

Duli Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-12-1986

Reported in : 1986WLN(UC)380

Judge : Shyam Sunder Byas and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 577 of 1981

Appellant : Duli Chand

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

1. This is, an appeal against the judgment of the learned Additional Sessions Judge, Raisinghnagar dated 30-9-1981 whereby the learned trial court has held the accused guilty of the offence under Section 302 IPC and has sentenced him to imprisonment for life together with a fine of Rs. 100/- and in default to undergo rigorous imprisonment for three months by his order dated 1-10-1981.

2. The facts giving rise to this appeal may briefly be stated as under. Accused Duli Chand who is a resident of Kalarkheda was working as a 'siri' (labourer) with deceased Manphoolram Kumhar, r/o 7 SHPD, who was cultivating the land of Shamda Musalman in village 56 INP by constructing a 'dhani' in the field. He took this land for cultivation on share basis. The accused was working as 'siri' with him

for the past about 15-20 days and they were living in that very 'dhani' which was constructed on the land of Shamda Musalman. It is alleged that before two days of the occurrence Manphoolram rebuked Duli Chand to work properly or else he may return the money advanced to him. This remonstrance was not liked by him and so in the night intervening between 2nd and 3rd July, 1980 at about 11 or 12 he caught hold of a 'kassi' and inflicted blows to him both from the blunt as well as from the sharp side of the 'kassi.' Manphoolram's daughter Bugali and his niece Mst. Murti were living with him in that very 'dhani' and were sleeping on separate cots. These two girls woke up on hearing the cries of Manphoolram and the noise created by the movement of animals and the landing of blows. As soon as they woke up, they saw the accused inflicting blows with a 'kassi' to Manphoolram and thereafter the accused dragged Manphoolram from the cot whereupon was sleeping. The two girls asked him as to what he is doing whereupon accused replied to them that they should keep quiet and go to sleep. Then they cried and the accused ran away from the place of the occurrence. These two girls then went to the 'dhani' of PW 2 Hazi Ahmed Khan and they informed him that the accused has killed Manphoolram with a 'kassi'. Hazi Ahmed Khan along with two girls went to the 'dhani' of Rajaram and there Hazi Ahmed Khan informed Rajaram about the entire occurrence. These two girls were there at that time, Rajaram came with them to the 'dhani' of Manphoolram and saw his dead body. Rajaram then sent a man to call the Sarpanch. The Sarpanch was not found at his residence. Rajaram then left Ram Chand, Banwari, Brijlal and others near the dead body and he went to Suratgarh to lodge a report of the incident. He took the Sarpanch Chander Singh with him from Suratgarh. This FIR has been marked Ex.P 2. The Police went to the spot and inspected the site. The site plan has been marked Ex. P 8 and the site inspection memo was marked Ex. P 10. Panchnama of deceased was marked Ex. P 3, inquest memo of the dead body was marked as Ex. P 4, seizure of blood stained 'gudari', pillow and 'chola' was marked as Ex.P 5, seizure of blood stained bed-sheet and underwear was marked as Ex. P 6, seizure of blood stained earth and control soil was marked as Ex. P 7, arrest memo of accused was marked as Ex. P 11, information regarding blood stained 'kassi' given by accused Duli Chand was marked ss Ex. P 12, site from where the 'kassi' was recovered on the information given by accused was marked as Ex. P 9, post-mortem report of

deceased was marked as Ex.13, and the report of Serologist and Chemical Examiner was marked as Ex. P 14. After usual investigation the case against the accused was challenged in the court of Munsif and Judicial Magistrate, Suratgarh from where it was committed for trial to the court of learned Additional Sessions Judge, Raisinghnagar, camp: Suratgarh.

