



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-178-DB of 2003
Date of Decision: 24.05.2024

Shanti Devi and another ...Appellant
Vs.
State of Haryana ...Respondents

CORAM: HON’BLE MR. JUSTICE GURVINDER SINGH GILL
HON’BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Jasdev Singh Mehndiratta, Advocate
(Legal Aid Counsel) with
Ms. Jyotnoor Kaur Sethi, Advocate
Mr. Rahul Dhanda, Advocate
Ms. Navreet Dhaliwal, Advocate and
Mr. Divyanshu Kaushik, Advocate
for the appellants.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J.(Oral)

1. By way of the present appeal, the appellants have assailed the validity of the judgment dated 14.01.2003 and order dated 16.01.2003 passed by Additional Sessions Judge, Hisar, whereby, the present appellants were convicted for the offences punishable under Sections 302 read with Section 34 IPC and Section 201 read with Section 34 IPC and were sentenced to undergo rigorous imprisonment for life for commission of offence under Section 302/34 IPC and to pay a fine of Rs. 1,000/- each alongwith default stipulation. They



were further sentenced to undergo rigorous imprisonment for 03 years and to pay a fine of Rs. 500/- each under Section 201/34 IPC alongwith default stipulation.

2. The prosecution story, as it emanates from the report under Section 173 Cr.P.C., is that the police of Police Post HTM, Hisar, was informed by the Junior Engineer from Water Works Mahabir Colony, Hisar in the evening of 23.12.1997 that a dead body of a person in a gunny bag was lying in the water works tank. On this, Shish Ram, ASI, alongwith other police officials reached there and the bag was taken out of the water. The dead body was taken out from the gunny bags and was placed near the tank. After some time, several persons had gathered there and Harnath son of Aad Ram identified the dead body as that of his son Balwant. He made his statement Ex.PA and on the basis of his statement, the FIR Ex.PC was registered in Police Station City Hisar. The statement of Harnath, complainant, which is the basis of the registration of the FIR in the present case, reads as follows:-

“Statement of Harnath son of Aad Ram, Caste Harijan Chamar resident of Sudama Nagar, Hisar, aged 64/66 years.

Stated that I am the resident of the above address and do labour work. I have five sons. The eldest is Chhabila, younger to him is Balwant and then Narender, younger to him is Naresh and the youngest is Madan. My son Balwant has constructed one house in Dhani Badwali



near Hanuman Mandir and another house in Gagandeep Colony, on Balsamand Road, Hisar. Balwant lives with his family in the house of Gagandeep Colony. Shanti Widow of Dalip Dhanky resident of Dogra Mohalla is in the illegal possession of the inner room of the house of Dhani Badwali, for the last sufficient time. The outer room has been kept by Balwant for his own occupation. Some-times, when Balwant becomes late during the night he used to stay in that room, for Gagandeep Colony is at a distance from there. Balwant deals in the business of purchase and sale of vehicles. My other four sons live with me in Sudama Mohalla. My son has illicit relations with Veena wife of Ram Chander, Jat, resident of Bhattu. Veena is also on visiting terms with Shanti Devi widow of Dalip. Today at about 9.00 a.m., Smt. Savitri wife of my son Balwant came to me and told me that her husband Balwant had left the house on Saturday the 20th December, 1997, for Hisar City and thereafter he had not returned home till today and that she had come to inform me about his search. On this, I made search for my son Balwant in the city and also enquired from his friends, but his whereabouts could not be ascertained. In search of my son Balwant I was going towards Mahabir colony. It was about 5.00 p.m. when I reached near the gate of water works tank, I saw many persons gathered there. On enquiry, I came to know that a dead body of a person wrapped in a gunny bag was recovered from the water tank. I went near the dead body and saw that it was the dead body of my son Balwant. The dead body was having sufficient number of injuries on its head, neck and face with sharp edged weapon. I fully suspect



that Shanti widow of Dalip, Dhanak, resident of Mohalla Dogran and her son Rajbir, who are in occupation of the house of Balwant, together with Veena wife of Ram Chander Jat resident of Bhattu alongwith some other persons have murdered my son Balwant. The cause of grievance is that Balwant wanted to get the house vacated from Shanti Devi and Shanti Devi did not want to vacate it. On the basis of this grudge Shanti Devi, her son Rajbir and Veena aforesaid, with some other persons have thrown the dead body of my son Balwant in the water tank with a view to screen away the evidence. I have got recorded my statement, I have heard it. Action be taken.

Sd/- Harnath (In Hindi)

ATTESTED.

Sd/ Sis Ram, ASI

PP HTM Hisar 23.12.97”.

3. After the registration of the FIR, the inquest report Ex.PH/2 was prepared by the police and the postmortem examination on the dead body of Balwant was got conducted from a team of doctors. The scaled site plan Ex.PE of the place of occurrence was got prepared. Veena, the accused suffered a disclosure statement Ex.PN to the effect that she alongwith Shanti and Rajbir both the accused had committed the murder of Balwant and dead body was buried in the kitchen of the house, which was taken on rent by Shanti. She caused injuries with *Kulhari*, whereas Shanti had caused injuries with a *Bugda* on the person of Balwant. She further stated that Rajbir



had caught hold of the deceased while they were causing injuries to him and the dead body was buried in the kitchen, after digging a ditch. On her disclosure statement, an axe (*Kulhari*) was recovered from a sewerage and it was taken out from the sewerage by Bhagtu. The axe was taken into possession. In police custody, Shanti, accused also suffered a disclosure statement Ex.PS and stated on similar lines. The *Bugda*, which was used by Shanti in causing the injuries to Balwant, was also recovered from the sewerage. She also got recovered a bed sheet (Chaddar), which was blood stained, from the kitchen of the house of Shanti, which was also taken into possession by the police. Even, Rajbir was arrested in the present case and after conducting the usual investigation, the final report under Section 173 Cr.P.C., was presented against Shanti, Rajbir, both the appellants and Veena, co-accused. During the pendency of the appeal, Veena had already expired and the appeal filed by her had already been ordered to be abated.

4. During the course of trial, on finding a *prima facie* case, charge under Sections 302, 201 and 34 IPC was ordered to be framed against the accused, to which, they pleaded not guilty and claimed trial.

5. To prove the charge against the appellants and Veena, the prosecution had placed reliance on 18 witnesses.

6. The prosecution examined K.S. Sardana, J.E., Public



Health, as PW1, who was working as a J.E. on the water works on 23.12.1997. He had informed the police, on finding the dead body in a bag in water tank of the water works. PW2 Jai Kishan, SI had received a *rukka* Ex.PA, on which ASI Shish Ram had made his endorsement Ex.PB and he recorded the formal FIR Ex.PC. The prosecution further examined PW3 Constable Hukam Chand, who had delivered the special report. The testimonies of PW4 Constable Dalbir Singh and PW5 HC Om Parkash were formal in nature. The prosecution further examined PW6 Mohan Lal, Draftsman, who had prepared the site plan Ex.PG. PW7 HC Mehar Singh had taken the photographs Ex.P-1 and Ex.P-2 of the dead body from different angles. He also took photographs Ex.P-5 and P-6 of the place in the house, where a ditch was dug. The prosecution further examined PW8 Dr. Ajay Kumar Gupta, who had conducted the postmortem examination on the dead body of Balwant on 24.12.1997. The dead body was identified by Banwari son of Bhagwan Dass and Chandu son of Budh Ram. As per him, the clothes of the deceased were stained with soil and blood. He found the following injuries and observed as under:-

“1. incised wound on frontal region of scale, across midline 5"x1/2 x bone deep. The underlying bone was cut.

2. Incised wound on frontal region across midline half inches below injury No. 1. 4x1/2" x bone deep with under



lying bone was cut.

3. Incised wound across forehead involving both eye brows and root of nose 5 x. 23" x bone deep with underlying bone cut.

4. Incised wound right maxillary region 4x1/2" x skin deep.

5. Incised wound right mandibular region in upper part extending to parotid region 6x1/2"x bone deep involving oral cavity.

6. Incised wound right cheek extending to just below lower lip 4x1/2"x soft tissue deep.

7. Incised wound on right mandibular region 4x1/2"x bone deep cutting the mandibular.

Multiple superficial incised wound on lateral aspect of right side of neck 3 inches to 4 inches length and soft tissue deep.

9. Incised wound below chin across midline of neck 4x1" x soft tissue deep.

10. Incised wound behind right ear 2x1" x soft tissue deep.

11. Incised wound on back of right wrist 1.5"x.25"x bone deep.

12. Incised wound on back of index and middle finger 1"x.25" x bone deep.

13. Incised wound on lateral aspect of right hand 2"x1" x bone deep.

14. Multiple linear abrasions on abdominal wall in umbilical region 6x7" in length.

All the injuries showed effusion of blood in subcutaneous tissues. Discussion of skull shows fracture of frontal bone with fracture of base of anterior cranial fossa. The brain



showed laceration and extradural and intra cerebral hemorrhage. The heart was empty, stomach contained little digestive juice, small intestine contained juices and gas while large intestine contained faecal matter and gases. All other organs were pale and normal.

In our opinion the cause of the death was shock and heamorrhage due to the injuries described which were antimortem in nature and sufficient to cause death in ordinary course of nature. The time between injury and death was within about an hour and between death and postmortem was within 2 to 5 days”.

In his cross-examination, he agreed that the rigor-mortis starts developing from the upper limbs after 2/3 hours of the death and progress in the lower limb and it is fully developed in about 12 hours. The rigor-mortis remains in the body for another 12 hours and it starts passing from the upper limbs and completely disappears in another 12 to 24 hours in winter.

7. The testimony of PW9 Constable Kulbir Singh is formal in nature. The prosecution further examined PW10 Daya Chand, who was going to Police Station City Hisar on 24.12.1997 to enquire about the progress in the case about the murder of Balwant. When he reached at Jhajpul, police met him. After some time, Nathu Ram had produced Shanti, accused before the police and she was arrested. On her interrogation, she suffered the disclosure statement before the police and at her instance, the bed sheet (chaddar) was got recovered



by Shanti, which was taken into possession vide recovery memo Ex.PT. He was cousin of Harnath, complainant. The prosecution further examined PW11 Harnath, complainant, who had supported the case of the prosecution in all material particulars. The prosecution further examined PW12 Indraj, in whose presence Veena, accused, was interrogated. She suffered her disclosure statement Ex.PN and she got recovered a *Kulhari* (axe) from the sewerage, which was taken into possession by the police vide memo Ex.PQ. The prosecution further examined PW13 Banwari, in whose presence, the dead body was recovered at 06.30 p.m. on 23.12.97, which was identified by PW11 Harnath. The prosecution further examined Bhagtu, who had recovered the *Bugda*, *Kulhari* and quilt from the sewerage. Krishan @ Kuli was examined as PW15, as per him, on 20.12.1997, at about 08.00 p.m., he was passing near the house of Shanti, accused and he saw that Shanti, Veena and Rajbir, all accused were quarreling with Balwant, deceased. He tried to intervene, but all in vain. He left the place. After few days, he came to know that Balwant had been murdered. After 15/16 days of the occurrence, Rajbir son of Shanti, accused came to him and requested him to produce him before the police. Rajbir had also confessed his crime before him. Ultimately, Krishan @ Kuli, PW15 produced him before the police. In his cross-examination, he stated that he had intimation with local police. PW16 ASI Shish Ram remained associated in the



present case during initial investigation. He had prepared the rough site plan Ex.PU with correct marginal notes. He also prepared inquest reports Ex.PH/2 and also took into possession the rope and gunny bag in the present case. He also obtained the opinion from the medical officer regarding the injury caused with *Kulhari and Bugda*. PW17, Shamsher Singh stated that Veena accused had come to his house and suffered an extra judicial confession before him. She was produced before the police by him. In cross-examination, he stated that certain police persons were his friends and he was on visiting terms with them. He had appeared as a witness for the first time. The prosecution further examined PW18 Kuldip Singh, DSP, who was posted as Inspector/SHO at the relevant time at Police Station City Hisar. He conducted the investigation in the present case. He had arrested Shanti, accused, who was produced by Nathu Ram and on interrogation, Shanti disclosed about keeping a *Chaddar* in her kitchen and got it recovered, which was found to be blood stained. Even, she got recovered a *Bugda* in the present case. Later, Veena was also interrogated and she got recovered a *Kulhari* (axe), in pursuance of the disclosure statement suffered by her. He also prepared sketch of axe and *Bugda* as Ex.PQ/1 and PZ/1, respectively. He also got recovered a quilt (*rajai*), which was taken into possession by him. He had prepared the challan in the present case after completion of the investigation.



8. After the closure of the prosecution evidence, the statements of all the accused/appellants were recorded under Section 313 Cr.P.C. and they stated that they had been falsely involved in the present case and opted to lead defence evidence. However, no evidence was led by the accused in the present case.

9. Learned counsel for the appellant vehemently argued that the entire case of the prosecution is based on circumstantial evidence and the chain of circumstances is not complete in the present case. He further contended that in the present case, it has been stated that Shanti, co-accused had suffered extra judicial confession in the presence of Nathu Ram. However, for the reasons best known to the prosecution, Nathu Ram was not examined in the present case. Even, it has been alleged that Shanti and Rajbir were living as tenants in the house of Balwant, the deceased and Balwant, the deceased wanted to get the house vacated from Shanti and Rajbir. Due to this, Shanti and Rajbir had joined hands with Veena and had murdered Balwant. In fact, the motive in the present case was very weak and it is highly unbelievable that the accused would commit the murder of Balwant on such a trivial issue. Apart from that, the prosecution wrongly alleged that Krishan @ Kuli had last seen all the accused fighting with Balwant, since deceased, as he did not inform anyone. Still further, it has been wrongly alleged that Rajbir had suffered an extra judicial confession in the presence of Krishan @ Kuli. Even, the



recovery of various incriminating evidence in the present case was highly doubtful and the appellants were liable to be acquitted by this Court.

10. On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the appellants that in the present case, the prosecution had led ample evidence with regard to the circumstances, which conclusively proved the complicity of the appellants in the crime. Even, in pursuance of their respective disclosure statements, Veena had got recovered an axe from a sewerage whereas Shanti had got recovered *Bugda* (weapon) from the sewerage. Apart from that, *Chaddar* (bed sheet), which was recovered from Shanti was found to be blood stained and it was recovered from the kitchen, where the accused wanted to bury the dead body after digging a ditch. He further contended that the non-examination of Nathu Ram would not be fatal to the case of the case of the prosecution as there was sufficient evidence against Shanti, appellant. Still further, Krishan @ Kuli had last seen all the accused fighting with Balwant, since deceased and immediately thereafter, admittedly, Balwant was found murdered. Apart from that, the recoveries of the incriminating evidence from the present appellants stood proved by cogent evidence and the appeal filed by the appellants is liable to be dismissed.

11. We have heard the learned counsel for the parties and



perused the record carefully.

12. The Hon'ble Supreme Court has consistently laid down where a case rests only on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances, from which, an inference as to the guilt of the accused is drawn, have to be proved beyond the reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. Our view is fortified by the law laid down by the Hon'ble Supreme Court in the matter of ***Bhagat Ram Vs. State of Punjab, (AIR 1954 Supreme Court 621)***.

13. A reference can also be made to the law laid down by the Hon'ble Supreme court in the matter of ***C. Chenga Reddy and Ors. v. State of A.P., (1996) 10 SCC 193: 1996(3) RCR (Criminal) 793 (SC)***, wherein it has been held as under:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the claim of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.....".



14. The Hon'ble Supreme Court in the matter of ***Hanumant Govind Nagundkar and Anr. v. State of Madhya Pradesh, (AIR 1952 Supreme Court 343)***, has observed as under:-

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15. Even, the Hon'ble Supreme Court, while dealing with the circumstantial evidence held that the onus is always on the prosecution to prove that the chain is complete and the infirmity or lacuna, in the present case, cannot be cured by false defence or plea. The condition precedent, before conviction could be based on circumstantial evidence, must be fully established. While holding so, the Hon'ble Supreme Court in the matter of ***Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 Supreme Court 1622)***, has held as follows:-



“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established.

(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.

*These aspects were recently highlighted in **State of Rajasthan Vs. Rajaram, (2003 AIR SCW 4097: 2003(4) RCR (Criminal) 238 (SC)).**”*

16. Now adverting to the facts of the present case, it is clear that on getting the information with regard to the dead body in a bag in the tank of water works at Hisar, a police team headed by ASI Shish Ram PW16 reached the water works and had taken out the dead body from the water tank. Harnath PW11 identified the dead body of his son Balwant at the spot itself and made a statement Ex.PA, on the basis of which, FIR Ex.PC was registered in the present case. Without



any delay, Harnath, PW11 clearly stated that Balwant, deceased was a businessman and was living with his family in the house in Gagandeep Colony. Shanti, accused/mother of Rajbir accused was in occupation of inner room of another house of Balwant. However, one outer room was also kept by Balwant for his own use as sometimes he used to get late at night time and his another house was at a distance of 5/6 kilometer from there. Balwant was already having illicit relations with Veena, co-accused, who was also on visiting terms with Shanti, accused. In fact, Balwant, deceased wanted to evict Shanti, accused from his house and was pressing for that. Consequently, Harnath clearly stated that he had full suspicion that Shanti, Rajbir, both the appellants, who were in occupation of the house of Balwant, deceased had joined hands with Veena and had killed his son Balwant.

17. Immediately thereafter, Veena, co-accused, suffered a disclosure statement in the presence of PW17 Shamsher Singh and confessed her crime. She was produced by PW17 Shamsher Singh before the police and was formally arrested. After her arrest, Veena suffered a disclosure statement and got recovered a *Kulhari*, which was taken into possession vide memo Ex.PQ. Similarly, Shanti suffered an extra judicial confession before Nathu Ram, who produced her before the police. She suffered a disclosure statement and got recovered *Bugda*, weapon of offence, which was used in the



commission of the crime in the present case by her. She got recovered a *Chaddar* (bed sheet) from the kitchen, where the dead body was buried by the accused. Even, as per the FSL report, *Chaddar* (bed sheet) and *Rajai*, which were recovered in the present case were found to be stained with blood. Even, a ditch was dug in the kitchen, to bury the dead body of Balwant and the photographs of the said ditch Ex.P-5 and Ex.P-6 were proved by PW7 HC Mehar Singh. Thus, the above circumstances clearly established the involvement of the appellants and Veena in the crime.

18. In the present case, learned counsel for the appellants vehemently argued that circumstantial evidence was not available on the file to prove the involvement of the appellants in the crime and the chain of circumstances was broken. However, we find no substance in the arguments raised by learned counsel for the appellants. In the present case, PW11 Harnath had mentioned about the involvement of both the appellants on the very first day itself. Apart from that, there was a strong motive on the part of the appellants to commit the crime as Balwant (since deceased) wanted to get his house vacated from the appellants and Veena. However, the appellants and Veena were resisting the same and to get rid of him, they murdered him and he was firstly buried in the kitchen itself. Even, PW8 Dr. Ajay Kumar Gupta, who had conducted the postmortem examination on the dead body of Balwant, also found that the dead body and clothes were



stained with blood and soil. Even, PW7 HC Mehar Singh, Photographer had proved the photographs of the ditch where the dead body was initially buried by them. Apart from that, the weapons of offence, i.e., *Kulhari and Bugda*, were recovered from Veena and Shanti in the present case. Even though, the said weapons of offence were not blood stained, however, it will not materially affect the case of the prosecution in any manner as both the accused had concealed the weapons of crime in a sewerage and it was highly unlikely that the said weapons would be stained with blood. However, the chain of other circumstances clearly established that both the appellants were involved in the present crime.

19. We find no substance in the arguments raised by the learned counsel for the appellants that Nathu Ram, before whom, Shanti, appellant had suffered extra judicial confession, was not examined by the prosecution. No doubt, Nathu Ram had produced Shanti, appellant, before the police and his statement under Section 161 Cr.P.C. was recorded. However, the said witnesses might have won over by the accused in the present case. Still further, the prosecution examined PW10 Daya Chand, who clearly stated that Shanti, appellant was produced by Nathu Ram before the police in his presence and she was interrogated in his presence. Daya Chand PW10 was a witness to the disclosure statement suffered by Shanti, appellant and had also witnessed the recovery of blood stained *Chaddar* (bed



sheet) at the instance of Shanti. Bed sheet (*Chaddar*) was taken into possession vide recovery memo Ex.PT and as per the FSL report Ex.PCC and Ex.PDD, the *Chaddar* (bed sheet) and quilt (*Rajai*) were found to be stained with human blood.

20. Still further, in the present case, the prosecution had also examined PW15 Krishan @ Kuli, who had seen the appellants and Veena, co-accused fighting with Balwant (since deceased) in the evening on 20.12.1997. Even, he tried to intervene, but of no avail and he left that place. After few days, he came to know that Balwant had been murdered by the police and Veena. In the meantime, Shanti also came to him and requested him to produce her before the police. Even, the accused tried to assail his testimony on the ground that he had remained in jail in a murder case and was sentenced to life imprisonment earlier. In fact, the said witness was subjected to lengthy cross-examination and his testimony could not be shattered in any manner. Simply because he had himself confessed a criminal case, was not a ground to discard his testimony. Even, in his cross-examination, he had stated that he had close relationship with the local police and it can be believed that Shanti had appeared before him as he had close links with the local police and had also faced a criminal charge in the past.

21. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, we are of the considered opinion that the

circumstances of the present case fully establish the guilt of the appellants and their co-accused Veena and the chain of circumstances is so complete that this Court has reasonable grounds to believe that in all probabilities, the appellants and Veena had committed the crime in the present case. Thus, we find no ground to interfere with the judgment dated 14.01.2003 and order dated 16.01.2003 passed by Additional Sessions Judge, Hisar. The appeal is accordingly dismissed.

22. A copy of this judgment may be transmitted to the CJM concerned, who may take both the appellants in custody, if on bail, and shall commit them for custody for serving the remaining part of their sentence

23. All pending applications, if any, are disposed off, accordingly.

24. Trial Court record may be transmitted back.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

24.05.2024
amit rana

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