

**(2018) 04 MP CK 0115**  
**In the Madhya Pradesh High Court**  
**Case No : Criminal Appeal No.342 OF 2009**

Dasaru And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

**Date of Decision :** 17-04-2018

**Acts Referred:**

Indian Penal Code, 1860 — Section 294, 302, 307, 396, 450, 460

**Citation :** (2018) 04 MP CK 0115

**Hon'ble Judges :** S.K. GANGELE, J; ANJULI PALO, J

**Bench :** Division Bench

**Advocate :** Alok Vagrecha, Pushpendra Dubey, A.N. Gupta

**Final Decision :** Allowed

## Judgement

Appellants have filed this appeal against the judgment dated 27.12.2008 passed by Second Additional Sessions Judge, Betul in Sessions Trial

No.229/2006 whereby the trial Court held the appellants guilty for commission of offence punishable under Sections 460 and 396 of the Indian Penal

Code and sentenced to undergo R.I. for seven years with fine of Rs.1,000/-Â each and R.I. for life imprisonment with fine of Rs.1,000/- each

respectively, with default stipulations.

2. In brief the prosecution case is that deceased Sohanlal and his wife Lalitabai were residing alone at village Dabhona, District Betul. They cultivated

their land. In the intervening night of 5th and 6th of November, 2005, some dacoits committed their murder and robbed their properties. FIR was

lodged by Damadu at Police Station Athner, District Betul. Police registered offence under Sections 302, 307, 294 and 450 of I.P.C. against unknown

persons. During investigation, it was found that the appellants unlawfully entered into the house of deceased Sohanlal.Â They robbed the propertiesÂ

and committed murder of Sohanlal and his wife Lalitabai. After due investigation, charge-sheet was filed against the appellants before the concerned Court.

3. After committal of case, the trial Court framed charges under Sections 460 and 396 of the IPC against them. The appellants abjured guilt and pleaded that they are innocent and falsely implicated by the police in this case. The trial Court convicted the appellants on the basis of extra judicial confession and sentenced as mentioned above.

4. The appellants challenged the aforesaid findings on the ground that the prosecution evidence ought not to have been accepted because all the witnesses have exaggerated their version before the Court and created new story. No case under Sections 396 and 460 of I.P.C. is made out against the appellants. Hence, the impugned judgment is liable to be set aside and the appellants are entitled to be acquitted from the charges levelled against them.

5. Learned Government Advocate for the respondent-State has contended that the appellants were rightly convicted and sentenced by the trial Court as per the evidence on record.Â

6. Heard learned counsel for the parties at length. Perused the record.

6(a). It is not in dispute that Sohanlal and Lalitabai are husband and wife and they were killed by inflicting fatal injuries on them.

7. Dr. N.D. Chaurasiya (PW-2) conducted autopsy of the deceased Sohanlal on 07.11.2005. He noticed following injuries on him:-

(i) Blood stream coming out from nostrils.

(ii) Lacerated wound over his left pinna size 1 x 1 x 1 cms near left eyebrow.

(iii) His temporal bone was broken.

(iv) Blood vessels of brain were ruptured.

Injuries are sufficient to cause his death in ordinary course of nature. Injuries are ante-mortem and homicidal in nature. Sohanlal died within 24 to 36 hours from his postmortem.

8. Dr. N.D. Chaurasiya (PW-2) also conducted postmortem of deceased Lalitabai (wife of Sohanlal) on 08.11.2005. He noticed the following injuries on her:-

(i) Crushed wound on middle part of head size 11x1x1 cms, due to which skull was broken. Brain matter was coming out.

(ii) Crushed wound on left side of head size 7x1x1 cms, due to which left parietal region was ruptured. Brain matter was coming out.

(iii) Crushed wound on left side of head size 7x1x1 cms behind 1 cm of injury no.2.

(iv) Incised wound size 4x1x1 cms on right side of neck.

All injuries were sufficient to cause her death in ordinary course of nature. Lalitabai died due to above injuries and hemorrhage. Injuries are homicidal

in nature and were caused within 12 to 24 hours from her postmortem. Postmortem reports Ex.P/9 and P/10 of Dr. Chaurasiya (PW-2) shows that

both the deceased were intentionally killed by inflicting injuries on their vital body parts.

9. As per the prosecution case, Arun Kumar Gothi (PW-8) and Ismail Khan @ Nabbu (PW-13) were important witnesses to prove the crime against

the appellants. Ismail Khan @ Nabbu (PW-13) explained that since 2006 the deceased husband and wife resided in village Dabhona Distt. Betul,

where they were cultivated oranges. Deceased were resided alone. Arun Kumar Gothi (PW-8) son of the deceased, he also visited from time to

time to look after his parents as well as the property.

