

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1)

CRA-D-791-DB of 2003
Date of decision:9.12.2015

Rohit Makkar

...Appellant

Versus

State of U.T. Chandigarh

...Respondent

(2)

CRA-D-826-DB of 2003

Inderjit Singh

...Appellant

Versus

State of U.T. Chandigarh

...Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the appellant in CRA-D-791-DB of 2003.

Mr. Munish Gupta, Advocate
for the appellant in CRA-D-826-DB of 2003.

Mr. A.S. Sullar, Additional Public Prosecutor
for U.T. Chandigarh.

GURMIT RAM, J.

The above noted both the appeals are taken up together for the purpose of disposal in order to avoid repetition and conflict of judgments since both these emanate from one and the same judgment dated 22.8.2003 passed by the Court of learned Additional Sessions Judge, Chandigarh in criminal case bearing FIR No.59 dated 14.2.2001 u/Ss 302, 392, 452, 411 and 397 read with Section 34 of the IPC, Police Station, Sector 34, Chandigarh vide which above-said both the appellants were held guilty for the offences punishable u/Ss 302 read with Section 34 of the IPC, 397 read with Section 34, IPC and 455 of the IPC and awarded the sentences thereunder.

2. The prosecution story in nutshell was that on 14.2.2001 at about 11:50 a.m., an information was received from Control Room at Police Station, Sector 34, Chandigarh that some persons had committed house trespass in House No.2167, Sector 44-C, Chandigarh. On receipt of this information, Labh Singh SI along with Amanjot Singh ASI and other police officials reached at the spot on a Government vehicle bearing registration No.CH0IG-9608. On reaching there, the door of the house was found closed from inside. On going to the rear portion of the house, its rear gate was found open. The police party entered into the house through this gate. On inspection, one Sikh gentleman of the age of about 55 years with injuries caused by sharp edged weapon on his body specifically on his stomach duly blood stained was found lying dead in the drawing room. One cushion made of cotton was also found lying on his face and it appeared that mouth of the deceased was gagged with this

cushion. The goods in the room were found lying at sixes and sevens. It appeared that some unknown person had committed his murder. On verification, the name of the deceased was found to be Harwinder Singh Brar son of Kartar Singh, resident of House No.2167, Section 44-C, Chandigarh. In the light of these facts an information/ruqqa was sent to the police station on the basis of which the instant case was registered. The investigation of this case was done by SI Labh Singh and Inspector/SHO K.I.P. Singh. During investigation, cushions of the sofa, two glasses, one scissors, one blood stained carpet, one piece of cover of the quilt blood stained and one half filled form of SBI credit card were found from the spot and the same were taken into police possession. Statement of Smt.Dalbir Kaur wife of said deceased was recorded. She stated that she had seen the dead body of her husband very carefully. The gold *kara* and gold ring which her husband used to wear and his purse were missing. It appeared that these articles were snatched by the persons who had murdered her husband. The above-said form of SBI Credit card recovered from the dining table had been filled in the hand of agents of SBI namely Inderjit Singh and Rohit Makkar. They had also prepared her SBI Credit card. In this regard, statement of Manbeena Brar daughter of deceased was also recorded. Dead body of deceased was sent to General Hospital, Sector-16, Chandigarh for post-mortem on 15.2.2001. On reaching at the house of deceased, one Lachman Singh was joined in the police party and raided the house of accused Inderjit Singh who was not found present at his house. Thereafter, a picket (*naka*) was laid in front of Co-operative Bank, Sector 34, Chandigarh which passage leads to the

office of Sentac Sales Pvt. Ltd. There came two boys on motorcycle bearing registration No.CH01Y/6154 who disclosed their names as Inderjit Singh and Rohit Makkar and were apprehended. One gold ring upon which letter 'H' was inscribed was recovered from the possession of accused Inderjit Singh which he was wearing in his hand. From his personal search, one wallet of black colour containing driving licence and two coloured photographs of deceased Harwinder Singh Brar and a cash of Rs.260/- was recovered from the rear pocket of his pant. One gold *kara* which was belonging to the deceased was recovered from accused Rohit Makkar which he was wearing in his hand. Then both the said accused were formally arrested in this case.

Accused Inderjit Singh on the basis of his disclosure statement got recovered one blood stained pant and a broken knife from its pocket from a room made in the rear portion of House No.1517, Sector 43-B, Chandigarh. Then accused Rohit Makkar got recovered one blood stained towel in which one knife was wrapped on the basis of his disclosure statement from grove of the bushes towards the right side of the petrol pump in Sector 10, Chandigarh near Leisure Valley. These recovered articles were sent to CFSL, Sector-36, Chandigarh. The identification of above-said gold kara, ring, purse and photographs was got done from Smt. Dalbir Kaur by Executive Magistrate-cum- Tehsildar, Chandigarh. The opinion of the doctor who conducted the post-mortem on the dead body of deceased was obtained with regard to the weapon of offence and injuries found during post-mortem. During investigation, it had also come to light that both the above-said accused were found

standing in the park in front of the house of deceased on 14.2.2001. Statements of witnesses were recorded. On completion of investigation, challan in this case was presented in the Court of learned Illaqa Magistrate, who further committed this case to the Court of learned Sessions Judge, Chandigarh for trial after making compliance of the provisions of Section 207 of Cr.P.C.