3. The learned trial court charged the accused with the offence under Section 302, IPC. The accused did not plead guilty to the charge whereupon the prosecution examined in all 12 witnesses in the case. The statement of the accused was recorded under Section 313, Cr.PC. The accused has completely denied his involvement in the occurrence. According to him the son of Hazi Ahmed Khan once scuffled with him and told him that he should go from Manphool's 'dhani' otherwise he will kill him. He, therefore, claimed that he had enmity with Niyamat Ali and as such he has been falsely implicated in this case. He was caught on 5th by one constable. On the date of the alleged occurrence he went to his village Kalarkheda at 2 p.m. in the day. He came to know about the death of Manphool at Kalarkheda. He has examined two witnesses in his defence. After hearing the parties, the learned lower court decided the case as aforesaid. Aggrieved against this judgment the accused has preferred this appeal.

4. We have heard Mr. B.R. Arora for the appellant and Miss S. Sankhla, Public Prosecutor for the State. Mr. Arora has frankly conceded that it cannot be challenged that the accused was not working with Manphool Ram. Actually the accused himself has admitted that he was working with manphool Ram but he left the 'dhani' of Manphool Ram in the day at 2 p.m. for his village Kalarkheda because on 1st and 2nd March, Holi was to be celebrated and so he went to his village to celebrate it. His contention is that nobody has seen the actual occurrence. According to him when in the morning they came to know that Manphool Ram was killed by somebody, Hazi Ahmed Khan who is father of Niyamat Ali who had a grudge with Duli Chand and Manphool Ram conspired with Raja Ram along with the Sarpanch of the village to fasten the guilt on this innocent boy about 16-17 years of age because he was not found in the 'dhani'. According to him two persons have taken part in the occurrence. This is clear from the fact that two types of injuries have been inflicted to the deceased, i.e., the first two

injuries are by blunt weapons and the rest are by sharp weapon. The S.H.O. has recorded in the site inspection memo that two foot prints were found. Moulds could not be taken because of the dusty storm. He further suggested that two persons must have taken part in the occurrence. According to him if the accused has actually killed Manphool Ram on the cot itself, there was no reason for the accused to drag him from the cot. He further suggests that these girls have not seen the occurrence. He has further submitted that only three cots were found at the spot and not four and that further belies the testimony of these two girls. He has also submitted that actually it appears that the police came at the spot at 5 a.m. in the morning and inspected the site and then with the connivance of the police the entire false case has been cooked up against the accused. Regarding the recovery of the 'kassi' it is submitted that it was recovered from an open place and, therefore, no reliance can be placed on this recovery and moreover, according to the statement of PW 10 Badri Prasad only four packets were deposited in the police station whereas five packets were sent for chemical and serological examination as per the statement of PW 9 Phool Chand. It is quite possible that this fifth packet might be of the 'kassi' which has been found blood stained. According to him the motive has been alleged in the FIR but it appears to have been abandoned at the trial. He has also stated that as per the eye witnesses the 'kassi' was picked up by the accused from a diggi although it could not have been observed by them as they woke up at the fag end of the occurrence and hence no reliance should be placed on the testimony of the eye witnesses. He further drew our attention to the fact that in the FIR it has been mentioned that one small girl has accompanied Hazi Ahmed Khan which clearly shows that Murti was not present at the time of occurrence. On the basis of these submissions made by him he requested that the accused deserve the benefit of doubt and consequent acquittal.

5. The learned Public Prosecutor however, argued that in this case the presence of these witnesses cannot be doubted because they were living in the same 'dhani' with the deceased. Mr. Arora has frankly conceded that the accused was working with Manphool Ram. If he was working with Manphool Ram, there was no occasion for them to falsely implicate their own 'siri' for the murder of Manphool Ram. If Niyamat Ali or for that matter his father Hazi Ahmed Khan were the arch

