

DAULAT RAM @ DAULTI

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v.

STATE OF HARYANA

(Criminal Appeal No. 433 of 2015)

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MARCH 17, 2015

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

*Penal code, 1860: s.302 r/w s.34 and s.201 – Conviction by courts below based on circumstantial evidence – Deceased brutally murdered and his dead body thrown in dry well – Evidence of prosecution witnesses were not found to be trustworthy – Motive or previous enmity of the appellant-accused with the deceased was also not proved – Chain of circumstances was not complete to prove charge of offences u/ss.302 and 201 against the appellant – Conviction liable to be set aside.*

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**Allowing the appeal, the court**

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**HELD: 1. PW-1, father of the deceased supported the prosecution case that the dead body of his son (deceased) was recovered from the dry well. PW-2, proved the fact that he had seen the appellant consuming liquor with the deceased and the three co-accused. He further stated that he informed about the above last seen evidence to his brother PW-1. In his cross-examination, he admitted that he was at the place of his duty between 8.00 a.m. to 8.00 p.m. It also came on the record that the distance between his village and his place of work was about 10-12 Kms, which he used to cover in one-two hours. When asked**

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A about the source of light in which he identified the  
appellant and other co-accused, he told that there was  
light of fire. But evidence of this witness did not inspire  
confidence nor appeared to be natural or trust worthy.  
PW-9 another brother of PW-1 stated that from behind  
B a bush he saw appellant and other three accused  
dragging some dead body and throwing the same into  
the well in early hours of 10.1.2002. In his cross-  
examination, this witness stated that he came to know  
C that the deceased was missing only at 9.00 a.m. on  
10.1.2002. What was not sufficiently explained in his  
statement was that if he actually saw that some dead  
body was being dragged and thrown into the well, why  
he remained silent in the village till he came to know  
D that the deceased was missing. The act of throwing  
the dead body into the well is such an incident, which  
a person who had witnessed it, would immediately  
disclose in the village. Evidence of this witness, who  
is also relative of the informant, did not appear to be  
E trust worthy as his presence near tube well cannot be  
said to be natural. Next witness of fact is PW-11,  
nephew of PW-1, who has attempted to corroborate  
that PW-9 told PW-1 about the fact that he had seen  
dragging of the dead body by four persons. Had the  
F incident been taken inside the house or courtyard, it  
could have been said that only the relatives living in  
the house or the next door neighbours had the  
opportunity to see the incident. But in the present  
case, the reasonable doubt cropped up as to why in  
G respect of an incident far away from the house of the  
informant, only informant and his relatives could see  
it. [Paras 13 to 16] [1008-E-H; 1009-A-H; 1010-A-B]

2. There was nothing on record to suggest that  
H appellant had any enmity with the deceased or that he

had any motive to commit the crime. No doubt, motive is not required to be proved for commission of a crime but in a case of circumstantial evidence, it cannot be altogether ignored where the other accused with similar role have been acquitted, from the charges of murder. The chain of circumstances brought on record was not complete to prove charge of offences punishable under Sections 302 and 201 IPC against appellant as such, the conviction and sentence recorded by the courts below against him is liable to be set aside. [Paras 17 to 19] [1010-D-G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 433 of 2015.

From the Judgment and Order dated 06.02.2012 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 546-DB of 2010.

S. C. Paul, Resham Singh, Roopa Paul, Satyendra Kumar for the Appellant.

Amit Kumar, AAG, Vishwa Pratap Singh, Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

**PRAFULLA C. PANT**, J. 1. Heard.

2. This appeal is directed against judgment and order dated 6.02.2012, passed by the High Court of Punjab and Haryana in Criminal Appeal No. 546-DB of 2010 whereby the appeal is dismissed and the conviction and sentence against the appellant Daulat Ram @ Daulti under Section 302 read with Section 34 and one under Section 201 of Indian Penal Code (IPC), recorded by the Additional Sessions Judge, Faridabad, in Sessions Case No. RBT

A No. 38 of 2008/2009 is affirmed.

3. Prosecution story, in brief, is that on 10.1.2002 PW-1 Himmat Singh approached PW-20, Inspector Amrik Singh of Police Station Chhainsa and informed him that his  
B elder son Zile Singh @ Prem Chand (deceased), was missing. The informant further told to the above officer that Zile Singh had gone on 9.1.2002 on the request of the  
C appellant Daulat Ram, with him. He further told that PW-2 Mangal Singh, disclosed him that in the previous night the deceased was seen having liquor with appellant Daulat  
D Ram, Devanand (son of Mishri Lal), Mahesh @ Bachhu (son of Ramji Lal) and Om Prakash @ Omi (son of Rewati Parshad) in fodder room (of Omi). The informant (PW-1) further told the police that when by about 5.00 a.m. on  
E 10.1.2002, Zile Singh did not come back to his home, he (informant) along with his another son Manoj Kumar went to fodder room of Omi where they spotted blood stains, and started searching for the deceased here and there. PW-9, Jugal Kishore, told him (PW-1) that he had seen  
F appellant Daulat Ram, Devanand, Mahesh and Om Prakash throwing a dead body into a dry well near the tubewell. Thereafter, accompanied by PW-9, Jugal Kishore, Himmat Singh, PW-11, Brahm Dutt, proceeded towards the tubewell. From the battlement (Munder) they peeped into  
G the well and noticed a dead body lying there. PW-11, Brahm Dutt, got down into the well and saw that the dead body was that of Zile Singh @ Prem Chand, which was tied with a blanket. The informant alleged that appellant Daulat Ram and co-accused Om Prakash, Mahesh and Devanand had killed Zile Singh after making him drunk.