3. Finding a prima-facie case u/Ss 302 read with Section 34, 455, 392 read with Section 397 and 411, IPC against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed the trial.

4. During trial of the case, the prosecution examined as many as twenty two witnesses in total in order to prove its version and further to punish the accused according to law.

5. Then the accused were duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence and other circumstances as brought on the file during the trial of the case against them were put to them, which they denied entirely and pleaded innocence and false implication in this case. Prosecution witnesses were stated to be interested. It was the case of blind murder and the police had concealed the real facts during investigation of the case. The alleged recovery was also stated to be false as well as planted.

In their defence, they also examined four witnesses.

6. The learned trial Court after hearing the counsel for both the parties and going through the record as well held the accused guilty for the offences punishable under Sections 302 read with Section 34, 397

read with Section 34 and 455, IPC vide the impugned judgment of conviction and awarded them sentences as detailed below:-

Under Section 302 read with Section 34, IPC	Both the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each and in default of payment of fine, each of them to further undergo rigorous imprisonment for a period of one year.
Under Section 397 read with Section 34, IPC	Both the accused were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.500/- each and in default of payment of fine, each of them to further undergo rigorous imprisonment for a period of six months.
Under Section 455, IPC	Both the accused were sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- each and in default of payment of fine, both accused to further undergo rigorous imprisonment for a period of six months each.

7. The appellants/accused being not satisfied with the impugned judgment of conviction and order of sentence have approached this Court by way of instant appeals, notices of which were given to the respondent – State. Record of the learned trial Court was also requisitioned.

8. Learned counsel for both the parties were heard and record was also perused and analysed with their able assistance.

9. In the beginning the learned counsel for the appellants has mainly contended that the entire case of prosecution is nothing but a bundle of lies, fabrications having no substance to rely upon it. The impugned judgment of conviction is entirely based on conjectures and surmises lacking reliable and admissible evidence and as such the same is not tenable in the eyes of law. His main contention is that both the appellants were already in the captivity of the police of Police Station Sector-34, Chandigarh on 14.2.2001 and hence the very plea of prosecution that the appellants were arrested on 15.2.2001 and the alleged

recoveries were effected from them thereafter carry no substance for its sustainability in the eyes of law. In support of his contention, it is further his submission that there is overwhelming evidence on record to substantiate the fact that both the appellants were handed over to the police on 14.2.2001 and since that very date they were in custody of the police. In order to lend support to his contention, he has referred to the cross-examinations of PW1 Dalbir Kaur and PW11 Amrish Kumar Gurang and statements of DW1 Sarabjit Singh, DW2 Dalbir Singh, DSP and DW3 HC Lakhmir Singh. PW1 in her cross-examination stated that police had told her on 14.2.2001 that the accused had been arrested. Then it had also come in the cross-examination of PW11 that SI Labh Singh along with some other police officials came to his office Sentac Sales, Sector 34-A, Chandigarh on 14.2.2001 and inquired about the whereabouts of the accused besides checking the record. Upon this, he called both the accused telephonically who reached in the office in the afternoon on that date and the police took both of them to the police station.

Then in the defence version, it had come in the deposition of DW1 Sarabjit Singh that on 12.2.2001 he along with Sukhwinder Singh and others was arrested by ASI Amanjot Singh of Police Station, Sector-34, Chandigarh. The police secured their two days' police remand and kept them in the police custody in lock-up at Police Station Section 34, Chandigarh. On 14.2.2001 in the evening, ASI Amanjot Singh brought both the accused present in the Court who were also detained in the police lock-up along with them. Accused present in the Court were kept in the

said lock-up till they were taken out for their production in the Court on 15.2.2001.

DW2 Dalbir Singh, DSP produced the record of Burail Jail for the year 2001 pertaining to the admission of undertrials in jail and their release from the jail. He deposed to the effect that as per the record, six accused Sarabjit Singh son of Beant Singh and five others were admitted in jail on 15.2.2001 in FIR No.57 dated 12.2.2001 u/Ss 147, 148, 452, 149 etc. of the IPC, Police Station Sector 34, Chandigarh. The correct photocopy of the relevant entry regarding their admission in jail was Ex.DW2/A. The said accused persons were released from jail as per record on 16.2.2001 and the correct photocopy of the relevant entry qua their release from jail was Ex.DW2/B.

DW3 HC Lakhmir Singh stated to the effect that as per DDR No.46 dated 12.2.2001 Police Station Sector-34, Chandigarh, Sarabjit Singh and five others were arrested in FIR No.57 dated 12.2.2001. The correct photocopy of this entry was Ex.DW3/A. The Court granted their two days' police remand till 15.2.2001 and entry to that effect was made vide DDR No.43 dated 13.2.2001, the correct photocopy of which was Ex.DW3/B. On 15.2.2001, the said accused were sent to judicial custody and entry to that effect was made vide DDR No.17 dated 15.2.2001, the correct photocopy of which was Ex.DW3/C.

10. But on the other hand, PW9 SI Labh Singh in his cross-examination denied the fact that he had ever disclosed to Dalbir Kaur (PW1) regarding the arrest of accused on 14.2.2001. Rather, it was his specific stand that the accused were apprehended by the police on

15.2.2001 at about 11:00 A.M.

Then PW20 Inspector K.I.P. Singh, the main Investigating Officer of this case in his cross-examination had also stated specifically that he did not meet Dalbir Kaur and Manbeena PWs on 14.2.2001. So in the light of this statement made by both the above-said PWs in their cross-examinations, the above statement made by PW1 in her cross-examination is held to be not correct one being not supported by any reliable evidence. Then it is also a known fact that whenever any barbarous crime like murder, dacoity etc. is committed in any residential house, then all the residents/family members of the person of deceased generally become panicky and feel insecure due to fear and they ask from the police impatiently regarding the arrest of the assailants for their further safety. In this situation, the police in order to embolden them and also to provide them moral, mental support generally apprise them that the assailants are either arrested or they are going to be arrested very soon.

11. So far as the above discussed statement of PW11 made by him in cross-examination is concerned, the same is also found to be inconsistent with his statement made by him in his examination-in-chief. It is in his statement that record pertaining to employment of the accused was handed over to police on 22.2.2001. Then his examination-in-chief was recorded on 18.12.2002 and his cross-examination was recorded on later date on 4.1.2003. So the possibility of statement made by him in cross examination being maneuvered or motivated one for any ulterior reason cannot be ruled out. When the record pertaining to the employment

of the accused as per statement of this witness was handed over to the police on 22.2.2001, so the question that accused were handed over to the police on 14.2.2001 at the instance of this witness does not seem to be either plausible or reliable.

12. So far as the above discussed statement of DW1 – Sarabjit Singh is concerned, the same is also not found up to the hilt to establish the fact that the present appellants (accused) were confined in the police lock up of Police Station Sector-34, Chandigarh on 14.2.2001, since this fact is not supported by any documentary evidence. Then it also came in the cross-examination of this witness that the accused persons present in Court were not known to him prior to his meeting with them in police lock-up, Police Station Sector-34, Chandigarh. He was also not a summoned witness in this case. He did not even disclose the fact of false implication of accused in this case to the defence counsel during the pendency of this case.

13. So far as the above discussed depositions of DW2 – DSP Dalbir Singh and DW3 – HC Lakhmir Singh were concerned, the same also did not have any much bearing on the merits of this case since these relate to arrest of DW1 and his five other co-accused in a criminal case bearing FIR No.57 dated 12.2.2001, Police Station Sector-34, Chandigarh, their lodging in the police lock-up of this police station till 15.2.2001, their admission in Burail jail on 15.2.2001 and subsequently their release from this jail on 16.2.2001 in this case.

So the above plea of learned counsel for the appellants that the appellants were taken into police custody by the police of Police

Station Sector-34, Chandigarh on 14.2.2001 has remained unsubstantiated on the record and consequently it stands turned down.

14. Now let us see the recoveries which were made in this case during its investigation in order to connect the appellants with this case. In this regard PW20 Inspector K.I.P. Singh deposed that his police party held a picket (*naka*) on the basis of secret information in front of Punjab State Cooperative Bank where the accused present in the Court came on motorcycle bearing registration No.CH01Y/6154. During search of accused Inderjit Singh, gold ring which he was wearing on his left ring finger was recovered upon which letter 'H' was inscribed. During his further search, a black colour wallet from his pocket containing Rs.260/-, two photographs and one driving licence of deceased Harvinder Singh Brar was recovered. He prepared the parcel of said recovered ring duly sealed with the seal of 'AS' and the same was taken into police possession vide memo Ex.PH along with the purse containing above-said articles. Then a gold bangle was recovered from the right hand wrist of accused Rohit Makkar, parcel of which was also prepared duly sealed with the seal of 'AS' and the same was also taken into police possession vide memo Ex.PJ. Rough site-plan Ex.PW18/A of the place of recovery was prepared. Both the accused were formally arrested in this case on the basis of suspicion.

Then during interrogation, accused Inderjit Singh suffered disclosure statement Ex.PL regarding the concealment of a broken knife and his pant in the room of his house. Similarly accused Rohit Makkar also suffered disclosure statement Ex.PM regarding the concealment of

knife and towel in the bushes near Art Gallery Leisure Valley, Sector-10, Chandigarh. Thereafter, accused Inderjit Singh led the police party to the place of concealment i.e. House No.1517, Sector-43-B, Chandigarh and opened the lock of the room which was towards the rear portion of the house and got recovered one broken knife from the pocket of pant hanging on the peg of wall of room. The sketch Ex.PN of the broken knife was prepared. Then parcels of broken knife and of said pant were prepared, duly sealed with the seal of 'AS' and the same were taken into police possession vide memo Ex.PO. Rough site-plan with regard to the spot of recovery Ex.PW18/B was also prepared. Then accused Rohit Makkar also led the police party to the above-said place of concealment and got recovered a towel and knife from the bushes, sketch Ex.PQ of knife was prepared. Then said knife and towel were converted into parcels duly sealed with the seal of 'AS' and taken into police possession vide memo Ex.PR. Rough site-plan Ex.PW18/C of the spot of recovery was also prepared. The above-said memos Ex.PH, Ex.PJ, disclosure statements Ex.PL and Ex.PM, rough sketch of the broken knife Ex.PN, memo Ex.PO, sketch of another knife Ex.PQ and memo Ex.PR were attested by SI Labh Singh, Lachman Singh and ASI Amanjot Singh.

The said Amanjot Singh ASI appeared as PW8 in this case and corroborated the above-discussed statement of PW20 with regard to the above-said recoveries. Further he also proved the credit card form Ex.P1, visiting card of Sentac Sales Ex.P2, purse of deceased Ex.P5 and his driving licence Ex.P6, two photographs Ex.P7 and Ex.P8 of deceased, knife Ex.P9, a carpet Ex.P10, a piece of quilt cover Ex.P11, one phial

containing residues cotton swabs blood stained Ex.P12, two cushions Ex.P13 and Ex.P14, two parts of knife Ex.P15(handle) and Ex.P16 (blade).

The above-said SI Labh Singh appeared during the trial as PW9 in this case. His statement was to the effect that on receipt of one wireless message from police Control Room, Sector-9, Chandigarh, he went to the spot of occurrence i.e. House No.2167, Sector 44-C, Chandigarh, which was found to be bolted from inside from the front. On the rear portion of this house a small gate was found open through which they entered into the house and found one person of the age of 50-55 years lying dead with injuries on his person. After inspecting the spot, he sent ruqqa Ex.PU for registration of the case on the basis of which the FIR Ex.PU/1 was recorded. Inquest report with regard to the dead body of deceased Ex.PV was prepared. Then dead body was sent to General Hospital, Sector-16, Chandigarh. Near the mouth of the deceased two cushions were lying which were blood stained, parcels of which were prepared duly sealed with the seal of 'LS' and the same were taken into possession vide memo Ex.PD. One carpet blood stained recovered from the spot was also converted into a parcel and the same was taken into police possession vide memo Ex.PC. One scissors was also lying at the spot, sketch Ex.PB/1 of which was prepared and converted into a parcel duly sealed with the seal of 'LS' and the same was taken into possession vide memo Ex.PB. Then blood lying on the floor of the house was lifted with a cotton swab, parcel of which was prepared after putting the same in a small bottle and the same was taken into police possession vide

memo Ex.PE. A part of the cover of the quilt which was blood stained was also converted into a parcel and the same was taken into police possession vide memo Ex.PG. Further he proved the memo Ex.PF vide which one half filled form of SBI Credit card was taken into possession from the spot. Further he proved the above-said quilt as Ex.P11, residue of the cotton swab Ex.P12, two cushions Ex.P13 and Ex.P14 and carpet Ex.P10. Further he also proved memo Ex.PA vide which visiting card Ex.P2 was taken into police possession. He also prepared the rough site-plan Ex.PX of the spot of occurrence. Then his further statement is in consonance with the above discussed statement of PW20 with regard to the recoveries which were made from the accused and further which were got made by them as per their disclosure statements. Further, he proved the application Ex.PZ which he moved through SDM, Chandigarh. Then he also proved the memo Ex.PZ/1 vide which he took into possession the copy of the appointment letters of both the accused from the office of Sentac Sales Pvt. Ltd., Chandigarh.

15. The above-said recoveries of the incriminating articles were made from the personal search of the accused when they were apprehended by the police party of PW20 Inspector K.I.P. Singh on 15.2.2001. Then recovery of some of the incriminating articles were got made by them after their formal arrest in this case on the basis of their disclosure statements above mentioned. So all these recoveries are permissible as well as admissible in the eyes of law and the same can be used against them in order to connect them with the case in hand. It is the settled law that when disclosure statement is made by the accused qua the

concealment of any article and if that article is recovered in pursuance of the disclosure statement, then disclosure statement to this extent and its resultant recovery can be used under the law against him.

16. The learned counsel for the appellants has further argued that it is the case of prosecution that appellant-Inderjit Singh after his arrest in this case during interrogation suffered disclosure statement Ex.PL and got recovered a broken knife in pursuance thereof, the handle and blade of which were produced during trial of the case as Ex.P15 and Ex.P16, respectively. In order to supplement his above contention, he has also submitted that it is not physically possible to cause an injury to any person with the blade of the knife without its handle nor it is acceptable to any medical science. In support of his above contention he has relied upon the statement of DW-4 Dr. M.P. Gupta. This witness as per his testimony is in private medical profession since the year 1973, after completing his M.B.B.S. degree. In precise his testimony is to the effect that it is not feasible to cause stab wound by holding the blade of a knife in hand. Above-said both the handle (Ex.P15) and blade (Ex.P16) were shown to this witness in Court and his opinion specifically in this regard was that no stab injury could be possible with this blade.

