

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

**CRM-2578-2019 in/and  
CRM-A-325-2019 (O&M)  
Date of Decision: 15.12.2022**

**STATE OF HARYANA**

..... Appellant(s)

**Versus**

**VICKY**

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL  
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Raman Sharma, Addl. A.G. Haryana,  
for the applicant-appellant/State.

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**LISA GILL, J.**

The appellant-State of Haryana seeks leave to appeal against judgment dated 07.06.2018, passed by learned Sessions Judge, Faridabad, whereby respondent-Vicky has been acquitted of the charges framed against him for the offences punishable under Sections 302 of IPC and Section 25 of the Arms Act, arising out of FIR No.334 dated 28.07.2016, registered at Police Station Bhupani, Faridabad.

Brief facts necessary for adjudication of the matter are that as per the prosecution version, Inspector Suresh Kumar (PW13) was on patrol duty on 28.07.2016 near Budhena bridge when information was received from the control room that dead body of a person was lying in village Kheri Kalan. PW13 accompanied by other police officials including SI Satpal Singh (PW12) reached village Kheri Kalan where Smt. Madhu (PW2) wife of Rajesh @ Damru (deceased) met him and submitted complaint Ex. PB. The complainant disclosed herself to be a labourer residing in village Kheri

Kalan. It is stated that on 27.07.2016 at about 8:30 PM, her husband Rajesh @ Damru (deceased), aged about 34 years, had gone out for a stroll, after his meal. Complainant waited for him for long but as he did not return, she alongwith her children went to sleep. At about mid-night, her mother-in-law Santa informed her that some unknown person had murdered Rajesh @ Damru with a sharp edged weapon by slitting his throat. Complainant, it is submitted, went to the spot alongwith her mother-in-law and found the dead body of her husband Rajesh @ Damru lying in pool of blood in front of a grocery/retail (Parchoon) shop of one Ashok son of Kameshwar. It is stated that some unknown person had slit her husband's throat and murdered him. Legal action was sought.

Police proceedings Ex. PQ were carried out by Inspector Suresh Kumar (PW-13) and FIR No.334 dated 28.07.2016, Ex.PF was recorded. Photographs Ex. P1 to P6 were taken by Inspector Suresh Kumar (PW-13). Inquest proceedings were carried out. Blood stained earth was lifted from the spot and taken in possession vide memo Ex. PN. Rough site plan Ex.PR of the place of crime was prepared. Postmortem of the deceased was carried out by Dr. Manish Dayal (PW4). Autopsy report Ex.PC/1 was prepared. Sealed parcel containing blood stained clothes of the deceased handed over by the doctor, were taken in possession by Inspector Suresh Kumar (PW-13) vide memo Ex.PO.

Respondent-Vicky was stated to have been arrested on 29.07.2016 on the basis of supplementary statement of the complainant/wife of the deceased. It is to be noted at this stage that no such supplementary statement of the complainant is admittedly available on record.

As per the prosecution case, respondent was interrogated on 30.07.2016 wherein he suffered a disclosure statement Ex.PK wherein he stated that he was residing with the family of Gulab son of Inder Singh, who is none other but elder brother of the deceased Rajesh @ Damru. Respondent is further stated to have disclosed that he was brought to the village by Gulab when he was 5-7 years old as his mother had performed second marriage and that he had been residing with Gulab at his residence for the last 15 to 16 years and did not know as to which place he belonged to. Respondent in his disclosure statement further stated that he used to treat Gulab as his elder brother and Gulab's mother Santa as his mother and that the deceased, it is stated, used to abuse and beat Gulab and the respondent. Respondent allegedly disclosed that on 27.07.2016 respondent and Gulab consumed liquor and at about 8:30 P.M., Rajesh @ Damru (deceased) also joined them. After some time Rajesh @ Damru left Gulab's residence for going home and respondent accompanied him to drop him home. The respondent stated that finding this to be a good opportunity, took a knife meant for cutting chicken and when he alongwith Rajesh @ Damru reached in front of the shop of Ashok, respondent started inflicting injuries with the knife on Rajesh @ Damru taking benefit of the dark. Rajesh @ Damru fell on the ground and the respondent caught him by his hair and inflicted injuries on his neck and then concealed the knife under a box in his house (residence of Gulab) along with his blood stained clothes, which he could get recovered.

