

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1888 OF 2011

SURINDER

..... APPELLANT(S)

VERSUS

THE STATE OF HARYANA

..... RESPONDENT(S)

ORDER

1. We have heard learned counsel for the parties.
2. Appellant was convicted under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') by the learned Additional Sessions Judge, Rohtak *vide* the judgment and order dated 01.08.2000 passed in Sessions Case No.97 of 1998 and sentenced to undergo imprisonment for life.
3. Appeal filed by the appellant before the High Court of Punjab and Haryana (briefly the 'High Court' hereinafter) in Criminal Appeal No.369 DB of 2000 came to dismissed *vide* the impugned judgment and order dated 04.11.2019.

4. This Court *vide* order dated 21.01.2011 had issued notice on the application for condonation of delay as well as on the Special Leave Petition. Thereafter, *vide* the order dated 30.09.2011, delay was condoned and leave was granted. Considering the fact that appellant was in custody at that point of time for more than 9 years, appellant was released on bail.

5. In the hearing held on 14.07.2026, the following order came to be passed:

1. Ms. Pearl Pundir, learned counsel submits that her Senior was appointed as legal aid counsel to represent the appellant in this Criminal Appeal. However, recently he has tendered his resignation.
2. This is an old pending matter.
3. We, therefore, appoint Mr. Mohammad Aslam, learned counsel who is present in the Court, as an Amicus Curiae to assist the Court.
4. We request learned counsel for the respondent-State of Haryana to furnish a soft copy of the case record to the learned Amicus Curiae.
5. At this stage, learned counsel for the respondent-State of Haryana submits that many portions of the soft copy of the case record are not legible.
6. We, therefore, permit learned counsel for the parties to approach the Registry for obtaining legible hard copies of the case record.

6. As per the prosecution, the complainant and his three brothers were residing at Babra Mohalla near Sadar Police Station, Rohtak. On 04.04.1998, one Kamlesh came to the house of the complainant around 07:00-08:00 am in the morning for delivery of milk. Kamlesh informed the complainant that his elder brother Raju did not make payment for the milk purchased. She gave an ultimatum to the complainant that by evening Raju should make the payment. In the evening Raju told the complainant that he was going to the house of the appellant Surinder (husband of Kamlesh) for making the payment. At around 10:00 pm, one Mukesh, PW-12, informed the complainant that Raju was murdered by Surinder and his wife Kamlesh with a *Gandasa*.

7. Based on this, FIR No.233 of 1998 was lodged before the Police Station Sadar, Rohtak under Sections 302/34 IPC.

8. After completion of investigation, charge-sheet was submitted, whereafter the case was committed to the Court of the Additional Sessions Judge. Both Surinder and Kamlesh pleaded not guilty and claimed to be tried.

9. The prosecution examined 15 witnesses to prove its case. At the conclusion of the prosecution evidence, the statements of Surinder and Kamlesh were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC). Thereafter, the learned Additional Sessions Judge convicted and sentenced the appellant as above, while acquitting his wife, Kamlesh, of the charges so framed against her.

10. As noticed supra, the conviction and sentence of the appellant was affirmed by the High Court.

11. Learned amicus submits that the prosecution case is based on the sole testimony of PW-12 Mukesh, who was projected as the eyewitness. However, the testimony of PW-12 cannot be believed at all. Apart from that, he submits that the forensic examination of the bloodstains found on the seized clothes of the appellant and on the *Gandasa* did not match with the bloodstains of the deceased. In such circumstances, the trial court erred in convicting the appellant as above. The High Court committed a manifest error in affirming such conviction and sentence.

12. On the other hand, learned State counsel has

defended the impugned conviction and sentence of the appellant by the trial court, as affirmed by the High Court. He submits from the compilation prepared by him, that the clothes and the *Gandasa* were recovered on the basis of the disclosure statement of the appellant made under Section 27 of the Indian Evidence Act, 1872. He further submits that it is quite but natural that there would be certain degree of inconsistency in the evidence of the prosecution witnesses but that would not be fatal to prove the prosecution case. If the testimony of PW-12 is considered as a whole and together with the testimony of Dr. S.S. Dahiya-PW-5, it would be apparent that the death of Raju was homicidal and was caused because of the fatal injuries suffered by him at the hands of the appellant. No other view is possible.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. Since heavy reliance has been placed on the testimony of PW-12, it would be apposite to refer to and examine the said evidence at the outset. In his examination-in-chief, PW-12 stated that at around 9:30 p.m. on

04.04.1998, as he had reached the house of one Babal, he heard the noise of 'mar diya, mar diya' from the house of the appellant, Surinder. He stated that he had gone to the house of the appellant and saw him giving a blow on the head of Raju with the *Gandasa*. He also saw Kamlesh giving *Gandasa* blow on the fingers of Raju. According to him, Raju succumbed to his injuries in the house of the appellant itself. It was thereafter that he went to the house of the deceased and narrated the entire episode to the complainant.

15. However, in his cross-examination, he stated that he did not enter the house of the appellant and had seen the occurrence from outside the main gate. The door of the house of the appellant was closed, but it was not bolted. Though he stated that the appellant had inflicted blows on the deceased in his presence, he contradicted himself by saying that he did not enter into the house of the appellant to intervene or to save Raju from the clutches of the appellant and Kamlesh. He also did not raise any noise though he was standing on the street outside the house of the appellant.

16. Thus, from the evidence of PW-12 itself, it is quite clear that there are vital material contradictions in his deposition. While in his examination-in-chief he stated that he had seen the appellant inflict a *Gandasa* blow on the deceased, but in his cross-examination, he stated that he was standing on the street outside the main gate of the house of the appellant which was closed; even the door of the house of the appellant was closed. Question is, if the door of the house of the appellant was closed, how could he have witnessed the incident of the appellant and Kamlesh giving blows to the deceased by *Gandasa*? In such circumstances, it would not be safe at all to place reliance on the testimony of PW-12, as it cannot be said to be trustworthy.

17. That brings us to the report of the Forensic Science Laboratory. As per the Forensic Science Laboratory report (Exhibit P-Z), the bloodstains found on the seized clothes of the appellant were found to be of human origin; however, no conclusive opinion could be rendered regarding the blood group. Even the serological examination of the deceased was also found to be inconclusive.

18. To hold that the examined samples were of human blood is one thing, but to get it matched with the blood sample of the deceased is another thing. Unless the blood samples found on the seized clothes of the appellant matches with the blood sample of the deceased, no definitive conclusion can be reached about the involvement of the appellant in the murder of the deceased. That apart, even the serological analysis of the bloodstains found on the *Gandasa* was incomplete as the material had disintegrated.

19. No doubt, the deceased had met an unfortunate end. However, the question is whether the evidence on record is sufficient to hold the appellant guilty of committing the homicidal death of the deceased. In our opinion, it cannot be said that prosecution had proved beyond all reasonable doubt that it was the appellant, and only the appellant, who had caused the death of the deceased. There is nothing on record to link the appellant with the homicidal death of the deceased. This view is reinforced by the acquittal of Kamlesh. In such circumstances, the benefit of doubt would have to be given

to the appellant.

20. Both the trial court as well as the High Court erred in convicting the appellant under Section 302 IPC.

21. Consequently, the judgment and order of the learned Additional Sessions Judge dated 01.08.2000 and that of the High Court dated 04.11.2019 are hereby set aside.

22. The appellant is acquitted of the charge under Section 302 IPC.

23. The bail bonds stands discharged.

24. The appeal is allowed.

25. Pending applications, if any, shall stand disposed of.

.....J.
(UJJAL BHUYAN)

.....J.
(ALOK ARADHE)

NEW DELHI;
October 08th, 2026.

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCriminal Appeal No(s). 1888/2011

SURINDER

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

Date : 08-10-2026 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UJJAL BHUYAN
HON'BLE MR. JUSTICE ALOK ARADHEFor Appellant(s) : Mr. Mohammad Aslam, AOR (Amicus Curie)
Mr. Waseem Akhtar Khan, Adv.
Ms. Sara Sambhavi, Adv. (not legible)
Mr/Mr. Syed Kashan Ali, Adv.
Ms. Shikha Bhargava, Adv.For Respondent(s) : Mr. Samar Vijay Singh, AOR
Mr. Rajesh Kumar Singh, Adv.
Mr. Amit Pandey, Adv.
Ms. Sabarni Som, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Gaj Singh Jaswal, Adv.
Ms. Deepika Singh, Adv.
Ms. Usha Bhaskar, Adv.UPON hearing the counsel the Court made the following
O R D E R

1. Appeal is allowed in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

(IRAMNAZ)
COURT MASTER (SH)(CHETNA BALOONI)
COURT MASTER (NSH)

(signed order is placed on the file)