17. For the accurate and proper appreciation of above contention of learned counsel for the appellants, the interest of justice requires that above deposition of DW-4 be read conjointly with the deposition of PW-16 Dr. Balbir Singh. PW-16 Dr. Balbir Singh was posted in Government Hospital Sector-16, Chandigarh on 15.02.2001 and he was one of the members of Board of Doctors constituted to conduct post-mortem on the

dead body of Harvinder Singh Brar. During post-mortem examination, following injuries were found on the dead body:-

- “1. Incised wound 2.5 cm x 0.5 cm on the left side of the chest just medial to the left nipple and it was obliquely placed and it communicates with the thoracic cavity and heart.*
- 2. Incised wound 2.5 cm x 0.5 cm on left side of the chest 1 cm from injury no.1 and medial wound and it was muscle deep.*
- 3. Incised wound 2 cm x 0.5 cm on left paramedian region in the epigastric obliquely communicating with the abdominal cavity.*
- 4. Incised wound 2 cm x 0.5 cm about 5 cm below and medial to injury no.3 transversely placed and communicating with the abdominal cavity.*
- 5. Trirediate with the regular margin measuring 5 cm x 2 cm x 2 cm about 5 cm medial and above the umbilicus and 7 cm below the injury no.2 communicating with the abdominal cavity.*
- 6. Transversely placed incised wound 2 cm x 0.5 cm about 2 cm below and lateral to injury No.5 and muscle deep.*
- 7. Incised wound 2 cm x 0.5 cm, 2 ½ cm below and lateral to umbilicus left side of abdomen communicating with the abdominal cavity.*
- 8. Linear abrasion 3 cm long on the hypochon-drium in the line of nipple.*
- 9. Incised wound 2 cm x 0.5 cm, 10 cm below the injury No.8 and 12 cm from the umbilicus on the right side of the abdominal cavity, communicating with the abdominal cavity.*
- 10. Incised wound 1.5 cm x 0.5 cm about 2.5 cm lateral to injury No.9 muscle deep.*
- 11. Incised wound 1 cm x 0.5 cm into muscle deep on the*

right gluteal region about 50 cm behind the greater trochanter.

12. Incised wound 1 cm x 0.5 cm on the right gluteal region about 5 cm below the injury No.11.

13. Incised wound 2.5 cm x 0.5 cm on the posterior auxiliary line on lower part of chest or right side.

14. Incised wound on the mid auxiliary line on the left side of the chest lower half communicating with the thoracic and abdominal cavity.

15. Incised wound 2 cm x 0.5 cm obliquely placed 8 cm below and lateral to injury No.14.

16. Incised wound 4 cm x 0.5 cm into muscle deep on the dorsal aspect of left hand lateral half.

17. Incised wound 2.5 cm x 0.5 cm on dorsal aspect of left hand just medial to injury No.16.

18. Incised wound 1 cm x 0.5 cm on dorsal aspect of left hand just lateral to metaphalangeal joint of left index finger.

19. Multiple contusion and abrasion of both legs.”

In their opinion, the cause of death in this case was due to shock and haemorrhage as a result of multiple injuries which were ante-mortem in nature and injuries to the multiple internal organs which were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injury and death was within one hour. Further he has produced the original post-mortem report of the deceased and proved its carbon copy as Ex.PW14/A and pictorial diagram showing seats of injuries as Ex.PW14/B.

18. From the analysis of this post-mortem report Ex.PW14/A, it is found that out of total 19 injuries found on the person of deceased, 15 were stab wounds and the epicenter of these 15 injuries was the chest and

abdomen part of the deceased. The dimensions of these injuries also suggest that assailants had used the weapon of offence with full force while inflicting injuries to deceased. So in this process the breakage of knife, the handle and blade of which were produced as Ex.P15 and Ex.P16, respectively during trial of the case, cannot be ruled out. Herein the learned counsel for the appellants has also contended that if the appellants had any intention to commit assassination of deceased, then they were not to carry such a weak weapon to execute their said illegal design and on this score the very genesis of the prosecution version is likely to be under-scored. But it is for the assailants to see as to what kind of weapon they are to carry for the commission of any crime. Moreover, strength and effectiveness of any weapon is assessed when the same is put into use in the commission of the crime and not before-hand. If any weapon is broken in the commission of any crime, then the alleged assailants are not entitled to derive any benefit out of it. Sometimes a weapon may look good from its outward appearance, but it may not be so in delivering the desired goods while put into use. Then it was not the case of prosecution at any stage that appellants had gone to the house of the deceased with a broken knife in committing his murder and dacoity.

19. In the light of above discussed statement of PW-16; carbon copy of the post-mortem report (Ex.PW14/A), number of injuries and nature thereof, the above statement of DW4 does not stand anywhere to help the appellants in this case. Hence the above contention of learned counsel for the appellants has failed to cause any dent in the story of prosecution and consequently, same stands turned down.

20. The learned counsel for the appellants has further argued that test identification parade of appellants was required to be done in this case in order to establish their identity for implicating them in the commission of the alleged crime. Herein it is also his contention that the entire case of prosecution with regard to the identity of the appellants for determining their criminal liability in this case hinges upon the statement of PW-4 Hardev Singh, which alone is not sufficient for the purpose above-mentioned. But as per the record there is other evidence available on the record with regard to the identification of the appellants for holding their criminal liability in this case, besides the statement of PW-4. For instance PW-1 Dalbir Kaur wife of the deceased had stated that about 15 to 20 days prior to the occurrence both the accused had come to her school. On her asking accused Inderjit Singh gave his identity card after signing the same in her presence with regard to his identity, which came on the record during trial of the case as Ex.P2. She identified both the accused Inderjit Singh and Rohit Makkar present in the Court. It was also in her statement that accused had come to her school for preparing credit cards of SBI being the agents of Bank. PW-2 Manbeena Brar daughter of deceased stated to the effect that both the accused had come to the house on Saturday and Sunday regarding preparation of said credit cards. She also identified both of them in the Court. PW-15 Sunanda who was a co-employee of PW-1 Dalbir Kaur also stated the fact that accused present in the Court came to their school in connection with the preparation of credit cards of SBI. So in the light of the above discussed statements of PW-1, PW-2 and PW-15, besides that of PW-4, the evidence available on the

record is held to be up to the mark in order to establish the identity of the accused and hence in such like situation no test identification parade as pointed out above by learned counsel for the appellants was required. Moreover, it was not the case of prosecution that PWs abovesaid (PWs 1, 2 and 15) had no occasion to meet the accused prior to the date of alleged occurrence in this case. Hence this contention of learned counsel for the appellants is also held to be not tenable and the same stands disposed of accordingly.

21. Then it is also argued by learned counsel for the appellants that PW-9 SI-Labh Singh who as per prosecution version initially reached at the spot along with other police officials on receipt of information had acted in haste in sending ruqa Ex.PU without firstly recording the statements of PW-1 Dalbir Kaur and PW-2 Manbeena Brar who were available at the spot when said ruqqa was sent to the police station. This act on the part of this police official is not above board and rather it can be said to be an attempt on his part to conceal the true facts pertaining to the alleged occurrence and also to give it a coloured version. In this case the information with regard to alleged occurrence was received at Police Control Room U.T. Chandigarh telephonically on 14.02.2001 at 11:48 a.m. and the photocopy of the relevant entry in this connection of the concerned record had come on the record in the statement of PW-18 ASI Kamal Dev as Ex.PW16/A. The front door of the house was found bolted from inside and the police party entered into the house through the door of its rear portion. The family members of the deceased were informed and abovesaid PW-1 Dalbir Kaur and PW-2 Manbeena Brar thereafter

reached at the spot, who had gone to their respective schools for their duties. Then as per the record PW-9 SI Labh Singh sent ruqqa Ex.PU to police station after inspecting the spot at 1:30 p.m.. There also came in his cross-examination that PW-1 Dalbir Kaur reached at the spot at 12:30/12:45 p.m. whereas PW-2 Manbeena Brar reached there at 1:15 p.m. Then it was also in his cross-examination that PW-1 was deeply depressed and not in a proper state of mind and was unable to make any statement due to her mental condition. She was also weeping bitterly. Then there was nothing wrong on the part of PW-9 SI Labh Singh in sending ruqqa Ex.PU to police station. Moreover, vide this ruqqa, he sent the information to police station by narrating the facts as he found existing at the spot after its inspection and nothing else. This witness faced cross-examination at the hands of the appellants very comprehensively running into 14 pages but the learned defence counsel had failed to bring on record any confidence inspiring material to show as to how the said act of this official was prejudicial to the interest of the accused or what material facts had been concealed by him in doing so. Then the prosecution had also no grouse with regard to said act of this witness. Consequently, the above contention of learned counsel for the appellants also does not hold any water and the same stands disposed of accordingly.

22. Then it was also argued by learned counsel for the appellants that it was plea of prosecution that one half filled credit card form of SBI Ex.P1 lying on the dining table was found at the spot during its inspection and the same was taken into police possession as a proof against the

accused. In this connection, it is his submission that this credit card form Ex.P1 was not got examined or compared from any handwriting expert in order to materialize the fact that same is in the hand of appellant-Inderjeet Singh, which is also a serious lacuna in the chain of prosecution evidence. But on a bare perusal of Ex.P1, it is found that it was filled in capital letters, only signatures of applicant - Harvinder Singh Brar in running handwriting are available on it at two places. So no handwriting in running hand of accused - Inderjit Singh is available on it. So it could be of no use to get compared the credit card form Ex.P1 from any handwriting expert. Then it is also to note that Harvinder Singh Brar (since deceased) was an educated person and said document Ex.P1 would have been filled by him in his own hand. The agents are to help the needy applicants, if the same is required by them in getting prepared the SBI credit cards. Moreover, there is no definite evidence on the file that document Ex.P1 was filled in the hand of appellant-Inderjit Singh. So this contention of learned counsel for the appellants has also nothing to do to find any kind of favour in favour of the appellants.

