

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

(1) CRA-D-758-DBA-2002 (O&M)
Date of Decision: 25.02.2020.

State of Haryana

.....Appellant

VS.

Anand Singh and others

.....Respondents

(2) CRA-D-1027-DB-2014 (O&M)

Manphool Singh

..... Appellant

VS.

State of Haryana and another

.....Respondents

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mr. Vikrant Pamboo, DAG Haryana,
for the appellant in CRA-D-758-DBA-2002
for respondent No.1 in CRA-D-1027-DB-2014.

Mr. Madan Sandhu, Advocate,
for the appellant in CRA-D-1027-DB-2014.

Mr. Rakesh Nehra, Advocate,
for the respondents in CRA-D-758-DBA-2002.

Ms. Kanika Ahuja, Amicus Curiae,
for respondent No.2 in CRA-D-1027-DB-2014.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two appeals bearing CRA-D-758-DBA-2002 filed by the State of Haryana against the judgment dated 28.02.2002 vide which all the five respondents were acquitted in FIR No.225 dated 28.06.2000 registered under Sections 302 and 148 read with Section 149 IPC at Police Station City Bahadurgarh and CRA-D-1027-DB-2014 which has been

filed by the complainant against the judgment of acquittal dated 16.01.2012 vide which respondent No.2 Sher Singh @ Raju @ Kala who was tried separately was also acquitted in the aforesaid FIR.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Prosecution case as disclosed by Manphool Singh brother of Shamsher Singh deceased in the written complaint (Ex.PH) made by him to Shri Ram Chander, S.H.O., Police Station City Bahadurgarh on 28.06.2000 forming basis of first information report is that his father Ram Pat and Ran Singh are sons of Sheo Chand. The agricultural land owned by them was not formerly partitioned as a result of which there was dispute between them over cultivation of five bighas land. While Ran Singh used to assert that he was entitled to cultivate this five bigha agricultural land, Ram Pat and his family members claimed that they were entitled to cultivate two and a half bigha agricultural land out of this five bigha agricultural land. Ram Pat and his family members had sown maize (Jawar) in two and a half bigha land. Two and a half bigha land in which they have sown maize was ploughed by Ram Singh and his sons on 24.06.2000. When Shamsher Singh son of Rampat inquired from Ran Singh and his son Sher Singh in front of their house as to why they ploughed two and a half bigha agricultural land sown by them, Ran Singh brusquely told him that they have rightly ploughed the land and he can do whatever he liked. Sher Singh also threatened to shoot Shamsher if he took any action against them for ploughing two and a half bigha land. On 28.06.2000 Shamsher went out of his house after telling his family members that he would be returning within half an hour and after that he would go to village Dighal. When Shamsher did not return to his house even after one hour, his brother Manphool Singh came out from his house on the road in search of Shamsher, he found Narender son of Manbir Singh resident of Jatwara locality standing in front of his house. Manphool inquired from Narender about Shamsher, Narender told him that Anand Singh son of Ran Singh, resident of Jatwara locality called Shamsher to his house. On this information Manphool Singh and Narender went to the house of Anand Singh. When they raised the shutters of the door of the house they noticed dead body of Shamsher lying on the floor of the

gallery soaked in blood. Leaving Narender at the spot, Manphool Singh went to his house and apprised his family members about the circumstances in which dead body of Shamsher was seen by him and Narender lying on the floor of the gallery in the house of Anand Singh. Manphool Singh reduced these facts into writing in the form of a complaint addressed to S.H.O Police Station City Bahadurgarh. He also concluded that Anand, Jasbir, Sher Singh, Dharambir sons of Ran Singh and Ran Singh son of Sheo Chand, Khazani wife of Ran Singh and Neelam wife of Anand have committed murder of his brother on account of dispute between them over cultivation of a plot of agricultural land. Further case of the prosecution is that when Manphool was going to Police Station City Bahadurgarh with the complaint, he met Inspector Ram Chander, Police Station City Bahadurgarh near Shiv Chowk at Bahadurgarh. Manphool handed over complaint (Ex.PH) to Inspector Ram Chander. Inspector Ram Chander made endorsement (Ex.PH/1) on the complaint and forwarded it to Police Station through Constable Jogender Singh No.484 for registration of the case. First information report on the basis of this complaint was registered by ASI Rajender Singh. Inspector Ram Chander investigated the case.....”

On completion of the investigation, challan/report under Section 173 Cr.P.C was presented in the Court. The case was committed to the Court of Session.

The accused were charge-sheeted under Sections 148 and 302 read with Section 149 IPC. They pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 ASI Chhattar Singh, PW-2 Ramesh Kumar Patwari, PW-3 Dr. D.S. Rana, PW-4 H.C. Dharambir, PW-5 Constable Ranjeet Singh, PW-6 Constable Jai Chand, PW-7 Manphool Singh, PW-8 H.C. Ram Chander, PW-9 Constable Randhir Singh, PW-10 Vijay Kumar

Photographer, PW-11 Lachhman Singh, PW-12 Inspector Ram Chander, PW-13 Mahabir Singh, Clerk, Municipal Committee, Bahadurgarh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No witness in defence evidence was examined by the accused.

After appraisal of evidence, the learned trial court vide two separate impugned judgments dated 28.02.2002 and 16.01.2012 acquitted all the accused.

Thus, CRA-D-758-DBA-2002 has been filed by the State of Haryana against the judgment dated 28.02.2002 vide which all the five respondents were acquitted.

It is worthwhile to mention here that vide judgment dated 29.04.2003 accused Dharmvir was acquitted of the charges framed against him. However, his acquittal has not been assailed by either the State or the complainant.

The seventh accused, Sher Singh @ Raju @ Kala was declared a proclaimed offender, was tried separately and was also acquitted by the learned trial Court, vide judgment dated 16.01.2012. Against the acquittal of Sher Singh @ Raju @ Kala, the complainant has filed appeal No. CRA-D-1027-DB-2014.

It is contended by the learned State counsel as well as learned counsel for the complainant that the learned trial Court has failed to appreciate the facts of the present case in correct perspective. The prosecution has established on record by leading cogent and reliable evidence that there was a motive behind the murder of Shamsher Singh as there was a dispute between the accused and the deceased over the cultivation of five *bigha* land.

It is further contended that the learned trial Court has failed to consider the disclosure statement made by accused, Anand on the basis of which *kulhari* used in the commission of offence was got recovered. This piece of evidence was not considered by the learned trial Court.

On the other hand, on behalf of the accused-respondents, it is contended that the judgments of acquittal have been rightly passed. There is no scope for interference in the same.

We have heard the learned counsel for the parties and have gone through the case file very carefully.

The present case is based upon circumstantial evidence. In such a case, the circumstances if taken collectively should not only point towards the guilt of the accused but must be inconsistent with his innocence also. In *Hanumant Versus State of Madhya Pradesh (1952) SCR 1091* it was held under:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
- 2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they*

should not be explainable on any other hypothesis except that the accused is guilty;

3. The circumstances should be of a conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved; and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

We may refer to Sir Alfred Wills book on Circumstantial evidence (Chapter VI) in which he has laid down the following rules specially to be observed in the case of circumstantial evidence:-

Rule 1.--The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum prabandum.

Rule.2--The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.

Rule.3—In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.

Rule.4-- In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

Rule.5-- If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

In the instant case, as per the statement of complainant, PW-1, Manphool Singh, deceased Shamsheer left his house at 2.00 p.m, after informing him that he would return within half an hour and then he would go to village Dighal but when Shamsheer did not return after

an hour, Manphool came outside the house to inquire about him. Manphool Singh met Narender in the street. The latter told the former that Shamsheer Singh was called by Anand Singh to his house. Manphool along with Narender went to the house of Anand Singh. Shutters fixed on the door of house of Anand Singh were found closed and when they lifted the shutters, they noticed the dead body of Shamsheer lying on the floor. The record reveals that the prosecution has not examined said Narender to prove this fact. He was the best witness who could corroborate the prosecution version. Withholding of best evidence from the Court is a serious lapse on the part of the prosecution.

Further, it has been noticed by the learned trial Court that the relations between the accused and Manphool Singh and his family members were strained because there was a dispute regarding the right to cultivate two and a half *bigha* agricultural land jointly owned by them. In such circumstances, statement made by Manphool needs closer scrutiny. As per Manphool Singh, the house in which the dead body of Shamsheer was found lying is situated in ward No.16 and its number in the municipal record is 545 but the voter lists Ex.PS shows that accused were occupying house No.573 and the house in which dead body of Shamsheer was found lying was not owned and possessed by Ran Singh and other accused. Further, in the complaint Ex.PH, given by the complainant, it has not been stated by him that when the shutters of the house were lifted by him, he noticed the accused

persons in that house. Though, while deposing in the Court, he has tried to improve his stand by stating that the accused were present on the spot when he opened the shutter. This fact makes his statement unreliable. That apart, there is no other evidence. Recoveries alone are insufficient to connect the accused with the commission of crime. This Court is of the considered opinion that the judgment of acquittal has been rightly passed by the learned trial Court. There is no flaw in the impugned judgments. Consequently, both the appeals are hereby dismissed.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

25.02.2020.
SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No