

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-582-DB-2014 (O&M)
Reserved on: 20.09.2022
Date of decision:28.09.2022

Dalip Singh @ Tirath Singh ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. D.S. Virk, Advocate,
for the appellant.

Mr. P.P. Chahar, DAG, Haryana.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction dated 28.01.2014 and order of sentence dated 29.01.2014 passed by the learned Additional Sessions Judge, Kaithal, whereby the present appellant was convicted for the commission of offence punishable under Sections 302 and 201 IPC and was sentenced as under:-

Offence	Sentence
302 IPC	To undergo imprisonment for life along with fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months;
201 IPC	To undergo rigorous imprisonment for five years along with a fine of Rs.2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months.

Both the above-said sentences were ordered to run

concurrently.

Brief facts of the case, as projected by the prosecution, are that on 23.03.2012, a telephonic call was received in the Police Station Pundri from village Bakal that a dead body was lying in a well. On getting the information, ASI Raspal along with other police officials reached at the spot, where several villagers had gathered. Dalip Singh @ Tirat Singh son of Darshan Singh met them and with the help of villagers, the police pulled out the dead body of Gurnam Singh from the well. Dalip Singh @ Tirath Singh made a statement as a complainant (later on he was implicated as an accused in this case and was convicted by the learned trial Court and is appellant before this Court) to the effect that he was an agriculturist by profession and they were three brothers. Eldest of all was Gurnam Singh (since deceased), after him, the complainant and Balwinder Singh was youngest of all. All the three brothers were married and living separately. They had sold their respective land at village Bakal, District Kaithal (Haryana) and had purchased the land in District Hardoi (Uttar Pradesh), but still they used to reside at their village Bakal in separate houses. The complainant further stated that his brother Gurnam Singh (since deceased) was married with Baljit Kaur, resident of village Sahanjana, District Rudarpur (Uttarakhand). His brother Gurnam Singh (since deceased) have two children namely Parbhjot (daughter) aged 07 years and Gurkirat (son) aged 05 years. His Bhabi (sister-in-law) namely Baljit Kaur had illicit relations with Darshan Singh son of Mukhtiar Singh resident of Salpani Khurd. Darshan Singh was on visiting terms at the house of his brother Gurnam Singh (since deceased). His brother Gurnam Singh (since

deceased) had sold his one acre of land about 10/12 days earlier. On 21.03.2012, Darshan Singh came at the house of his brother Gurnam Singh (since deceased) and the complainant was also sitting at the house of his brother. At that time. Gurnam Singh asked Darshan Singh not to come to his house. Upon this, Baljit Kaur (wife of Gurnam Singh) had a quarrel with her husband Gurnam Singh (since deceased). Darshan Singh had stayed at the house of his brother Gurnam Singh at night and the complainant returned to his house. At about 07.00 PM on 22.03.2012, his brother Gurnam Singh told him that Baljit Kaur and Darshan Singh may commit his murder in collusion with each other and Baljit Kaur had a fight with him on that day also and she had gone out from the house. Gurnam Singh left both the children at the house of the complainant and went to his house during night. On 23.3.2012 at about 07.00 AM, the complainant went to the well constructed in Balmiki Basti near his house on hearing that a Parna (cloth) of blue colour, being worn on head and Hawaii Chappal (slippers) were lying at the well. The complainant identified the Parna as well as slippers lying at the well to be of his brother Gurnam Singh. Nothing was visible as the well was very deep and many persons from locality gathered there. The police was informed and later on with the help of rope, the dead body was taken out of the well. His brother Gurnam Singh was having injuries on forehead and right side of the face and the blood had oozed out from the same. The complainant was sure that Baljit Kaur and Darshan Singh had caused injuries to his brother Gurnam Singh during night and committed his murder by throwing the dead body in an old abandoned well with a motive to conceal his dead body. On the basis of

said statement, the FIR in the instant case was initially registered against Baljit Kaur (PW-7) and Darshan Singh (PW-8) on 23.03.2012 itself.

On the basis of the above-mentioned FIR, the police started the investigation in the instant case. Initially, the matter was investigated by Deputy Superintendent of Police Nripjit singh and later on, the matter was further investigated by DSP Anil Kumar, PW17, who was working as SHO (under training) in Police Station, Pundri. He took over the investigation on 29.05.2012 and according to him, he studied the case file on 30.05.2012 and found Baljit Kaur (PW-7) and Darshan Singh (PW-8) innocent in the case and found that there was enough incriminating evidence against Dalip Singh @ Tirath Singh, complainant himself. Consequently, on 25.06.2012, he recorded the statements of Baljit Kaur (PW-7) and her paramour Darshan Singh (PW-8) under Section 161 Cr.P.C. On 09.07.2012, he arrested Dalip Singh @ Tirath Singh. After about 03½ months, Dalip Singh @ Tirath Singh was arrayed as the only accused in the instant case and he recorded the disclosure statement Ex.PW of the accused. As per the said disclosure statement of Dalip Singh @ Tirath Singh; his sister-in-law (Bhabi) Baljt Kaur had illicit relations with Darshan Singh son of Mukhtiar Singh resident of Salpani Khurd. Due to this reason, they were feeling insulted in their village and brotherhood. His brother Gurnam Singh (since deceased) had sold his land and purchased land in village Deviha Fatehpur, District Hardoi and started residing there. After some time, accused/appellant (Dalip Singh) and his younger brother Balwinder Singh also sold their land in village Bakal and went to Gurnam Singh (since deceased) and started residing there. Darshan Singh also used to come there. He told his brother

Gurnam Singh (since deceased) about this, but he did not pay any heed to the same. About 3-4 months ago, appellant (Dalip Singh @ Tirath Singh) gave beatings to his brother Gurnam Singh and sister-in-law Baljit Kaur. His brother Gurnam Singh (since deceased) made a complaint to Police Station Tatiana in this regard. Gurnam Singh (since deceased) and accused/appellant (Dalip Singh @ Tirath Singh) returned to their village Bakal after some time. On 22.03.2012, accused/appellant Dalip Singh @ Tirath Singh and his brother Gurnam Singh (since deceased) consumed liquor together and went to the house of Gurnam Singh. Again, they both consumed liquor. His sister-in-law (Bhabi) Baljit Kaur along with children went inside her room. Then he asked Baljit Kaur to open the door, but she did not open the same. He pushed the door with force and bolt of the door was opened. He wanted to kill his Bhabi on that day, but she escaped and ran away from the roof of the house on the back side after getting down from the roof. Then he and Gurnam Singh (since deceased) came to his house by taking children of Gurnam Singh with them. He took children of Gurnam Singh to the first floor and made them to sleep with his children. Then an idea struck to his mind that Baljit Kaur had escaped and he would kill his brother Gurnam Singh. Thereafter, Baljit Kaur would go herself from there and he will grab the property and the land. He again served liquor to Gurnam Singh (since deceased) and mixed sleeping pills in the liquor. Due to this, Gurnam Singh (since deceased) came under the influence of liquor and on the pretext of taking him to his house for sleeping, accused/appellant Dalip Singh @ Tirath Singh finally took him to the well near his house and pushed him in the well, and he died due to

drowning in the well. In this regard, he got a false case registered against Darshan Singh and Baljit Kaur regarding the murder of Gurnam Singh, after pushing him in the well. He could demarcate the room, where he served liquor mixed with sleeping pills to Gurnam Singh (since deceased) and the well, where he committed the murder of Gurnam Singh by pushing him. The said disclosure statement (Ex.PW) was recorded by PW-17 Anil Kumar, SHO (under training)/DSP (P) on 09.07.2012.

Thereafter, the investigation commenced against accused-appellant Dalip Singh @ Tirath Singh and he demarcated the place of occurrence, where he had served liquor mixed with sleeping pills to Gurnam Singh and from there he took Gurnam Singh in unconscious condition to the well near Balmiki Basti and pushed him in the well.

To prove its case, the prosecution examined 19 witnesses and thereafter, the statement of appellant was recorded under Section 313 Cr.P.C.. He pleaded that he had lodged the FIR against PW-7 Baljit Kaur and her paramour Darshan Singh, who had murdered his brother Gurnam Singh and thereafter, in collusion with the police, they falsely implicated him in the instant case. His brother Gurnam Singh was murdered by his wife Baljit Kaur and paramour Darshan Singh by simply pushing him in the well or his brother Gurnam Singh committed suicide due to illicit relations of his wife Baljit Kaur with Darshan Singh. Dalip Singh @ Tirath Singh (appellant) did not lead any evidence in defence.

After conclusion of the evidence, the trial Court vide its judgment of conviction dated 28.01.2014 and order of sentence dated 29.01.2014 has held the present appellant guilty for the commission of

offence punishable under Sections 302 and 201 IPC and sentenced as mentioned above.

Hence the appellant has preferred the instant appeal before this Court, praying for his acquittal by making his submissions.

The learned trial Court convicted the appellant primarily on the following grounds:-

- (i) The learned trial Court held that during the course of investigation, the appellant suffered a disclosure statement on 09.07.2012 and he admitted that he had committed the offence in question. Since Baljit Kaur, who is his Bhabi, had left the house, he killed his brother Gurnam Singh, by thinking that after the murder of Gurnam Singh, his wife would leave and he would grab the entire property. However, no recovery was effected in pursuance of the said disclosure statement and he only identified and demarcated the place, where he had taken liquor with the deceased and also the well, where he pushed the deceased in the well
- (ii) The accused-appellant was last seen with Gurnam Singh (since deceased) by the witnesses PW-7 Baljit Kaur and PW-15 Prabhjot Kaur, wife and daughter of the deceased, respectively. Still further, the presence of the appellant and the deceased in the village Bakal on the date of incident was admitted by both the parties.
- (iii) Since there was no direct evidence, but the deceased was

lastly seen with the accused/appellant before disappearance. Consequently, as per Section 106 of the Evidence Act, this evidence was sufficient to hold him guilty.

- (iv) The learned trial Court relied upon the testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur, wife and daughter of Gurnam Singh (since deceased), respectively and found them to be reliable witnesses.
- (v) The appellant/accused did not like his Bhabi Baljit Kaur as she was allegedly having illicit relations with Darshan Singh and accused/appellant wanted to kill Baljit Kaur (Bhabi), but when she ran away, he killed his brother Gurnam Singh with a thought that after his death, Baljit Kaur would go away and he would grab the property of Gurnam Singh. Consequently, there was motive on the part of the appellant to commit the crime.
- (vi) The learned trial Court found the testimony of PW-15 Prabhjot Kaur (a child witness) to be reliable and trustworthy.
- (vii) The learned trial Court held that there were enough circumstantial evidence against the accused/appellant and in fact he had absconded 2-3 days after the crime and this also showed that he was involved in the commission of the crime. Still further, there were injuries on the person of the deceased, which showed that the deceased had

resisted the act of the accused/appellant of throwing him in the well, but he could not succeed as he was under the influence of liquor.

We have heard the learned counsel for the parties at length and perused the trial court record carefully.

We find that there are sufficient grounds for interfering and over turning the judgment of conviction passed by the learned trial Court and we hereinafter deal with the findings recorded by the learned trial Court and the reasons for disagreeing with the same.

(i) Regarding the disclosure statement suffered by the appellant on 09.07.2012

The FIR in the instant case was initially got registered by the appellant/accused on 23.03.2012 under Sections 302/ 201 IPC against Baljit Kaur, wife of the deceased and her paramour Darsahan Singh and had levelled specific allegations against him. The police did not take any effective steps for a period of more than 03 months to conduct the investigation in the fair and impartial manner and after a gap of more than 03 months, the appellant, who was the complainant, was arrayed as an accused, without any incriminating substance on record. Surprisingly, to array him as an accused, the police recorded the statements of both the accused Baljit Kaur and Darshan Singh on 25.06.2012. It is pertinent to note here that during the inquest proceedings, statements of several villagers namely Sukhwinder Singh, Angrej Singh etc. were recorded and they had levelled specific allegations against Baljit Kaur and Darshan Singh.

Consequently, there was no other evidence except the statements of the

accused with the police, on the basis of which, the complainant was arrayed as an accused in the instant case. Still further, even the story projected by the police in the disclosure statement Ex.PW was highly improbable and unbelievable. Moreover, the said disclosure statement, which was heavily relied upon by the learned trial Court, was inadmissible in evidence as the said statement led to no recovery at all. In pursuance of the said disclosure statement, the accused/appellant allegedly demarcated the place, where he had consumed liquor with the deceased and also identified the well, where he allegedly pushed the deceased in the well; both these places were already in the knowledge of the police and were known to the Investigating Officer. Consequently, the suffering of disclosure statement Ex.PW by the accused on 09.07.2012 in police custody was inconsequential and could not have been relied upon by the learned trial Court. We have even dealt with the contents of disclosure statement in the later part of the judgment, which would establish that even the story projected by the prosecution in the said disclosure statement is liable to be rejected outrightly and could not have been relied upon to base the judgment of conviction by the learned trial Court.

- (ii) **The accused-appellant was last seen with Gurnam Singh (since deceased) by the witnesses PW-7 Baljit Kaur and PW-15 Prabhjot Kaur, wife and daughter of the deceased, respectively.**

The learned trial Court failed to appreciate that no direct evidence in the instant case was available on record and it was a case of circumstantial evidence. The learned trial Court placed heavy reliance on the testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur to hold that

they had last seen the accused with the deceased on the date of the occurrence. In fact, there was sufficient material to hold that PW-7 Baljit Kaur was having illicit relations with PW-8 Darshan Singh. Even in the FIR initially, she was arrayed as an accused in the instant case. In her testimony, she stated that on the night of the occurrence, the appellant came to their house at 08.30 PM and took liquor with her husband for about 1½ hour, i.e. from 08.30 PM to 10.00 PM. Thereafter, she called her husband Gurnam Singh (since deceased), on which the accused/appellant became annoyed and he had scuffle with her. She went in her room and he came thereafter opening the door and gave her two slaps. Thereafter the villagers gathered at their house and Gurnam Singh (since deceased) and another people asked her to run away otherwise the accused/appellant may kill her. Thereafter, she went away from the house and reached at village Karora and informed PW-8 Darshan Singh. Surprisingly, she left her husband at the mercy of a person, who could have killed him. Secondly, if the accused/appellant wanted to kill her, he had sufficient chance to commit the crime. Still further, she neither informed the brother and father of the deceased, who were staying in the same village nor she preferred to call the police or any other relatives, who were admittedly residing in nearby villages. Even she did not seek the help of any other villager or any Panch/Sarpanch of the village to save them from her brother-in-law. It was also admitted by her that distance between village Bakal and Karora was about 2-3 kilometers and she could have very well informed the police after reaching village Karora. Moreover, Her paramour Darshan Singh reached her at about 05.00 AM on 23.03.2012, still she did not go back to her house nor inform the

police nor any relative was informed. Surprisingly, even after coming to know about the death of her husband, she did not make a complaint to the police. In her cross-examination, she stated that she made a written application to the police regarding the death of her husband but she could not produce any copy of the application. She even could not tell the contents of the said application. However, she stated that it was got written that the appellant had run away after committing the murder of her husband. It is equally shocking to note from her cross-examination that she had levelled allegations of murder of her husband against the appellant, solely on the basis of the fact that her husband was not having any dispute with any other person. Even the prosecution could not place on record any such application moved by PW-7 Baljit Kaur to the police. Thus, it is apparent that the learned trial Court committed a grave error in relying upon the testimony of the said witness, who named the appellant as an accused only on the basis of her whims and fancies and due to her previous enmity with the accused.

Similarly, the learned trial Court committed a grave error in relying upon the testimony of PW-15 Prabhjot Kaur (a child witness) to hold that she had last seen the accused-appellant with the deceased. In fact, PW-15 Prabhjot Kaur, a child witness, was apparently a tutored witness. She stated that her mother Baljit Kaur (PW-7) had brought her to the Court on that day. Her mother told her what to depose in Court and she gave her a paper for preparing. Thus, it is apparent that PW-15 Prabhjot Kaur was given a paper to memorize the facts and depose before the Court by her mother, i.e. PW-7 Baljit Kaur. Consequently, the learned trial Court

committed a grave error in placing reliance on the testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur to hold that they had last seen the accused in the company of the deceased Gurnam Singh.

(iii) **The evidence of last seen and invoking the provisions of Section 106 of the Evidence Act.**

As discussed above, we have found that testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur are unreliable and not worthy of credence and their testimonies could not be relied upon to hold that they had seen the accused/appellant in the company of Gurnam Singh (since deceased) lastly. Still further, the burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability. Since we do not find any ground to hold that the accused/appellant was last seen in the company of Gurnam Singh (since deceased) and the prosecution had not discharged its initial burden, there was no question of invoking the provisions of Section 106 of the Evidence Act. Still further, a circumstance of last seen does not, by itself, necessarily lead to an inference that the accused/appellant committed the crime. There must be some thing more that establishes a connection between the accused and the crime. For instance, there may be cases where close proximity between the event of last seen and factum of death may persuade a rational mind to reach an irresistible conclusion that the last seen of the deceased is material and merits an explanation from the accused. In view of the unreliable and impeachable testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur, we

hold that in order to create a false defence, they had coined a false story of last seen of the deceased in the company of the appellant/accused. The provisions of Section 106 of the Evidence Act have no applicability to the facts of the present case.

(iv) **Reliance on the testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur.**

We have discussed the testimonies of PW-7 Baljit Kaur and PW-15 Prabhjot Kaur in detail above. When the FIR was initially registered, there were specific and serious allegations against PW-7 Baljit Kaur. We find that PW-7 Baljit Kaur and PW-15 Prabhjot Kaur (wife and daughter of the appellant, respectively) were admittedly inimical towards the appellant and had deposed falsely and their testimonies are liable to be discarded, being interested and related witnesses. The law is well settled that there cannot be any hard and fast rule that the evidence of interested witness cannot be taken into consideration and then cannot be termed as witnesses. But, the only burden that would be cast upon the courts in those cases is that the courts have to be cautious, while evaluating the evidence to exclude the possibility of false implication. It is equally settled that relationship can never be a factor to affect the credibility of the witness as it is always impossible to get an independent witness each time. As a rule of prudence, and not as a rule of law, the evidence of such witnesses have to be scrutinized with little care and it is only when the court is satisfied that the evidence of interested witnesses have a ring of truth, such evidence can be relied upon even without corroboration.

In the instant case, as discussed above, the testimonies of PW-7

Baljit Kaur and PW-15 Prabhjot Kaur are apparently made, just to save PW-7 Bajit Kaur from the charge of murder.

(v) **Motive**

The FIR was initially got registered by the present appellant, who was the real brother of Gurnam Singh (since deceased). He clearly stated that at about 07.00 PM on 22.03.2012, his brother Gurnam Singh told that his wife PW-7 Baljit Kaur and PW-8 Darshan Singh in connivance with each other may commit his murder and Baljit Kaur had picked a quarrel with him on that day also and she had gone out from the house. Thereafter, his brother Gurnam Singh (since deceased) left his both the children at his house and went to his house during night. In the morning at about 07.00 AM on 23.03.2012, his dead body with certain injuries was found in the well. It was alleged by the appellant (initially the complainant) that due to illicit relations between PW-7 Baljit Kaur and Darshan Singh, his brother Gurnam Singh (since deceased) was defamed and he was killed by Baljit Kaur and his paramour Darshan Singh.

The police recorded the disclosure statement Ex.PW of the appellant on 09.07.2012 and he was arrayed as an accused in the instant case only on the basis of said disclosure statement, recorded in the police custody. As per the said disclosure statement Ex.PW, the appellant was aware of the illicit relations with Baljit Kaur and Darshan Singh. Due to this, he gave beatings to his brother and his Bhabi 3-4 months prior to the occurrence. It was stated that on 22.03.2012, he and his brother Gurnam Singh (since deceased) consumed liquor together and his Bhabi, i.e. Baljit Kaur (PW-7) along with the children went inside her room. When he asked

PW-7 Baljit Kaur to open the door, but she did not open the door. He pushed the door with force and bolt of the door was opened. He wanted to kill his Bhabi on that day, but she escaped and ran away from the roof of the house on the backside. Thereafter, it has been alleged that he shifted the children of Gurnam Singh (since deceased) to his house and again served liquor to Gurnam Singh. He offered liquor mixed with sleeping pills to the deceased and pushed him in the well later. It was alleged that the motive for commission of the crime was that the appellant had an impression that after the murder of Gurnam Singh (since deceased), his Bhabi, i.e. Baljit Kaur (PW-7) would leave the place and he would grab his property.

In fact, the motive alleged in the said disclosure statement is highly unbelievable. First of all, admittedly, the appellant/accused and Gurnam Singh (since deceased) were real brothers and there was no prior enmity between them. Rather they had taken liquor together twice and even their father Darshan Singh appeared as PW-14. Darshan Singh, father of the appellant (PW-14) as well as Gurnam Singh (since deceased) clearly stated that his daughter-in-law Baljit Kaur was having illicit relations with PW-8 Darshan Singh. PW-7 Baljit Kaur used to call her paramour Darshan Singh whenever Gurnam Singh (since deceased) was away. Due to this, a quarrel ensued between Gurnam Singh (since deceased) and his wife Baljit Kaur. One day, he heard the voice of quarrel from house of Gurnam Singh and heard cries of Gurnam Singh (since deceased). On that, he along with the appellant went to the house of Gurnam Singh and saw that injuries had been caused on the forehead of Gurnam Singh (since deceased), which were caused by Baljit Kaur with a Kirpan. After causing injuries, PW-7 Baljit

Kaur escaped by jumping over the wall of neighbours. Gurnam Singh (since deceased) left his home by saying that he was going in search of Baljit Kaur and did not return for the whole night and next day his dead body was recovered from the well. Thus, it is apparent that PW-7 Baljit Kaur and PW-8 Darshan Singh had motive to commit the crime and the criminal liability has been wrongly fastened on the present appellant.

(vi) The learned trial Court found the testimony of PW-15 Prabhjot Kaur (a child witness) to be reliable and trustworthy.

The learned trial Court has committed a grave error on relying upon the testimony of PW-15 Prabhjot Kaur, a child witness. The law is well settled and even the evidentiary value of a child witness is at par with any other ordinary witness. The deposition of a child witness may require corroboration, but when his/her deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his/her evidence. Only when there was evidence on record to show that a child witness had been tutored, the Court can reject his/her statement partly or fully and such an inference as to whether child has been tutored or not can be drawn easily from the contents of his/her deposition. In the instant case, PW-15 Prabhjot Kaur, a child witness, clearly stated that her mother had brought her in the Court. Even her mother told her what to depose in the Court and she was given a paper for preparing her testimony. Consequently, the learned trial Court committed a grave error in placing reliance on the testimony of such a tutored child witness and the testimony of such witness was liable to be rejected by the learned trial Court.

(vii) Circumstantial evidence

We find that there was enough evidence, which indicates that the prosecution had not been able to prove the case beyond the reasonable doubt. The accused/appellant had taken a plea in the statement under Section 313 Cr.P.C. that he had lodged the present FIR and as per him, PW-7 Baljit Kaur along with her paramour Darshan Singh had murdered his brother Gurnam Singh and in collusion of the police falsely implicated him. His brother Gurnam Singh was murdered by his wife Baljit Kaur and paramour Darshan Singh, by pushing him down in the well or his brother Gurnam Singh committed suicide due to illicit relations of his wife Baljit Kaur with Darshan Singh. We have carefully perused the medical evidence in this regard and found substance in his statement. The prosecution examined PW-19 Dr.Anumeha Gill, who was a member of the Board of Doctors, which conducted the post-mortem on the dead body and found the following injuries:-

1. Lacerated wound of size of 3x2 cm on frontal Region on left side near mid line bone deep injury.
2. Abrasion of size 1x1 cm on right dorsum of hand dark reddish brown in colour.
3. Abrasion of size 4x3 cm present on right cheek dark reddish brown in colour.
4. Abrasion of size 3x2 present on right elbow dark reddish brown in colour.
5. Abrasion of size 3x2 present on left fore arm middle 1/3 dark reddish brown in colour.
6. Abrasion of size 1x1 cm present on left fore arm lower 1/3rd near wrist dark reddish brown in colour.

Nail beds blue in colour post mortem staining present on back and dependent area, face congestion present

froth mixed with blood coming from nostril on deep dissection blood clots present around lacerated wound of skull on opening thoracic cavity lungs were congested. Swollen voluminous on cut section froth comes out.

As per opinion of the doctor, the cause of death was asphyxia due to drowning, which was ante mortem in nature and sufficient to cause death in normal course of life. Even all injuries were ante mortem in nature. The said doctor in her cross-examination admitted that the injuries mentioned in the post-mortem report were possible by falling on hard surface from a considerable height. The injuries on the head of the deceased Gurnam Singh can be possible by falling into a deep well (well is missing in deposition). The doctor admitted that if a person inflicts such injuries as explained in the PMR to any other person, the victim will cry loudly. She admitted that in case of asphyxia, the death occurs in a few seconds and no injury on the person of deceased Gurnam Singh was detected as post-mortem injury.

From a perusal of the testimony of above-said doctor, it is apparent that there is no definite opinion that it is a case of homicidal death as even though the deceased had suffered injuries, still these injuries could be caused by any other person or these could be suffered due to fall into a deep well. Consequently, it is apparent that either the deceased was caused these injuries and thrown in the well. At the same time, it is equally possible that the deceased had committed suicide and suffered injuries due to fall in the deep well and died due to asphyxia as a result of drowning in the well. Consequently, it can be a case of homicidal death as well as

suicide by the deceased himself.

Still further, even the story propounded by the prosecution in the disclosure statement is highly unnatural and unbelievable even on the strength of the medical record and the report of the chemical examiner. It was alleged by the prosecution that from 08.30 PM to 10.00 PM on 22.03.2012, the appellant had consumed liquor with the deceased at the house of PW-7 Baljit Kaur and Gurnam Singh (since deceased). From there, he was taken to the house of the appellant, where the appellant administered him sleeping pills alongwith liquor and while he was semi conscious, he was pushed in the well by the appellant. Again, the said story falls flat as the viscera was sent to the Chemical Examiner, Haryana. As per said report, Ex.PRR, six exhibits containing samples of stomach, liver, spleen, lung, kidney, small and large intestine, blood from heart, heart and preservatives were sent to Chemical Examiner and contents of all the exhibits gave negative test for common poison and ethyl alcohol. Consequently, it is apparent that neither alcohol was detected nor any other chemical (sleeping pills) were detected in the said exhibits. This clearly falsifies the story of the prosecution that the deceased was made to drink alcohol heavily by the appellant and was administered sleeping pills by the appellant.

Even otherwise, the version put forth by the prosecution was highly unbelievable. It has been stated that the appellant had taken liquor at the house of the deceased and thereafter again they consumed liquor at the house of the appellant, where the deceased was made to take liquor mixed with sleeping pills. Thereafter the appellant took away the deceased to his

house and on the way, he was pushed in a well. In fact the appellant was also heavily drunk that time, as per the case set up by the prosecution. It is highly unbelievable that a heavily drunk appellant would be able to cover such a long distance with Gurnam Singh (since deceased), who was also heavily drunk and had taken sleeping pills and then the appellant pushed him in the well also. In fact, one person, who himself is heavily drunk would not be in a position to commit the said crime in such a manner and the entire prosecution story is liable to be discarded. Even otherwise, the chain of circumstances in the instant case is incomplete to hold the accused guilty as per the crime.

It is propounded in several judgments that in scrutinizing the circumstantial evidence, a Court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. It is underlying that whether the chain is complete or not would dependent on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. It is equally settled that in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to irresistible conclusion that the accused alone is the perpetrator of the crime alleged and that the circumstances also of conclusive nature consistent only with the hypothesis of the guilt of the accused.

Tested on the touchstone of the above judicially laid parameters, defining the quality and contents of the circumstantial evidence, essential to bring home the guilt of an accused person on a criminal charge, we are of the unhesitant opinion that the prosecution, in

the instant case has failed to meet the same. The evidence led by the prosecution and the material produced during the course of trial admit of substantial doubt vis-a-vis due to the complicity of the present appellant in the commission of the crime.

Having regard to the evidence led by the prosecution, it would be highly unsafe to sustain the conviction of the appellant and he is entitled to benefit of doubt. As a consequence thereof, the appeal succeeds and is hereby allowed. The judgment of conviction dated 28.01.2014 and order of sentence dated 29.01.2014 passed by the learned Additional Sessions Judge, Kaithal are set aside. The bail bonds of the present appellant stand discharged and he may be released from custody, if not on bail and if not required in any other case.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

28.09.2022

mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO