

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1033-DB-2009 (O&M)

Date of decision: 02.12.2015

Mehar Singh and another Appellants

Vs.

State of Haryana and another Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. Vinod Ghai, Sr. Advocate with
Mr. Simrandeep Singh, Advocate
for appellant No.1.

Mr. S.K.Garg, Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate
for appellant No.2.

Mr. Vivek Saini, AAG, Haryana.

Ms. Deipa Singh, Advocate
for the complainant.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 05.11.2009 rendered by learned Additional Sessions Judge (FTC), Karnal, whereby, the appellants-accused were held guilty for committing offence punishable under Section 302/34 of Indian Penal Code (for short 'IPC'). Vide order of sentence dated 07.11.2009, each one of the appellants-accused was sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/- with default clause for committing

offence punishable under Section 302/34 IPC.

Brief facts of the prosecution case are like this; that as per complainant, he and his brothers are the transporters. They transport paddy husk to various Solvex concerns. They have a shop in Sector 4, Urban Estate, Karnal to monitor the supply and transportation of the raw material. Ram Devi, wife of Gurnam Singh, was the owner in possession of 5-½ acres of land situated in village Chhapra Khera. She is the daughter of Giani. In the year 1986, Mehar Singh accused managed a collusive decree by duping his sister Ram Devi. A civil suit No. 634 of 1986 was instituted on 28.08.1986 and the same was decreed on the very next day i.e. 29.08.1986. On 25.02.2005, Ram Devi sold the aforesaid land to Birmi, wife of Jagbir Singh (deceased), who was the real brother of complainant. The aforesaid land was sold for a sum of ₹14,96,000/-. Mehar Singh-accused is the real brother of Ram Devi. He felt that an intruder has been introduced in the family holding by selling the land to Birmi, by Ram Devi. As such, on that account, he became furious.

On 14.03.2005, Mehar Singh-accused, accompanied with Pala Ram-accused (lessee for two years on the land in question) and others two came to their shop. At that time, complainant Sukhbir and his brother Surinder were closing down their shop. They were putting down the shutters. Jagbir, another brother of the complainant, got into his car bearing registration No. HR-05L-9002, make Zen and accused asked him as to how he dared to purchase the land of his sister Ram

Devi. Immediately, Pala Ram, caught hold of Jagbir by his collar whereas Mehar Singh-accused fired on his brother Jagbir on left side of his temple and the bullet made an exit from the right side of the head. All the four accused including two unknown persons had run away from the spot after executing their intention. Complainant along with his brother Surinder brought Jagbir to General Hospital, Karnal, where he was declared dead. Inspector Rajesh Kumar of Police Station, City, Karnal, reached the hospital and recorded the statement of the complainant, whereupon, FIR No. 88 dated 14.03.2005, under Section 302/34 IPC and under Section 25 of the Arms Act was registered. As the police did not take any action for considerable time, therefore, Sukhbir complainant instituted a complaint in the Court against the accused under Section 302/34 IPC and under Section 25 of the Arms Act. It was also averred by the complainant that after commission of the crime, Mehar Singh-accused, had filed a criminal complaint under Section 420/120-B etc. IPC against Ram Devi and Birmi Devi in order to create a false defence. It was further averred that since Mehar Singh accused was an influential person, therefore, justice has been denied to the complainant in spite of approaching the authorities for proper and honest investigation. Complainant apprehended that cold blooded day light murder is likely to go unpunished on account of partial and dishonest attitude of the police. Under these circumstances, it was prayed by the complainant that report be called from the Investigating Agency and after receipt of report appropriate action may be taken.

However, on this complaint, complainant was directed to lead preliminary evidence. By way of preliminary evidence, complainant himself appeared as CW1 and produced Surinder Singh as CW2, Vijay Kumar, Registration Clerk as CW3, Ashok Kumar, Constable as CW4 and Dr. Piyush Sharma as CW5.