10. Ismail Khan @ Nabbu (PW-13) came to know that in the intervening night of 5th and 6th November, 2005 someone committed murder of the

deceased. Sohanlal died on the spot. He sustained injuries on his left ear and bleeding from his nose. Lalitabai sustained fatal injuries. She was sent to

Amrawati for her treatment, where she died. Their female dog was also found unconscious on the spot as it was assaulted by dacoit.

11. After getting information, Ismail Khan @ Nabbu (PW-13) reached on the spot, he found Sohanlal died on his bed. His female dog was also

unconscious. The rods of window were bend and lying on the floor. All the articles were scattered. Almira was in broken condition. Police came there

to investigate the matter. Arun (PW-8) son of the deceased (husband and wife) stated that he received telephonic information from Kaliram then he

reached on the spot. He also corroborated the testimony of Ismail Khan @ Nabbu (PW13).

12. Learned trial Court convicted the appellants on their extra-judicial confession.

In the case of Sunil Rai @ Pauya and others vs. Union Territory,

Chandigarh (2011) 12 SCC 258, the Supreme Court has held as under:-

38. In SCC para 20 of the judgment, this Court observed as follows:-

20. In this case, the High Court has not relied upon the confessional statement as a substantive piece of evidence to convict Accused 1. It has

been used for lending assurance to the proved circumstances. The High Court held that the proved circumstances would not involve Accused 2 for

the offence punishable under Section 302 IPC and the circumstantial evidence does not establish that there was any common intention or conspiracy

between the father and the son to commit the offence.

39. It is, thus, clear that the extra judicial confession of Sunil Rai could not be fastened upon the other two appellants for holding them guilty of murder

and the High Court was quite wrong in using the confessional statement of Sunil Rai as a circumstance against the other two appellants.

40. Recovery of the bloodstained jacket of Sunil Rai, the third circumstance obviously does not relate to appellant nos.2 and 3 in any manner. Equally,

the theft of the money and clothes of Sunil Rai would be no motive for the other two accused to assault Dile Ram, much less to kill him.

13. Ismail Khan @ Nabbu (PW-13) and Manoj Verma (PW-9) deposed that in the morning of 07.11.2005 at about 10:30 pm, they both were going

towards Dabhona from Sirajgaon via motor cycle and in Enkhedi Jod, the appellants met them, they stopped Ismail Khan @ Nabbu (PW-13). As per

Ismail Khan @ Nabbu (PW-13) all the appellants confessed that by mistake and in drunken condition, they assaulted the deceased (husband and

wife). They requested to convey the matter to Arun (PW-8) and save them. This testimony of Ismail Khan @ Nabbu (PW-13) is also corroborated by

Manoj Verma (PW-9). Both the witnesses deposed that they communicated the matter to Kaliram, Damdu and others. Arun (PW-8) also

corroborated the testimony of Manoj Verma (PW9) about extra judicial confession of the appellants. Manoj Verma (PW-9) told them that it was

heard that the appellants killed the deceased. But he did not state that he informed the aforesaid facts to the police. Ismail Khan @ Nabbu (PW-13)

deposed that he told Manoj Verma (PW-9) to convey it to Arun (PW-8). Ismail Khan @ Nabbu (PW-13) further stated that after one day, he heard

that police had arrested some persons.

14. With regard to role of Ismail Khan @ Nabbu (PW-13) and Manoj Verma (PW-9), it is pertinent to mention here that in paragraph 8 of cross-

examination Manoj Verma (PW-9) has stated that one of the appellants had talked to him and others have requested for their pardon. It is essential

here for him to clearly explain the names of appellants involved in the crime. Further in paragraph 7, he admitted that when a person receives

information regarding commission of offence, he must inform the police immediately. In the instant case, Manoj Verma (PW-9) did not do so.

Therefore, a reasonable doubt is created on his conduct. Arun Kumar (PW-8) has not corroborated the testimony of Manoj Verma (PW-9), who had

firstly informed him about the incident. Thereafter, no one came to Arun (PW-8) son of the deceased to take the responsibility of the offence. In such

circumstances, it is not just and proper to proceed for conviction based on extra judicial confession of the appellants. Extra judicial confession of the

accused is weak type of evidence.

15. In case of Vijay Shankar vs. State of Haryana (2015) 12 SCC 644, the Supreme Court discussed about the evidentiary value and reliability of

extra-judicial confession have been summarized by this Court in Sahadevan vs. State of T.N. which reads as under:-

i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

ii) It should be made voluntarily and should be truthful. iii) It should inspire confidence. iv) An extra-judicial confession attains greater credibility and

evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law.

19. Extra-judicial confession is a weak piece of evidence and the Courts are to view it with greater care and caution. For an extra-judicial confession

to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. In the case on hand, extra-judicial

confession allegedly made to PW-12 does not inspire confidence and cannot form the basis for the conviction.

16. In the case of Sucha Singh vs. State of Haryana (2013) 14 SCC 552, the Supreme Court has held as under:-

“There is also no merit in the contention of the learned counsel for the appellant that the extra-judicial confession alleged to have been made by the appellant to PW-8 ought not to have been believed. In Sahoo v. State of Uttar Pradesh, this Court has held that a confession is a direct piece of evidence but before such evidence can be accepted, it must be established by cogent evidence what were the exact words used by the accused and even if the confession was established, prudence and justice demand that such evidence should not be used as the sole ground of conviction and it may be used as a corroborative piece of evidence. PW-8 has stated that on 05.02.1997, the appellant came to his residence and told him that with a bad intention he had murdered the deceased and he had brought the mule cart to village Kamalpur. This was a clear confession made by the appellant to PW8. That apart, this extra-judicial confession only corroborates the other circumstances which establish the guilt of the appellant beyond reasonable doubt.”

17. Uttam Kumar Chouksey (PW-14), Investigating Officer established that the female dog sustained injuries by wooden weapon baisa, which was seized as per the memorandum of appellant Dasar. He also seized some other incriminating articles as per the memorandums of other appellants. He denied that he prepared all the documents at police station.

18. It indicates that some incriminating articles related to the deceased Sohanlal were recovered from the possession of the appellants. It is important to mention here that all the articles are not very valuable or precious. This fact is necessary for determination of the intention of the culprits because this case is related to double murder also. It was alleged that appellants resided in the same village. They were well known to the deceased person and Ismail Khan @ Nabbu (PW-13) and Manoj Verma (PW-9). It is also important to note that in the present case, robbers/murderers did not enter from the main door of the deceased house. They removed the window rods and entered into the house. It is alleged that an object used for cutting the grill of window was seized from the possession of the appellant Dilip. It is also alleged by the prosecution that some rods were recovered from his possession.

19. In this regard Uttam Kumar Chouksey (PW-14), Investigating Officer stated that on 09.11.2005, he recovered tools used for removing the window

rods, purse of the deceased Sohanlal with Rs.100/-, baniyan (vest) of appellant Dilip vide seizure memo (Ex.P/21). Further he took nails of appellants

Dasaru, Dilip, Gopal, Mohan Nahal and Mohan Singh Gond. All the articles were sent for FSL examination. No FSL report has been filed by the

prosecution, which was very essential in the present case. If positive FSL report had been received against the appellants that it would have been

strong evidence to connect them with the crime.

20. After considering all the evidence, in our opinion it is unnatural that in absence of the deceased persons from their house, the appellants did not

enter from the main door of their house. They entered after removing the rods of window. The appellants were very well knew that both the deceased

were residing alone. Appellants were 4-5 persons. They could easily enter into the house of the deceased. It seems that death of the deceased were

caused by other unknown persons. Such type of circumstances of the case are not directly linked with the appellants.

21. Further that, appellants were convicted by the trial Court on the basis of their extra judicial confession made to Ismail Khan (PW-13) and Manoj

(PW-9). Both these witnesses deposed that on the next date of incident at about 10:00 to 10:30 am, they were going together to Dabhora on the way

seven persons including appellants and Vinod, Ganesh met with them. They were afraid. Appellants Dilip and Mohan took Ismail Khan @ Nabbu to

the road side, thereafter, all the seven persons told them â??ges cpk yksâ? (save us). We committed mistake and assaulted the parents of Arun

bhaiya. Thereafter, Manoj Verma (PW-9) and Ismail Khan @ Nabbu (PW-13) asked them, how they committed the offence. They said that they

went to the deceased house for stealing but in the effect of alcohol, they all assaulted the deceased (husband and wife). On the same day, at about 4

to 4.30 pm Manoj Verma (PW-9) informed about the aforesaid incident to Arun bhaiya son of the deceased. All the seven persons were arrested by

the Police on 09.11.2005. Ismail Khan @ Nabbu (PW-13) also supported the above version.

22. Defence witness Kadma (DW-1) is the labourer who worked for the deceased persons. He deposed that on 07.11.2005, police took him and

appellants Mohan Nahal, Mohan Gond and Gopal to the Police Station. They were beaten by the Police. After that police took their thumb impression

on plain papers. He was released with Kisori but appellants were arrested by the Police. As per Kadma (DW-1), who killed the deceased (husband

and wife), no one knew. He is the father of Dasaru, therefore, there is a possibility that he falsely deposed in favour of his son. No other person has

been examined by the defence. Hence, statement of Kadma (DW-1) is not reliable.