Pursuant to disclosure statement Ex.PK, respondent is stated to have led the police party to the place of crime and correctly identified the spot and also got recovered a knife and his blood stained clothes i.e. blue

colour spotted shirt and a knicker. Measurement of the knife was taken and sketch Ex.PL was prepared. The knife and the clothes were converted into separate parcels and taken in custody. Final report under Section 173 Cr.P.C. was submitted after completion of investigation and the case committed to the Court of Sessions on 27.10.2016. Charge under Section 302 IPC and Section 25 of the Arms Act was prepared against the respondent on 17.11.2016, to which the respondent pleaded not guilty and claimed trial.

Prosecution examined as many as 13 witnesses to buttress its case besides tendering FSL report Ex.PJ in evidence and reliance was placed by the prosecution on various other documents as were exhibited in evidence. All incriminating evidence against the accused was put to him and his statement under Section 313 Cr.P.C. was recorded. The incriminating evidence was denied by the accused, who pleaded innocence and false implication. No evidence was led by him in defence.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had miserably failed to prove its case beyond reasonable doubt against the accused thereby acquitting him of the charges framed against him. Aggrieved therefrom, present appeal has been filed by the State.

Learned counsel for the State-appellant submits that the learned trial Court has grossly erred in acquitting the respondent of the charges against him. It is submitted that the evidence on record clearly points to the guilt of the accused. The FSL report Ex.PJ clearly reveals that the respondent is guilty as charged. The blood stained towel recovered from the accused and the shirt of the deceased handed over by the doctor were found to be stained

with blood belonging to the same blood group i.e., 'O'. It is further submitted that disclosure statement of the accused has been wrongly ignored by the learned trial Court as the same had led to discovery of the blood stained clothes of the accused and the towel. The chain of events, it is contended, is complete in this case and points to the guilt of the accused, therefore, present appeal be allowed. Judgment dated 07.06.2018, passed by learned Sessions Judge, Faridabad be set aside and the accused be convicted for the offences as charged and sentenced in accordance with law for having committed murder of Rajesh @ Damru.

We have heard learned counsel for the appellant and have gone through the record with his assistance.

Present is a case, which rests solely on circumstantial evidence. There is no direct evidence available on record. The prosecution has sought to establish that the deceased was last seen with the accused on the basis of the statement of PW3 Subhash. Furthermore, reliance is placed by the prosecution on recovery of blood stained knife and clothes of the accused pursuant to his disclosure statement to prove its case against the accused.

Proceedings in this case were initiated on the basis of a written complaint Ex.PB, submitted by the wife of deceased Rajesh @ Damru. It is a matter of record that no suspicion has been raised against anyone in the said complaint leave alone qua the respondent. It is the case of the prosecution that accused was nominated and arrested on the basis of a supplementary statement of the wife of the deceased. Inspector Suresh Kumar (PW13) in his examination-in-chief stated that wife of the deceased recorded her supplementary statement on 29.07.2016 to the effect that she suspected the accused to have committed the crime. Accordingly, the accused was arrested

from village Kheri in the evening. However, it is a matter of record that no such supplementary statement is on record. This fact has been conceded by Inspector Suresh Kumar (PW13) in his cross-examination.

In so far as evidence of Subhash (PW3) is concerned, it is to be noted that the same has been correctly discarded by the learned trial Court. Subhash (PW3) stated that Rajesh @ Damru, deceased was working with him and was living with him as well. A house had been got built for the deceased by him. Subhash (PW3) further stated that deceased often revealed to him that the respondent Vicky used to quarrel with him. Subhash (PW3) is stated to have told the accused Vicky a number of times to restrain and refrain himself from quarreling with Rajesh @ Damru but all in vain. It is further stated by Subhash (PW3) that on 27.07.2016 he had gone to call Rajesh @ Damru from his residence at about 8:00-8:30 PM but he came to know that Rajesh @ Damru had gone with Vicky. It is stated that when PW3, Subhash reached near them, he heard Vicky threatening Rajesh @ Damru loudly on which Subhash (PW3) asked Rajesh @ Damru to accompany him. Subhash (PW3) then left therefrom. PW3 further stated that on the same night he came to know that Rajesh @ Damru was murdered by someone with a sharp edged weapon and his dead body was lying in a pool of blood near the shop of Ashok Pandit. He, therefore, suspected that Rajesh @ Damru had been murdered by Vicky.

It is relevant to note that Suresh Kumar (PW13) - the Investigating Officer of the case has not at any stage stated that he joined PW3 – Subhash in the investigation. Subhash was confronted with his statement Ex.D1, purportedly made before the police wherein it was admitted that this statement though bearing his signatures did not bear any date, time

or year. There is no reference of this statement in the report under Section 173 Cr.P.C. Furthermore, PW3 has claimed that he had gone to the house of the deceased Rajesh @ Damru at about 8:00-8:30 PM but it is not so corroborated by PW2 Madhu, wife of the deceased. There is further no indication of the place where he saw both the respondent and Rajesh @ Damru together, where the respondent is stated to have been threatening Rajesh @ Damru. It is correctly observed by the learned trial Court that had the statement of PW3 been recorded on the night of the murder at any point of time, it would have found mention in the report under Section 173 Cr.P.C., whereas PW13 - the Investigating Officer clearly stated that he arrested the accused on account of supplementary statement of the complainant, raising a suspicion against the accused. Therefore, evidence of this witness has been discarded rightly. There is indeed no evidence on record to indicate that the accused was last seen with the deceased.

At this stage, it is relevant to note that the accused had admittedly been brought to the family by Gulab i.e. younger brother of the deceased when the accused was 5-7 years old. The accused had admittedly been living alongwith Gulab and his family. PW1 Gulab, real brother of the deceased has not raised any suspicion against the accused and in fact says that he did not know who murdered his brother. The complainant (PW2) - wife of the deceased has also not raised any allegation or suspicion against the accused. In fact, in her cross-examination, she has categorically stated that no quarrel had ever taken place between the accused and her husband in her presence at any point of time and neither had Rajesh @ Damru ever disclosed about any quarrel between him and the accused. It is thus highly improbable in such a situation that PW3 would be aware of some quarrel

between the accused and the deceased, which was not even known to the wife and brother of the deceased.

Prosecution has further relied upon the discovery of the knife, stated to be the weapon of offence and the blood stained clothes pursuant to the disclosure statement Ex.PK, purportedly suffered by the accused. It is a settled position that a disclosure statement in police custody would become relevant only if it leads to discovery of a fact in terms of Section 27 of the Indian Evidence Act, 1872. In the present case, the recovery itself is doubtful and sketchy. This is so for the reason that recovery is alleged to have been made from the residence of the accused i.e. also the residence of PW1-Gulab. No public witness or even Gulab-PW1 was associated at the time of alleged recovery. The overwriting and cutting in the date on the disclosure statement as well as on the recovery memo Ex.PL/1 is duly noted by the learned trial Court. A material and glaring discrepancy to be noted in this case is that the articles recovered, as mentioned in the recovery memo Ex.PL/1 are described as a blood stained knife besides blood stained clothes of the accused i.e., a blue spotted shirt and a red-blue knicker. There is no mention of a blood stained towel which is stated to have been found in the parcel which was sent for FSL examination. FSL report Ex.PJ has been pressed into service to state that commission of offence by the accused is proved on the ground that blood detected on the white towel recovered from the respondent and shirt of the deceased belonged to the same blood group i.e., 'O'.