enemies of Manphool Ram, they would have been the last persons to spare Niyamat Ali and to substitute Duli Chand in place of him. According to the learned Public Prosecutor 'kassi' is a weapon which can be used as a weapon of offence not only from the sharp side but also from its blunt side and when these two girls have not seen the entire occurrence it is quite possible and probable that the injuries on the head might have been inflicted by the blunt side of the 'kassi' at the initial stage of the occurrence. The testimony of the two girls that the accused has dragged Manphool Ram is fully supported by the presence of blood stains on the entire place of land on which Manphool Ram was dragged. The presence of four cots is fully supported by the site inspection note. According to her, Raja Ram is an independent witness and there is no evidence that he had any grudge against Duli Chand to falsely implicate him in a murder case. She has further submitted that although the 'kassi' has been recovered from an open place, i.e., a kair bush which is 7 feet high and a circumference of 30' and, therefore, the 'kassi' with 2-1/2 ft. handle can safely be kept concealed under the kair bush. Human blood was found on the blade of the 'kassi' and as such the recovery of the 'kassi' is an important link in the case to connect the accused with the crime. She further submitted that the S.H.O. has categorically stated that the 'kassi' was kept in the malkhana after its seizure and was sent for chemical examination. These two girls have immediately gone to the house of Hazi Ahmed Khan and told to him that Duli Chand has killed Manphool Ram. He accompanied them to the 'dhani' of Raja Ram and there too they told that this very accused killed Manphool Ram. Bugali happens to be the daughter of the deceased where as Murti is the niece of the deceased and so they are the last persons to spare the real culprit.

6. Thus according to her, the judgment of the learned lower court deserves to be sustained.

7. We have given our most earnest consideration to the submissions made by the learned Counsel. The occurrence took place in the night intervening between 2nd and 3rd July. It was a moonlit night. It has not been disputed that these two girls were not there in the 'dhani.' The only fact that has been disputed is that they may not have seen the occurrence as the occurrence has taken place in midnight when they were sleeping. It has also not been disputed that accused Duli Chand was

working as a 'siri' of Manphoolram. The report was lodged at the police station which is situated at a distance of 12 miles from the 'dhani' of Manphoolram at 6 a.m. Initially after the occurrence these girls went to the 'dhani' of Hazi Ahmed Khan and with him to the 'dhani' of Rajaram and Rajaram came to the 'dhani' of Manphoolram. By that time certain other residents of the nearby 'dhanies' have also assembled there. Some one was sent to call the Sarpanch but he was not found at his residence. Having taken these precautions, Rajaram instructed certain persons to guard the dead body and he went to lodge the report and the report was lodged at 6 a.m. which cannot be said to be late. This report has been received by the concerned Magistrate on that very day and, therefore, genuineness of the FIR cannot be challenged. Mr. Arora has built up an argument that actually the FIR was prepared after the police have arrived at the spot. In this respect he stated that PW 2 Hazi Ahmed Khan admitted in his cross examination that the police personnel came to the spot at about 5 or 6 a.m. According to Jaimal PW 3, the police arrived at the place of occurrence in the morning. PW 4 Kadar Khan has stated that the police came to the place of occurrence at 10 or 11 a.m. whereas PW 6 Mst. Murti has stated that the police came to the place of occurrence at noon. The SHO PW 11 Ummed Singh stated that it was 8 a.m. when he reached the spot. On the basis of these discrepancies in the statements of the witnesses he has tried to canvass before us that actually the police arrived at the place of occurrence early in the morning, saw the site and then cooked up this false case against the accused. We are afraid we cannot agree with this submission of Mr. Arora. When the witnesses are rustic villagers, it is quite possible that they can falter about time because they are less accustomed to maintain exactness regarding correct timings. Most of the witnesses gave out that the SHO came in the morning. Rajaram has no interest what so ever in falsely implicating Duli Chand. These girls have no enmity with Dulichad because he was working as a 'siri' with Manphoolram and so the possibility of a concoction is completely ruled out in the facts and circumstances of the case. The report of this incident has been lodged promptly. Illiterate villagers are mostly afraid of the police and so they usually take the precaution to take the Sarpanch or a Panch with them as he is a person in authority as per them and can easily communicate with Policewalas. Thus if they have tried to call the Panch or a Sarpanch it does not

mean that they have acted in this manner to falsely implicate the accused. PW 2 Hazi Ahmed Khan has stated that after Rajaram visited the 'dhani' and certain other persons assembled there, he sent Rajaram to report the matter to the police and the police arrived at the place of occurrence after Rajaram reported the matter to the police. No suggestion was made to him that actually the police came earlier to find out as to what has happened and after that the report of Rajaram was recorded by the police. Rajaram himself has stated that first he went to the police station and lodged the report Ex P. 1 there and then the police came. It has also not been suggested in his cross examination that the report was not lodged immediately by him but first he brought the police to the spot and then after that he went to the police station and then the report was lodged. PW 11 Ummed Singh S.H.O. also stated that he went to the spot after recording the FIR. No suggestion was made to him in his cross examination that in fact he did not record the report when Rajaram came to the police station but first he visited the place of occurrence with him and then after coming to the police station he recorded the FIR. In the absence of any such cross examination we are of the opinion that there appears no reason to believe that the police visited the place of occurrence earlier to the lodging of the FIR at the police station.

8. In this case the prosecution examined two eye witnesses of the occurrence. They are PW 5 Bugli and PW 6 Murti, who are daughter and niece respectively of the deceased. It has not been disputed that both these girls were in the 'dhani' with the deceased on the night of the occurrence. Both of them have stated that they heard some noise (khudka) and so they woke up. As soon as they woke up they found the accused landing blows to the deceased with a kassi. They enquired from him as to what he was doing to which he replied that they should sleep silently. It has been alleged by PW 6 Murti that the accused then dragged Manphoolram and then left the place of occurrence along with the kassi, Chaddar and his trousers. To the same effect is the statement of PW 5 Bugli who saw him running upto three Murrabas. Both these witnesses after the accused left the scene of occurrence promptly went to the 'dhani' of PW 2 Hazi Ahmed Khan which is situated at a distance of 1-1/2 Murrabas from the dhani. There they narrated the entire incident to Hazi Ahmed Khan. Hazi Ahmed Khan went to the dhani of Manphool and verified the facts and then he accompanied by the two girls went to the dhani of

Rajaram. There Hazi Ahmed Khan narrated the entire incident to PW 1 Rajaram on the basis of the information supplied to him by these two eye witnesses and on the basis of the facts verified by him by visiting the scene of occurrence. Rajaram then confirmed the facts from these two witnesses. Mr. Arora stated that the story about dragging of the deceased from the cot where he was lying has not been stated by these witnesses in their examination-in-chief. PW 6 Murti has categorically stated that she enquired from the accused as to why he was dragging her maternal uncle from the cot and put him on the ground. PW 5 Bugli has stated in the last lines of her cross examination that her father was dragged by the accused and was put on the ground. Their statements are fully corroborated by the site plan Ex. P. 2 and the site inspection memo Ex. P 10 where in it has been shown that the deceased was dragged from the cot A to place B. The chaddar of the deceased was lying at place C and the entire place from A to B was stained with drops of blood. Thus the site inspection memo also corroborates the theory put forward by PW 5 Bugli and PW 6 Murti. Both the witnesses, i.e., PW 1 Rajaram and PW 2 Hazi Ahmed Khan who visited the place of occurrence on the information of these two girls found the dead body lying on the ground away from the cot on which he was sleeping. Some controversy has been raised about the number of cots which were lying there. Bugli has stated that all the four were sleeping on separate cots whereas Murti has stated that the deceased was sleeping on one cot and the accused was sleeping on another cot whereas they two were sleeping on the same cot. Be that as it may, this hardly affects the merits of the case. Moreover, the site inspection memo clearly shows that there were four cots present in the dhani, two were lying at place A whereas one cot was lying at place D and two more cots were used to give shelter to the dead body. Thus in all four cots were there and so this controversy had no bearing on the merits of the case.

9. Mr. Arora also argued that when the accused has seriously injured or killed Manphoolram what was the necessity for him to drag the deceased. It is quite possible that the accused might have tried to take away the dead body somewhere but as the girls cried he thought that it might attract others and that must have prompted him to leave the body there and run away with the 'kassi' and his clothes. Moreover, in such matters how the mind of a particular accused works

cannot be fitted into any set formula. Different persons react differently in a given situation.

10. Mr. Arora further submitted that the 'kassi' is a sharp edged weapon. Injuries Nos. 3 to 7 have been received by the deceased from some sharp weapon but injuries Nos. 1 and 2 have been inflicted to him by some blunt weapon. The S.H.O has also noted in the site inspection memo that he found two foot prints but because of a sand storm he could not take the moulds of these foot prints. Mr. Arora has tried to build up an argument that actually two persons have participated in the occurrence and, therefore, these two eye witnesses have not seen the occurrence and they are only cooked up witnesses. We have given our most earnest consideration to the submission of Mr. Arora but we are unable to agree with him. These two witnesses are the closest relatives of the deceased. They did not see the occurrence from its inception. They have seen only the last two or three blows being inflicted to the deceased by the accused. Kassi is a weapon which has got a sharp side as well as a blunt side. When used from its blunt side it is quite a heavy weapon and it can cause serious blunt Weapon injuries. Had these two girls seen two persons beating the deceased they should not have saved the other man because father of Bugli and real maternal uncle of Murti has been killed. They would have been the last persons to spare anybody who had taken part in the occurrence. They have categorically stated that only this accused Dulichand took part in the occurrence. The evidence of the S.H.O. that he found two foot prints does not mean that those two foot prints belonged to two different persons. They may as well be of one person. Unless moulds are taken and it is clearly established that these two foot prints belonged to two different persons, this argument cannot be availed by Mr. Arora that presence of two foot prints necessarily gave rise to the conclusion that they belonged two different persons. We are, therefore, of the opinion that only one accused has taken part in the occurrence. As these two eye witnesses have not seen the entire occurrence and they woke up only at the fag end of the occurrence, and so it appears probable that they have not witnessed that part of the occurrence when the accused used the kassi from its blunt side and only saw that part of the occurrence when he was using it from its sharp side and hence we agree with the learned lower court that this accused alone has taken part in the occurrence.

11. Mr. Arora further submitted that PW 5 Bugli has stated that kassi was picked up by the accused from the diggi which is at a distance of one bigha, i.e. 18 Pawandas from the place of the occurrence. It is very clear from her statement that she has not seen the initial part of the occurrence. She has stated this fact only on account of her knowledge that the kassi was lying near the diggi when she slept and so the accused must have picked it up from there. It does not mean that she has actually seen the accused picking up the kassi from the diggi.

12. Mr. Arora next argued that the kassi has been recovered from an open place and, therefore, no value can be attached to this recovery. In this respect PW 11 Ummed Singh has stated that accused gave an information that he has put the kassi below the Kair Bush and he is ready to get it recovered. On the basis of this information and at his instance the kassi was recovered from below the Kair tree. The tree is 7' high and its circumference is 30'. The length of the wooden handle of the kassi is only 2/1-2. In such a thorny and dense bush a kassi can safely be concealed. PW 7 Faiz Mohammad has also stated that this kassi was got recovered by the accused from below the Kair tree and to the same effect is the statement of PW 8 Bachan Singh. Both are the 'motbirs' of the recovery memo and seizure memo of kassi Ex.P 8. All these three witnesses have stated that this 'kassi' was blood stained. It was sealed at the spot PW 11 Ummed Singh has stated that this very 'kassi' was sent for chemical examination. PW 10 Badri Prasad has stated that on 3-7-1970 the S.HO. deposited three packets in the malkhana and on 6-7-1980 he deposited one more sealed packet in the malakhana. This 'kassi' has been recovered on 6-7-1980 and, therefore this much is clear from the testimony of Badri Prasad that this 'kassi' was deposited in the malkhana of the police station on 6-7-1980. Mr. Arora has stated that PW 8 Bachan Singh has stated that five packets were given to him for taking it to the Forensic Science Laboratory by Badri Prasad PW 10. Badri Prasad has however, stated that only four packets were deposited in the malkhana and so he tried to develop an argument that the fifth packet which was not deposited in the malkhana was that of the 'kassi'. Firstly PW 9 Phool Chand has stated that the five sealed packets which were given to him for taking to the Forensic Science Laboratory were delivered to him by Badri Prasad himself and by no other person. It is true that Badri Prasad has stated that only four packets were deposited in the

malkhana but it is clear from his evidence that on 6-7-1980 'kassi' was deposited in the malkhana as it was recovered on that very day. Thus the fifth packet may be anything but not kassi because even according to him kassi has been deposited in the malkhana. More over, PW 9 Phoolchand has been examined earlier than PW 10 Badri Prasad and Phool Chand has stated that he was given five sealed packets regarding this case by Badri Prasad and he obtained a receipt from the Forensic Science Laboratory and gave it to Badri Prasad. If any controversy was to be raised about the number of packets, explanation ought to have been obtained from Badri Prasad as to how Phool Chand was telling that he has been given five packets by him instead of four and when this has not been done it cannot be argued that the kassi was not included in those four packets specially when Badri Prasad himself has admitted that it was deposited in the malkhana on 6-7-1980. Under these circumstances although the recovery of the kassi has taken place from an open place but it was such an open place where kassi could have been concealed and, therefore, the recovery of this weapon on the information and at the instance of the accused has a great bearing on the facts of this case because this kassi has been found stained with human blood as per serologist's report Ex. P. 14. This is therefore, an important link in the chain to connect the accused with the crime.

13. We have already stated that it has not been challenged before us that the accused was working as a 'siri' of the deceased Manphoolram. This fact has not only been stated by PW 5 Bugli and PW 6 Murti but their evidence in this respect stands fully corroborated by the testimony of Rajaram PW 1 and Hazi Ahmed Khan PW 2 who are the closest neighbours of the dhani of Manphoolram and who have seen this accused working with the deceased. Even the defence witnesses have stated that the accused told them that he was working with Manphoolram.

14. Mr. Arora on the strength of the admission of PW 6 Murti has tried to argue that as Niyamat Ali was the last person with whom the deceased was seen talking when Murti went to sleep and so he could be his assailant. If actually Niyamat Ali has inflicted these injuries to the deceased then these two witnesses, i.e., PW 5 Bugli and PW 6 Murti would never spared him and they would not have gone to the dhani of Hazi Ahmed Khan who happens to be the father of Niyamat Ali.

Actually Hazi Ahmed Khan sent his son to inform Manphoolram's brother Jaimal and it was told to Jaimal that accused Duli Chand has killed Manphoolram. The matter was also immediately reported to the police and in that report the entire sequence of events has been faithfully mentioned and this lends ample support to the testimony of PW 1 Rajaram, PW 2 Hazi Ahmed Khan, PW 5 Bugli and PW 8 Murti. Mr. Arora also argued that in the FIR it has been mentioned that one small girl came to Hazi Ahmed Khan. Probably he has tried to isolate the portion E to F from the rest of the contents of the FIR Ex.P 1. Initially the FIR contained the version given by Hazi Ahmed Khan to Raja Ram. Hazi Ahmed Khan stated to Rajaram that Murti said some so thing to him and she was accompanied by a small girl meaning thereby PW 6 Bugli. Thus, from the FIR it is clear that Murti went to inform Hazi Ahmed Khan and she was accompanied by a small girl namely PW 5 Bugli. Even Rajaram stated that both these girls came along with Hazi Ahmed Khan. This further lends support to the testimony of PW 5 Bugli and PW 6 Murti that they both went to the 'dhani' of Hazi Ahmed Khan and there they accompanied Hazi Ahmed Khan to the 'dhani' of Rajaram.

15. Mr. Arora also argued that in the FIR the motive of the crime has been disclosed to be a verbal altercation between Manphoolram and Duli Chand which took place before two days of the occurrence. According to Mr. Arora in the FIR Rajaram has got it recorded that Duli Chand killed Manphoolram because Manphoolram rebuked him before two days for not working properly in his field and demanded his money back from him. This motive according to him has been abandoned by the prosecution at the trial. This is not true. PW 1 Rajaram has stated that Murti told him that before two days of the occurrence Duli Chand was rebuked by Manphool Ram regarding ploughing of the field and he further told that if he does not work properly he may return back the money which was given to him in advance. To the same effect is the statement of PW 2 Hazi Ahmed Khan. Mst. Murti has of course stated at the trial that the verbal altercation between Manphoolram and Dulichand did not take place in her presence. That does not mean that no such occurrence took place. It is not a case of abandonment of the motive. The person who gave the FIR has asserted at the trial that the motive for the crime was the remonstrance given by Manphoolram to Dulichand.

16. Mr. Arora has also argued that this land belongs to Shamda Musalman and it was earlier cultivated by Hazi Ahmed Khan and his son Niyamat Ali but it was taken back from them and was given for cultivation to Manphoolram and so Hazi Ahmed Khan and his son were aggrieved against Manphoolram on account of this. No suggestion was made in the cross examination of Hazi Ahmed Khan about this fact. He has categorically stated that he never cultivated the land of Shamda. According to him Shamda has cultivated his land himself and after that he gave it to Manphool Ram for cultivation. PW 3 Jaimal who is the real brother of the deceased has also stated Hazi Ahmed Khan and Niyamat Ali Khan never cultivated the land of Shamda. He has further denied the suggestion that this land was taken back from Hazi Ahmed Khan and Niyamat Ali and was given to Manphoolram for cultivation by the land owner Shamda. It is, therefore, clear that this could not have been the motive for the crime. More over it has been observed by us earlier that had this occurrence happened in the manner in which it has been put forth by Mr. Arora, Murti and Bugli would have never gone to the 'dhani' of Hazi Ahmed Khan to tell him that Duli Chand has killed Manphoolram. They would not have saved the arch enemy of the family by falsely implicating Duli Chand who was an uncle of Murti in distant relation and specially when he was engaged as a 'siri' of Manphool Ram. Mr. Arora argued that Duli Chand was found absent from the place of occurrence and on the next day of the occurrence there was Holi festival. Holi festival is celebrated in the month of March and not in July and, therefore, this explanation is not satisfactory. The defence evidence regarding alibi is not the worth of the paper on which it is written and secondly it is mutually contradictory. Chanaram has stated that he went there to demand his money from Duli Chand, when Duli Chand was working as 'siri' of Manphoolram, how could he know that he has come back and so he must go and meet him and demand back his money. Secondly Khirajram DW 2 has categorically denied that Chanaram has demanded any money from Duli Chand on that day. More over such an evidence of one's own villagers can always be produced to save one self from the clutches of law. No other point was pressed before us.

17. The discussion of the entire evidence would reveal that the occurrence was seen by two eye witnesses PW 5 Bugli and PW 6 Murti. Their evidence is fully corroborated by the testimony of PW 1 Rajaram and PW 2 Hazi Ahmed Khan. The

FIR was lodged without delay and it contained the correct and faithful record of the events as they have taken place and were revealed to PW 1 Rajaram and PW 2 Hazi Ahmed Khan. The recovery of blood stained 'kassi' on the information and at the instance of the accused also connects the accused with the crime. PW 12 Dr. Shiv Bhagwan Jhanwar has proved the post-mortem report Ex. P. 13. Learned counsel for the accused-appellant has not disputed that these injuries were received by the deceased. According to the Doctor these injuries were sufficient in the ordinary course of nature to cause death. Actually injury No. 1 on the head and injury No. 5 were individually sufficient to cause death of the deceased. Looking to these facts and circumstances we agree with the learned lower court that it is this very accused Duli Chand who committed murder of Manphoolram.

18. In the result the appeal has no force and it is hereby dismissed. The accused is already undergoing the sentence. The result of the appeal may be communicated to the jail authorities for compliance.

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