

Neutral Citation : 2023:PHHC:071120-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1134-DB-2014 (O&M)
Date of Decision: May 16, 2023

Kamal Singh ...Appellant
Versus
State of Haryana ...Respondent

CORAM:HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Arun Kumar Bakshi, Advocate
for appellant.

Mr. Anmol Malik, DAG Haryana.

HARINDER SINGH SIDHU, J.

This appeal has been preferred against the judgment and order dated 3.5.2014 passed by the Session Judge, Narnaul in Sessions Case No.43 of 2013 whereby the appellant, who was charged with and tried for the commission of offence punishable under Sections 302 and 379 IPC has been convicted and sentenced as under :

Offence U/s	Sentence
Under Section 302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of which, to further undergo rigorous imprisonment for 6 months.
Under Section 379 IPC	To undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.1,000/- and in default of which, to further undergo rigorous imprisonment for 1 month.

The sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Sapna Devi wife of Bir Singh resident of village Khairana submitted a complaint to SHO, P.S. Kanina stating therein that her husband has one brother Kamal who is younger to her husband. Her brother-in-law Kamal was roaming with axe saying that he would kill Bir Singh and he would keep the complainant and children. On the intervening night of 5/6.10.2013 at about 11 pm, her brother-in-law Kamal having a kulhari in his hand was standing near her house saying that you (complainant) may hide Bir Singh anywhere but he would kill him that day. On account of fear she made her husband sleep inside the room of the house. After some time, her husband said that he would sleep outside. Her husband went outside and the complainant slept inside the room. Thereafter she slept. In the morning, brother of her father-in-law woke her up and told her that she has been looted. Thereafter, she along with her Tayasra (brother of her father-in-law) Jagmal came outside and saw that the dead body of her husband was lying on the cot. He was having kulhari blow on his head. She further alleged that her brother-in-law Kamal had committed the murder of her husband.

3. On the basis of application, FIR No. 294 dated 6.10.2013 under Section 302 IPC was registered at Police Station Kanina, District Mohindergarh. On the statement of Jagmal regarding theft of a motorcycle, Section 379 IPC was added in the FIR. On 7.10.2013, accused Kamal was arrested and the motorcycle was recovered.

4. The prosecution examined number of witnesses in its

support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded innocence. He stated that he had been falsely implicated in the case due to the illicit relations between PW2 Sapna and PW3 Jagmal. However, he did not lead any evidence in his defence.

5. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 Sanjay Kumar deposed that on 6.10.2013, he was associated in the investigation with Inspector Hari Om, SHO, Police Station Kanina. Inspector Hari Om took into police possession blood stained earth, piece of rope of cot and blood stained piece of bed sheet (gudri) from the spot in his presence vide memo Ex. PW 1/A. On the same day inquest proceedings were conducted by police in his presence. The police also recorded his statement under Section 175 Cr.P.C.

8. In cross examination he stated that the distance of his house from the house of the deceased was about 200 feet. Police had recorded his statement in the hospital.

9. PW2 Sapna (complainant) deposed that her husband had one younger brother Kamal Singh. For the last 2-3 days he had been roaming in the street with kulhari. He was saying that he would kill Bir Singh and keep the complainant and her children with him. On the intervening night of 5/6.10.2013 at about 11.00 pm accused Kamal Singh

came to her house. He was having kulhari in his hand. He told the complainant that she may make attempt to hide her husband but he would kill him. Thereafter, she along with her husband slept inside the room. After some time, her husband came outside and slept in the cattle shed outside the house. In the morning, elder brother of her father-in-law (Jagmal) woke her up and told her that she had been looted. She came out with him and found that dead body of her husband was lying on the cot. He was having kulhari blow on his head. Kamal Singh had murdered her husband. The police was summoned by the Sarpanch. Then she moved an application (Ex.PA) to the police.

10. In cross examination by learned counsel for accused, she stated that in her application she had mentioned that her husband was sleeping in the cattle shed. She was confronted with her statement Ex.PA where it is not so recorded. She admitted that the accused did not give the kulhari blow on the head of her husband in her presence. She was sleeping inside the house. She did not know at what time accused inflicted kulhari blow on her husband. She did not know that any person of the village had witnessed the occurrence. She had disclosed the fact that accused was roaming with kulhari to her neighbours and the persons who used to visit her husband but she did not know their names. She did not make any complaint to the police regarding accused roaming with a kulhari. She admitted that there was a dispute between her husband and accused regarding agricultural land. Her husband came out of her room at 12 midnight. Again said she could not tell the time when

her husband came out of the room as she was sleeping at that time. She did not hear the noise of the kulhari blow. The police had scribed the application Ex.PA. She only appended her signatures. The elder brother of her father-in-law (Tayasara) was aged about 70-75 years. She denied the suggestion that she along with her tayasara Jagmal had committed the murder of Bir Singh to grab the land of accused Kamal Singh. The house of her Tayasara was situated in front of her house and he usually visited their house. Her father- in- law had died prior to the murder of her husband. He died due to illness. It was a natural death. She denied the suggestion that there was a quarrel between her husband and her father- in- law regarding agricultural land. She denied the suggestion that Kamal Singh was never roaming with Kulhari and he never threatened to kill her husband.

11. PW3 Jagmal son of Chhaju Ram deposed that on the intervening night of 5/6.10.2013, accused Kamal Singh was roaming with kulhari. He was saying that he would kill Bir Singh. Thereafter, Sapna took her husband Bir Singh inside the room and they both slept in the room. In the morning, of 6.10.2013, he woke up and found that Bir Singh was lying on the cot and blood had spread there. Thereafter, he woke up Sapna. She came out and saw that Bir Singh was lying dead. Meantime, many persons gathered there. The Sarpanch summoned the police. Bir Singh was having a kulhari blow on his head. The police shifted dead body of Bir Singh to hospital for conducting post mortem examination.

12. In cross examination by learned counsel for accused he stated that the house of Bir Singh was situated at a distance of 15 feet from his house. The main gate of his house and the house of Bir Singh were on different sides. In the month of October the winter season starts and people usually go to sleep at 7 to 8 pm. He did not witness the occurrence when accused gave kulhari blow to Bir Singh. He had not seen the accused when he came near the cot of Bir Singh or when he went away from there. The cot of deceased was about 5 paces from the room of Sapna. It was an open place and cattle were tethered there. He denied the suggestion that he alongwith Sapna had committed murder of Bir Singh to grab the agricultural land of Kamal Singh.

13. PW4 ASI Atma Ram deposed that on 6.10.2013, he was posted as ASI/Investigating Officer in Police Station Kanina. On that day a ruqa written by Inspector/SHO Hari Om was received through Constable Satish Kumar on which he registered formal FIR (Ex.PW4/A).

14. PW5 Constable Sunil Kumar deposed that on 6.10.2013, he had visited the place of occurrence in village Kanina alongwith Inspector/SHO Hari Om of Police Station Kanina. He inspected place of occurrence and house of Bir Singh. He prepared inspection report (Ex.PW5/A) on the demarcation of Inspector/SHO Hari Om.

15. PW6 ASI Mukesh Kumar Draftsman deposed he had prepared the scaled site plan (Ex.PW6/A) on the demarcation of Inspector Hari Om.

16. PW7 Mahender Singh deposed that he owns Ashoka Photo

Studio at village Sihma. On 6.10.2013 on the asking of SHO Hari Om of Police Station Kanina he reached the place of occurrence and took photographs. He proved the original photographs (Ex.PW7/A to Ex.PW7/D).

17. In cross examination by learned counsel for accused he stated that he had received a telephonic call of Hari Om SHO, Police Station Kanina from village Khairana at about 9 AM. He had reached the spot at about 10 AM on his motorcycle. The photographs were taken from digital camera. The photographs are of open place.

18. PW8 HC Mahavir Singh tendered in evidence his affidavit (Ex.PW8/A) wherein he stated that on 6.10.2013, he was posted as Moharrir in Police Station Kanina. On that day, Inspector/SHO Hari Om deposited four parcels sealed with seal of BS alongwith sample seal and one parcel sealed with the seal of the doctor alongwith the sample seal in Malkhana. On 7.10.2013, Inspector Hari Om deposited one parcel of axe with 5 seals and one parcel documents sealed with seal of MP alongwith sample seal of Malkhana. He sent abovesaid parcels to FSL, Madhuban through Constable Surender.

19. PW9 Constable Surender Singh tendered in evidence his affidavit (Ex.PW9A) wherein he stated that on 11.10.2013, he was posted in Police Station Kanina. On that day, MHC Mahabir Singh handed over to him four parcels sealed with seal of BS and one parcel sealed with the seal of the doctor and one parcel axe sealed with the seal and one parcel of documents sealed with the seal of MP alongwith sample seal for

depositing it in FSL, Madhuban which he did.

20. PW10 ASI Dharamvir deposed that on 7.10.2013 he was posted as ASI/Investigating Officer at Police Station Kanina. On that day he was associated in the investigation of this case with Inspector Hari Om, SHO, Police Station Kanina. During investigation, Inspector Hari Om took into possession white colour T-shirt with stamp 'never say never' of accused which was stained with blood. He identified the T shirt (Ex.MO/1) as being the same which was recovered during investigation.

21. In cross examination, he denied the suggestion that the T shirt was not stained with blood. He could not tell whether the blood stains on the T shirt were of human or animal origin. He could not say whether the blood stains on the T shirt were of accused or deceased. The T shirt was taken into possession at CHC Kanina at the time of medico-legal examination of accused.

22. PW11 ASI Rajender Kumar deposed that on 6.10.2013 he was posted as Incharge Police Post Dongra Ahir. On that day he was associated in the investigation of this case with Inspector Hari Om, SHO Police Station Kanina. On that day, after post mortem examination, the doctor handed over to Inspector Hari Om parcel of articles which was taken into possession. Inspector Hari Om had taken into possession from the spot blood stained earth, clothes piece, rope and other articles. After post mortem the dead body of Bir Singh was handed over to Hanuman and Jagmal.

23 On 7.10.2013, Inspector Hari Om interrogated accused

Kamal Singh alias Dholia. During interrogation, accused suffered disclosure statement (ExPW11/B) to the effect that he had concealed the axe in his house and he could get it recovered. In pursuance of the disclosure statement the accused got recovered the axe from his house which was taken into possession through recovery memo Ex.PW11/C. A rough sketch of axe (Ex.PW11/D) was prepared by Inspector Hari Om.

24. In cross examination by learned counsel for accused he stated that a telephonic message was received at 8 am from village Khairana but he did not know who was the informer. He had reached at the spot at about 8.30/8.45 am on his motorcycle. The SHO also reached at the spot at 9.30/9.45 am. They stayed at the spot for about 1-2 hours. SHO prepared rough plan of place of occurrence in his presence. He had seen the dead body having 2-3 inches axe wound on the head. The axe was recovered from the possession of accused. Ravi son of Ram Phal was also present at the time of recovery of axe. Accused was arrested on secret information. On interrogation he disclosed his identity and that he was having a motorcycle. He produced the RC of the motorcycle and stated that Bir Singh was the owner of the motorcycle.

25. PW12 Dr. Rahul Mighani, Medical Officer, GH Sirsa tendered in evidence his affidavit (Ex.PW12/A) wherein he stated that on 6.10.2013 he was posted at CHC M.Garh. He and Dr. Suresh conducted the post mortem on the dead body of Bir Singh. The cause of death in their opinion was on account of coma as a result of injury to brain i.e. vital part of body because of head injury which is ante mortem

in nature. Probable time between injury and death was immediate and between death and post mortem was within 24 hours.

26. In cross examination by learned counsel for accused he stated that four injuries were found on the dead body of Bir Singh. Possibility of injury No. 1 being caused by fall from a height on sharp edged object cannot be ruled out.

27. PW13 Ravi Kumar deposed that they are six brothers and sisters. The name of his sisters are Goma Devi, Parmila Devi and Sapna Devi. Sapna Devi was married with Bir Singh about 10 years ago. Sapna Devi has four children. Bir Singh was engaged in agriculture. On 6.10.2013 at about 6.30 am, he had received a telephonic message from his sister Goma Devi to the effect that his brother- in- law Bir Singh was murdered by accused Kamal Singh with an axe. He reached village Khairana. His sisters Goma Devi and Sapna Devi told that accused Kamal Singh had murdered Bir Singh by axe at night and ran away. He also enquired from the villagers and they told him that Kamal Singh murdered Bir Singh and thereafter he ran away from the village.

28. On 7.10.2013, in the morning when he was going towards village Bewal, a police vehicle was coming from village Bewal and accused was also sitting in the vehicle. On seeing him the police stopped the vehicle and took him together to the house of Kamal Singh. Where accused Kamal Singh got recovered the axe which was taken into possession through recovery memo Ex.PW11/C. He identified the the axe in the Court as being the same which was recovered from the house

of Kamal Singh.

29. In cross examination he stated that his sister Goma Devi is married with Suraj Bhan Yadav at village Khairana. He had received a telephonic message from his sister at about 6.30 am. He reached village Khairana at 7.15 am on his motorcycle. The distance between his village to Khairana is 50-55 kilometer. The axe was recovered and measured by the police officials in his presence.

30. PW14 Inspector/SHO Hari Om deposed that on 6.10.2013 he was posted as Inspector/SHO Police Station Kanina. On that day EASI Rajender Kumar made a telephonic call to him regarding a murder of Bir Singh. On this information, he alongwith HC Jai Bhagwan, Constable Sombir and finger print expert Constable Sunil Kumar reached the spot at village Khairana. Sapna moved a written application Ex.PA before him. He made his endorsement Ex.PW14/A on the application and sent the same to Police Station Kanina through Constable Satish Kumar for registration of the case. Inquest proceedings under Section 174 Cr.P.C. were conducted by him. Blood stained earth, piece of rope of cot, a piece of gudri, a piece of cloth all stained with blood were taken into possession through recovery memo Ex.PW1/A. Rough site plan of the place of occurrence Ex.PW14/B was prepared by him. The dead body was shifted to CHC Mohindergarh for post mortem. After post mortem the dead body was handed over to the relatives.

31. On 7.10.2013, the informer informed that accused Kamal Singh was seen near the Aashram of Baba Gudaria, Madhogarh. On this

information he alongwith other police officials reached at Aashram of Baba Gudaria, Madhopur. On the gate of the Aashram near the road the accused was standing with a motorcycle. EASI Rajender Kumar identified the accused and the accused was arrested while having motorcycle No. HR-36E-4943 make TVS-100. The motorcycle with RC was taken into possession through recovery memo Ex.PW11/E. Rough site plan of the place of recovery of motorcycle (Ex.PW14/C) was prepared. Accused was arrested. On interrogation he suffered disclosure statement (Ex.PW11/B) to the effect that he could get recovered the axe which he had kept concealed in a room of his house. In pursuance to disclosure statement accused got recovered the axe from a room of his residential house which was taken into possession through recovery memo Ex.PW11/C. One Ravi Kumar whom they met on the way to the village was with them. The recovery memo was attested by EASI Rajender Kumar and PW Ravi Kumar. It was also signed by the accused. The accused was taken to CHC Kanina for his medico -legal examination. After medico legal examination, a white T-shirt with message “never say never” worn by accused was taken into possession through recovery memo Ex.PW10/A. Application Ex.PW14/E was moved before Dr. Suresh Chand for obtaining his opinion regarding the injuries and weapon used. The opinion of the doctor is Ex.PW14/F. Kulhari, parcel with seal of doctor and other articles i.e. motorcycle and other articles were deposited with MHC Police Station Kanina. Statements of witnesses under Section 161 Cr.P.C. were recorded. On

completion of investigation of this case against accused, he prepared report under Section 173 Cr.P.C.

32. In cross examination he stated that he had received the message at about 6.00-6.30 am and reached the spot about 8-8.30 am. He remained at the spot till 2 pm. Many villagers were present at the time of recovery of gudri etc. Except Hanuman and Sanjay, he had not joined any other villager in the investigation of the case. Sapna wife of deceased Bir Singh produced before him application (Ex.PA) at about 10.30 am. No house exists near the place of occurrence. The house of deceased Bir Singh is situated on the outer side of the village. The house of accused is situated near the house of deceased. The accused was arrested by him at about 8-8.30 am on 7.10.2013 in the presence of EASI Rajender Kumar, ASI Dharamvir and HC Sanjay. He denied the suggestion that the accused had been falsely implicated in the case.

33. PW15 Dr. Suresh Chand, Ex. Medical Officer, CHC Mohindergarh deposed that on 6.10.2013 he was posted as Medical Officer G.H. Mohindergarh. On that day SHO Police Station moved an application Ex.PW12/C before SMO G.H. Mohindergarh for post mortem examination of dead body of Bir Singh resident of village Khairana by the Board of Doctors. On this application, the SMO G.H. Mohindergarh constituted a Board of Doctors including him and Dr. Rahul Mighani and they conducted post mortem examination and prepared post mortem report Ex.PW12/B. In their opinion the cause of death was on account of injury to brain i.e. vital part of body because of

head injury which is ante mortem in nature.

34. On 7.10.2013 the SHO Police Station Kanina moved an application Ex.PW14/E for obtaining the opinion regarding the weapon and also produced before him a sealed parcel bearing one seal (DB) intact containing an axe on which he gave his opinion that the injury found over the body of Bir Singh could be caused by that weapon. The axe was returned to the police after opinion with five seals and sample seal (impression SC).

Laboratory Examination

Laboratory examination was carried out to detect the presence of blood on the exhibits through chemical tests. The blood thus detected was subject to serological tests to determine its species of origin and group. Based upon these examinations the results obtained are given below :-

“1. Blood was detected on exhibit-1 (Blood) and exhibit-2 (Cloth pieces)

2. Exhibit-3 (Cloth piece) exhibit-4 (Rope pieces), exhibit-5a (Pants), exhibit-5b (T Shirt), exhibit-5 c (Kachha) and exhibit-6 (Kulhari) were stained with blood stains.

Note :1. Results of serological analysis of blood are attached herewith.

2. After the examinations the exhibits along with their original wrappers have been sealed with the seal of RKW SSO FSL (H).

3. The results relates only to the items tested above.

Results of serological analysis of blood

<i>Sr.No.</i>	<i>Name of exhibit</i>	<i>Origin</i>	<i>Group</i>
1.	Blood	Human	Inconclusive
2.	Cloth pieces	Human	Inconclusive
3.	Cloth piece	Human	Inconclusive
4.	Rope pieces	Human	Inconclusive
5a	Pants	Human	Inconclusive
5b.	T-shirt	Human	Inconclusive
5c	Kachha	Human	Inconclusive
6	Kulhari	Human	Inconclusive”

35. The deceased Bir Singh is the husband of complainant-PW 2 Sapna. The accused- appellant Kamal Singh is the younger brother of deceased Bir Singh. PW 3 Jagmal Singh (aged about 70-75 years) is the brother of the father-in-law of the complainant. The father-in-law of the complainant had died some time earlier out of natural causes.

36. The case is based on circumstantial evidence. The first circumstance is the factum as disclosed in the deposition of PW2 Sapna that for 2-3 days prior to the incident the accused had been roaming in the street with kulhari. He was saying that he would kill Bir Singh and keep the complainant and her children with him. On the intervening night of 5/6.10.2013 at about 11.00 pm accused Kamal Singh came to her house. He was having kulhari in his hand. He told the complainant that she may make attempt to hide her husband but he would kill him. Thereafter, she along with her husband slept inside the room. After some time, her husband came outside and slept in the cattle shed outside the house. In the morning, elder brother of her father- in- law (PW3-Jagmal)

woke her up and told her that she had been looted. She came out with him and found that dead body of her husband was lying on the cot. He had suffered a kulhari blow on his head. The police was summoned by the Sarpanch. Then she moved an application (Ex.PA) to the police.

37. PW3 Jagmal also deposed on similar lines that on the intervening night of 5/6.10.2013, accused Kamal Singh was roaming with kulhari. He was saying that he would kill Bir Singh. Thereafter, Sapna took her husband Bir Singh inside the room and they both slept in the room. In the morning, of 6.10.2013, he woke up and found that Bir Singh was lying on the cot and blood had spread there. Thereafter, he woke up Sapna. She came out and saw that Bir Singh was lying dead. Meantime, many persons gathered there. The Sarpanch summoned the police. Bir Singh was having a kulhari blow on his head.

38. The second circumstance is the alleged recovery of blood stained axe from room in the house of the appellant consequent on his disclosure statement after his arrest on 7.10.2013. In this regard PW14 Inspector/SHO Hari Om deposed that on 6.10.2013 he was posted as Inspector/SHO Police Station Kanina. On receipt of information regarding murder of Bir Singh he along with police party and finger print expert Constable Sunil Kumar reached the spot at village Khairana where PW 2 Sapna moved a written application Ex.PA before him on the basis of which FIR was registered. Inquest proceedings under Section 174 Cr.P.C. were conducted by him. Blood stained earth, piece of rope of cot, a piece of gudri, a piece of cloth all stained with blood were

taken into possession through recovery memo Ex.PW1/A.

39. On 7.10.2013, appellant Kamal Singh was arrested with motorcycle No. HR-36E-4943 make TVS-100. On his disclosure the axe was recovered from a room of his residential house which was taken into possession through recovery memo Ex.PW11/C. PW Ravi Kumar and EASI Rajender Kumar attested the recovery memo which was also signed by the accused. The accused was taken to CHC Kanina for his medico -legal examination. After medico legal examination, a white T-shirt with message “never say never” worn by accused was taken into possession through recovery memo Ex.PW10/A.

40. The post mortem on the dead body of Bir Singh was conducted on 6.10.2013 by PW12 Dr. Rahul Mighani Medical Officer, GH Sirsa and PW 15 Dr. Suresh. Medical Officer, GH Mohindergarh.

41. As per the Post Mortem Report Ex PW 12/ B the following injuries were found:

“1. Incised wound 5x1.5x3 cm over left temporo parieto occipital region of head, fracture of underlying bones seen, brain matter disrupted and coming out

2. Bruise 2x2 cm over L shoulder

3. Injuries No. 3 and 4 were an abrasion and bruise”

42. PW12 in his affidavit (Ex.PW12/A) deposed that

“The cause of death in their opinion was on account of coma as a result of injury to brain i.e. vital part of body because of head injury which is ante mortem in nature. Probable time between injury and death was immediate and between death and post mortem was within 24 hours.”

43. PW 15 Dr. Suresh Chand gave opinion (Ex.PW14/F) that the injury found on the body of the deceased could be caused by the axe recovered from the appellant.

44. The third circumstance is that the accused was not found at his house which was adjacent to the house of the deceased when the police arrived. He was arrested the next day having motorcycle which he allegedly disclosed that it belonged to his deceased brother regarding which offence under Section 379 IPC was added.

45. The requirements for recording a conviction in a case based on circumstantial evidence are well settled. In ***Satye Singh v. State of Uttarakhand, (2022) 5 SCC 438*** the Hon'ble Supreme Court culled out the principles as under:

“15. At this juncture, let us regurgitate, the golden principles laid down by this Court in Sharad Birdhichand Sarda v. State of Maharashtra. This Court while drawing the distinction between “must be” and “may be” observed as under in para 153 : (SCC p. 185)

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or

should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made : (SCC p. 807, para 19)

19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of 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.”

46. Now we need to examine whether in the facts of this case the guilt of the appellant is conclusively established.

47. PW 2 Sapna deposed that for 2-3 days prior to the incident the accused had been roaming in the street with kulhari. He was saying that he would kill Bir Singh and keep the complainant and her children with him. On the intervening night of 5/6.10.2013 at about 11.00 pm accused Kamal Singh came to her house. He was having kulhari in his hand. He

told the complainant that she may make attempt to hide her husband but he would kill him. Thereafter, she along with her husband slept inside the room. After some time, her husband came outside and slept in the cattle shed outside the house. In the morning, elder brother of her father-in-law (PW 2-Jagmal) woke her up and informed her about the death of husband and on coming out she found that dead body of her husband was lying on the cot. He had suffered a kulhari blow on his head. In cross examination she stated that she had disclosed the fact that accused was roaming with kulhari to her neighbours and the persons who used to visit her husband but she did not know their names. She did not make any complaint to the police regarding accused roaming with a kulhari. She could not tell the time when her husband came out of the room as she was sleeping at that time. She did not hear the noise of the kulhari blow.

48. There are certain inexplicable circumstances in the narration of PW2 Sapna. If the appellant had been openly threatening to kill her husband and was roaming out with a Kulhari in his hand as to why no complaint was made to the police. She stated that she had disclosed the fact that accused was roaming with kulhari to her neighbours and the persons who used to visit her husband but she did not know their names. It is inexplicable why she would not know the names of her neighbours and other persons who usually visited her husband. If she did not know their names she could at least give some other information whereby they could be identified and joined in investigation. No person has come forward to

state that they had been informed about the threat from the appellant to the deceased and his family members.

49. As the appellant had been openly threatening to kill her husband and was roaming around with a Kulhari, presumably her husband -the deceased was also aware of it. More so when at about 11.00 PM on the night intervening 5/6.10. 2013 appellant came to their house with a kulhari in his hand and told the complainant that she may make any attempt to hide her husband but he would kill him. Why did he not react to this and the earlier threats is not forthcoming? It is also not forthcoming that the deceased dismissed the threats out of hand presuming them to be an idle threats and asked her not to worry.

50. PW 3 Jagmal in his cross examination stated that the cot of deceased was about 5 paces from the room of PW 2 -Sapna. It was an open place and cattle were tethered there. It is inexplicable that PW 2 who was sleeping so close by would not hear any noise or screams of the deceased when he suffered an axe blow. Further when there was such an apprehension that her husband may be done to death by the appellant how could she be in such deep sleep as not to hear any sound ?

51. No doubt the axe/ kulhari which has been stated to be recovered on the disclosure of the appellant was found to be stained with human blood. But the report regarding the blood group was inconclusive. If the blood group had matched with that of the deceased the situation may have been different.

52. After his arrest the accused was taken to CHC Kanina for his medico -legal examination. After medico- legal examination, a white T-shirt with message “never say never” worn by accused was taken into possession through recovery memo Ex.PW10/A. In his cross examination PW10 ASI Dharamvir stated that he could not tell whether the blood stains on the T shirt were of human or animal origin. He could also not say whether the blood stains on the T shirt were of accused or deceased. From the record it appears that this T shirt was not sent to the FSL. If it had been so sent and the blood stains on the T shirt were found to be matching with the blood group of the deceased it would have been a different matter.

53. Initially a finger print expert had been taken to the spot, however, no object was found at the place of occurrence on which the finger prints could be developed. But after the recovery of the axe/ kulhari no effort was made to develop the finger prints from it to connect with the accused.

54. Having duly considered the matter we do not feel that from the circumstances sought to be relied on, the guilt of the appellant can be said to have been established beyond reasonable doubt.

55. Accordingly the accused is acquitted of the charge under Section 302 IPC.

56. So far as the offence under Section 379 IPC is concerned there is no complaint regarding the theft/missing of the motorcycle of the deceased. There is nothing in the deposition of the PWs about the theft of any

motorcycle of the deceased. The motorcycle bearing Registration No. HR-36-E-4943 along with its RC was taken into possession vide recovery Memo Ex. PW 11/E. As per the RC the registered owner is Mangtu Ram son of Sh. Narayan Das. It is only on the alleged disclosure of the appellant that Bir Singh was the owner of the motorcycle that this offence appears to have been added. Thus this offence under Section 379 IPC also cannot be held to be proved and he is acquitted of said charge as well.

57. Accordingly, the appeal is allowed and the judgment of conviction and order of sentence both dated 3.5.2014 are set aside. The appellant is ordered to be released forthwith, if not required in any other case. Registry is directed to prepare the release warrants forthwith.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 16, 2023

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No