23. Investigating Officer, Uttam Kumar Chouksey (PW-14) supported the testimonies of Manoj Verma (PW-9) and Ismail Khan @ Nabbu (PW-13).

U.K. Chowksey (PW-14) also deposed that he arrested the appellants on 09.11.2005. In custody, the appellant Dasaru gave memorandum to him that

he hid a baisa behind the deceased house at badi. One silver ring and clothes of Dasaru also recovered by the Police. His memorandum (Ex.P/15)

and seizure memo (Ex.P/34) also supported the prosecution story.

24. On the same day, Investigating Officer recorded the memorandum of appellant Mohan Nahal at that time, accused was in custody. He narrated

about the wrist watch of the deceased Sohanlal and his own clothes which were worn by him at the time of incident. His memorandum is Ex.P/16 and

seizure memo is Ex.P/20. On the same day, he took Mohan son of Gulab in custody. Mohan narrated him that he has kept Rs.800/- in his pant pocket,

which were stolen from the deceased house. Thereafter, as per his memorandum (Ex.P/18) police recovered Rs.800/- and vide seizure memo

(Ex.P/22) wooden weapon baisa with blood stained also recovered. Similarly, on the same day police recorded memorandum of appellant Gopal Nahal

and seized a bulb of the deceased house, an axe, his clothes worn at the time of incident by him, Rs.100/-, a steel glass, a jug, two glass bottles, plastic

bottle from the back side of his hut. His memorandum is Ex.P/35 and seizure memo if Ex.P/23.

25. It is true that conviction can be based solely on circumstantial evidence but for the conviction on circumstantial evidence, it is settled principle of

law that the prosecution has to satisfy certain conditions before the conviction. The circumstance from which the conclusion of guilt is to be drawn

should be fully established and should also be consistent with only one hypothesis i.e. the guilt of accused. The circumstances should be conclusive and



proved by the prosecution. There must be a chain of events so complete as to not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion which is inconsistency with the innocence of the accused and only for the possibility is that the accused has committed the crime.

26. To put it simple, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. [Please see case of Brijendra V. State of M.P. (2012) 4 SCC 289, Shivaji Vs. State of Maharashtra (2008) 15 SCC 269].

27. On consideration of all these relevant facts and vital piece of evidence, it can safely be concluded that the offence committed by the appellants has not been fully established beyond reasonable doubt.

28. On 09.11.2005, police called them at Panchayat Bhavan, where the appellants were present and police interrogated them. Kaliram (PW-5) deposed that in Panchayat Bhavan, Dabhona at about 05:00 pm police recorded the memorandum of the appellants vide Ex. P/15 to P/18, thereafter seized incriminating articles from their possession vide seizure memo Ex. P/20 to P/23). This version is corroborated by Ismail Khan @ Nabbu (PW-13). He also deposed that police seized a wooden weapon *baisa* from the back side of the house of the deceased, as per information of appellant Mohan Singh.

29. Further that, only the recovery of incriminating articles is not sufficient for conviction of the appellants. Prosecution has failed to produce the FSL report which is necessary to prove that the incriminating weapon *baisa* has blood stained which directly acted the appellants with the crime. Further, there is no specific or conclusive circumstantial evidence on record which established that who inflicted blows of weapon on the deceased person.

30. In the case of Dhan Raj @ Dhand vs. State of Haryana and Badal vs. State of Haryana (2014) 6 SCC 745, the Supreme Court has held as under:-

“Evidence Act, 1982 S.27” Fact discovered in consequence of information received from accused “What is” Mere recovery of stolen

objects" Facts necessary to establish commission of murder/ robbery" Reiterated, recovery of an object is not a discovery of fact" Even if recovery of stolen/robbed articles is reliable even then it does not establish that accused committed murder and only admissible fact which can be inferred is that accused was in possession of stolen goods" Where the only evidence against accused is recovery of stolen property, then although circumstances may indicate that theft/robbery and murder might have been committed at the same time, it is not safe to draw an inference that person in possession of stolen property had committed murder."

31. In our opinion, learned trial Court held the appellants guilty on weak type of evidence. Therefore, their conviction for offences punishable under

Sections 460 and 396 of the IPC is not maintainable in the eyes of law. Therefore, the appeal is allowed. Conviction of the appellants is hereby set

aside. They are acquitted from the charges levelled against them. The appellants are on bail, their bail bonds stand discharged.

32. Copy of the judgment be sent to the trial Court for information along with the record.