

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

102

2026:PHHC:099864-DB



CRA-491-DB-2005 (O&M)
Date of decision: 21.07.2026.

NARESH @ KALA

... Appellant(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present :- Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kashish Sahni, Advocate,
Mr. Arvan Ghai, Advocate, and
Mr. Manvir Singh Jaidka, Advocate,
for the appellant(s).

Mr. Dhruv Dayal, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Accused Naresh @ Kala son of Rameshwar is in an appeal against the judgment dated 02.07.2005 passed by the Additional Sessions Judge, Sonapat, in Sessions case bearing No.60 of 2002/2004 dated 04.08.2002, arising out of FIR bearing No.173 dated 26.10.2001, under Section 302 of the Indian Penal Code, 1860, registered at Police Station Kundli, District Sonapat whereby the appellant-accused has been convicted

for the commission of offence under Section 302 IPC and has been sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-.

2 FACTS

2.1 Succinctly stated, the case as set up by the prosecution is that on 26.10.2001, complainant Sardar Singh had lodged a complaint (EX.PJ) to the effect that he is a resident of village Nahri and is an agriculturist. He has two sons namely Dalbir, aged 22 years and Kuldeep, aged 18 years and both are unmarried. They help him in agricultural work. His wife had gone to her parental house. He alleged that on 25.10.2001, his son Dalbir had gone to level the ground at Gyatri brick kiln on his tractor. He returned back at around 9:00 P.M., parked the tractor inside the house and went outside. On 26.10.2001, at about 5:15 A.M., one Mehtab Singh son of Manphool came to his residence and told him about a dead body lying in the street of Nahri. He along with Mehtab reached at the spot where he found that it was the dead body of his son Dalbir. He was lying with his face downwards. His moustaches and mouth were filled with blood and there were marks of injuries on his forehead. He along with Mehtab brought the dead body inside the house and placed it on a cot. An inquiry into the death of Dalbir was made and he expressed that his son may have sustained injuries on his mouth, nose and forehead by a fall, under the effect of liquor and consequently died. A statement in this regard was accordingly recorded and inquest proceedings (EX.PP) were initiated. The apparent cause of death as per the inquest proceedings was on account of injuries sustained due to a fall. The dead body was sent for post-mortem examination. As per the post-mortem report, the cause of death was reported as “injury to the vital organ of the body viz. the brain” and there was a fracture

on parietal region of the skull.

2.2 On the basis of the aforesaid post-mortem report, FIR in the present case was registered. During investigation, police arrested the appellant, based on last seen evidence as well as his extra-judicial confession. The case then set up by the prosecution was that the appellant Naresh had inflicted injuries on the head of Dalbir on the intervening night of 25th/26th October 2001 as a result whereof he fell and started bleeding from his nose and mouth. Dalbir succumbed to the injuries within a few minutes. Appellant-accused got scared and threw the body in the Nali behind the house of Partap son of Man Phool. Appellant-accused also made a disclosure statement and got recovered one quilt and one mattress from his rented shop and he also got recovered a stained shirt and trousers from the almirah of his house, which were taken into possession vide EX.PD. The place of occurrence was demarcated and a scaled site plan of the place of murder was also prepared.

2.3 A report from the Forensic Science Laboratory, Madhuban was received and on completion of all other formalities, a final report under Section 173 Cr.P.C. was filed.

2.4 Since the case is triable by the Court of Sessions, it was committed and upon finding a prima facie offence under Section 302 IPC, charge was framed accordingly on 23.08.2002. The appellant-accused pleaded not guilty and claimed trial.

2.5 In support of its case, the prosecution examined as many as 21 witnesses including complainant Sardara as PW.1 who proved the first information (Ex.PJ) given to the police. PW.2 Sat Pal son of Sardar Singh and PW.3 Iqbal Singh son of Deep Chand were declared hostile and nothing could

be elicited from their cross-examination. PW.4 Dalel son of Chatter Singh also resiled from his statement made to the police.

2.6 PW.5 Partap Singh son of Jage Ram stated that the appellant had made an extra judicial confession before him that he had inflicted injuries on the head of Dalbir on the intervening night of 25/26th October, 2001 and as a result whereof Dalbir fell down and started bleeding from nose and mouth and succumbed to the injuries in a few minutes. The matter was reported to the Police on 27.10.2001. Search of the house of appellant Naresh was undertaken in his presence. The police recovered one quilt and one mattress from the rented shop of the appellant. Appellant Naresh also got recovered a shirt and trousers from his house pursuant to the disclosure statement (Ex. PE). A Memo (Ex. PF) was prepared by the police after the demarcation of the spot at the instance of the appellant.

2.7 PW.6 HC Surender Singh deposed that he had gone to village Nahri along with the investigating officer on 26.10.2001. The dead body was taken to the Civil Hospital, Sonapat for the post-mortem examination. He also proved seizure memo EX.PH.

2.8 PW.7 Daya Kishan, proved Ex. PJ. PW.8 Dharmender Singh Constable is a formal witness who delivered the sealed parcels and papers to Randhir Singh MHC on 26.10.2001. PW.9 Dr. R.N.Tehlan who conducted the post-mortem examination of the deceased proved the copy of post-mortem report Ex.PL. Virender Singh, SI who got issued the docket from the office of DSP Ganaur and handed over the same to MHC, P.S.Kundli for sending the parcels to FSL Madhuban for chemical examination also appeared as PW.10. PW.11 Constable Inder Pal proved the scaled site plan (Ex. PM) prepared at

the instance of Sardara-complainant (PW11). PW.12 SI Hukam Chand proved the report Ex.PN. PW.13 Om Parkash ASI recorded the formal FIR (Ex. PJ/2) and proved the same being dispatched to the S.S.P. and Ilqa Magistrate through Constable Ramesh Kumar. PW.14 Constable Billu is another formal witness. PW.15 Ram Kumar ASI, the investigating officer proved the various documents.

2.9 PW.16 Daya Kishan was also declared hostile and nothing incriminating could be elicited from his cross-examination. PW.17 Devender also did not support the prosecution version. PW.18 Nawal Singh is the attesting witness of the disclosure statement and seizure memo (EX.PD) and PW.19 Anup Singh proved the disclosure statement (Ex. PE). The remaining witnesses are formal witnesses.

2.10 PWs Ram Chander, Dr.V.K.Gupta, Mukhtiar Singh and Om Parkash were given up by the Public Prosecutor being unnecessary. The FSL report Ex. PX was tendered into evidence.

2.11 In the statement recorded under Section 313 Cr.P.C, the entire incriminating evidence, appearing against the appellant on record, was put to him to which he denied and pleaded false implication. The appellant raised a plea that nothing was recovered from his possession, either from his shop or his house. However, the appellant did not lead any evidence in his defence.

2.12 On consideration of the evidence led on record as well as the submissions made, the trial Court recorded a finding of conviction against the appellant and sentenced him as aforesaid. Hence, the present appeal.

3 **ARGUMENTS ON BEHALF OF THE APPELLANT.**

3.1 Learned senior counsel for appellant contends that it is a case based purely on circumstantial evidence and the appellant had been nominated as an accused on an extra-judicial confession and the statement of witnesses who claim that the deceased was last seen in the company of the appellant herein. Counsel contends that the prosecution has miserably however failed to prove its case against the appellant beyond reasonable doubt. He contends that so far as complainant Sardar, who appeared as PW.1, is concerned, he, in his first statement recorded before the police as well as in his deposition before the Court did not raise suspicion of any foul play and had not named any person as having caused injury to his son. He however made material improvement in the case. While in his statement EX.PJ, he had stated that his son used to consume liquor occasionally, however, when he appeared in Court, he denied the suggestion and said that he never saw his son consuming liquor. He further admitted in his cross-examination that there was no enmity between his son and the appellant herein and that their relations were fine.

3.2 He contends that PW.2 Satpal son of Sardar who was examined as a prosecution witness to have last seen the deceased Dalbir in the company of appellant-accused Naresh herein on 25.10.2001, however, he did not support the case of the prosecution and had turned hostile and nothing incriminating could be elicited from his cross-examination. In his statement under Section 161 Cr.P.C., Satpal had stated that he had seen Naresh (appellant) and Dalbir (deceased) were standing in front of shop of Naresh and talking about consuming liquor and that they were already under the influence of liquor. He denied having seen Naresh and Dalbir on 25.10.2001

at all.

3.3 Similarly, PW.3 Iqbal Singh son of Deep Chand whose statement was relied upon by the prosecution to contend that he had seen the appellant-accused taking Dalbir Singh on his shoulder in front of his shop at 1:30 on 26.10.2001, also did not support the case of the prosecution and was declared hostile. His cross-examination also failed to elicit anything against the appellant. PW.4 Dalbir who was relied upon by the prosecution to substantiate that there had been a fight between Dalbir and appellant Naresh at 11:30 P.M. on the intervening night of 25.10.2001/26.10.2001, however, while testifying before the Court, he also did not support the case of the prosecution and was declared hostile. No fruitful evidence was elicited from his cross-examination as well.

3.4 Learned senior counsel for the appellant contends that the case of the prosecution is based entirely on the last seen evidence and extra judicial confession made before PW.16 Daya Kishan son of Sodha Ram, however, he as well as the witness who was present at the time of making of extra judicial confession by the appellant have not supported the case of the prosecution. Thus there is no evidence that would suggest that Dalbir (deceased) was in the company of the appellant and was last seen with him on the intervening night of 25/26th October 2001. Thus, the prime evidence in the case of prosecution did not support the version.

3.5 The only incriminating evidence against the appellant thus left is about the alleged recoveries that are claimed to have been made by the prosecution at the instance of the appellant herein. He contends that the recovery in the present case is two-fold i.e. the quilt and bedding from the

shop as well as clothes of the appellant from the house. The recovery of the quilt and mattress was, however, not consequent upon any disclosure by the appellant and has thus has no evidentiary value as a fact discovered. He contends that so far as the recovery of clothes from the house of the appellant herein at his disclosure is concerned, the FSL report shows that the alleged stains claimed by the prosecution to be of human blood could not be linked. The material had already been disintegrated and the same could not be said to be of human origin. Hence, the conviction of the appellant solely on the ground that blood-stained clothes had been recovered on his disclosure from his house, without establishing as to whether the stains were of human blood or whether the same could be related to the deceased, the conviction would not be sustainable. The case is thus at best of a grave suspicion and a conviction cannot be sustained on a mere suspicion. He further contends that the prosecution has not established any motive against the appellant. The death was caused due to injury on the head of the deceased allegedly by the appellant by striking his head against the deceased. However, on a specific query having been put to the prosecution witness PW.9, he specifically stated that the injury resulting the cause of death could not have been caused by hitting with his head.

3.6 Learned senior counsel for the appellant contends that the prosecution has thus not only failed to establish motive against the appellant but has also failed to explain the cause of death in the present case. The prosecution story is not corroborated by the medical evidence on record. All the material prosecution witnesses about the last seen did not support the case. The solitary evidence in the form of the recovery of blood stained shirt and

trousers of the appellant is inconsequential since it has not conclusively established the offence as alleged and stains could not even be said to be human blood.

4 **ARGUMENTS ON BEHALF OF RESPONDENT-STATE**

4.1 Learned State counsel, on the other hand, contends that an altercation took place between the deceased Dalbir as well as the appellant Naresh when they were having liquor together. He contends that as per the statement of the complainant Sardara, the father of the deceased Dalbir, Dalbir did not use to drink. Besides, accused was last seen at 10.30 P.M. in the company of the deceased and thereafter, the other witness saw a quarrel taking place between the deceased Dalbir and the appellant-accused Naresh and at around 1:00 A.M. in the morning, yet another prosecution witness saw the deceased being carried by the appellant-accused herein and at that point in time, blood was oozing out from the nose of the deceased. He contends that the entire chain of evidence thus stands complete and that the same not only conclusively establishes that the appellant was last seen in the company of the deceased but also that during the intervening period, it was the appellant who was present with the deceased. Hence, there is a completed chain of events and circumstances proving that the appellant-accused committed the offence. He further contends that so far as initial suspicion on the part of complainant PW.1 Sardara is concerned, the same is based only on ocular evidence and it was only later, after post-mortem examination, that the brain injury was identified. Hence, a mere narration by Sardara under a bona fide belief, should not weigh against the prosecution.

4.2 He further contends that so far as the disintegration of stains on the clothes recovered at the disclosure of the appellant is concerned, the disclosure of the appellant reveals that he had washed the clothes after the offence, hence, a mere disintegration of the stains should not be construed to the advantage of the appellant herein. He contends that Dalbir had passed away as a result of the injury caused by the appellant-accused herein and the judgment of conviction has been rightly recorded by the trial Court. The appeal thus deserves to be dismissed.

4.3 Learned State counsel further that recovery pursuant to the disclosure has been duly proved and the witnesses have consistently deposed in support of the recovery. Hence, the said recovery becomes crucial link evidence to the commission of the offence by the appellant-accused Naresh.

5 ANALYSIS

5.1 We have heard learned counsel for the respective parties and have gone through the records of the case with their able assistance.

5.2 It remains undisputed that as per the initial statement (EX.P.J), the DDR Entry No.5 was recorded at the instance of the complainant Sardar Singh-father of the deceased Dalbir Singh. Inquest was carried out and the proceedings as recorded in the inquest (EX.PP), reflect that Sardara Singh had not suspected any foul play. He had stated in the aforesaid statement that Dalbir Singh used to consume liquor occasionally, a case which he sought to improve during the course of deposition. However, such deviation from the earlier statement stands defeated by the fact that as per the chemical examiner's report, there was ethyl alcohol to the extent of 69% in the samples of blood collected from the heart, liver, kidneys and intestines. Such a high

degree of blood alcohol concentration would normally lead to a complete shut-down of brain's control centres and effect muscular control. The chemical examiners report is conclusive about high level and effectively counters the prosecution case. Under such conditions, a person may actually fell down. The deceased was lying with his head downwards, in a 'naali' and the injuries as shown in the post-mortem report could be as a result of the same.

5.3 Besides, the entire case of the prosecution is based upon the circumstantial evidence that is sought to be proved by the evidence of the persons who had allegedly last seen the deceased in the company of the appellant herein. Three of the said witnesses who stated that they had seen both of them together at different times i.e. at 10.30 P.M., 11.35 P.M. and at 1:00 A.M. approximately on the intervening night of 25th/26th October 2001, however, have not supported the case of the prosecution during their testimony/deposition in the Court and they were declared hostile. The Supreme Court in the judgment passed in the matter of **State of U.P. Vs. Satish, reported as (2005) 3 SCC 114**, has held as under: -

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the

deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

5.4 The test of last seen, as prescribed above, is however not satisfied.

5.5 Reliance was heavily placed on the extra-judicial confession made by the appellant before PW.16 Daya Kishan. It however remains undisputed that said Daya Kishan has also not supported the prosecution case and was declared hostile by the prosecution. Further, PW.17, Devender who was stated to be present at the time when the appellant made an extra-judicial confession before Daya Krishan, had also not supported the case of the prosecution. Thus, said version also remains unestablished. Even though extra judicial confession is a weak evidence, where even the person before whom such confession is made, resides and does not support its admissibility plummets still further.

5.6 Adverting next to the reliance placed by the prosecution on the recovery of quilt and mattress from the shop of the appellant here. Even though the prosecution case is that recovery of stained quilt and mattresses had been effected, it is not disputed that the said recovery was not made pursuant to any disclosure statement made by the appellant herein, hence, its connection with the case gets severed. The solitary recovery which thus has been effected at the disclosure of the appellant was of his clothes allegedly worn at the time of the incident, i.e. the shirt and the trousers which were taken in possession and sealed. The same was sent to the FSL for examination as (Exhibit 4-A and Ex.4-B). Undisputedly, the trousers did not contain any stain marks but certain stain marks were shown to be present only on the shirt

(Ex.4-A). As per the report of the FSL, based upon serological examination, the material/stains on the shirt had disintegrated and could not be identified to be of human origin.

5.7 Under the given circumstances, the said stains cannot be conclusively perceived as human blood stains, at this stage, leave apart, establishing that the said blood stains are related to the deceased. Hence, the above recovery per se does not conclusively establish the offence having been committed by the appellant-accused.

5.8 It also remains undisputed that the prosecution has not established any motive nor has it explained any circumstances under which the scuffle/fight had occurred between the deceased Dalbir and the appellant herein. The absence of motive becomes significant as it was a specific case of Sardar Singh that the deceased and the appellant-accused were good friends and there was no enmity amongst the families.

5.9 Further, so far as the manner in which death had allegedly taken place on account of a blow given on the head of the deceased by the appellant-accused from his own head is concerned, the doctor PW.9 Dr.R.N. Trehan, has ruled out that the injury in question could have been caused by a blow from the head. The relevant part of the cross-examination of the doctor reads this: -

“Injuries No.1, 2 and 3 found on the body of the deceased Dalbir Singh could not have been caused by striking one’s head by a man at the seat (wrongly typed as sheet) of the injuries.”

5.10 In these circumstances, the chain of events as sought to be created by the prosecution, remain unestablished, beyond reasonable doubt. It has

failed to prove the cause of death in the manner as alleged as well as the motive for commission of a crime. The prosecution has also failed to establish its last seen theory or prove the extra-judicial confession. Even the recovered clothes have not been able to link the appellant with the offence.

5.11 The position in law needs no reiteration that suspicion howsoever strong is not a substitute for proof. The prosecution is under a burden to establish its case against the accused, not only beyond reasonable doubt but also to establish that the incident in question could not have taken place in any manner other than the manner as claimed by the prosecution. Reliance in this regard can be placed on the judgment of the Supreme Court in the matter of **Kali Ram Vs. State of H.P., reported as (1973) 2 SCC 808**. The relevant extract of the same reads thus: -

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is

hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

26. It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the Courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is

more apparent than real. As observed on page 3 of the book entitled "The Accused" by J. A. Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved, the public interest and the interest of the accused alike require an acquittal".

5.12 Considering the totality of circumstances and noticing the fact that the deceased was found lying with his face downwards in a nalli and blood alcohol concentration was to the extent of 69% sustaining those injuries, on account of a fall cannot entirely be ruled out.

6 Under the given circumstances, we find that the judgment of conviction dated 02.07.2005 passed in Sessions case No.60 dated 04.08.2002/2004, whereby the appellant-accused has been convicted for the commission of offence under Section 302 IPC and has been sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, fails to take note of these major lapses in the prosecution case and has convicted on conjectural conclusions based on stained clothes. The case of the prosecution cannot be said to have been proved beyond reasonable doubt or leading to the inescapable conclusion that the offence could be committed by the appellant alone and by no one else.

7 We accordingly extend the benefit of doubt to the appellant herein. The judgment of conviction dated 02.07.2005 passed by the Additional Sessions Judge, Sonapat, in Sessions case No.60 dated 04.08.2002, arising out

of FIR bearing No.173 dated 26.10.2001 convicting the appellant-accused for the commission of the offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.2,000/-, is consequently set aside.

8 The appeal stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

July 21, 2026.
raj arora

(SUKHVINDER KAUR)
JUDGE

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