As the proceedings pertaining to the aforementioned FIR were pending before the police, therefore, the learned Chief Judicial Magistrate (CJM) stayed the proceedings of the complaint vide order dated 07.02.2006 and the report from the Station House Officer concerned in FIR No. 88 dated 14.03.2005 was called. When nothing happened, Sukhbir complainant had to knock the door of this Court by filing a petition under Section 482 Cr.P.C by making a prayer to issue a direction to the CJM, Karnal for proceeding with the complaint in question without further waiting for the report of the Station House Officer concerned. This Court vide order dated 16.11.2006 passed the following order:-

“..... the present petition is disposed of with a direction to the respondents to conclude the investigation of the FIR within two months from today and, thereafter, present the final report under section 173 Cr.P.C. If the same is not done within the stipulated period of time, the Chief Judicial Magistrate, Karnal shall proceed with the complaint without waiting any further for the report of the police. But still the prosecution failed to submit report under Section 173 Cr.P.C. and therefore in Criminal Misc. No. 8373 of 2007 in

Criminal Misc. No. 60918-M of 2006 initiated at the instance of the complainant Sukhbir Singh the Hon'ble High Court vide its order dated 9.2.2007 observed that “ the present application is disposed of by observing that Chief Judicial Magistrate, Karnal is not to wait for the submission of final report by the police under Section 173 Cr.P.C. and shall proceed with the complaint”

In pursuance with this order, the learned CJM, Karnal, proceeded with the complaint and passed the summoning order dated 02.03.2007, thereby, summoning both the accused to face trial for commission of offence punishable under Section 302/34 of IPC and under Section 25 of the Arms Act. Thereafter, the prosecution also submitted untrace report on 13.04.2007 before the Court of learned CJM, Karnal. Both the accused put their appearance in the Court on 01.05.2007. As such, the complaint was committed to the Court of Sessions, Karnal for 15.05.2007.

Finding a *prima-facie* case against both the accused, they were charge-sheeted for committing offence punishable under Section 302/34 IPC. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence. In their defence, accused examined Surinder Singh, DSP, Assandh as DW1, L.S.Yadav, Senior Scientific Officer, Ballistics, FSL, Madhuban, Karnal as DW2, Jagdish Singh Ahlmad in the Court Commissioner Rohtak, Division Rohtak as DW3, Neena Rani,

V.R.K.office of Deputy Commissioner, Karnal as DW4, Dabir Singh, DSP, Head Quarter, Rohtak as DW5, Chano Devi as DW6 and Dr. Amod Kumar Singh, Senior Scientific Officer, Grade II, Lie Detection Division, CFSL/CBI, New Delhi as DW7.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court convicted both the accused for committing offence punishable under Section 302/34 IPC and also passed the order of sentence, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence on record.

It is a case based on eye witness account. Sukhbir Singh (PW1) and his brother Surinder Singh (PW-3) are the eye witnesses of this case. The present occurrence is dated 14.03.2005. The statements of both the witnesses are consistent so far as the present occurrence is concerned. Sukhbir Singh as PW1 deposed that on 14.03.2005, they were present at their shop at 8:30 P.M. for preparing to leave the shop for their residence. He, along with his brother Surinder, was shutting down the shutter of their shop. His 3rd brother Jagbir (deceased) was waiting for them while sitting in his car bearing No. HR05L-9002, make Zen. He further deposed that they saw Mehar Singh and Pala Ram accused present in the Court along with other 2 unknown persons coming towards the aforesaid car. Accused also raised *lalkara* that they would teach him a lesson for purchasing a land of Ram Devi. Pala Ram

accused caught hold of Jagbir from his collar whereas accused Mehar Singh fired from country made pistol on the left side of the temple region of the head and it passed through. As per Sukhbir (PW1), they tried to chase all the four persons but they succeeded in making good their escape. Jagbir became unconscious on account of fire arm shot. He was taken to Civil Hospital, Karnal, where he was declared as brought dead. His statement was recorded in the Trauma Centre by the police on the basis of which FIR Ex.PA was recorded. They approached the police time and again but each time they were assured by the police that they would take action against the accused but since no action was taken by the police and no arrest was made, therefore, ultimately, a complaint Ex.PB was filed by him. This oral evidence available on the file is fully corroborated by Dr. Piyush Sharma, SMO, General Hospital, Karnal. This witness conducted the post mortem on the dead body of Jagbir and also deposed about the injuries on his person. As per this doctor, a lacerated wound oval in shape 2.1 cm X 0.8 cm on the left cheek 2 cm in front of the tragus of left ear. This doctor also reported that there was a blackening of the area around the margins. The wound was going on the right side and slightly downward piercing and fracturing left mandible and maxilla advancing further through posterior part of oropharynx fracturing anterior part of 3rd and 4th cervical vertebrae along with fracturing base of skull and coming out on the right side of neck on lateral side producing a wound 12 cm X 6.5 cm with everted margins and irregular border. This doctor also

gave cause of death in this case as hemorrhage and shock due to injuries to vital organs as described in the PMR (Post mortem report). He further stated that wound in this case appears to be fire arm from a very close range. A bullet when it hits the bone or strong muscles, it reflects and can change the course. Thus, from the afore-discussed evidence on the file both oral as well as medical, it is clear that Jagbir Singh died due to fire arm injury.

The learned counsel for the appellants-accused challenging the present complaint contended that only on account of enmity with the accused due to land dispute between the parties, they have been falsely implicated in this case. No weapon of offence has been recovered nor produced in the Court so as to show as to by which weapon, the injury was caused on the person of deceased Jagbir. In fact, this argument has no force as in spite of the fact that Sukhbir (PW1) got recorded his statement to the police on the day of occurrence itself i.e too at 9:30 P.M. The police failed to nab the accused. What to speak of arresting the accused, who were named in the FIR itself, but the police even did not proceed with the investigations in the manner it should. Resultantly, when accused were not arrested by the police, the weapon of offence was also not recovered from the possession of the accused. As such, non-recovery of weapon of offence or its non-production in the Court is not fatal. Dr. Piyush Sharma (PW2) has clearly opined that there was a blackening of the area around the margins and further that wound in this case, in his

opinion, appears to be a fire arm from a very close range.

It was next argued by learned counsel for the appellants-accused that in fact Sukhbir (PW1) and Surinder (PW3) were not present at the spot. They being brothers are introduced witnesses. Somebody else might have committed the murder of Jagbir but on account of enmity with the accused, they have been falsely implicated in this case. Learned counsel for the appellants-accused has tried to create doubt in the genuineness of the prosecution case by contending that Sukhbir (PW1) deposed that Pala Ram had caught hold of his deceased's brother collar from left side and Mehar Singh had fired from right side, where as per Dr. Piyush Sharma (PW2) entry of wound was on left side and wound of exit was on the right side. Thus, from this evidence, it is proved on the file that Sukhbir (PW1) and Surinder (PW3) were not present at the spot. This argument is again not sustainable as at the relevant time, both the accused along with two others came to the spot while Sukhbir (PW1) and Surinder (PW3) were putting down the shutter of their shop. At that time, Jagbir (deceased) was sitting in the car. At that juncture only both the accused raised *lalkara* of teaching a lesson to Jagbir for purchasing the land of Ram Devi and, thereafter, catching hold of collar of deceased by Pala Ram and opening of fire at Jagbir by Mehar Singh. After committing this crime, the accused could succeeded in making good their escape, in spite of the fact that Sukhbir (PW1) and Surinder (PW3) chased them.

Under these circumstances, if there is any discrepancy

regarding left or right side, it cannot be said to be fatal for the case of the prosecution. In fact, it all depends upon the situation of Jagbir in which he was sitting in the car. When Pala Ram-accused caught hold of him by his collar, again, there must have been some resistance at the hands of Jagbir and under those circumstances Sukhbir (PW1) and Surinder (PW3) could not possibly know as to which side of Jagbir (deceased) was hit by the fire shot. Even, Dr. Piyush Sharma (PW2), categorically stated that a bullet when hits the bone or strong muscles, it reflects and can change the course. With this statement of doctor as well, no benefit can be given to the accused on this account. The shot was fired from a very close range. As the case of the prosecution and the injuries on the person of deceased were fire arm injuries as per doctor Dr. Piyush Sharma (PW2), as such, there remains no doubt regarding the fact that deceased had died on account of fire arm injuries. Since, Sukhbir (PW1) and Surinder (PW3), identified the appellants-accused at the spot itself and they were named as well in the FIR which was quite prompt, therefore, there remains no doubt regarding presence of Sukhbir (PW1) and Surinder (PW3) at the spot. Sukhbir (PW1) and Surinder (PW3) have also been cross-examined at length but no suggestion was given to them that they were not present at the spot. As such, now raising of this argument is not tenable.

Learned Shri S.K.Garg, Narwana, Sr. Advocate, for Pala Ram accused raised argument that in fact Pala Ram is in no way concerned with the dispute between Mehar Singh and complainant

party. He is simply cultivating the land under Mehar Singh. As the complainant party wanted to grab the land of Mehar Singh, therefore, since Pala Ram is cultivating the same, he has been implicated falsely in this case by assigning the role of catching hold of Jagbir by his collar when Jagbir was sitting in the car. Mehar Singh-accused could well open fire and there was no necessity for Pala Ram to catch hold of Jagbir by going into the car. Jagbir was not to run away from the car.

The above argument is not sustainable at the very threshold; Jagbir was sitting on the driver seat of the car. On seeing the accused, raising *lalkara*, and who were also possessed with fire arm, there was every possibility of Jagbir to run away along with the car. As such, it was quite possible for Pala Ram to first go into the car and catch hold of Jagbir by his collar so as to facilitate the commission of this crime by Mehar Singh-accused. Thus, on the basis of conjectures and surmises alone, the eye witness account cannot be brushed aside.

Mr. Vinod Ghai, Sr. Advocate, for appellant No.1, raised argument that the statement of Sukhbir (PW1) is not in consonance with FIR Ex.PA. He has made improvements in his statement. As such, conviction cannot be based on the statement of Sukhbir (PW1). It was contended that in the FIR Ex.PA, it finds mention that Mehar Singh was wrapped in a blanket whereas so has not been mentioned in the complaint Ex.PB. In fact, this part of the statement of PW1 is not very material which can be said to go to the root of the case. It hardly makes any difference if PW1 stated in FIR Ex.PA that Mehar Singh was

wrapped in a blanket and if he does not say so in the complaint Ex.PB.

The question is that of identity of Mehar Singh. Mehar Singh is known to the witnesses right from the inception. He has been identified at the spot by the eye witnesses. He is named in the FIR which is quite prompt in time. As such, even if there is omission in Ex.PB as to if Mehar Singh was wrapped in a blanket or not, it is not fatal for the prosecution case.

It was next argued by learned counsel for the appellants-accused that on 14.03.2005 at about 9:00 P.M., accused Pala Ram and Mehar Singh were taken from the *dera* by the police. As such, both of them were with the police. There was no question of their causing murder of Jagbir in this case. This fact stands proved from Ex.D12, copy of the judgment in Sessions case No. 61 of 2006, decided on 31.03.2008. Surinder @ Pappu PW8 of that case deposed so and even mentioned in the complaint, whereupon, FIR No. 84 dated 16.03.2005 was recorded. This argument of learned counsel for the appellants-accused is of no help to the appellants-accused. Firstly, for the reason that it is nowhere proved on the file that in fact Pala Ram and Mehar Singh had been taken away from their *dera* by the police on 14.03.2005 at about 9:00 P.M. Surinder @ Pappu, complainant of FIR No. 84 dated 16.03.2005, asserted that he came to know about the aforesaid fact; so even, complainant Surinder was having no knowledge of his own about the fact that Pala Ram and Mehar Singh had been taken away by the police from their *dera*. In that FIR, the occurrence was

stated to be that of 14.03.2005. It is not known as to why the FIR regarding missing of Vikram son of Pala Ram was not got recorded on 14.03.2005 itself when the parties were so much inimical and when Vikram along with Surinder and Jai Bhagwan, Sarpanch of village Rasulpur Khurd, were waylaid by Surinder and Jasbir sons of Hari Ram along with other (accused) of that case. In the absence of evidence on the file that in fact appellants-accused were in police custody on the relevant time, no benefit can be extended to the accused.

Regarding motive, it was contended by counsel for the appellants-accused that Mehar Singh is in possession of 5-½ acre of land in question. Pala Ram is cultivating the same. By way of Civil Court decree dated 29.08.1986, Ram Devi suffered a decree in favour of Mehar Singh. Thereafter, there was no point for Ram Devi to sell the land in question to Birmi, w/o Jagbir on 25.02.2005. By doing so, she has played fraud upon the Court as well upon Mehar Singh-accused. Under these circumstances, the motive cannot be attributed to accused-appellants.

Of course, motive is a relevant factor in all criminal cases when based on testimony of eye witness or circumstantial evidence. It is generally a difficult area for any prosecution to bring on record what was the mind of accused. In **Nathuni Yadav Vs. State of Bihar, 1998 (9) SCC, 238**, it has been held that:-

“ No doubt it is a sound principle to remember that every criminal act was done with a motive but its

corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

In the case in hand Ram Devi executed a sale deed regarding 5-½ acres of land in favour of Birmi on 25.02.2005, whereas, the present occurrence had taken place on 14.03.2005. After coming to know about this sale, Mehar Singh got furious and then accompanied with Pala Ram and committed the murder of Jagbir. In Ex.PA, Sukhbir Singh (PW1) has assigned the same motive to the accused to commit this crime and with the documents on record as tendered by the accused in defence, even, it is established that the parties were having civil/revenue litigation and were inimical. As such, motive of appellants-accused to commit this crime stands established on record.

As mentioned above, there is eye witness account of this

occurrence available on the file. Just after the occurrence statement of Sukhbir Singh (PW1) was recorded by the police. FIR No. 88 dated 14.03.2005 was also registered on the basis of statement Ex.PA but thereafter nothing happened except filing of untrace report i.e. too when the summoning order of the appellants-accused was passed by learned CJM, Karnal on 02.03.2007. Untrace report was filed on 13.04.2007. Accused appeared in the Court in pursuance with the summoning order only on 01.05.2007 probably for the reason that the untrace report had already been filed in the Court. Before passing of summoning order, parties were before this Court. In fact, after filing of complaint Ex.PB in the Court of learned CJM, Karnal, the Magistrate stayed the complaint on account of investigations going on in FIR pertaining to this incident. When after taking considerable time, nothing had happened, complainant had to knock the door of this Court with prayer for issuance of direction to learned CJM, Karnal for proceedings with the complaint in question without further waiting for report of the Station House Officer concerned. This Court passed order dated 16.11.2006 in CRM-60918-M of 2006 (Sukhbir Singh Vs. State), whereby the petition was disposed of with a direction to the respondents to conclude the investigation of the FIR within 2 months from that day and, thereafter, present the final report under Section 173 Cr.P.C.. It was also stipulated that if the same was not done, the CJM, Karnal, shall proceed with the complaint without waiting any further for the report of the police. This Court vide order dated 09.02.2007

observed that CJM, Karnal was not to wait for the submission of final report by the police under Section 173 Cr.P.C. and shall proceed with the complaint. Under those circumstances, learned CJM, Karnal proceeded with this complaint and when the CJM, Karnal passed the summoning order of the accused, only then the untrace report was filed in the Court. All this evidence themselves speak volumes about the connection of accused with the police and at least the fact that the accused are influential people.

Learned counsel for the appellants-accused has further argued that the police after investigations submitted a report dated 12.04.2007 (Ex.D10), wherein both the appellants were found innocent. During the course of investigations, the police has conducted Lie Detection Test from the **CFSL**, New Delhi as well Brain Mapping Test from the **CSFL**, Bangalore. On the basis of such report, the argument raised is that the evidence of the witnesses produced by the complainant cannot be relied upon.

The first question is, as to whether the untraced report Ex.D10 submitted by DW5 Dalbir Singh, DSP, is admissible in evidence, and; secondly, what is the probative value of such report.

The police when investigating a crime collects primary evidence on the basis of which an accused is made to stand trial. The report on conclusion of such investigations is not primary evidence, therefore, such report is not *per se* admissible in evidence. The facts collected by the investigation agencies are to be proved in the Court of

law.

The fact in issue is to find out who are the persons, who have committed crime. To determine the fact in issue, the prosecution or the complainant as the case may be, is required to adduce relevant facts. The relevant facts would be the primary evidence, which in the present case is when Sukhbir Singh (PW1), Dr. Piyush Sharma (PW2) and Surinder (PW3) are examined by the prosecution. On the other hand, Lie Detection Test or the Brain Mapping Test on the basis of which accused have been found innocent are the statements made by the accused to police or the investigation team which cannot be made the basis of acquittal of the accused. These reports cannot be said to be conclusive proof of innocence of the accused or that of guilt of the accused. In fact, Lie Detection Test report exhibited as Ex.D10 dated 16.10.2009 but the record shows that it was never tendered in evidence on that day. That day only Brain Mapping report as Mark DA was tendered in evidence which was later on exhibited as Ex.D13. Under these circumstances, declaration of the appellants-accused as innocent only on the basis of Brain Mapping report Ex.D13, by the police is a matter of grave concern.

Dalbir Singh, DSP (DW5) submitted untrace report Ex.D10. Such report is only collection of primary facts. The same is not the proof of its contents. This witness during the course of his cross-examination stated that no notice under Section 160 Cr.P.C. was on the file. This goes to show that witness in fact did not join the

witnesses who had seen the occurrence, while investigating the present case. He further deposed that he did not obtain the signatures of Sukhbir and Surinder PWs. When Sukhbir Singh (PW1) made statement before the police Ex.PA, on the basis of which FIR of this case was registered. It is not understand as to why the same was not taken into consideration by the police before submission of untrace report. The Investigating Officer, who is of the rank of DSP, should at least come forward with the material in the shape of statements of witnesses recorded by him during the course of investigations. What to speak of recording of statement of witnesses, he even did not record the statement of eye witnesses Sukhbir and Surinder. He did not even make enquiries from them about the incident in question. Likewise, he also did not record the statement of any of the neighbours nor that of Ram Devi or Halka Patwari. In the absence of act of recording of their statements, the oral statement of the witness that he made inquiries from them is not sufficient to prove that the aforesaid witnesses deposed in favour of the accused.

Surinder Singh, DSP (DW1), who investigated this case from 18.03.2005 to 05.05.2005 also deposed that he did not record the statements of Sukhbir and Surinder PWs. He also did not give any notice under Section 160 Cr.P.C. to them. He did not record the statement of owner of the shop adjoining the shop of deceased Jagbir during his investigations. He further deposed that he does not remember the names of the shopkeepers, whose shops were adjoining

the shop of Sukhbir complainant. He also did not join in the investigation Birmi Devi or recorded the statement of Ram Devi. Thus with this kind of investigations, the Brain Mapping Test report Ex. D13, alone cannot be made the basis of acquittal of the accused herein.

If the police during the course of investigations find commission of an offence, it has to produce the witnesses in support of the evidence collected during the investigations. Similarly, in the case of untrace report. The report itself is not evidence, but the police is required to produce evidence in support of its plea regarding submission of untrace report.

The argument of learned counsel for the appellants-accused is that the report is admitted in evidence, therefore, it stands proved subject to the probative value, which the Court may attach to such report is not tenable. At the very outset, we may refer to the Hon'ble Supreme Court judgment reported as **Life Insurance Corporation of India & another Vs. Ram Pal Singh Bisen, 2010 (4) SCC, 491,** wherein it has been held that mere exhibiting of a document is not a proof of a document. The Court held to the following effect:-

“25. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

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27. *It is the duty of the appellants to have proved*

documents Exh. A-1 to Exh. A-10 in accordance with law. Filing of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do .

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31. *Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court.”*

Recently, in another judgment reported as **Kaliya Vs. State of Madhya Pradesh 2013 (10) SCC 758**, the admissibility of a document produced on record, it was held that the document is required to be proved. The Court held as under:-

“13. Further, mere admission of a document in evidence does not amount to its proof. Nor mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. (Vide Roman Catholic Mission v.

State of Madras AIR 1966 SC 1457, Marwari Kumhar v. Bhagwanpuri Guru Ganeshpuri (2000) 6 SCC 735, R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple (2003) 8 SCC 752, Dayamathi Bai v. K.M. Shaffi (2004) 7 SCC 107 and LIC v. Ram Pal Singh Bisen (2010) 4 SCC 491.)

14. *In M. Chandra vs. M. Thangamuthu (2010) 9 SCC 712 this Court considered this aspect in detail and held as under: (SCC pp. 735-36, para 47)*

“47. We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.”

A similar vide has been reiterated in J. Yashoda v. K. Shobha Rani (2007) 5 SCC 730.”

Learned counsel for the appellants also relies upon a Single Bench judgment of Delhi High Court reported as Sudir Engineering Company Vs. Nitco Roadways Ltd. 1995 RLR 286 in respect of the manner of exhibition of documents and proof thereof. However, we find that the

judgment in Sudhir Engineering Company's case (supra) does not support the argument raised. It has been held that the documents filed by either parties do not become part of the judicial record merely for the reason that the same are on file. When the documents are tendered or produced in evidence by a party, the same become part of the judicial record and constitute evidence. The question as to whether a document is 'proved, not proved or disproved' is at the stage of final hearing of the suit or the proceeding. It has been held to the following effect:

“13. Admission of a document in evidence is not to be confused with proof of a document.

14. When the Court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disapproved or not proved the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intendment of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.

15. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of number, is only for the purpose of identification.

While reaching the record the parties and the Court should be able to know which was the document before the witness, when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering which was the document to which the witness was referring to while deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.”

Therefore, mere fact of producing the report on conclusion of investigations is not proof of the facts stated therein. The same are required to be proved by examining the witnesses, which act alone constitute primary evidence. The trial Court is required to base its conclusion solely on the evidence adduced during the trial. It cannot rely on the investigations or the result thereof. If the result of investigation was to be made the basis of Court's verdict regarding guilt or innocence of an accused, there would be no need of a trial in a police case for as the report submitted under Section 173 (2) Cr.P.C. The Court would be entitled to decide the fate of the accused. It is not so.

Short of repetition, we have already discussed above the circumstances under which the untrace report Ex.D10 was filed by the police in the Court. The occurrence is dated 14.03.2005 whereas

untrace report is dated 12.04.2007 which was filed in the Court on 13.04.2007 i.e. too after passing of summoning order of the accused by the Court on 02.03.2007. In fact DW5 Dalbir Singh, has failed to bring on record any material to show the basis on which he arrived at a conclusion that the accused are innocent, of course, except Brain Mapping Test report Ex. D13. On the other hand, the statements of PW1 Sukhbir and that of PW3 Surinder, brother of Sukhbir, who are the eye witnesses of this occurrence, have not been taken into account by DW5 Dalbir Singh, DSP. He did not make a mention in the report Ex. D10 as to how their statements were not reliable when the FIR was recorded on the statement of Sukhbir (PW1). Instead, it finds mention in the untrace report that *“no information could be known about the assassins of deceased Jagbir Singh. The investigations of this case is being conducted by the State Crime Branch Madhuban, Haryana from past several days. No useful purpose would be served by keeping the investigation of this case continue. So, in this case, untraced report has been prepared. In case, any information is received about the assassins of the present case, in the near future, then investigation would be conducted.”*

All this goes to speak volumes about the work of investigations conducted by two DSPs i.e DW1 Surinder Singh and DW5 Dalbir Singh, DSP Head Quarter, Rohtak. Their investigation is partisan as it assigns no reason as to why the statements of eye witnesses Sukhbir (PW1) and Surinder (PW3) are not believable

without recording the statements of eye witnesses during the course of their investigation. These witnesses came to the conclusion that appellants-accused are innocent only on the basis of Brain Mapping report Ex.D13 when the untrace report dated 12.04.2007 Ex.D10 was submitted. This kind of investigation shows that these two DSPs have failed to carry the duties assigned to them in accordance with law. There is serious deflection of the duties assigned to them. As such, a strict disciplinary action is required to be taken against them by the Competent Authority. Accordingly, we direct Director General of Police (DGP), Haryana to take action against these two DSPs for dereliction of their duties and conducting the investigation of this case in partisan manner, within a period of 6 months, in accordance with law/rules, from the date of receipt of copy of this order and then to report about the action taken, to this Court. Certified copy of this order be sent to DGP, Haryana, for necessary action.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 05.11.2009 and order of sentence dated 07.11.2009, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

02.12.2015
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