4. On the basis of above report, FIR (Ex PB) was registered against all the four accused, namely, Mahesh @  
H Bachhu, Om Prakash @ Omi, Devanand and Daulat Ram

@ Daulti, at Police Station Chhainsa, and crime was investigated by PW-20 Inspector Amrik Singh. The dead body of Zile Singh was taken into possession by the police, sealed and sent for post mortem examination. PW-13, Dr. P.S. Yadav, conducted post mortem on 10.1.2002 with his team of doctors, namely, Dr. S.K. Mittal and Dr. Harsh Piplani. The team of medical officers recorded four ante/post mortem injuries (one ante and three post mortem), and opined that the deceased has died of shock and hemorrhage as a result of injury No. 1 sustained due to fire arm. After interrogating the witnesses and inspecting the spot, charge sheet was filed against three accused namely, Mahesh @ Bachhu, Om Prakash @ Omi and Devanand, who were arrested. As against appellant Daulat Ram, who could be arrested only in the year 2008, subsequent report/charge sheet was filed under Section 173 of the Code of Criminal Procedure.

5. After separate committal of the case of Daulat Ram @ Daulti (appellant), charge was framed against him in respect of offences punishable under Section 302 read with Section 34 and Section 201 IPC, to which he pleaded not guilty and claimed to be tried.

6. On this, prosecution examined PW-1 Himmat Singh (informant), PW-2 Mangal Singh, PW-3 A.S.I. Sher Singh, PW-4 Constable Sukhender Singh, PW-5 Shiv Lal, PW-6 A.S.I. Jai Lal, PW-7 Yashwant Singh (Patwari Halqa), PW-8 Rajbir, PW-9 Jugal Kishore, PW-10 Bhagwat Dayal, PW-11 Brahm Dutt, PW-12 Narottam (photographer), PW-13 Dr. P.S. Yadav (who conducted autopsy), PW-14 Inspector Prem Singh, PW-15 HC Sarjeet Singh, PW-16 HC Suresh Kumar, PW-17 A.S.I. Sukhbir Singh, PW-18 S.I. Raghubir Singh, PW-19 Constable Randhir Singh and PW-20 Amrik Singh (who investigated the crime).

A 7. The oral and documentary evidence was put to the appellant under Section 313 of the Code of Criminal Procedure on 18.2.2010, to which he pleaded that the same is incorrect.

B 8. After hearing the parties, the trial court (Additional Sessions Judge, Faridabad), on 20.4.2010, found accused Daulat Ram (appellant) guilty of charge of offences punishable under Section 302 read with Section 34 and under Section 201 IPC. After hearing on sentence, on C 21.4.2010, the convict was sentenced to rigorous imprisonment for life and directed to pay a fine of Rs.25,000/- under Section 302 read with Section 34 IPC. He was further sentenced to rigorous imprisonment for five years and to pay a fine of Rs.5,000/- under section 201 D IPC. In default of payment of fine of Rs.25,000/- the convict was directed to undergo rigorous imprisonment for a period of two years, while in default of payment of fine of Rs.5,000/- he was directed to undergo rigorous imprisonment for a period of one year.

E 9. It is pertinent to mention here that co-accused Mahesh, Devanand and Om Prakash @ Omi had already been convicted by the trial court, vide its judgment and order dated 29/31.7.2006 in SC No. 25 of 2002/06.

F 10. Both sets of convicts filed appeals before the High Court. Criminal Appeal No. 568-DB of 2006 was filed by accused Mahesh @ Bachhu, Om Prakash @ Omi and Devanand and Criminal Appeal No. 546-DB of 2010 was G filed by convict Daulat Ram @ Daulti. Both the appeals were clubbed and heard together and decided by common judgment dated 6.2.2012. Appeal of accused Mahesh, Om Prakash and Devanand was partly allowed and they were H acquitted by the High Court from the charge of offence punishable under Section 302/34 IPC but their conviction

and sentence under Section 201 IPC was not interfered with. However, the appeal of convict Daulat Ram was dismissed upholding his conviction and sentences awarded to him on both the counts. Hence, this appeal by Daulat Ram @ Daulti.

11. Before further discussion, we think it just and proper to reproduce the ante/post mortem injuries found on the dead body of Zile Singh (deceased) by PW-13 Dr. P.S. Yadav and his team mates. The same are reproduced as under: -

- “1. A lacerated wound of 3 x 2.5 cm on left side of the face with the incised margins and blackening just around the wound. On probing wound was going downwards and posteriorly and in the opposite direction. On further examination of the wound, there was a fluid like feeling and feeling of clotting of multiple bones of head pieces. However, the wound was not communicated exteriorly on the opposite side with head and neck.
2. The face and skull of left side was depressed and on examination and dissection it was just like bag of bones and there was fracture of skull bone with posterior cranial fossa.
3. A parchment of like appearance of the skin over the interior chest wall, the upper part of abdomen on both sides with some deficiency in the epigetric region.
4. The chest wall on left side on dissection was found depressed and there was fracture of 3<sup>rd</sup> to 7<sup>th</sup> rib. At this stage, x-ray of the skull was got done (No. 247 dated 10.1.2002), which was taken in custody by the

- A Board members and signed. The x-ray skull reveals the multiple radio opaque shadow of 1 millimeter in size and round in shape with multiple fractures of skull bone. On dissection of other part of body, namely, intestine, liver, spleen, kidneys was found to be normal.”
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The autopsy report shows that Zile Singh had died of shock and hemorrhage, as a result of injury No. 1 (i.e. ante mortem) caused by fire arm. Rest of the injuries were post mortem injuries in nature.

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12. As such, there is no doubt that it is established on the record that Zile Singh had died homicidal death. Now, this Court has to see whether the courts below have rightly found or not that appellant Daulat Ram has committed murder of Zile Singh and in order to cause disappearance of evidence threw the dead body into the well from where it is said to have been recovered. As to the commission of murder, it is a case of circumstantial evidence.

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13. PW-1, Himmat Singh, who is father of Zile Singh (deceased), is the informant. He has supported the prosecution case and proved the fact that his son went missing from the evening of 9.1.2002. He also stated that he lodged First Information Report. He further proved the fact that the dead body of his son (deceased) was recovered on 10.1.2002 from the dry well.

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14. PW-2, Mangal, has proved the fact that he had seen appellant Daulat Ram consuming liquor with the deceased (Zile Singh) and the three co-accused, namely, Mahesh, Om Prakash and Devanand. He further stated that he informed about the above last seen evidence to his brother Himmat Singh. In his cross-examination, he has admitted that he was at the place of his duty between 8.00

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a.m. to 8.00 p.m. It has also come on the record that the distance between his village Junhera and his place of work is about 10-12 Kms, which he used to cover in one-two hours. He further disclosed that the fodder room, where the appellant was said to have been consuming liquor with co-accused and the deceased, was at a distance of 6-7 feet from the road. When asked about the source of light in which he identified the appellant and other co-accused, he told that there was light of fire. But evidence of this witness, who is brother of informant, does not inspire confidence nor appears to be natural or trust worthy.

15. PW-9, Jugal Kishore, who is another witness of fact, is also brother of informant Himmat Singh (PW-1), who has stated that from behind a bush he saw appellant Daulat Ram and other three accused dragging some dead body and throwing the same into the well in early hours of 10.1.2002. In his cross-examination, this witness states that he came to know that Zile Singh was missing only at 9.00 a.m. on 10.1.2002. What is not sufficiently explained in his statement is that if he actually saw that some dead body was being dragged and thrown into the well, why he remained silent in the village till he came to know that Zile Singh was missing. The act of throwing the dead body into the well is such an incident, which a person who had witnessed it, would immediately disclose in the village. Evidence of this witness, who is also relative of the informant, does not appear to be trust worthy as his presence near tube well cannot be said to be natural.

16. Next witness of fact is PW-11, Brahm Dutt, nephew of PW-1 Himmat Singh, who has attempted to corroborate that Jugal Kishore told Himmat Singh about the fact that he had seen dragging of the dead body by four persons. Had the incident been taken inside the house or

A courtyard, it could have been said that only the relatives living in the house or the next door neighbours had the opportunity to see the incident. But in the present case, the reasonable doubt crops up as to why in respect of an incident far away from the house of the informant, only B informant and his relatives could see it.

17. No doubt, Zile Singh appears to have been brutally murdered and his dead body was found in the well, but as to the role of the appellant Daulat Ram, in our opinion, in C the above facts and circumstances, it cannot be said that complete chain of circumstances is proved to hold him guilty of commission of murder of Zile Singh or as to the fact that he caused disappearance of evidence by throwing the dead body of Zile Singh into the well. There is nothing D on record to suggest that appellant had any enmity with the deceased or that he had any motive to commit the crime. No doubt, motive is not required to be proved for commission of a crime but in a case of circumstantial evidence, it cannot be altogether ignored where the other E accused with similar role have been acquitted, from the charges of murder.

18. The other witnesses got examined on behalf of the prosecution have given evidence of formal nature which is F not incriminatory against the appellant.

19. For the reasons, as discussed above, we are of the view that the chain of circumstances brought on record is not complete to prove charge of offences punishable G under Sections 302 and 201 IPC against appellant Daulat Ram @ Daulti, as such, the conviction and sentence recorded by the courts below against him is liable to be set aside.

H 20. Accordingly, the appeal is allowed. The conviction

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and sentence recorded against accused Daulat Ram under A  
Sections 302 and 201 IPC, is set aside. He is acquitted  
of the charge. He shall be set at liberty, if not required in  
connection with any other crime.

Devika Gujral

Appeal allowed. B