

Darshan Lal Vs. State

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Court : Uttaranchal

Decided On : Sep-01-2004

Reported in : 2005CriLJ1488

Judge : V.S. Sirpurkar, C.J. and; Irshad Hussain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 313; Code of Criminal Procedure (CrPC) - Sections 164, 164(2), 164(4) and 281

Appeal No. : CRL. Jail Appeal No. 1693 of 2001

Appellant : Darshan Lal

Respondent : State

Advocate for Def. : D.K. Sharma, Govt. Adv.

Advocate for Pet/Ap. : S.P.S. Panwar, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Irshad Hussain, J.

1. Appellant Darshan Lal was arrested on 22-2-1995 in FIR No. 2/1995, dated 19-2-1995, of Parwari /Circle Girsha, District Chamoli and after investigation charged for the offence punishable under Section 302 of the Indian Penal Code in Sessions

Trial No. 14 of 1995 by the Sessions Judge, Chamoli. After completion of the trial, appellant was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- (one thousand).

2. Not satisfied with his conviction and sentence appellant preferred this appeal from jail.

3. Appellant was married to witness Smt. Darshani Devi (P.W.4). Their residential house is in village Uttaron of aforesaid Patwari Circle. Bala Lal deceased aged about 13-14 years was brother of appellant's wife. Bala Lal a student of class-VI was residing with the appellant. Smt. Panna Devi (P.W.2), the elder sister of Smt. Darshani Devi and Km. Prabha. aged about 12 years, niece of the appellant, were also residing with the appellant and his wife. In the night between 17/18th February, 1995, the wife of the appellant was away to her parents house in village Bhikona, of Patwari Circle, Pokhari and as such the appellant, Bala Lal deceased, Smt. Panna Devi and Km. Prabha were the occupants of the house during the said night. These facts are not in dispute.

4. Accusations which form the basis of the prosecution are as below :--

5. Few days prior to 17th February, 1995 Smt. Darshani Devi went to visit the house of her parents with her husband, the appellant. The appellant returned to his village but Smt. Darshani Devi preferred to extend her stay. Appellant suspected that his wife was maintaining illicit relations with Supal Das of village Vasthi and was thus suffering anguish and mental tension. He was also showing deep anger towards his wife. In the night of 17th February 1995 the appellant took his meal and thereafter on his dictation got a letter written by his brother-in-law, Bala Lal. He then kept the said letter under his pillow and retired to sleep in his bed (takhat). Bala Lal was also made to sleep in the same bed by the appellant. Smt. Panna Devi and Km. Prabha also retired to sleep on the floor of the same room of the house. Sometime in the mid night when Bala Lal was asleep, appellant gave hammer-blows on his head resulting which Bala Lal sustained serious injuries and died spontaneously. The appellant then spread a bed sheet over the dead body of Bala Lal and left the house in the night itself.

6. In the morning Smt. Panna Devi and Km. Prabha woke up as usual and Smt. Panna Devi started preparing morning meal. She then asked Km. Prabha to awaken Bala Lal, who may prepare himself to go to his school. When Km. Prabha pulled of the bed-sheet she found, to her utter surprise, Bala Lal lying dead with blood and injuries on the head and face. The scene also put Smt. Panna Devi in agony and these two started weeping and crying. The appellant Darshan Lal was, however, not found in the house. Hearing the noise, Supal Das (P. W. 1) and other neighbours arrived at the house of the occurrence. Smt. Panna Devi spotted an iron hammer lying underneath the appellant's bed (takhat). It had blood stains and hair stuck to it. Supal Das got scribed a report (Ext. Ka. 1) through Raghbir Lal and gave it to the Patwari Girsha at 8 a.m. 19-2-1995. On the basis of the written report, the F.I.R. was registered against the appellant and investigation was taken up by Circle Patwari Sri Ashok Kumar (P.W.7).

7. The Investigating Officer visited the village of the occurrence and seized iron hammer and blood stained clothes of deceased. He held inquest on the dead body of Bala Lal and sent it for autopsy. Dr. Mayank Upadhyaya (P.W.6) performed post mortem on the dead body at 2 p.m. on 20-2-1995.

