh s/o Sohan Lal, Rama w/o Bani Singh had gone to the house of Ombir, at his well for dinner. After some time, his uncle Bani Singh, has stated to the complainant that Mahender and Vikram, sons of Ramji Lal, and Attar Singh, Naresh and Ashok sons of Banwari Lal, resident of village Bochariya, are quarreling with him on that day, on the same issue, qua which, a quarrel had taken place one year earlier, due to the dispute of Dola. The complainant asked his uncle to take dinner and to go to home and they shall talk in the morning. After saying so, the complainant went to his house. On 04.12.2014 at about 2'O clock, the complainant received telephonic call from Sunil s/o Bani Singh that Ombir had come to his house and he stated that his father has consumed liquor and is lying behind the house of Ombir and he has to be brought. Upon this, the complainant arranged Alto car of his friend Sandeep s/o Bal Krishan and then, he along with Sunil and his aunt Rama Devi, had reached the house of Ombir, where his uncle Bani Singh was lying behind the house of Ombir. He had injuries on the right side of his head and on right ear, below the ear and blood was oozing out from the right ear and nose. Bani Singh was lifted and in the Alto car, he was brought to Government Hospital, Ateli, where he was declared dead and intimation was given to the police.

Proceedings in the present case, were initiated, on the basis of the application filed by Vijay Kumar, complainant. The case was registered under Section 302 read with Section 34 IPC. The initial investigation was

handled by SI/SHO Brahm Prakash. During the course of investigation,

spot was inspected and scaled site plan was prepared. Statements of witnesses were recorded. Thereafter, further investigation was handed over to SI/SHO Malkhan Singh. Accused Vikram @ Rajbir was arrested on 09.12.2014. Even though, the complainant had named five persons namely Mahender, Vikram sons of Ramji Lal, Attar Singh, Naresh and Ashok sons of Banwari Lal but however, Vikram @ Rajbir, in his disclosure statement, admitted about injuries to have been given by him alone with wooden log of budberry tree. The said wooden log was recovered. CD was prepared. During the course of investigation, remaining assailants were found to be innocent. Even, it was so concluded in the investigation conducted by DSP, Kanina and CIA Narnaul.

On completion of investigation, challan was presented against accused Vikram @ Rajbir, for the commission of offence under Section 302 IPC.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

On the basis of material coming forth, charge under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 13 witnesses, besides adducing documentary evidence.

The witnesses, so examined are **PW-1 Subash Chand, PW-2 Prithvi Raj, Patwari, PW-3 EASI Phool Kumar**, who had clicked the photographs and prepared the CD, relating to the place of occurrence, at the instance of SI Brahm Parkash and SI Malkhan Singh. **PW-4 ASI Yogesh**

02.12.2014 to 05.12.2014. **PW-5 ASI Rohtash Singh**, **PW-7 EASI Somdutt** and **PW-8 Constable Mukesh**, have tendered into evidence their affidavits Ex.PW5/A, Ex.PW7/A and Ex.PW8/A, respectively. **PW-6 Om Parkash**, has deposed about extra-judicial confession made by Vikram @ Rajbir to him. **PW-9 Dr.Hamesh Kumar**, Medical Officer, has deposed about conducting of post-mortem examination on the dead body of Bani Singh along with Dr.Gagandeep and proved post-mortem report **Ex.PW9/C**. **PW-10 Sanjay Kumar**, has deposed about Vikram @ Rajbir and others to have caused murder of Bani Singh and further deposed about disclosure statement made by accused Vikram @ Rajbir, on the basis whereof, wooden log was got recovered. He also deposed about Arishal to have witnessed the occurrence in question. **PW-11 Vijay Kumar**, is the complainant, at whose instance, the prosecution proceedings were initiated. **PW-12 SI Malkhan Singh**, is the subsequent Investigating Officer of the present case. He has deposed about having taken into possession photographs and conducting of interrogation of Vikram @ Rajbir, during which, he had suffered disclosure statement, on the basis whereof, wooden log was recovered. He also deposed about preparation of various memos, relating to said recoveries and also about the photographs so taken and preparation of CD, which have been proved by him. **PW-13 SI Brahm Parkash** has deposed about having reached the hospital, soon after receiving of the information, about the death of Bani Singh and further deposed about receipt of ruqa Ex.PW9/F and the application of the complainant presented to him, which is Ex.PW11/A, upon which, his endorsement is Ex.PW13/A, on the basis whereof, case was registered. He also deposed about conducting of inquest proceedings

the dead body of Bani Singh. He further deposed about having visited the spot of occurrence and preparation of rough site plan of the place of occurrence. He prepared sealed parcel of the blood-stained earth, lifted from the spot, which was taken into possession, vide memo Ex.PW11/B. Photographs of the spot were also taken. He had filed application Ex.PW4/A to the Cyber Cell, for supply of call details. He proved copy of FIR Ex.PW13/D.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to accused Vikram @ Rajbir in his statement under Section 313 Cr.P.C. The accused denied those allegations and pleaded innocence. He had taken the plea, which is reproduced in verbatim, as herein given:-

“I am innocent and I have been falsely involved in this case. Ram Parshad (brother of Bani Singh since deceased) was enrolled in Army by misusing the certificates of his brother Bani Singh. Ram Parshad has been drawing pension by impersonation as Bani Singh. PW Ajay is son of Ram Parshad. He is falsely proclaiming as son of Bani Singh. Bimla Devi is wife of Ram Parshad but she is shown as wife of Bani Singh. In these circumstances there used to be quarrel between Ram Parshad and Bani Singh. Bani Singh was heavy drunkard. Bani Singh might have received injuries by fall under intoxication or in a quarrel with his brother Ram Parshad. My name has been falsely involved due to party faction in the village. Our land is not adjoining to the land of deceased or his family. We did not have any boundary dispute with Bani Singh and his family.”

In defence, accused examination as many 8 witnesses, namely

Nihal Singh, Welfare Organizer, DW-3 Hem Raj Sharma, Officer, Punjab National Bank, DW-4 Amit Kumar, Clerk, Government Sr. Secondary School, Partapur, DW-5 Dinesh Kumar, Clerk, Government Sr. Secondary School, Chandpura, DW-6 Neeraj Kumar, Sub Inspector, Food and Supply Department, Ateli, DW-7 Nihal Singh, Welfare Organizer and DW-8 Shamsheer Singh.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment of conviction dated 06.09.2016 and order of sentence dated 12.09.2016, accused-appellant was held guilty, convicted and sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant-convict has filed the present appeal.

Even the trial Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the trial Court record.

At the very outset, learned counsel for the appellant has emphatically submitted that there is no direct evidence in the present case. Thus, in the absence of any witness of the occurrence, the prosecution was duty bound, to establish the chain of circumstantial evidence, to this extent that it only leads to the conclusion of accused Vikram @ Rajbir, being the culprit. However, he points out that the circumstantial evidence, so relied upon by the prosecution is incoherent and insufficient in form, continuity and content and falls short of the legally prescribed standards, to return a finding of guilt, on the basis thereof. Making reference to the so called

been emphatically submitted that the prosecution has failed to establish the guilt of accused, beyond shadow of reasonable doubt. He has further submitted that there is doubt raised about the cause of death in the present case, which in itself, gives fatal blow to the prosecution version. There are various other flaws, coming forth, which renders the prosecution version doubtful. In fact, learned counsel for the appellant has submitted that learned trial Court has rightly discarded the version of extra-judicial confession made by accused Vikram @ Rajbir to Om Parkash and this very fact also throws doubt about the truthfulness of the prosecution version. In fact, it is pointed that there is no acceptable evidence, to establish linkage of the accused to the occurrence in question. Rather, it is submitted that the evidence, so coming on record, at the maximum, can be taken to raise suspicion, but it does not conclusively prove the guilt of the accused. Thus, the benefit of lacuna, so coming forth, in the prosecution version, ought to be extended to the accused. Furthermore, learned counsel for the appellant has submitted that the material witnesses, such like, Rama Devi, Sunil wife and son of Bani Singh deceased as well as Ombir, Om Parkash Arya, and Arishal, who could throw light, about the manner of taking place of the occurrence and also about the so called involvement of the appellant in the same, have not been examined by the prosecution and this in itself, gives fatal blow to the prosecution version. Thus, a prayer has been made by learned counsel for the appellant for setting aside the impugned judgment and to acquit the appellant of the charges, levelled against him.

