

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.1482

CRA-D-1681-DB-2015 (O&M)

Reserved on : 21.03.2024

Pronounced on: 24.04.2024

Tasvir @ Dhillu

..... Appellant

VERSUS

State of Haryana

..... Respondent

CORAM: HON’BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON’BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Anju Arora, Legal Aid Counsel,
for the applicant-appellant.

Mr. Bijender Dhankhar, Addl. AG, Haryana.

KIRTI SINGH, J.

This appeal has been preferred, aggrieved by the judgment and order of sentence dated 05.10.2015 passed by the learned Sessions Judge, Bhiwani whereby, the appellant was convicted for commission of offences punishable under Section 302 IPC and Section 25 of the Arms Act and sentenced as under:-

Section(s)	Sentenced to R.I.	Fine	In default of payment of fine
302 IPC	Life imprisonment	Rs.10,000/-	RI for 06 months
25 of the Arms Act	03 years	Rs.5,000/-	RI for 03 months

2. The trial Court has ordered both sentences to run concurrently.

Factual matrix

3. On 14.09.2013, Inspector Ramesh Kumar received a telephonic message from the Control Room that Tasvir @ Dhillu son of Bedharak resident of Dera Dhillu, Kakroli Hukmi had shot dead a person named Om Parkash. On receipt of this information, he alongwith the accompanying staff reached the spot at Dera Dhillu, where Sanjay son of Om Parkash-deceased alongwith his mother, uncles and other family members were found present. Dead body of Om Parkash son of Bhundu Ram was lying on the cot with a fire arm injury on his temple and wrapped in a quilt. Statement of Sanjay was recorded who stated that he was a labourer. His father Om Parkash had renounced the world and had become a Saint since 7-8 years and he used to visit their house occasionally to stay with them for 2-3 months. His father was not permanently attached with any Dera and was a moving Saint. About 7-8 months back, his father started residing in a temple constructed in the fields of Tasvir @ Dhillu. About 10 days before, his father had come to their house and stayed with them for few days and had told them that he did not want to go to the temple as he apprehended danger to his life. He also stated that Tasvir @ Dhillu and his wife visited their house and stated that Maharaj Om Parkash was annoyed with them and they wanted to clear their differences. However, on seeing them, his father had concealed himself in a Chaupar and was traced after two hours. Tasvir @ Dhillu and his wife then took his father alongwith them to Kakroli Hukmi. On the very same day, they received information that his father has been shot dead and thereafter, he alongwith his mother, uncle and other family

members reached the fields of Dera Dhillu, Kakroli Hukmi and he found his father Om Parkash lying dead on a cot in front of the house of Tasvir @ Dhillu. He was having a bullet injury mark on the left side of his head from which blood was oozing out profusely. He along with others identified his father Om Parkash. He suspected that his father had been shot dead by Tasvir @ Dhillu alongwith his wife and therefore, action be taken against them.

Investigation

4. On the statement of the complainant-Sanjay (Ex.PD), formal FIR (Ex.PC) was recorded. Inquest proceedings under Section 174 Cr.P.C. were conducted. The dead body was photographed. Place of occurrence was inspected and blood stains were taken into possession. FSL team also reached the spot and inspection of the place of occurrence was conducted. In the meanwhile, Bijender Singh, Deputy Superintendent of Police, Dadri also reached there and he verified the facts of the case and during enquiry, Manoj wife of Tasvir @ Dhillu was found innocent. During further investigation, after autopsy, the dead body was handed over to the relatives and the statements of the witnesses were recorded. Accused-Tasvir @ Dhillu was arrested on 15.09.2013 and he suffered a disclosure statement and got recovered pistol .315 bore alongwith empty cartridges used in the crime. After completion of the usual investigation, report under Section 173 Cr.P.C. was filed against the accused in the Court.

5. After complying with the provisions of Section 207 Cr.P.C., the case was committed to the Court of learned Sessions Judge,

Bhiwani by Sh. Naveen Kumar, learned Judicial Magistrate Ist Class, Charkhi Dadri vide order dated 06.01.2014.

6. The accused was charge sheeted under Section 302 IPC and Section 25 of the Arms Act vide order dated 18.02.2014 to which he pleaded not guilty and claimed trial.