8. The appellant was arrested on 22-2-1995. He confessed his guilt and therefore the Investigating Officer submitted a report for recording of the statement under Section 164 of the Code of Criminal Procedure (for short 'Code'). The appellant was remanded to judicial custody on 23-2-1995. Chief Judicial Magistrate, Chamoli while granting further jail remand on 28-2-1995 passed an order to produce the appellant before the Munsif Magistrate, Karanprayag for recording of confessional statement. Sri C. P. Bijalwan (P. W. 5), Munsif Magistrate, Karanprayag recorded the statement of the appellant on 2-3-1995. On completion of the other formalities of the investigation, charge sheet (Ext. Ka. 16) was submitted against the appellant on 4-4-1995.

9. During trial appellant pleaded innocence and retracted from his confession. He also took the plea that in the night of the incident he was away on a visit to the house of his maternal grand father. He attributed enmity to witness Supal Das, who wanted to garb his landed property.

10. To bring home the guilt against appellant, the prosecution placed reliance on the evidence of the witnesses referred above. The F. I. R. was lodged by Supal Das (P.W.1), a cousin and neighbour of the appellant. Smt. Panna Devi (P. W. 2) and Km. Prabha (P.W.3) gave evidence to corroborate the prosecution version that in the night of the incident Bala Lal deceased shared the bed with the appellant who was not found in and around the house in the morning when it was detected that Bala Lal had been done to death by causing fatal injuries on the head sometime in the dead hours of the night when the victim and these witnesses were sound asleep. P. W. 2 also referred to letter (Ext. 1) which the appellant have it scribed through Bala Lal deceased on his dictation before retiring to the bed. Smt. Darshani Devi (P. W. 4) was informed of the incident at her parents house and on her return to village Uttaron she was told about the gruesome murder of Bala Lal. On that day her husband, the appellant, had not returned to the house. She also gave out that the information of the incident was carried to her by Supal Das and Indra Lal both of whom told her that Bala Lal had sustained injuries when Bala Lal fell on the ground. Sri C. P. Bijalwan (P. W. 5) besides proving the confessional statement (Ext. Ka.3) of the appellant reiterated that in recording the same due safeguards were observed and appellant was explained that he is not bound to make a confession and that, if he does so, it may be used as evidence against him. The appellant was given half an hour to rethink on his decision to make the confession. Dr. Mayank Upadhyaya (P. W.6) held autopsy on the dead body of Bala Lal on 20-2-1995 at 2 p.m. and prepared post mortem report (Ex. Ka. 5). He observed that rigor mortis was absent in upper limbs and was passing away from lower limbs. Following ante-mortem injuries were detected :--

(1) A lacerated wound 3.5 cm x 1 cm x bone deep transversely placed on left side of head, 12 cm above and anteriorly to left ear. Clotted blood was present over it.

(2) A lacerated wound 2 cm x 1 cm x bone deep, 2 mm behind the above injury, on the right side of scalp.

(3) A lacerated wound triangular in shape, 1 cm x 1 cm x bone x bone deep, 2 cm behind the injury No.2, on left side of the head.

(4) An abrasion 5 cm x 4 cm reddish in colour, 10 cm above right ear.

(5) A lacerated wound 5 cm x 2 cm x bone deep transversely placed, 30 cm behind right ear and 3 cm above the horizontal line at the level of right ear.

(6) A linear abrasion 2 cm x 5 cm brownish, 6 cm above right sternoclavicular joint on neck.

11. On internal examination skull bones were found fractured. Blood clot was present on the brain and it was congested. In the opinion of the Medical Officer death occurred about 36 to 42 hours ago due to shock and haemorrhage as a result of ante-mortem injuries, probably sustained by blows of iron hammer or any other hard weapon of this variety. He refuted suggestion that the ante-mortem injuries were probably sustained on a fall from balcony on a floor of rough slates.

12. Sri Ashok Kumar (P. W. 7), the Investigating Officer of the case proved the steps taken by him in the investigation of the crime, besides the relevant documents such as check F. I. R., inquest report, seizure memo of articles and the charge sheet. Letter, Ext-1 was handed over to him by Smt. Panna Devi (P. W. 2) who told him that it was written by Bala Lal deceased on the dictation by the appellant before going to sleep in the night of the occurrence.

13. Learned Sessions Judge evaluated the evidence of the prosecution and came to a definite conclusion that the circumstances of last seen; abscondence of the appellant from the house after the incident and the motive to commit the murder on account of suspicion that the appellant's wife was not chaste and thus on account of mental distress committed murder of wife's brother, make out a complete chain pointing to the guilt of the appellant beyond doubt. He also accepted the confession of the appellant as true and voluntary in view of its receiving corroboration from the chain of circumstances and therefore convicted and sentenced the appellant as aforesaid.

14. Learned Amicus Curiae for the appellant contended that the learned Sessions Judge failed in its duty and committed manifest error in accepting the evidence of the prosecution in regard to the circumstances relied upon by the prosecution. According to him the evidence of Smt. Panna Devi (P. W. 2) and Km. Prabha (P. W. 3) was not reliable as it was highly improbable that they remained asleep in the

same room in which the appellant allegedly gave iron hammer blows on the head of Bala Lal deceased and came to know about the murder on the next morning and that on account of relationship with the deceased they gave false evidence that the appellant was, in the morning, not found in and around the house. Referring to the statement of Smt. Darshani Devi (P. W. 4), he contended that the marital life being happy the claim of the prosecution that out of anguish and mental torture the appellant took the extreme step of eliminating wife's brother was not sustainable. It was also contended that the seat and nature of the injuries of the deceased probabise that these could not have been caused by giving hammer blows and further that the medical evidence do not corroborate the time of the occurrence as alleged by the prosecution. He termed the confession of the appellant as untrue and involuntary on the premise that the learned Magistrate who recorded it did not take due precautions as envisaged by law and therefore the alleged confession should have not been relied upon to corroborate the prosecution version and to prove the guilt of the appellant. The veracity of the F. I. R. was also adversely commented upon by the learned Amicus Curiae.

15. Learned Government Advocate on behalf of the State argued supporting the impugned judgment and contended that the infirmities and defects pointed out by the learned Amicus Curiae do not entail the rejection of the prosecution case particularly when the circumstances relied upon establish the commission of offence by the appellant and the inference stand fully corroborated by the confession of the appellant which is true and voluntary.

16. We have carefully considered the submissions made by the learned counsel for the parties. The case of the prosecution is based on circumstantial evidence and various circumstances which were found established are as under :--

(i) Bala Lal deceased lastly slept alive in the same bed with the appellant in the night of the incident.

(ii). Homicidal, death of Bala Lal deceased.

(iii) The appellant absconded from the house and was thus not found in and around the house in the next morning.

(iv) The confession by the appellant acknowledging the guilt in express words voluntarily.

(v) Motive to commit the murder on account of appellant suspecting that wife not maintaining her chastity and thus out of mental distress and anguish the appellant was put to the frame of mind to commit the murder of wife's brother.

17. At the out set it need to be stated that in a case based on circumstantial evidence inference of guilt can be justified only when all the incriminating facts and circumstances are found to be in- compatible with innocence of the accused or the guilt of any other person. As stated above the inferences drawn by the learned Sessions Judge are positive in the sense that from the evidence on record a complete chain of circumstances stand established and which lead to only one conclusion that the murder of Bala Lal deceased was committed by the appellant Darshan Lal.

18. In regard to the first circumstance we find that the evidence of both Smt. Panna Devi and Km. Prabha who admittedly were sharing the same room with the appellant and Bala Lal deceased is reliable and trustworthy as nothing infirm could be elicited from their cross- examination as may cast doubt on their credibility. The village of the occurrence is in the hills and the incident took place in winter season, in the intervening night of 17/18th February, 1995. Therefore, these two witnesses on account of cold weather, in all probabilities, expected to be in sound sleep under the warmth of a blanket or similar thick covering of wool. In such a state of sound sleep they were not expected to wake up when Bala Lal was assaulted by iron hammer. We also cannot loose sight of the fact that the assault being made when these two witnesses were also sleeping in the same room the appellant must have taken care to keep shut, by the hand, the mouth of the victim so that the victim may not raise any noise or shriek out of pain and suffering. It is also pertinent to mention that Smt. Panna Devi, the widowed sister-in-law of the appellant, testified that she was hard of hearing and she was not tested on this score in her cross-examination. This was an additional factor that the witness would not be alarmed by any noise at the time of the assault. Witness Km. Prabha was, on account of her tender age, further expected to be in such sound sleep that

she would not be awoken at the time of the assault on the person of Bala Lal deceased. In these circumstances it was not unusual that they did not wake up when assault was made and therefore their presence in the room in the night of the occurrence can not be doubted. In other words the evidence of both these witnesses prove beyond doubt that appellant and Bala Lal deceased went to sleep in the same bed in the night of the occurrence and in the morning Bala Lal was not found alive and appellant was not there in the house.

19. So far as the claim of the prosecution that the death of Bala Lal was homicidal is concerned, it need to be stated that the evidence of Smt. Panna Devi and Km. Prabha being trustworthy it also corroborate the prosecution claim that Bala Lal was assaulted in the night of the incident and succumbed to the injuries sustained by him. Medical evidence on record as referred above also corroborate the prosecution version. It also rule out the possibility of sustaining the fatal injuries as a result of a fall from roof or balcony on a floor of rough slates. The suggestion put to the Medical Officer Dr. Mayank Upadhyaya (P. W. 6) was vehemently refuted. This apart, absence of any injury on the limbs also indicate that the defence suggestion does not carry conviction. The reason is that if some one will accidentally fall from a balcony, in all probability there will be fracture of limbs and since it is not so in the instant case, the claim of the prosecution does not stand diluted. Learned Amicus Curiae has drawn attention to the statements of Smt. Darshani Devi and Supal Das to bring home his point of view that the said sister of Bala Lal was given the information that Bala Lal had sustained injuries as a result of fall from roof and on receiving the said news she returned to her marital home. The information was carried by Supal Das. Since it was case of tragic death of minor Bala Lal the information giver was prudent enough in not telling the actual fact of death so that the lady may not be put to great shock and grief all of a sudden. Information in the above manner was given as a measure of solace and from it, it can not be safely inferred that Bala Lal was not done to death as a result of assault on his person.

20. Attempt was also made to make a dent in the prosecution story by submitting that the measurements of the ante-mortem injuries run counter to the claim of the prosecution that these were sustained by blows of iron hammer on the head. No

doubt measurements of lacerated wounds do not have uniform pattern but this aspect of the matter cannot be taken to discredit the prosecution version. An iron hammer was seized from under the bed (takhat) of the appellant and its physical features as mentioned in detail in the attachment memo (Ext. Ka.2) indicate that it was not a sophisticated object and had blunt face on one side and pointed on the other. Such a hammer is used in masonry job and therefore on account of irregular surface, wounds of varied size were expected to be sustained by its blows.

21. It was next submitted that the Medical Officer was not shown the seized iron hammer to corroborate the version that the ante-mortem injuries were probably sustained by making assault from this object. Even if the seized iron hammer was not produced at the time of the recording of the statement of the Medical Officer it would not belittle the evidentiary value of the claim made by the Medical Officer that the injuries were sustained by blows of iron hammer. Considering this aspect of the matter also the contention of the learned Amicus Curiae merited rejection.

22. In order to assail the prosecution version it was also argued that the medical evidence failed to corroborate the prosecution case about the time of the incident. The post-mortem was performed on 20-2-1995 at 2 p.m. and it was reported that the death of Bala Lal deceased occurred about 36 to 42 hours ago. It was also submitted that the Medical Officer was not made to state by the prosecution that the ante-mortem injuries were probably sustained in the night between 17/18th February, 1995 and this aspect of the matter assail the prosecution claim. We see no merit in the submission of the learned Amicus Curiae. The reason is that it is well settled that the medical evidence is not perfect as yet as to determine the exact time of the death of the deceased. The Apex Court in *P. Venkaiah v. State of Andhra Pradesh*, AIR 1985 SC 1715 : (1985 Cri LJ 2012) observed that 'medical evidence is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be accurate to the last second.' Moreover the postmortem examination in this case was considerably delayed due to dispatch of the dead body from hilly village to the headquarter after completion of the formalities of the investigation and since the Medical Officer gave out that the death probably took place about 36 to 42 hours ago there cannot be any doubt that in the estimation there could be difference of

about 10-12 hours in the said duration. Therefore, the approximate duration of the death as given by the Medical Officer do not rule out. the probability that the incident took place in the dark hours of night intervening 17/18th February, 1995.

23. In view of above medical evidence in the case prove beyond doubt that the death of Bala Lal deceased was homicidal and he was done to death some times in the night between 17/18th February, 1995.

24. Coming to the third circumstance relating to abscondence of the appellant from the house, there is again definite evidence of Smt. Panna Devi and Km. Prabha that although Darshan Lal retired to sleep in the same bed with Bala Lal deceased in the night but he was not found in and around the house in the next morning when the factum of homicidal death of Bala Lal came to be known by them. Smt. Panna Devi also gave out that letter, Ext. 1 was got prepared by the appellant before going to sleep through Bala Lal deceased and that this letter was given by her to the Patwari. The prosecution case and the evidence of the witness is consistent in this regard also and since there is nothing to dispute the genuineness of this letter, the same further support the evidence of the witness about the present of the appellant and his going to bed in the night of the incident along with Bala Lal deceased. Both these witnesses were suggested that the appellant was not in the house that night and had gone to visit the house of father-in-law in village Bhikona. The suggestion was vehemently denied by both the witnesses. The appellant in his statement under Section 313 of the 'Code' admitted that he was there in the house between 17/18th February, 1995 with these witnesses and Bala Lal but later on in an answer to another question urged that he was not in the house that night. The stand taken by the appellant was shaky and in the face of the reliable evidence of the above two witnesses we are of the view that the learned Sessions Judge rightly came to the conclusion that after the incident the appellant stipped away from the house until his return on the third morning of the incident as stated to by these witnesses. The explanation put forward by the appellant in his statement that he had been to the house of his father-in-law in the night of the accident and was thus not available in the house in the next morning, was false and this is also an additional link in the chain of the circumstances existing against the appellant.

25. Coming to the confession of the appellant it need to be stated that a confession is the evidence against its maker if its admissibility is not excluded by some provision of law. Law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary. If the facts and circumstances surrounding the making of a confession appear to cast a doubt in the voluntariness of the same the Court may refuse to act upon it. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession deserves highest credit even if retracted, because it is presumed to flow from the highest sense of guilt. Looking in this backdrop the appellant's confessional statement (Ext. Ka-3) we are of the view that it was voluntarily given and that there was no possibility for the appellant to have been physically and mentally pressurised for giving such a statement.

26. The reasons are that the appellant was sent to jail custody on 23-2-1995 and remained so when he was directed to be produced before the Magistrate concerned for recording of the statement under Section 164 of the 'Code'. As stated above it was recorded on 2-3-1995 and since about 10 days have elapsed since his arrest and his judicial custody question of any physical or mental pressure to give a confessional statement can safely be ruled out.

27. Learned Amicus Curiae submitted that when the appellant was taken to Karanprayag the Magistrate (P.W. 5) gave only half an hour to him to rethink on his decision and during this period the appellant was made to sit in the Court of the Magistrate which indicate that the appellant has had to free atmosphere to take a second thought on his decision. Evidence of I.O. (P.W. 7) is to the effect that on the date of the arrest the appellant volunteered to confess his guilt. The arrest was made on 22-2-1995 and as stated above the appellant was in jail custody and sufficient intervening time had been given to him to think on his decision and even if on the day of recording of the statement he was further given half an hour to rethink on his decision it could not be taken that the statement was not voluntary and it was under physical and mental pressure from the revenue police.

28. The objection that the confessional statement was not recorded by observing the safeguards envisaged under law, it need to be stated that the protest was

merely for the sake of argument. Confessional statement (Ext. Ka.3) and the evidence of the Magistrate (P.W. 5) fully establish that it was recorded in the manner provided in Section 164 read with Section 281 of the 'Code'. Before recording the statement the Magistrate had explained to the appellant, that he is not bound to make a confession and that, if he does so it may be used as evidence against him and further that the Magistrate upon questioning the appellant his reason to believe that the statement is being made voluntarily. Below the printed endorsement to the effect the Magistrate has put in his signatures and in the beginning the name of the appellant Darshan Lal was mentioned indicating that the requirement of Sub-section (2) of Section 164 of the 'Code' was satisfied. After recording of the statement it was also read over to the appellant who after verifying its correctness signed the same. Thereafter the Magistrate appended his certificate at the foot of the statement in the form prescribed under Sub-section (4) of Section 164 of the 'Code'. In other words in all respects the requirements of the law were observed in letter and spirit and therefore the confessional statement of the appellant cannot be viewed with suspicion.

29. While going through the said statement we find that the appellant has admitted his crime in categorical and unequivocal expression of words. The facts disclosed not only pertain to the actual sequence of events of the night of the occurrence but also of the subsequent days till his arrest. He had admitted to have given blows of his iron hammer on the head of the deceased in the dead hours of the night and while doing so had gagged the mouth of the deceased by his hand so that the deceased may not be able to shriek and other occupants of the room namely Smt. Panna Devi and Km. Prabha may not woke up. The appellant on being assured of the death of the deceased spread a bed sheet on the dead body and after some time slipped away from the house and went into hiding in a deserted cave away from his house till his return on the third day. Significantly enough the appellant also disclosed the cause of the crime by stating that he did not approve of the attitude of his wife in extending the stay in the parents house and refusal to return with him to the marital home and further that he was hearing of his wife maintaining illicit relations with Supal Das of village Vasthi who was on the look for an opportunity for elopement of appellant's wife, with him. The appellant stated to have kept himself in waiting for about two or three days for return of his wife but

she failed to turn up even by the evening of 17th February, 1995 and it made him to believe that his wife had eloped with Supal Das. This had the effect of loss of love, affection and attachment for wife's brother Bala Lal. After taking meal in the night of 17th February, 1995 the appellant got a letter written on his dictation through Bala Lal and thereafter they together went to sleep in the same bed. When Bala Lal went asleep, appellant in the mid night got up and out of tension and anger took out his iron hammer of masonry use and gave its blows on the head of Bala Lal. From the above reproduction of the disclosures made in the confessional statement by the appellant it is further evident that it was voluntarily given and further that such a statement could not have been given by an arraigned culprit by coaching or tutoring under pressure, mental or physical. In other words on evaluation of the evidence we are convinced that the confession was made voluntarily and its evidentiary worth does not get diluted on account of the fact that the appellant retracted his said confession. Therefore, the confessional statement of the appellant not only support the other circumstances but the same also is a link in the chain of circumstances leading to prove the guilt of the appellant.

30. The above inference now takes us to the laid circumstance which pertain to the motive for the crime. The voluntary and true confession of the appellant referred above fully establish the cause of the crime in the sense that the appellant believing that he had been cheated and befooled by his wife, took, extreme step of committing the murder of wife's brother out of disgust and anguish.

31. Learned Amicus Curiae also submitted that despite the incriminating circumstances appearing against the appellant, the FIR which is very substratum of the prosecution case, does not corroborate the prosecution evidence as the facts and circumstances of the case clearly indicate that it was lodged after due deliberations and consultations when the steps towards investigation of the crime have already taken up. No doubt First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the prosecution evidence adduced at the trial. The FIR in the instant case is no doubt delayed one but plausible explanation for the same has been given by the informant Supal Das (P.W. 1). He got the written report (Ext. Ka. 1) prepared on

18-2-1995 itself, the next day of the incident, but there is positive evidence to indicate that on account of urgency to summon the sister of Bala Lal deceased from her parents house, informant gave the written report to the Pradhan to be sent to the Patwari. It appear that the Pradhan was not vigilant enough to do the work assigned to him and this was a reason that the FIR got to be lodged at 8 a.m. on 19-2-1995 when the informant returned from village Bhikona with Bala Lal's sister Smt. Darshani Devi (P.W. 4). We also cannot loose sight of the fact that the written FIR contain a very natural and correct statement of the fact relating to the incident as referring to the homicidal death of Bala Lal it merely mention that victim's brother in law appellant Darshan Lal is absconding from the house and it gives an indication that the crime had been committed by said Darshan Lal. Appellant's other relations namely Smt. Panna Devi and Km. Prabha were also residing in the same house even in the night of the incident and if there would have been any element of deliberations or consultations in preparing the FIR these two inhabitants of the house could have easily be shown to be the eye-witnesses of incident. Therefore, there is neither any element of exaggeration nor inclusion of any false fact in the FIR and therefore even if the evidence of informant Supal Das confirm the present of the peon of the Circle Patwari in the village in the evening of 18th February, 1995 itself it would not be safe to infer that the FIR is tainted.

32. Attention was also drawn to the fact that check FIR (Ext. Ka.6) was dispatched to the concerned C.J.M. on 23-2-1995 by the Circle Patwari and referring to this delay it was contended that there was sufficient opportunity to cook up false case against the appellant and on this account also the veracity of the FIR stand assailed. In the face of the facts of the case as referred above, particularly the FIR containing only brief statement of events, the submission of the learned Amicus Curiae merited rejection. The Apex Court in the matter of criminal appeals of Sahdeo v. State of U. P. and Satyendra v. State of U. P., 2004 AIR SCW 3362 : (2004 Cri LJ 2876) in almost similar circumstances did not view the FIR with suspicion and the plea that the FIR is tainted was not accepted. In that case the FIR was received by the Magistrate after six days and the prosecution did not explain the said delay. It was argued that the FIR was concocted after the inquest and post mortem examination were over. It was also submitted that the delay in sending the FIR to the Magistrate enable the prosecution to cook up a false case

against the culprits nominated in the FIR. The Hon'ble Judges of the Court rejected the contention for the reason that the First Information Report contained only a brief statement of events and also for the reason that if the FIR had been prepared later after the inquest and post-mortem examination were over, many more facts could have been incorporated in the FIR. The absence of any other further detail in the FIR was taken to be an indication of its genuineness. Thus the inference drawn by us find support from the observation of the Apex Court in the reported decision and we can safely conclude that the FIR in the instant case is genuine document and it corroborate the incriminating circumstances as appearing against the appellant.

33. It was also submitted that the investigation of the case has not been fair right from the very beginning when the appellant Darshan Lal was not arrested on 19-2-1995 itself when he was available to the Circle Patwari and was also questioned in regard to the incident and further that it appear that the iron hammer attached from the scene was not sent for chemical examination by reason of which adverse inference need to be drawn against the prosecution. Similar argument was advanced in regard to the clothes of the deceased which were blood stained and were seized by the Investigating Officer vide memo, Ext. Ka. 2. No doubt these are some infirmities in the investigation of the case but these do not go to the root of the matter and assail the testimony of the witnesses which fully prove the incriminating circumstances against the appellant. It is now well settled that error or illegality in the investigation of the crime shall have no impact on trial unless miscarriage of justice is brought out. The Apex Court in *Allarakha K. Mansuri v. State of Gujarat*, 2002 AIR SCW 781 : (2002 Cri LJ 1489) laid stress on the preposition that in murder case defective investigation by itself cannot be made a ground for acquitting accused. In the matter of *State of U. P. v. Jagdeo*, 2002 AIR SCW 5330 the Apex Court observed that (para 8) :--

'Coming to the aspect of the investigation being allegedly faulty, we would like to say that we do not agree with the view taken by High Court. We would rather like to say that assuming the investigation was faulty, for that alone the accused persons cannot be let off or acquitted. For the fault of prosecution, the perpetrators of such a ghastly crime cannot be allowed to go scot-free.'

34. In this case an adolescent namely Bala Lal deceased aged about 13-14 years had been done to death in his sleep by none other than his own guardian, the appellant who cannot be permitted to go scot-free on the basis of some defects and discrepancies pointed out above and which are not at all fatal to the prosecution case.

35. For the foregoing reasons, we are of the firm view that the circumstances taken together as appearing against the appellant coupled with the voluntary confessional statement of the appellant are sufficient to fasten the liability of murder on the appellant Darshan Lal and he had been rightly convicted and sentenced for this offence punishable under Section 302, IPC by the learned Sessions Judge, Chamoli per his judgment and order dated 4-9-1995. The appeal thus fail and is hereby dismissed. The appellant is in jail and he shall serve out the sentence as awarded against him.

36. Let the record of the case be sent back to the Court concerned for necessary compliance, if any, and to submit the compliance report to the Court within two months.

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