23. Learned counsel for the appellants has further argued that material PWs are discrepant regarding the time at which PW4 – Hardev Singh visited the house of deceased on the date of the alleged occurrence and as such the plea of prosecution that this PW had visited the house of the deceased on the date of the alleged occurrence is shrouded with mysterious circumstances and hence not reliable. Herein he has contended that according to PW4 – Hardev Singh, he visited the house of deceased on 14.2.2001 at about 10:15 A.M. and stayed there for about 5-7

minutes and then he left therefrom. PW1 – Dalbir Kaur in her cross-examination stated that when she had gone for duty, then Hardev Singh was not present in the house. She did not know as to when said Hardev Singh again came to their house since she was away to her school. Then it was further in her cross-examination that Hardev Singh had told her that he had gone from her house at about 9/9:15 A.M. which fact was told to her by him on 14.2.2001 in the evening at about 5/6:00 p.m. PW2 Manbeena Brar in this regard in her cross-examination stated that Hardev Singh had left their house on 14.2.2001 at about 9:10 or 9:20 A.M. She saw him again on the said date in their house at about 5/5:30 p.m. Then PW4 – Hardev Singh in his cross-examination stated that he got recorded in his statement under Section 161 Cr.P.C. that he had come to the house of deceased on 14.2.2001 at 8:15 p.m., but when confronted with his said statement Ex.DB, then the said fact was not found mentioned in it. But if the above statements of these PWs are to be taken as a whole then one thing is clear beyond any doubt that PW4 had visited the house of deceased on 14.2.2001 in the morning in between 9:00 A.M. to 10:15 A.M. The question whether this witness had come to the house of deceased on the same day in the evening is not so material because it is the case of prosecution that when this witness came out of the house of the deceased after meeting him on the said date at about 10:15 A.M. then he saw both the accused standing in the park in front of the house of the deceased. So there is nothing on the record to say that PW4 did not visit the house of the deceased on the said date in the morning or that he was introduced later on in order to fill up the lacunae in the case of prosecution. On the

said date, he would not have revealed the fact regarding the involvement of the present appellants in this case for the reason that on the said date they were yet to be arrested and as such he did not have any suspicion qua them in order to name them in the case in hand.

24. Then it is also contended by the learned counsel for the appellants that weapons like Ex.P9, Ex.P15 (handle) and Ex.P16(blade) which were allegedly got recovered by the accused in this case are easily available in the market and as such the possibility of planting the same upon the appellants could not be ruled out. It is quite undisputed that weapons like Ex.P9, Ex.P15 (handle) and Ex.P16 (blade) are easily available in the market but in the case in hand the facts and circumstances under which the recovery of these arms was made are also to be taken into consideration. As above discussed, two pieces of a broken knife i.e. Ex.P15 (handle) and Ex.P16 (blade) were got recovered by accused Inderjit Singh as per his disclosure statement Ex.PL from the place of concealment i.e. from the room made in the rear portion of his House No.1517, Sector 43-B, Chandigarh after opening its lock by him. Similarly knife Ex.P9 was got recovered by accused Rohit Makkar as per his disclosure statement Ex.PM from the place of concealment i.e. from grove of the bushes towards the right side of the petrol pump in Sector 10, Chandigarh near Leisure Valley. When the recovery of the above said weapons was got made by the appellants in pursuance of their above-said disclosure statements, so the plea that such like weapons are available in the market easily is not a good ground to dislodge the prosecution version qua their recovery.

25. Then 11 sealed parcels of case property in this case were sent to the office of CFSL, Sector 36, Chandigarh for the purpose of their chemical analysis which submitted its report Ex.PW9/D after doing the needful. As per this report, human blood was found on all the articles contained in these parcels except one parcel containing broken knife marked as Exhibit - 9. The knife which was contained in sealed parcel Exhibit – 8 as per the case of prosecution was got recovered by appellant-Rohit Makkar. If human blood is not found on the said Exhibit – 9 i.e. broken knife, then that also is not a ground to give any benefit of it to the appellants when the articles contained in other Exhibits 1 to 8 and Exhibits 10 and 11 are found to be containing human blood. Then possibility also could not be ruled out that appellant Inderjit Singh had washed this knife after the commission of alleged crime and then kept the same in a room of his house from where he allegedly got it recovered as per his above discussed disclosure statement Ex.PL.

26. Then it also came in the statement of PW6 Sandeep Rawat that he handed over one knife to appellant - Rohit for cutting vegetables upon which word 'SRAW' was written. This knife was shown to this witness in the Court during recording of his deposition and he identified the same as one which he had handed over to the said appellant. Then it also came in the cross-examination of PW20 Inspector K.I.P. Singh that knife which was got recovered by appellant Rohit Makkar was bearing letters 'SRAW'. Then as per the above-said report of CFSL this word was detected on this knife during the chemical analysis. Herein the counsel for the appellants has submitted that when such like weapons are available in

the market then what was the need for this appellant to go to PW6 for procuring the same. But it is for the accused whether to purchase such like weapon from the market or to procure the same from his any known person. Such like things always remain hidden in the mind of the culprit.

27. Then there is statement of PW7 Sunny Thakur. His statement was to the effect that he had been telephonically asked by appellant - Rohit Makkar to boil the water since he was to wash his clothes. Initially this witness did not support the case of prosecution and was declared hostile and was allowed to be cross-examined by the prosecution. During his cross-examination by the prosecution, he supported its version while stating that he boiled the water as directed to him by appellant Rohit Makkar. Both the appellants had come to his house. The pant worn by appellant Inderjit Singh was stained with blood. When he inquired from him about this, then he firstly told him that he had some quarrel with some one. Then he further told him that they had given knife blow to one person in Sector-44, Chandigarh. Then he felt frightened and directed both of them to go away from there.

28. Then as per the statement of PW11 Amrish Kumar Gurang both the appellants had joined in the office of Sentac Sales Pvt. Ltd. on 1.2.2001. It had been established on the record that during the period from 1.2.2001 till the date of occurrence they both had the occasion to visit the house of the deceased about twicely in order to prepare their credit card of SBI. They might have thought the deceased to be a plutocrat person which tempted them to commit dacoity in his house to

get cash and jewellery in abundance after committing his murder, though in this dacoity, they could not get much from the house of deceased except the gold ornaments i.e. one finger ring, one bangle, one wallet etc. of deceased.

29. PW13 H.R. Nagra was posted as Tehsildar-cum-Executive Magistrate, U.T., Chandigarh on 8.3.2001. SI Labh Singh produced before him two parcels containing one gold bangle and one gold finger ring which were taken out by him from the parcels and mixed the same with such like other ornaments. Then identification of these articles was made by PW1 Dalbir Kaur wife of deceased Harvinder Singh Brar from such like other ornaments in the presence of this witness. Thereafter, the gold ring and gold bangle identified by PW1 – Dalbir Kaur were again converted into sealed parcels which were handed over to SI Labh Singh. Identification memo in this regard Ex.PW11/A was prepared.

30. In this case, the circumstantial evidence which has come on the record during the trial is summed up as under:

- i. Half filled form for SBI credit card Ex.P1;
- ii. identity card given by accused Inderjit Singh to PW1 Dalbir Kaur Ex.P2;
- iii. gold bangle Ex.P3;
- iv. gold ring bearing inscription 'H' on it Ex.P4;
- v. purse Ex.P5 containing driving licence Ex.P6 of deceased and two photographs of deceased Ex.P7 and Ex.P8;
- vi. disclosure statement Ex.PL of accused Inderjit Singh which led to the recovery of two parts of a broken knife

- i.e. handle (Ex.P15) and blade of knife (Ex.P16);
- vii.disclosure statement Ex.PM of appellant Rohit Makkar and recovery of knife Ex.P9 in pursuance thereof;
- viii.CFSL report Ex.PW9/D;
- ix.blood stained carpet Ex.P10;
- x. a blood stained piece of quilt cover Ex.P11;
- xi.one phial containing residues cotton swabs blood stained Ex.P12;
- xii.two cushions blood stained Ex.P13 and Ex.P14;
- xiii.blood stained pant Ex.P17;
- xiv.blood stained towel Ex.P19; and
- xv.Identification memo with regard to gold ornaments Ex.PW11/A.

31. According to our opinion, the above discussed circumstantial evidence brings this case completely within the ambit of five principles as laid down by the Hon'ble Apex Court in **Sharad Birdhichand Sarda Versus State of Maharashtra, (1984) 4 SCC 116.**

32. Then the Hon'ble Apex Court has held in the latest case law titled **Madhu alias Madhuranatha & Anr. Versus State of Karnataka, AIR 2014, Supreme Court, 394** that accused can be convicted on the basis of circumstantial evidence if the same is found to be complete and confidence reposing in order to hold him guilty from all the aspects. It was held as under:

“A conviction can be based solely on circumstantial evidence. The prosecution's case must stand or fall on its

own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the Court where various links in the chain of circumstantial evidence are complete in themselves. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable or point to any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. The evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable.”

33. Then there is another latest authority of the Hon'ble Apex Court qua the aspect of circumstantial evidence as delivered in **Ganga Bai Versus State of Rajasthan, 2015(4) R.C.R.(Criminal) 644**. In this case accused - mother-in-law was convicted for the murder of her daughter-in-law. A number of witnesses turned hostile. Her blood stained clothes were got recovered on her disclosure statement. Accused could not give any explanation of the presence of human blood stains on her clothes. Her conviction was upheld.

34. In the light of the above discussion, no substance is found in both the appeals to warrant any kind of interference in the impugned judgment. So, the impugned judgment of conviction and order of sentence are accordingly upheld. Both the appeals stand dismissed and disposed of accordingly.

CRA-D-791-DB of 2003 &
CRA-D-826-DB of 2003

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A copy of this order be sent to the quarter concerned for its
strict compliance.

9.12.2015
Brij/gaurav sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE