



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-436-DB-2004 (O&M)
Date of Decision:-19.5.2025

Dina Nath @ Raju ... Appellant

Versus

State of Haryana ... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Arav Gupta, Advocate as Amicus Curiae for the appellant.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.

GURVINDER SINGH GILL, J.

- The appellant – Dina Nath @ Raju assails judgment dated 6.3.2003 passed by learned Sessions Judge, Kurukshetra, whereby the Trial Court while holding him guilty of having committed offences punishable under Sections 302 and 449 of Indian Penal Code, sentenced him as under:

Offence(s)	Imprisonment	Fine	In default of payment of fine
302 IPC	Life imprisonment	Rs.2,000/-	R.I for 6 months
449 IPC	Seven years	Rs.1,000/-	R.I for 3 months

- The matter arises out of FIR No.49 dated 24.4.2002 registered at Police Station Jhansa, under Sections 449/376/302 of Indian Penal Code (Ex.PL/1)



at the instance of Dalip Singh (PW-10). The translated gist of his statement (Ex.PL) leading to FIR is reproduced herein-under:

“I am a resident of Dera Barami, Village Baram and am an agriculturist. I have two sons. The elder one namely Wazir Singh is abroad and the younger one Dalbir Singh resides with me. Balwinder Kaur wife of my elder son has herself sown wheat crop in 4 kanals of land, whereas the remaining 1½ acres has been leased out by her. Today i.e. the night intervening 23/24.4.2002 at about 09:30 P.M. I alongwith my son Dalbir Singh and Balwinder Kaur went to the fields on a tractor to thresh wheat crop. We had left behind our neighbour Pritam Kaur to keep a watch on the house of my elder son Wazir. When we returned back at about 12:30 A.M. after threshing wheat crop, then one ‘*Bhaiya*’ whose name is Raju, who was employed as a servant since the last about 3 months with Mohinder Singh, who is our neighbour, was seen coming out from our house. I can identify him. He is dark coloured having well built body and a round face with a scar mark of some burn injury near the right eye and is about 5 feet 6 inches tall aged about 25 years. I, my son Dalbir Singh and Balwinder Kaur tried to catch him, but he scaled over the boundary wall of our house and taking benefit of darkness ran away towards the fields. We raised alarm upon which several villagers came to the spot and all of them tried looking for the accused. Upon entering the room, we found Pritam Kaur was lying dead. Her *Salwar* and underwear had been taken off and she was having an injury on her head. Pritam Kaur had slept on a cot placed outside. Raju Bhaiya had inflicted injury to her and after breaking open the lock of the room had taken her inside the room and committed rape upon her. The pillow lying on the cot was also having blood stains. We have been searching for Raju Bhayia till now at Railway Station and in the fields and at other places. After leaving my son Dalbir Singh near the dead body I alongwith Mangat Singh, Member Panchayat have come to the police station to lodge report. Legal action be taken against Raju Bhaiya.



3. Pursuant to lodging of FIR (Ex.PL/1) based on the aforesaid statement, Sub Inspector Avtar Singh alongwith other police officials went to the spot and conducted preliminary investigation. Inquest proceedings were conducted. The dead-body was sent for post-mortem examination to the hospital. Rough site plan of the place of occurrence was prepared. Blood stained soil was lifted from the spot and prepared into a parcel. A screw driver, an iron pipe, a *khes*, a *dari*, a pillow, a pillow cover, a cot, strings of cot and a brick, all stained with blood were also taken into possession. The accused was arrested on 2.5.2002 near railway crossing. It is the case of prosecution that upon interrogation the accused Dina Nath @ Raju made a disclosure statement (Ex.PO) to the effect that he had kept concealed an iron rod in the 1st 'kup' of 'Toori' (heap of straw) and pursuant to the disclosure statement got the same recovered, which was taken into possession by the police vide recovery memo (Ex.PO/1).
4. Upon conclusion of investigation, challan was presented against the accused in the Court of learned Judicial Magistrate 1st Class, Kurukshetra on 3.7.2002, who committed the case to the Court of Sessions vide commitment order dated 23.7.2002. Learned Sessions Judge, Kurukshetra framed charges against the accused for offences under Sections 449/376/302 of Indian Penal Code on 6.8.2002 to which the accused pleaded not guilty and claimed trial.
5. The prosecution, in order to substantiate the charges framed against the accused, examined as many as 14 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Dr. R.K. Dahiya, Medical Officer, C.H.C. Ladwa, stated that on 2.5.2002 while he was posted as Medical Officer, Primary Health



Center, Jhansa, he had medico-legally examined Dina Nath accused and had found that there was nothing to suggest that Dina Nath accused could not perform sexual intercourse.