In refutation, learned State counsel has assiduously submitted that even though, there is no direct evidence vis-a-vis murder of Bani Singh, coming on record but however, the circumstantial evidence brought on

record, does amply establish the complicity of the appellants. It is pointed out that the chain of circumstantial evidence has been completely linked to the appellants, which unerringly point the needle of guilt towards him. He has submitted that the prosecution has proved the case to the hilt and the guilt of the appellants is deducible from the circumstances coming forth, and from the testimonies of various witnesses examined by the prosecution. He has pointed out various circumstances, spelt out in the evidence, relating to establishment of motive, making of extra judicial confession, making of disclosure statement and the recovery of weapon of offence, on the basis thereof. Also, learned State counsel has submitted that even though, as asserted by learned counsel for the appellant, various persons, such like, Rama, Sunil, wife and son of deceased, Ombir, Om Parkash Arya and Arishal, who could have put light on the incriminating role of the accused, as such, have not been examined but it is submitted that this can only be taken, as deficiency in investigation, by way of omission and lapses, on the part of Investigating Agency and this in itself, does not justify total rejection of the prosecution case, more particularly, when there are other circumstances, spelling out the incriminating role of the appellant.

Thus, summing up his arguments, learned State counsel has made a prayer for dismissal of the appeal.

As per version of the prosecution, on 03.12.2014, there was *lagan* ceremony of Sonu s/o Ombir at his village Bochariya. For the said ceremony, complainant Vijay Kumar and his family members as well as Bani Singh were invited. Complainant Vijay Kumar along with Bani Singh as well as his aunt Rama, had gone to attend the function. Also, it is

return to his village, then Bani Singh, his uncle, had disclosed him that Vikram @ Rajbir, his brother and three other persons, were quarreling with him, regarding the previous dispute, which had taken place about one year ago and Vijay Kumar had stated to his uncle Bani Singh, to return back to his house, after having dinner and they shall talk in the morning. Furthermore, it is coming in the disclosure statement of Vikram @ Rajbir that he consumed some beer with Krishan and Mahesh. Also, it appeared in his statement that Bani Singh, in the company of one more person of Dongra Ahir was indulging in intake of liquor, at some distance from him and 2-3 other persons, were also consuming liquor. He had also disclosed about the dispute having arisen between them and Bani Singh, in which, Bani Singh, with band-pipe, had given injuries on his head, but later on, the matter was compromised. However, at about 1.30 a.m., on 04.12.2014, Ombir had come to the house of Sunil and apprised him about Bani Singh, while in the drunkard condition, to be lying at the back of his house. Furthermore, Sunil had passed on this information to complainant Vijay Kumar, who had then arranged Alto car of his friend Sandeep and then, he along with Sunil and Rama Devi, had gone to the house of Ombir and spotted Bani Singh, to be lying there, in injured condition. Thereupon, Bani Singh was taken to hospital, where he was declared to be brought dead by the doctor.

From the testimony of PW-10 Sanjay, it is evident that one Arishal s/o Bihari Lal had disclosed to the said witness, about having seen Bani Singh, to be inflicted injuries by two persons, who were addressing each other by calling Vikram and Mahender. Thus, even if this statement,

as it is considered, then it is evident that sole eye witness to the occurrence

was the said Arishal s/o Bihari Lal, but however, it is pertinent to mention that he has not been cited as a witness, in the report under Section 173 Cr.P.C. In the light of the same, the entire version of the prosecution, is based on circumstantial evidence.

Before proceeding further, to the factual and evidential appraisal, in the case in hand, it is important to make mention about the manner of appraisal of evidence, in a criminal trial. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of **“may be true”** but has to essentially elevate it to the grade of **“must be true”**. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion, do not take place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. However, such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non existent, but as entertain-able by an impartial, prudent and analytical mind, judged on the touch stone of reason and common sense. At the same time, also one has to consider that primary postulation in criminal jurisprudence is that, if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted. Very close to the same, there has to be underlying string running throughout about the inalienable interface of presumption of innocence and the burden of proof, in a criminal case, which is always on the prosecution.

is no direct evidence to connect the accused with the crime. However, the prosecution has relied upon circumstantial evidence, to prove the charges against the accused persons. Where there is no direct evidence, the Court should draw an inference, whether or not the incriminating facts and circumstances are found to be totally incompatible, with the innocence of the accused. Of course, the circumstances, from which, an inference, as to the guilt is drawn, have to be proved, beyond reasonable doubt and shown to be connected with the principal facts, sought to be inferred from those circumstances. The circumstantial evidence is a close companion of factual matrix, creating a fine network, through which, there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit the Court to arrive at any other inference, but one indicating the guilt of the accused.

The fact of death of Bani Singh stands established from the testimony of PW-9 Dr.Hamesh Kumar, who along with Dr.Gagandeep, had conducted post-mortem examination on the dead body of Bani Singh, on 04.12.2014. He has deposed about following injuries to have been found on the dead body of Bani Singh:-

1. *Lacerated wound of size 2x1 inch on the dorsal aspect of right pinna with bleeding from right ear. Clotted blood was present around the right ear.*
2. *Boggy swelling of size 4x2 inch was present over right temporal region. On dissection fracture of right temporal bone was found present. Large sub arachnoid haemorrhage was found present on right brain.*
3. *Bleeding from both nostrils with clotted blood was present.*
4. *Fracture of 3rd rib on left side.*

The opinion about cause of death was reserved till receipt of report of chemical examiner. After receipt of report of chemical examiner, which is Ex.PW9/D, it was opined that cause of death in this case was the injuries mentioned in the post-mortem report. Thereafter, in pursuance of the application filed by the Investigating Officer with a sealed parcel of wooden log, he had perused the *lathi* and recorded his opinion PW-9/D, stating that injuries mentioned in the post-mortem report, could be caused by the produced wooden log. He had also stated that after going through the FSL report Ex.PW9/E and Ex.PW9/F, it is revealed that human blood was detected on the *danda*. It is important to make reference to some part of the cross-examination of the said witness, the impact, whereof, shall be discussed, at a later stage. In the cross-examination, he has further stated that there was no external mark of injury on the surface of body of Bani Singh, corresponding to injury of fracture of 3rd rib. The FSL report Ex.PW9/E, depicts about various organs of the dead body to be showing positive test for ethyl alcohol. Ethyl alcohol was estimated to be 69.0 mg% in Ex.4, which is 'blood from heart'. This doctor also stated further that possibility cannot be ruled out of suffering of the injuries, as shown in the post-mortem report, in case a person, under intoxication falls on stones or forcefully strikes against the wall. He also stated in the cross-examination that injury of fracture of rib, can be result of fall on a hard surface. Thus, in view of the recitals of the post-mortem report, the fact of death and cause of death of Bani Singh, stands established.

Now, we have to appraise various aspects of circumstances, relied by the prosecution, to establish the connectivity of accused with death

As per the version of the prosecution, after taking place of the occurrence, on 07.12.2014, accused Vikram @ Rajbir, had gone to PW-6 Om Parkash, who is father-in-law of Sunil s/o Bani Singh and he had made extra judicial confession, about commission of murder of Bani Singh. Definitely, as submitted by learned counsel for the appellant that extra-judicial confession is a weak type of evidence but however, it cannot be discarded outrightly. There are various circumstances, which are required to be taken into consideration and conviction of the accused can be there, on the basis of the extra-judicial confession. However, it is pertinent to mention that PW-6 Om Parkash has deposed that on 07.12.2014, accused had come to his house and disclosed about having killed Bani Singh. He had narrated about the manner of disclosure, so made by Vikram @ Rajbir and also about involvement of Mahender in the same. Furthermore, Om Parkash had stated that while he went inside the house to telephonically inform the police of Police Station Ateli and when he brought the phone, he saw Vikram had already fled away from there. It, thus shows that it was, on the day of making of the confession, as per the prosecution version, Vikram was not produced by Om Parkash before the police. Rather, it is evident that Om Parkash did not visit the police station till 09.12.2014. According to PW-6, it was only on 09.12.2014, when he had gone to the police station, to know about the progress of the case, that he spotted Vikram to have already been apprehended by the police and thereupon, he was associated in the interrogation of Vikram @ Rajbir. However, the version, so made by the said witness, is not acceptable. His conduct is against the expected human behaviour. It is pertinent to mention that Om Parkash is closely related to the family of the deceased, being father-in-law of Sunil s/o Bani Singh. If

accused Vikram @ Rajbir had so disclosed him, about the manner of causing of the occurrence, then instant reaction on the part of Om Parkash, ought to have been, to apprise the police about the said disclosure and in the minimum, to have disclosed the same to family members of the deceased. Silence on his part, from 07.12.2014 to 09.12.2014, is highly improbable. In the light of the same, learned trial Court has rightly discarded this linkage of extra-judicial confession vis-a-vis role of Vikram @ Rajbir. Besides the aforesaid, the prosecution has also relied upon the disclosure statement made by accused Vikram @ Rajbir, on the basis whereof, *danda* of budberry tree, was recovered. The said *danda* is claimed to be smeared with blood and the same was further sent for chemical analysis. As per FSL report **Ex.PW9/E**, human blood was detected on the *danda* but however, the blood group, as such, was not ascertained. There is no result, with regard to, blood grouping. In the light of the same, the blood so allegedly found, on the *danda*, does not stand sufficiently connected to be that of deceased Bani Singh. Even if, without dilating further, this recovery, as such, is taken into consideration, this is only one piece of evidence and it has to be seen, as to whether, this sufficiently connects with incriminating role of the appellant. However, relating to the same, there is no other sufficient evidence, coming on record.

As already detailed aforesaid, the circumstance relating to extra-judicial confession, has been rightly discarded by the trial Court and in the light of the same, there is also deficiency, coming forth, in the investigation of the present case. As per version of the prosecution, Rama Devi, wife of Bani Singh, had accompanied the deceased to the house of Ombir, for attending *lagan* ceremony but however, there is no evidence,

coming on record, as to whether, Rama Devi was still present at the house of Ombir, when the complainant had returned back or she had gone back. If she had gone back, in whose company, she had gone back, there is no such evidence on record. In the light of the same, it is important to make mention that as per complainant Vijay Kumar, soon after the receipt of information about Bani Singh to be lying in drunkard condition behind the house of Ombir, he, in the company of Sunil and Rama Devi had gone to the spot and found Bani Singh to be lying in injured condition. However, said Sunil and Rama Devi, who were important connecting link to establish about the manner, in which, they had proceeded to the spot and had seen Bani Singh lying in the injured condition, as such, have not been examined by the prosecution. Even, Ombir in whose house, the festivities were going on and who had come to the house of Sunil, to apprise of the lying of Bani Singh, has not been examined. His testimony, ought to be important connecting link, to complete the chain of circumstances, pointing out the needle of guilt, towards the accused but however, for certain reasons, known to the Investigating Agency, said witness, has also not been examined. Furthermore, it is coming forth, in the testimony of PW-12 SI Malkhan Singh, who is subsequent Investigating Officer, that Vikram was produced in the police station on 09.12.2014 at 2.00 p.m., by one Om Parkash Arya r/o village Bochariya. How and in what manner, Om Parkash Arya, came to know about the incriminating role of Vikram @ Rajbir, as such, has not been disclosed anywhere. Even, said Om Parkash Arya, who was important connecting link, to strengthen the version of the prosecution, has also not been examined by the prosecution. Besides the same, another maternal witness, who had witnessed the occurrence and who could give eye witness

account of inflicting of the injuries by Vikram @ Rajbir, was Arishal s/o Bihari Lal. PW-10 Sanjay Kumar had stated in cross-examination that on 11/12.12.2014, one Arishal s/o Bihari Lal r/o village Amarpura, Police Station Nangal Chaudhary, came to his house for condolence and he had disclosed that he had gone to attend the lagan ceremony of son of Ombir r/o village Bochariya and in the evening, when he went to urinate behind the house of Ombir, he saw that one person was being beaten by two persons and the assailants were addressing each other by calling Mahender and Vikram. He further told that when he tried to intervene, both the assailants had asked him to go away, by saying that it was their personal matter. He claimed that he could identify those persons. He further told that he had read the news along with photograph of the accused in the newspaper and he offered to be a witness in this case. He asked Arishal to come after the rasam pagri. Thereafter, he had further stated about the manner of taking Arishal along with him to S.P. Narnaul. In the light of the role, so assigned to Arishal, as disclosed by PW-10 Sanjay Kumar, it was required on the part of investigating agency, also to have nominated Arishal as a witness and to examine him. However, Arishal has not been cited as a witness. As such, it is evident that the aforesaid five persons, who could establish the important links, to complete the chain of circumstantial evidence, have been left out by the prosecution. No doubt, it has been held by the Courts time and again, that any lapses or omission, on the part of the investigating officer, vis-a-vis collection of evidence and manner of conducting of the proceedings and preparation of the record, as such, cannot in themselves, justify total rejection of the prosecution case but at the same time, it has to be seen that

accused, beyond shadow of reasonable doubt. As already detailed aforesaid, the recovery of weapon, is the only link, as such, coming forth, to establish the incriminating role of the appellant but however, his involvement, as such, besides this linkage, does not stand established. Even the circumstance of extra-judicial confession, has not been believed as it is highly improbable to have been so made, in the manner, as asserted by PW-6 Om Parkash. In the light of the same, the omission to examine the aforesaid witnesses, who could establish the material linkage of the accused with the occurrence in question, also gains strength and it cannot be overlooked, simply as deficiency in the investigation.

As already observed in the earlier portion of the judgment, Dr.Harmesh Kumar, who along with fellow Dr.Gagandeep, had conducted postmortem examination on the corpse, had stated in the cross-examination that ethyl alcohol was estimated to be 69.0 mg% in Ex.4, which is 'blood from heart' and he further stated that possibility cannot be ruled out of suffering of the injuries, in case a person, under intoxication falls on stones or forcefully strikes against the wall. He also stated in the cross-examination that injury of fracture of rib, can be result of fall on a hard surface. Considering the same, it cannot be concluded with certainty that the injuries in question were caused by *lathi* of budberry tree and this also gives dent to the prosecution version.

In case based on circumstantial evidence, motive gains importance. In the present case, the dispute, which had taken place about one and half year ago, relating to boundary wall of the fields, relating to which, compromise was effected, is stated to be the motive, on the part of the accused, for causing the occurrence. However, it is pertinent to mention

that but for the ocular version qua this dispute having earlier arisen, there is no satisfactory evidence, coming on record. Even though, the prosecution witnesses, while facing cross-examination, have spelt that the police was apprised of the previous dispute and compromise had taken place, in the police station but however, no recording of this compromise, has been proved. Even, no evidence, relating to the matter having given quietus, by the police, as such, has been led. In the light of the same, the motive part, does not stand established.

In the light of the same, the prosecution version, as such, cannot be termed to be free from doubt and precisely, benefit of such doubt so arising, ought to be extended to the appellant.

As such, we find merit in the appeal filed by the appellant and the same is allowed. The impugned judgment of conviction dated 06.09.2016 and order of sentence dated 12.09.2016 passed by learned Sessions Judge, Narnaul, are set aside and appellant is acquitted of the charges, levelled against him.

As appellant Vikram @ Rajbir, is stated to be on bail, therefore, his bail/surety bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

March 03, 2020

Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No