In our considered opinion, abovesaid argument is devoid of any merit as recovery of the said towel itself is not proved. Inspector Suresh Kumar (PW13) has clearly stated that only two clothes of the accused as

recovered pursuant to his disclosure statement were sent for forensic examination to the FSL. Furthermore the recovery memo does not indicate recovery of any towel from the accused. ASI Pritam Singh (PW11) has clearly deposed that clothes of the accused as recovered included a knicker and shirt as is mentioned in the recovery memo Ex.PL whereas the sealed parcel, which was opened in Court contained a knicker, shirt as well as the blood stained towel. Mysterious presence of this towel is thus not explained.

Furthermore, as per report of the FSL (Ex.PJ) the knife examined by it was approximately 25 cm. in length having a rusty metallic blade and a wooden handle whereas the sketch Ex.PL and recovery memo Ex.PL/1 mention the length of the blade of the knife allegedly recovered from the accused to be different. This aspect has been discussed at length by the learned trial Court, as under:-

"23. Not only above, the report Ex. PJ of FSL reveals that the knife examined by it had the length of approximately 25 cm having rusty metallic blade and wooden handle. Sketch Ex. PL and the recovery memo Ex. PL/1 reveal that length of the blade of the knife allegedly recovered from the accused was 9 ½" and the handle as 4" 8 cm. Meaning thereby, total length of the knife as per the sketch and the recovery memo is approximately 13' - 8.5 cm; which means that it was more than 30 cm, which is completely at variance from the length of the knife examined by the FSL as referred in Ex. PJ. It again creates doubt as to whether the parcel of the same knife and clothes reached the FSL, which consisted the clothes and knife allegedly recovered at the instance of the accused.

24. Still further, PW11 ASI Pritam Singh, during cross-examination, candidly admitted that knife Ex. P7 as produced in the Court was fully rusted with no blood spots visible on its blade. There is absolutely no evidence on file to reveal that said

knife, after recovery allegedly effected from the accused, was ever shown to PW4 Dr. Manish Dayal so as to elicit his opinion as to whether the injuries found on the body of deceased Rajesh @ Damru could be possible by the said rusted knife Ex. P7.”

The conclusion thus drawn by the learned trial Court is unassailable. It is a settled position of law that in a case resting on circumstantial evidence, the chain of events has to be so complete that it points unerringly to the guilt of the accused and is not consistent with any other hypothesis. Suspicion, however, strong can never be the basis of conviction of an accused. The Hon'ble Supreme Court in ***Padala Veera Reddy v. State of A.P. and others (AIR 1990 Supreme Court 79)***, held that it has been consistently held in a series of decisions that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) 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
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of 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.”

Prosecution in this matter has been unable to prove that the link in the chain of events is so complete that it unerringly points to the guilt of the respondent and is in consistence with his innocence. Furthermore there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon’ble Supreme Court in *Arulvelu v. State represented by the Public Prosecutor 2009 (10) SCC 206* held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court’s acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

Reference in this regard can also be made to judgment of Hon’ble Supreme Court in **Criminal Appeal No. 2119 of 2010 (State of Rajasthan versus Kistoora Ram)** decided on 28.07.2022, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that view taken by Court is impossible or perverse.

Learned counsel for appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 07.06.2018, passed by learned Sessions Judge, Faridabad, which calls for

any interference by this Court.

An application seeking condonation of delay of 107 days in filing the application/appeal has been filed. As the appeal has been decided on merit, question of condonation of delay in filing the applicant/appeal is rendered academic. Application is disposed of accordingly.

No other argument has been raised.

Accordingly, leave to appeal is declined.

**(LISA GILL)**  
**JUDGE**

**(RITU TAGORE)**  
**JUDGE**

**15.12.2022**

Sunil

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