PW-2 Constable Sudeep Kumar stated that he had prepared a scaled site plan Ex.PB of the place of occurrence.

PW-3 Assistant Sub Inspector Shri Bhagwan tendered his affidavit Ex.PC in evidence, wherein he deposed that on 24.4.2002 he was posted as Assistant Sub Inspector (ASI) at Police Station Jhansa and it was in his presence that Constable Sunil Kumar (No.195) produced sealed parcels bearing seal of doctor of L.N.J.P., Hospital, Kurukshetra before Station House Officer (SHO) Avtar Singh, who took the said articles into police possession vide a memo.

PW-4 Head Constable Chander Bhan tendered his affidavit Ex.PD in evidence, wherein he deposed that on 24.4.2002 and also on 2.5.2002 he was posted as Moharrir Head Constable in Police Station Jhansa and the key of '*Malkhana*' used to remain in his custody. He deposed that on 24.2.2002 Sub Inspector/Station House Officer had deposited 13 sealed parcels and another 4 articles on 2.5.2002. He further stated that 10 parcels out of the same were taken out from '*Malkhana*' on 30.4.2002 and were sent to Forensic Science Laboratory, Madhuban through Constable Gulzar Singh, who deposited the same with FSL on the same day itself. He further stated that on 7.5.2002 another parcel containing an iron rod and a parcel containing clothes of deceased and one more sealed parcel were sent to Forensic Science Laboratory, Madhuban through



Constable Gulzar Singh, who deposited the same in the office of FSL, Madhuban the same day itself. He further deposed that as long as the case property remained in his possession, the same was not tampered with.

PW-5 Constable Mahesh Kumar tendered his affidavit Ex.PE in evidence, wherein he deposed that on 2.5.2002 he was posted at Police Station Jhansa and that it was in his presence and also in the presence of ASI Sukhdev Singh that a parcel containing clothes bearing seal of doctor were produced before Sub Inspector/Station House Officer (SHO) Avtar Singh, which were taken into possession vide a memo.

PW-6 Constable Gulzar Singh tendered his affidavit Ex.PF in evidence, wherein he deposed that on 24.4.2002 he was posted as Constable on General Duty in Police Station Jhansa. He stated that 2.5.2002 the M.H.C. of the police station had handed over 12 parcels to him to be deposited in the office of F.S.L. Madhuban and he accordingly deposited the same in the office of F.S.L. Madhuban and the receipt thereof had been handed over to M.H.C. of the police station.

PW-7 Constable Satish Kumar tendered his affidavit Ex.PG in evidence, wherein he deposed that on 24.4.2002 he was posted on General Duty in Police Station Jhansa and that on the said day he had delivered the special reports of this case to the Illaqa Magistrate and to higher police officials.

PW-8 Head Constable Sushil Kumar stated that on 24.4.2002 he alongwith Constable Sanjeev Kumar had taken the dead-body of



Pritam Kaur to L.N.J.P., Hospital at Kurukshetra for getting post mortem-examination conducted and after the same had been conducted, the dead-body was handed over to heirs of the deceased.

PW-9 Dr. S.C. Grover, Medical Officer, L.N.J.P., Hospital, Kurukshetra stated that on 24.4.2002 he alongwith Dr. K.K. Chawla and Dr. Mrs. Sarah Aggarwal had conducted post-mortem examination on the dead-body of Pritam Kaur. He had described the 4 injuries found on the dead-body and also the multiple fractures found on the ribs. He opined that the cause of death was shock and haemorrhage due to injuries to the brain and lung, which were sufficient to cause death in ordinary course of nature. Upon having been shown the 'saria', which had been taken into possession by the police, the PW opined that the injuries could be caused by using the said 'saria'. He further stated that possibility of sexual intercourse could not be ruled out.

PW-10 Dalip Singh (complainant) at whose instance the FIR (Ex.PL/1) was lodged stated in tune with his statement Ex.PL. He stated that on the night intervening 23.4.2002 & 24.4.2002, when he alongwith other members of his family returned back from their fields, they saw Raju Bhaiya (accused) coming out of the house of Balwinder Kaur and when they went inside they saw that Pritam Kaur was lying murdered. He further stated that Raju Bhaiya scaled over the boundary wall while carrying an iron rod and escaped under the cover of darkness.



PW-11 Balwinder Kaur, who was accompanying the complainant on the day of occurrence, stated identically as stated by PW-10 Dalip Singh (complainant). She stated that when she alongwith Dalip Singh returned from the fields late in the night intervening 23/24.4.2002, they saw the accused carrying an iron rod running out of her house who scaled the wall and escaped and that when they went inside their house, they found Pritam Kaur lying dead, who had been inflicted multiple injuries.

PW-12 Mohinder Singh stated that he had employed Raju as a servant, who used to reside in his '*bara*'.

PW-13 Mangat Singh stated that he is Member Panchayat of his Village Gram Panchayat (Barami) and that on the night intervening 23/24.4.2002 Dalip Singh (PW-10) had come to him and he accompanied Dalip Singh to the police station for lodging FIR. He stated that the police came to the spot and recovered screw driver, an iron pipe, a *khes*, a *dari*, a pillow, a pillow cover, a cot, strings of cot and a brick, which were taken into possession by the police. He further stated that the accused Dina Nath @ Raju was arrested by the police on 2.5.2002 and upon interrogation he suffered a disclosure statement Ex.PO to the effect that he had kept an iron rod concealed and pursuant to his disclosure statement he led the police party to the disclosed place and got the iron rod recovered, which was taken into possession by the police vide recovery memo Ex.PO/1.



- PW-14** Avtar Singh, Sub Inspector/Station House Officer, Police Station Jhansa, who is the Investigating Officer of the present case, stated in detail with regard to the investigation conducted by him right from lodging of the FIR upto the filing of challan. He proved the various documents and memos prepared during the course of investigation. He specifically stated with regard to the arrest of the accused on 2.5.2002 and as regards the accused having made a disclosure statement (Ex.PO) and having got recovered the iron rod.
6. Upon closure of the prosecution evidence, statement of the accused was recorded in terms of provisions of Section 313 Cr.P.C., wherein he pleaded false implication. The accused, however, did not lead any evidence in his defence.
 7. Learned Trial Court upon appraisal of the evidence on record returned its findings to the effect that the prosecution has fully established its case against accused/appellant Dina Nath and accordingly held him guilty of having committed offences punishable under Sections 302 and 449 of Indian Penal Code vide impugned judgment dated 6.3.2003 passed by learned Additional Sessions Judge, Kurukshetra.
 8. Learned counsel representing the appellant submitted that it is a case of blind murder, wherein the accused has been implicated falsely and that the only evidence against him is that he was seen near the place of occurrence. It has been submitted that although the prosecution seeks to establish its case on the basis of circumstantial evidence, but the prosecution has miserably failed to prove all the links in chain of evidence, which could possibly point towards



guilt of the accused. It has further been submitted that since the deceased was a lady aged about 65 years and no enmity or motive having been established for the accused to have committed the offences in question, the findings of guilt as recorded by the Trial Court could not sustain and are liable to be set aside.

9. Opposing the appeal, learned State counsel submitted that the impugned judgment does not suffer from any infirmity and the very fact that the accused was seen scaling the wall of the house carrying an iron rod, and the dead-body was found in the house clearly shows that he is responsible for the murder. It has further been submitted that the factum of recovery of iron rod, which was found to be smeared with blood, would corroborate the case of the prosecution and, as such, no interference in the impugned judgment is warranted.
10. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
11. It is apposite to first of all refer to the medical evidence as regards homicidal death of deceased Pritam Kaur. The prosecution has examined PW-9 Dr. S.C. Grover, Medical Officer, L.N.J.P., Hospital, Kurukshetra, who had conducted the post-mortem examination on the dead body of Pritam Kaur, who has described the injuries found on the dead body as under:

“1. Lacerated wound of irregular shape 3.5 cms. x 1.5 cms. on the left parietal region of scalp. 5 cms from midline of scalp. There was diffuse swelling present around the wound and left temporal region. Clotted blood was present. On exploration there was haematoma in the scalp layers. On further exploration there was a depressed fracture of underlying bone of skull. Depressed segment



of bone was oval shaped and was of the size of 6 cms. X 4 cms. Underlying extra-dural and sub-dural haematomas were present. Brain matter was contused and depressed. Meninges were torn on left side. Rest of the brain was swollen.

2. There was diffuse swelling left side of face over the malar and mandibular region in front of left ear. On dissection there was haematoma in the underlying soft tissues.
 3. There were multiple (eight) contusions of various sizes on the front and right side of abdomen. These were of the sizes of 5 mm. X 1.5 cm., 3 mm. to 7 mm. Infiltration of blood was present in the underlying sub-cutaneous tissues.
 4. Lower lip was swollen and contused. There was a lacerated wound of size of ½ cm. x ½ cm. on the inner side of lip, just to the left of mid line. Infiltration of blood was present in the tissues.”
12. PW-9 further opined that the injuries in question could have been caused with the iron rod, which was shown to the witness in the Court and has opined that the possibility of sexual intercourse could not be ruled out. He opined that the cause of death was shock and haemorrhage due to injuries to the brain and lung, which were sufficient to cause death in ordinary course of nature.
13. A perusal of description of the injuries shows that injuries had been inflicted on the head, face, abdomen and chest. Fractures were also found on the skull and on the ribs. The description of injuries and the effect of the injuries leading to fractures shows that the injuries have been inflicted with some blunt edged weapon with great force as is also the case of prosecution that the injuries had been caused with an iron rod. Although the witness was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as to doubt his veracity or opinion. As such, we find that the medical evidence is in tune with the case



of the prosecution and that it is a case of homicidal death, wherein the deceased had been inflicted injuries with some blunt edged weapon.

14. Coming to the ocular evidence, we find that both the eye-witnesses i.e. PW-10 Dalip Singh (complainant) and PW-11 Balwinder Kaur have stated absolutely in consistence as regards having seen the accused getting out of the house of Balwinder Kaur and having made good his escape by scaling the wall. The said occurrence had taken place at about 11:00 P.M. The accused was also carrying an iron rod while he made good his escape. Immediately thereafter when PW-10 Dalip Singh (complainant) and PW-11 Balwinder Kaur entered the house of Balwinder Kaur from where the accused had escaped, they found the dead-body of Pritam Kaur lying there on the cot, which was having multiple injuries.
15. While it is correct that the actual act of commission of murder was not witnessed by both the eye-witnesses, but the circumstances under which the accused was seen and that too in the dead of the night at about 11:00 P.M. clearly points towards his guilt. There was nobody else present in the house at that time when the accused was seen and the dead-body was seen lying in the house. The accused was seen while escaping by way of scaling the wall and was carrying an iron rod. Subsequently, upon arrest of the accused he made a disclosure statement pertaining to his having concealed the iron rod and pursuant to the said disclosure statement, he led the police party to the disclosed place and got the iron rod recovered as well. The said iron rod was sent to FSL for chemical examination and it was found to be smeared with human blood. The factum of recovery of a blood-stained iron rod at the instance of the accused is a strong corroborative piece of evidence under the



given circumstances where the accused in the dead of the night was seen escaping from the house where the dead-body was lying, while carrying the iron rod. The doctor i.e. PW-9 Dr. S.C. Grover, who conducted the post-mortem examination was shown the recovered iron rod in Court and upon seeing the same he opined that the injuries found on the dead body could have been caused with the iron rod.

16. It may here also be added that the accused has not come out with any kind of explanation to justify his presence in the house of Balwinder Kaur, where the dead-body was lying and that too late at night at about 11:00 P.M. while carrying the blood-stained iron rod. We thus find that the evidence collected by the prosecution including the evidence in the shape of *res gestae* i.e. PW-10 Dalip Singh (complainant) and PW-11 Balwinder Kaur having seen the accused with the rod escaping from the house where the dead-body was lying would nail his guilt particularly when the iron rod, upon examination by FSL was found to be stained with human blood. Consequently, we find that the findings of the Trial Court as regards guilt of the accused for offence under Section 302 IPC do not warrant any interference and are hereby affirmed.
17. As far as the conviction of the appellant for offence under Section 449 of Indian Penal Code is concerned, the evidence led by the prosecution particularly the consistent testimonies of PW-10 Dalip Singh (complainant) and PW-11 Balwinder Kaur clearly show that the appellant was seen by both the witnesses running away from the house of Balwinder Kaur by scaling the wall and that he was having an iron rod in his hand, which the appellant also got recovered pursuant to his disclosure statement (Ex.PL). It is noteworthy that even in the FIR, which was lodged fairly promptly, the complainant had



disclosed the same very details with regard to having seen the accused leaving the house, where the dead-body of Pritam Kaur was lying, by scaling the wall. The complainant specifically named the accused in the FIR itself. Under these circumstances, the factum of accused having been armed with an iron rod and having been seen leaving the house of Balwinder Kaur by scaling the wall stands duly established. While it may be hazardous to say that his intention was to murder the deceased as he cannot be connected with the murder of the deceased, but given the fact that he was carrying an iron rod in the dead of the night i.e. at about 11:00 P.M. and was leaving the house, where the dead-body of deceased Pritam Kaur was lying, by scaling the wall, he has rendered himself liable for having broken into the house of Balwinder Kaur apparently with an intention to cause some hurt being armed with an iron rod.

18. At this stage, it is apposite to refer to Sections 442 & 445 of Indian Penal Code, which are reproduced herein-under:

“442. House trespass.—

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

Explanation.—The introduction of any part of the criminal trespasser’s body is entering sufficient to constitute house-trespass.

445. House breaking.—

A person is said to commit “house-breaking” who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if,



being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

(First) — If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(Secondly) — **If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.**

(Thirdly) — If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

(Fourthly) — If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

(Fifthly) — If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

(Sixthly) — If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation— Any out-house or building occupied with a house, and between which and such house there



is an immediate internal communication, is part of the house within the meaning of this section.”

19. The facts of the present case would clearly show that the appellant was seen leaving the house of Balwinder Kaur by scaling the wall and that too during night time i.e. at about 11:00 P.M., as such, it is a case where the appellant had committed the offence of “house breaking”. Section 458 of Indian Penal Code, wherein the accused commits the offence of house breaking by night after having made preparation to commit hurt, assault or restraint, for the sake of ready reference is reproduced herein-under:

“458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.—

Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.”

20. As already discussed above, it is a case where the appellant had committed the offence of house breaking by night and since he was also carrying an iron rod indicating his preparation for causing hurt or assault, the appellant has rendered himself liable for having committed offence punishable under Section 458 IPC. Although, a specific charge for offence under Section 458 IPC was not framed by the Trial Court, but since a charge for a graver offence i.e. for offence under Section 449 IPC had been framed against the accused, which the accused had defended, therefore, it cannot be said that the accused had been prejudiced in any manner. While the sentence provided for offence



under Section 449 IPC can be extended to imprisonment for life, the maximum sentence for offence under Section 458 IPC is 14 years.

21. In view of the discussion made above, the conviction of the appellant for offence under Section 449 IPC is altered to that offence under Section 458 IPC. However, the sentence as imposed shall remain the same i.e. 7 years and fine amounting to Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for 3 months for offence under Section 458 IPC.
22. The instant appeal, as such, is dismissed except for the modification to the extent that his conviction for offence under Section 449 IPC is converted to conviction for offence under Section 458 IPC. The accused/appellant shall undergo rigorous imprisonment for 7 years and shall also pay a fine of Rs.1,000/- and in case of default in payment of fine shall further undergo simple imprisonment for 3 months. The sentence for offence under Section 302 IPC shall remain unaltered.
23. Necessary Intimation be sent to quarters concerned for effecting arrest of the appellant – Dina Nath @ Raju so as to undergo remaining part of his sentence. Case property be dealt with under rules upon expiry of limitation for filing appeal.

(GURVINDER SINGH GILL)
JUDGE

19.5.2025

Pankaj

(JASJIT SINGH BEDI)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No