Trial Proceedings

7. To prove its case, the prosecution has examined the following witnesses:-

PW1- Krishan Singh, Reader to District Magistrate Bhiwani

PW2- Ravinder Kumar, Patwari

PW3- Constable Manish Kumar

PW4- EASI Wazir Singh

PW5- Constable Amit Kumar

PW6- Dr. Parveen Kumar

PW7- Satyapal son of Daya Nand

PW8- Raghbir son of Panni Lal

PW9- Chand Ram son of Bhundu Ram

PW10-HC Atma Ram

PW11-Sanjay, complainant

PW12-Ramesh Kumar, DSP, investigating officer

PW13- SI Des Raj

8. The accused when examined under Section 313 Cr.P.C. denied the allegations of the prosecution and pleaded false implication in this case due to party faction and political rivalry in the village. He further pleaded that he did not suffer any disclosure statement before the police nor got anything recovered. False recovery of weapon was planted upon him. However, the accused did not lead any evidence in defence.

9. After completion of the trial, the learned Sessions Judge, Bhiwani by recording a finding that the prosecution has proved the charges vide judgment dated 05.10.2015 held the accused Tasvir @ Dhillu (appellant herein) guilty for offences under Section 302 IPC and Section 25 of the Arms Act and sentenced him as under:-

Section(s)	Sentenced to R.I.	Fine	In default of payment of fine
302 IPC	Life imprisonment	Rs.10,000/-	RI for 06 months
25 of the Arms Act	03 years	Rs.5,000/-	RI for 03 months

10. Aggrieved by the conviction recorded and sentence imposed by the learned Sessions Judge, Bhiwani, the appellant approached this Court by way of the present appeal i.e. CRA-D-1681-DB-2015 which was admitted vide order dated 21.12.2015.

11. We have heard learned counsel appearing for the appellant and learned Additional Advocate General for the State of Haryana.

12. **Submissions of the learned counsel for the appellant**

(i) The incident in question was a blind murder and the conviction is solely based on circumstantial evidence.

(ii) PW11 Sanjay-complainant, the son of the deceased Om Parkash and the other witnesses are the interested witnesses and the conviction is based on the testimony of the interested witnesses.

(iii) There are material contradictions and improvements in the statements made by the witnesses. Moreover, PW9 was declared hostile by the prosecution.

(iv) The conviction is based on the alleged recovery of weapon at the instance of the accused Tasvir @ Dhillu and the weapon has been planted.

(v) In the absence of any other independent evidence, the Court below had committed error in accepting such evidence which is with material contradiction.

(vi) The appellant-Tasvir @ Dhillu has been falsely implicated in the instant case and has undergone incarceration for almost 07 years and it is a fit case to allow the present appeal by acquitting the appellant from the charges leveled against him.

13. **Submissions of the learned Additional Advocate General appearing for the State of Haryana**

(i) The complainant, namely, Sanjay specifically named the appellant Tasvir @ Dhillu in the FIR. He has also stated about the motive that the accused used to indulge in illegal activities and also wanted his father to do the same but his father refused to do so and on this account he murdered his father.

(ii) After the arrest of the accused, in pursuance of his disclosure statement he got recovered the pistol of .315 bore alongwith one empty cartridge from his house.

(iii) The medical evidence clearly supports the case of the prosecution, as Dr. Parveen Kumar, who was examined as PW-6 and who conducted the post mortem has stated that the cause of death was Acute Neurogenic shock which is due to injury to vital organ i.e. brain as a

result of fire-arm injury which is sufficient to cause death in ordinary course of nature.

(iv) The FSL report has clearly proved that the weapon i.e. country made pistol marked as W/1 (Chambered for .315 cartridges) which was recovered at the instance of the appellant and the fired bullet marked as BC/1 (bullet which was recovered from the body of the deceased) matched, hence the prosecution has proved its case by bringing on record scientific evidence by way of FSL report.

Analysis & observations

14. We have considered the submissions made by learned counsel of both sides and have perused the material on record. It is clear in this case that there is no direct evidence as to who had committed the crime. The case rests upon circumstantial evidence. Circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the existence of facts in issue or factum probandum. It is aptly said that “man may tell lies, but circumstances do not” but we should not forget that circumstances can be created/concocted/planted in order to falsely entangle a person on mere suspicion.

15. In **K.T. Palansamy versus State of Tamilnadu 2008 (2) RCR (Criminal) 870**, Hon'ble Apex Court held:

*"It is now well settled that in a case where an offence is said to have been established on circumstantial evidence alone, indisputably all the links in the chain must be found to be complete as has been held in **Sharad Birdhichand Sarda***

v. State of Maharashtra [AIR 1984 SC 1622] in the following terms:

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

(2) the facts so established should be consistent 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. They should exclude every possible hypothesis except the one to be proved.

(4) 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.

16. In **Nanhar Vs. State of Haryana, 2010 (3) RCR 548** also, Hon'ble Supreme Court held that when case is based on circumstantial evidence, the chain of circumstances should be complete in all respects and the pointer of guilt should continuously be on the accused only. Any deviation of the pointer of guilt on the accused would enure doubt.

16 (i) In the case of **Jaharlal Das Vs. State of Orissa, reported in AIR 1991 SC 1388**, it is held as follows:-

"The Court has to bear in mind a caution that in cases depending largely upon circumstantial evidence, there is

always a danger that the conjecture or suspicion may take the place of legal proof & such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful & ensure that conjectures & suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly & that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused."

16 (ii) In case of **Budhram v. State of Chhattisgarh reported in (2013) 1 Supreme Court Cases (Criminal) 727**, it is held as follows:-

"The law relating to proof of a criminal charge by means of circumstantial evidence would hardly require any reiteration, save & except that the incriminating circumstances against the accused, on being proved, must be capable of pointing to only one direction & to no other, namely, that it is the accused & nobody else who had committed the crime. If the proved circumstances are capable of admitting any other conclusion inconsistent with the guilt of the accused, the accused must have the benefit of the same."

16 (iii) In case of **Kanhaiya Lal v. State of Rajasthan reported in (2014) 2 Supreme Court Cases (Criminal) 413**, it is held as follows:-

"Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all

the incriminating facts & 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 reasonable doubt & have to be shown to be closely connected with the principle fact sought to be inferred from those circumstances.”

17. The present case was registered on the statement of PW11 Sanjay who is the son of the deceased. A perusal of the said statement Ex.PD makes it clear that the complainant-Sanjay recorded his statement before the police that his father Om Parkash had renounced the world about 7-8 years back and had become a Saint and he used to visit their house occasionally. He further deposed that approximately 7-8 months earlier, his father had started residing in a temple constructed in the fields of the accused Tasvir @ Dhillu. About 10 days prior to the occurrence, his father had come to their house and stayed with them for few days and he told the complainant that he apprehended danger to his life and that he would not stay in the temple any longer. About 5-6 days prior to the occurrence, the accused Tasvir @ Dhillu along with his wife came to his house and informed him that Maharaj Om Parkash (deceased) was annoyed with them due to which he had left the temple and they wanted to apologize and take him back with them. On seeing them, his father concealed himself in a Chaupar and was traced only after two hours. However, he accepted their apology and went with them to Kakrauli Hukmi. On that day, he received information that Om Parkash had been

shot dead. Statement Ex.PD of PW11 Sanjay was recorded on 14.09.2013 at 05:15 p.m. on the day of occurrence itself. FIR Ex.PC was registered on the same day at about 06:15 p.m meaning thereby that there was no delay in lodging the FIR with the police and thus, it cannot be said that the version of the complainant-Sanjay was an after-thought. The statement of PW11 Sanjay had also been supported and corroborated by PW8 Raghubir son of Panni Lal who in his cross-examination stated that about 10 days prior to his death, Om Parkash met him and told him that Tasvir @ Dhillu was involved in smuggling of intoxicants, he do not want to indulge in such practices and he apprehended danger to his life from Tasvir @ Dhillu. PW9 Chand Ram, brother of the deceased supported the prosecution version by deposing that on 04.09.2013, Om Parkash (since deceased) had come to him and told that he would not return to Kakroli Hukmi as he apprehended danger to his life at the hands of accused Tasvir @ Dhillu because he tried to persuade him to indulge in illegal activities of supply of opium etc. and he was not interested in doing such activities.

18. PW12 Ramesh Kumar, DSP the then Inspector/SHO deposed before the court that on 14.09.2013, on receiving an information from the Control Room that Tasvir @ Dhillu had murdered Om Parkash by firing shots at village Kakroli Hukmi in his Dera, he alongwith other officials reached the spot. He inspected the spot and prepared rough site plan Ex.PU besides recording statement Ex.PD of Sanjay complainant. He conducted inquest proceedings under Section 174 Cr.P.C vide inquest report Ex.PJ and sent the dead body to General Hospital, Charkhi Dadri for post mortem examination vide application Ex.PG. He further deposed

that on the next day, after conducting post mortem examination, the doctor handed over the sealed parcels containing a lead taken out from the dead body of the deceased to Head Constable Atma Ram who produced the same before him and he took the same into possession vide memo Ex.PK in presence of PW8 Raghbir Singh and PW10 Head Constable Atma Ram.

Recovery and seizures

19. Another important fact which links the accused to the commission of the offence is the subsequent recovery in pursuance to the disclosure statement which is reproduced as below:-

Disclosure statement of accused

In the presence of the following witnesses accused Tavar @ Dhillu son of Bedharak, caste Jat, resident of Kakdoli Hukmi in police custody at his own without any pressure on interrogation suffered disclosure statement that in the night of 13/14-9-13 at about 4.00 AM, I made a shot fire with .315 bore pistol upon Om Parkash @ Jangli Baba son of Dhundu Ram, caste chamar, resident of Kharak Kalan on his head and murdered him. After the murder, that pistol and the empty cartirdge wrapped in a polythene and hidden the same in the wheat which was lying in my home. No one is known about the same except me. I can get the same recovered after due identification. I purchased the pistol for self protection around two and half years ago, which was used in the crime and made the payment of Rs.3000/-. Deshi from whom the pistol was

purchased was murdered. Disclosure statement was recorded and the same was signed by the accused and the witnesses.

Accused

Tasvir @ Dhillu son of Bedharak, caste Jat, resident of Kakdoli Hukmi, Sd/- in Hindi.

Witnesses

1) Sanjay son of Om Parkash, caste chamar, R/o Kharak Kalan. Sd/- in Hindi.

2) Chand nam son of Bhundu Ram, caste chamar, R/o Kharak Kalan, Sd/- in English.

3) HC Atma Ram 438, PS Badhera, Sd/-in English.

Sd/-in English

SHO PS Badhra, Dt.15.9.13.

Thereafter, in pursuance of his disclosure statement, accused got recovered .315 bore pistol and empty cartridge from the disclosed place. Sketch Ex.PL of the pistol was prepared and both the pistol and empty cartridge were taken into possession vide recovery memo Ex.PS. The recovery memo Ex.PS and sketch Ex.PL were attested by all the aforesaid witnesses. Thus, evidentiary vigor is to be assigned to the above memo as he was not able to bring-forth any tangible evidence to suggest that the recovery was either contrived or invented.

20. The Hon'ble Supreme Court in **Perumal Raja @ Perumal Vs. State, Represented by Inspector of Police, 2024 SCC Online SC 12** held as follows:-

“19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 1872 (for short 'the Evidence Act'), a confession made to a police officer is

prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events- a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

20. In **Pulukuri Kottaya Vs. King Emperor AIR 1947 PC 67**, the Privy Council held that the fact discovered embraces the place from which the physical object is

produced and the knowledge of the accused as to this, and the information given, must distinctly relates to this fact.

21. In **State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600**, this Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a physical object disassociated from the recovery of the physical object.”

Post mortem report

21. PW6 Dr. Parveen Kumar tendered in evidence his affidavit Ex.PW6/A. By way of his affidavit Exhibit PW6/A, he deposed that on 15.09.2013, on police request, he conducted post mortem examination on the body of Om Parkash son of Bhundu Ram, male, r/o Kharak Kalan (Bhiwani) and found the following injuries:-

"1. A lacerated wound present on left temporal region on skull, 1 cm diameter, spherical shape with blackening around it. On dissection gutter shaped cavity present traced upto right mid brain with damaged intervening bones and brain matter and ecchymosis present.

2. A metallic foreign body recovered from brain cavity and preserved.

In his opinion the cause of death was acute neurogenic shock which was due to injury to vital organ i.e. brain, as a result of firearm

weapon which was sufficient to cause death in ordinary course of nature.

All findings were ante mortem in nature."

22. PW6 Dr. Parveen Kumar, has deposed that the cause of death in this case was Acute Neurogenic shock which was due to injury to vital organ i.e. Brain as a result of firearm weapon which was sufficient to cause death in ordinary course of nature and all the injuries were ante mortem in nature. He also took out a piece of lead from the dead body of the deceased Om Parkash which was taken into possession by the police vide memo Ex.PK. It has also come on record that .315 bore pistol and one empty cartridge were got recovered by the accused Tasvir @ Dhillu and thereafter, the recovered pistol, empty cartridge and the Lead were sent to FSL Madhuban. As per report of FSL Madhuban, Ex.PT, the Lead taken out of the dead body has been fired from the .315 bore pistol which got recovered from accused Tasvir @ Dhillu.

FSL Report

23. Ex. PT is the report of R.S. Sangwan, Senior Scientific officer, Ballistic, FSL Madhuban which speaks that the seals on the parcels received in the office of DFSL Madhuban relating to this case were found intact and tallied with the specimen seal as per forwarding authority. On examination, the country made pistol marked as W/1 (Chambered for .315 bore cartridges) is a firearm as defined in Arms Act, 54 of 1959. Its firing mechanism was found in working order. The .315 bore fired cartridge case marked as C/1 and .315 fired bullet marked as BC/1 have been fired from country made pistol marked as W/1 (recovered from accused Tasvir @ Dhillu) as per FSL report. This is

significant as every firearm has got its own individual characteristic marks. This report was not challenged by the defence. No application was moved by the defence for examination of the expert who had given the said report and there is no reason to disbelieve the report which, has been given by an independent agency and prepared by a government servant while discharging his official duties.

24. Further, it is the contention of the learned counsel for the appellant that PW11 and PW8 are family members/close relatives of the deceased-Om Parkash and as such, their testimony is to be discarded. However, this contention cannot be accepted as merely because PW11 and PW8 are related to the deceased, this is itself not a ground to reject their testimony. Further, merely because a natural witness is a close relative of the deceased this does not *ipso facto* make him an interested witness. It is well settled proposition of law that the evidence of interested witness can also be considered provided such evidence is corroborated by other evidence on record. At this stage, it is apposite to refer to a judgment of Hon'ble Apex Court in case of **Kanhaiya Lal and others etc. Vs. State of Rajashtan (2013) 5 SCC 655**. Paragraphs 24 and 25 of the said judgment read as under:-

“24. In Hari Obula Reddy Vs. State of A.P. (1981) 3 SCC 675, a three-Judge Bench has opined that it cannot be laid down as

“an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material

particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.” (SCC pp.683-84, para 13).

25. *In **Kartik Malhar Vs. State of Bihar (1996) 1 SCC 614**, this Court has stated (SCC p.621, para 15) that a close relative who is natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reasons.”*

25. While rejecting the plea that the witnesses were in close relation to the deceased, in the case of **Ram Chander and ors. Vs. State of Haryana, (2017) 2 SCC 321** this Court has held as under:-

*“33. The submission of the learned counsel for the appellants that since Guddi (PW9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in **Dalbir Kaur Vs. State of Punjab (1976) 4 SCC 158** and **Harbans Kaur Vs. State of Haryana (2005) 9 SCC 195**, which lays down the following proposition (**Harbans Kaur case, SCC p.198, para 7**)*

“There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.”

26. After carefully scrutinizing the oral as well as documentary evidence, we are of the considered view that there is a complete chain of evidence which would lead to the irresistible conclusion that the appellant Tasvir @ Dhillu had committed the murder of the deceased. Even the recoveries are sufficiently proved with cogent evidence. From the testimony of PW8, PW9 and PW11, the motive is also established that the appellant wanted to involve the deceased in the smuggling of intoxicant substances and the deceased apprehended a threat to his life from the hands of the appellant. The disclosure statement of the appellant led to the recovery of .315 pistol. The FSL report, which has been duly proved, shows that the bullet extracted from the person of the deceased was fired from the pistol recovered at the instance of the appellant. The post mortem report proves that the death was a result of a firearm injury. From the evidence on the record, we are of the considered view that the prosecution has proved the guilt of the appellant beyond reasonable doubt by leading cogent evidence.

Conclusion

27. After hearing the submissions made by both the counsels and on complete examination of the record, this Court is of the considered view that the impugned judgment of conviction and order of sentence

dated 05.10.2015 passed by learned Sessions Judge, Bhiwani is based on correct appreciation of evidence and material available on record. Furthermore, it can be easily concluded that the prosecution has successfully proved the complete chain of circumstances beyond a shadow of doubt. Resultantly, the impugned judgment and order of sentence dated 05.10.2015 are upheld and the instant appeal stands dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

24.04.2024
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes