

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

CRA No.D-850-DB-2009.

Date of decision: 12.01.2015.

Vikramjit Singh

.....Appellant

versus

State of Haryana

.....Respondent

with

CRA No.D-995-DB-2009.

Date of decision: 12.01.2015.

Randhir Singh

.....Appellant

versus

State of Haryana

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr.Vinod Ghai, Senior Advocate with
Mr.Simranjeet Singh, Advocate for appellant Vikramjit
Singh in CRA No.D-850-DB-2009.

Mr.N.S.Shekhawat, Advocate for appellant Randhir Singh in
CRA No.D-995-DB-2009.

Mr.Dhurv Dayal, DAG, Haryana.

DARSHAN SINGH J.

This judgment of ours shall dispose of both the appeals mentioned above, which have been directed against the same judgment of conviction dated 26.09.2009 and order on quantum of sentence of the even dated, vide which both the appellants were held guilty, convicted and sentenced as under:-

Accused Vikramjit Singh			
Under Section	Imprisonment	Fine	In default of payment of fine further imprisonment
302 read with Section 34 IPC	RI for life	10,000/-	SI for 2 ½ years
364 read with Section 34 IPC	RI for ten years	10,000/-	SI for 2 ½ years
120-B IPC	RI for life	10,000/-	SI for 2 ½ years
25 Arms Act	RI for three years	3,000/-	SI for 6 months
Accused Randhir Singh			
Under Section	Imprisonment	Fine	In default of payment of fine further imprisonment
302 read with Section 34 IPC	RI for life	10,000/-	SI for 2 ½ years
364 read with Section 34 IPC	RI for ten years	10,000/-	SI for 2 ½ years
201 IPC	RI for seven years	5,000/-	18 months

2. The brief facts giving rise to this prosecution are that PW14 Rajnish Kumar, son of deceased Suresh Kumar, submitted an application

to PW21 Miyan Singh ASI alleging therein that on the previous night at about 10:00 p.m., his father Suresh Kumar had gone for a walk towards ITI school, however, he did not return. On search, his slippers were found near I.T.I. School. It was apprehended that some unknown persons had kidnapped his father. On the basis of this application, formal FIR Ex.P22 was registered and investigation was initiated.

3. PW21 ASI Miyan Singh along with HC Om Parkash and Ramesh Kumar went to the spot. He inspected the spot and prepared the rough site plan of place of occurrence Ex.P77. He lifted one pair of chappal, which were kept in sealed parcel and taken into possession vide memo Ex.P21.

4. On the night intervening 2/3.5.2008, accused appellant Randhir Singh was apprehended on the basis of secret information from his house. On 03.05.2008, appellant Randhir Singh suffered the disclosure statement Ex.P41. In pursuance of the said disclosure statement, he pointed out the place of abduction of deceased Suresh Kumar vide memo Ex.P47. Then he led the police to Bhakhra Canal and pointed out the place where the dead body of Suresh Kumar was thrown in the Bhakhra Canal vide memo Ex.P78. The Investigating Officer also inspected the site. One foot mark was found on the road. One visiting card, watch of the deceased and blood stained earth were also lying there. The mould of the footprint was lifted. The articles found at the spot were taken into possession vide memo Ex.P48. The dead body was recovered at about 06:00 p.m. near the Damkora Head from the Bhakhra Canal. The

dead body was identified by Satpal and Rakesh. The dead body was handed over to ASI Miyan Singh for the postmortem examination.

5. On 4th May, 2008, accused appellant Randhir was again interrogated. He suffered the disclosure statement Ex.P43 and in pursuance thereof he got recovered his car and blood stained clothes from his house, which were also taken into possession by the Investigating Officer. The Team of Scene of Crime also inspected the spot as well as the car recovered from appellant Randhir Singh.

6. On 04.05.2008 accused appellant Vikramjit Singh was arrested from village Rasida. On interrogation, he suffered the repeated disclosure statements. Ultimately, in pursuance of his disclosure statement Ex.P27, he got recovered one telephone slip, a country-made revolver and five cartridges. The sample footprints of appellant Randhir Singh were also taken in the presence of Shri Ram Singh, Tehsildar Tohana, in compliance of the orders passed by learned Judicial Magistrate, Tohana. The articles were sent to Forensic Science Laboratory ('FSL' for short), Madhuban for examination and on completion of formalities of investigation, the report under Section 173 Cr.P.C. was presented in the Court.

7. Both the accused-appellants were charge sheeted for the offence punishable under Sections 120-B IPC, 364 302 & 201 read with Section 34 IPC. Besides accused Vikramjit Singh was also charge sheeted for the offence punishable under Section 25 of Arms Act, vide order dated 25.09.2008, to which they pleaded not guilty and claimed

trial.

8. In order to substantiate its case, prosecution examined as many as 22 witnesses.

9. When examined under Section 313 Cr.P.C., accused-appellant Randhir Singh pleaded innocence and false implication. He further pleaded that he was arrested by SI Hawa Singh on 30th April, 2008 at about 05:00 p.m. in the presence of his father, his cousin Krishan Kumar, Suber Singh Namberdar and Kewal Krishan. He has also taken away his car bearing registration No.HR-32B-7505 from his house on the said date and time. He also informed his friend Gurmel Singh Advocate Narwana. He never parked his car near the alleged place of abduction on 29th April, 2008. He also denied having made any disclosure statement, pointing out the place of occurrence and having got effected the recoveries. Appellant Vikramjit Singh pleaded that he has not made any disclosure statement. His signatures were obtained on blank papers and were fabricated into the disclosure statements. He did not get effected any recovery of the arms. He also pleaded that he has been falsely implicated in this case.

10. In defence evidence, accused-appellants examined as many as ten witnesses.

11. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, both the accused-appellants were held guilty and convicted for the offences punishable under Sections 302, 364 read with Section 34 IPC. Accused Randhir

Singh was also held guilty and convicted for the offence punishable under Section 201 IPC. Accused Vikramjit Singh was also held guilty and convicted for the offence punishable under Section 120-B IPC and under Section 25 of Arms Act. Both the accused-appellants were awarded the sentence as mentioned in the upper part of the judgment.

12. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeals have been preferred.

13. We have heard Shri Vinod Ghai, Senior Advocate assisted by Shri Simranjeet Singh, Advocate, learned counsel for appellant Vikramjit Singh, Shri N.S. Shekhawat, Advocate, learned counsel for appellant Randhir Singh and Shri Dhruv Dayal, learned Deputy Advocate General for the State of Haryana and have carefully examined the record of the case.

14. Initiating the arguments, learned counsel for the appellants contended that the case of the prosecution is based on circumstantial evidence. The motive for the commission of offence is stated to be the ransom but there is no evidence to prove the allegation of ransom. There is absolutely no evidence about any demand of ransom or even attempt to demand the ransom. There is no gap in the murder and abduction, which rules out the ransom as a motive for abduction. The prosecution did not collect the call details of the accused or the deceased. Moreover, no charge has been framed by the learned trial Court for Section 364-A IPC. In the absence of any proof for the demand of ransom, the theory of conspiracy also goes.

15. They further contended that accused Randhir Singh was arrested on the night intervening 2/3.5.2008. It is alleged that he suffered the disclosure statement on 3rd May, 2008 in the presence of PW14 Rajnish and PW15 Vikas, sons of deceased Suresh but there is no evidence to show as to how they came to know about the arrest of the accused and how they reached the police station. They have stated that they were called by the police but PW22 Hawa Singh Inspector stated that he did not call them.

16. They further contended that PW21 Miyan Singh has totally demolished the case of the prosecution about the disclosure statement. He has stated that after the arrest of Randhir Singh, they straightway went to the spot. No independent witness has been associated at the time of disclosure statement and recoveries. Only the sons and other relatives of the deceased have been associated.

17. They further contended that it is not believable that after coming to know about the murder and throwing away the deceased into the canal, the sons of the deceased will go to their house and not come to the canal to see to the body of their father as to whether he is dead or alive.

18. They further contended that the pointing out of the place of abduction is not admissible in evidence as the same was already known to the police officials. Even the pair of chappals of deceased was lifted from that place.

19. They further contended that the story of the prosecution is

highly improbable. It is not possible that one person can abduct the deceased, make him to board the car, drive the car, fire a shot at him, to take out the body from the car and threw away the same in the canal. No other injury on the person of deceased except the firearm injury has been found. Similarly, no injury has been found on the person of the accused.

20. They further contended that the recoveries are also planted. It is alleged that from the place where the dead body was allegedly thrown in the canal, the blood stained earth, watch of the deceased, his visiting card and footprints were lifted. Footprints are alleged have been lifted from the cemented road. How the foot prints can be available at the spot after four days of the occurrence on a thoroughfare. It has also come in evidence that officials of Canal Department have been patrolling over the area, so there was no possibility of the footprint available at the spot. The place of recovery is open and accessible to the general public. The articles were visible and were not concealed. Many persons had passed through the said place. There is no evidence to establish that the watch allegedly recovered from the spot belonged to the deceased. There is no reference in the FIR that at the time of abduction the accused was wearing the watch. Even in the recovery memo Ex.P48, it is not mentioned that the recovered watch belongs to the deceased. As per the prosecution story, the footprints were lifted from the spot but the sample of the footwear print has been taken. Even the report of the FSL shows that print of footwear lifted from the crime scene and the sample mould of footwear were sent for comparison.

These footwear moulds have been lifted after the arrest of the accused, which could have been easily fabricated by the police to create evidence.

21. Learned counsel for the appellants further contended that the articles were recovered on 3rd and 4th May, 2008. The sample moulds of footwear were also obtained on 06.05.2008. The revolver is alleged have been recovered along with cartridges on 10.05.2008 but the articles were sent to the FSL on 26.05.2008. No explanation has been given for this delay. PW9 MHC Sadhu Ram has admitted that during this period he has been sending the case property of other cases to the FSL. But surprisingly the case property of this case was not forwarded to the FSL authorities. They further contended that the Constable, who has carried the bullet parcel, allegedly recovered from the dead body, has stated that the same was not sealed, so the report of the FSL carries no evidentiary value.

22. They further contended that the recovery of the dead body at the instance of appellant Randhir Singh is not established at all. It is alleged that disclosure statement was suffered by accused Randhir Singh in the presence of sons of the deceased but they did not join the recovery proceedings. PW19 Anil Kumar has also only witnessed the recoveries from the spot from where the dead body was thrown in the canal. He also did not accompany the Investigating Officer for the recovery of the dead body from the canal. It is alleged that the dead body was recovered in the presence of Satpal and Rakesh, but both of them have been given up as unnecessary and have not been examined, which is fatal to the

prosecution case.

23. They further contended that recovery of car as well as the blood stained clothes as shown by the Investigating Officer are highly doubtful. It is admitted case of the prosecution that on 03.05.2008 at the time of arrest of accused Randhir Singh, his house was searched by PW22 SI Hawa Singh, but at that time the car was not taken into possession. Later on, the recovery of the car has been shown on the basis of his disclosure statement from his house. Similar is the position with respect to the recovery of the clothes. As per the report of the FSL, no blood has been found on the said clothes. They further contended that PW21 Miyan Singh ASI stated that the police officials and public man were already present at the spot when accused Randhir Singh was taken to the spot for pointing out the place from where the dead body was thrown in the canal. So, even this place was already in the knowledge of the police and the pointing out of this place was also not admissible in evidence.

24. They further contended that nothing incriminating has been found in the car. Mere this fact that front glass of the car was found replaced, cannot be considered to be an incriminating circumstance. No human blood has been found on the seat cover and the mat of the car. As per the report of the FSL, the material was disintegrated. They contended that there is no last seen, no extra judicial confession and no motive for the commission of crime.

25. They further contended that in the FIR, there is absolutely

no reference of the car having been seen near the place of abduction. It is alleged that PW15 Vikas had noticed the car near the place of abduction but he had also accompanied PW14 Rajnish at the time of moving the application to the police, but the reference of the car has not been given. Even in his statement in the Court, PW15 Vikas had not given any description of the said car. So, there is no evidence of the involvement of the car of appellant Randhir in the present occurrence.

26. They further contended that there is absolutely no evidence to establish any conspiracy between the appellants. Accused Vikramjit has been arrested on 04.05.2008. His three disclosure statements have been recorded, which shows the fabrication of the disclosure statements. The recovery of the fire arm and cartridges has been shown from him on 10.05.2008. Recovery witness Om Parkash is the brother of the deceased. No independent witness has been associated at the time of recovery. The statement of PW15 Vikas has totally rendered the prosecution case doubtful, as he has stated that recovery was effected on 08.05.2008.

27. They further contended that even as per the admitted case of the prosecution, appellant Vikramjit was not present at the spot. No charge of conspiracy to kill Suresh Kumar has been framed. The charge is only for conspiracy to kidnap him. There is no evidence of any meeting of minds prior to the occurrence between the accused to commit the offence. There is also no evidence that they were known to each other. They are belonging to different villages. If there would have been any

conspiracy between the appellants, it is not believable that every act shall be committed by appellant Randhir alone. If there would have been any conspiracy, appellant Vikramjit should also have accompanied Randhir and participated in the crime. Only the alleged recovery of firearm cannot establish the conspiracy. Moreover, even the recovery of firearm from the possession of appellant Vikramjit Singh is not established.

28. With these contentions, learned counsel for the appellants pleaded that they have been wrongly convicted by the learned trial Court.

29. On the other hand, learned State counsel pleaded that there is cogent and convincing circumstantial evidence available on record against both the appellants. They had hatched criminal conspiracy to abduct deceased Suresh Kumar for ransom and had committed his murder. Appellant Randhir Singh has pointed out the place of occurrence. The watch and visiting card of the deceased Suresh was recovered from the place from where his dead body was thrown in the canal. The footprints were also lifted from the spot which tallied with the sample footprint moulds of appellant Randhir Singh. The medical evidence shows that the cause of death of the deceased was fire arm injury. The weapon of offence has been recovered from the appellant Vikramjit. A bullet was also recovered from the dead body, the same has been fired from the revolver as per the report of the FSL. The blood was detected from the car of appellant Randhir Singh. The front glass of the car was replaced as per the report of the Scene of Crime Team Ex.P37. Even the dead body was recovered at the instance of appellant Randhir Singh,

which is clinching evidence of the commission of offence by the appellants. Mere this fact that the recoveries have been witnessed by the relatives, is no ground to discard the prosecution case, as in such type of crimes, the independent witness do not come forward. He further contended that there was no reason for the false implication of the appellants. The pointing out of place of occurrence by the appellant is also a relevant piece of evidence as the place from where the dead body was thrown was not in the knowledge of the police. Thus, he pleaded that there is no infirmity in the conviction of the appellants recorded by the learned trial Court.

30. We have duly considered the aforesaid contentions.

31. Admittedly, there is no direct evidence to the commission of crime and entire case of the prosecution is based on circumstantial evidence. The legal position pertaining to the principles to base the conviction in the cases based on circumstantial evidence is well settled. In a latest judgment titled as **Vadlakonda Lenin Vs. State of Andhra Pradesh, 2013 (2) RCR (Criminal) 82**, the Hon'ble Supreme Court relying upon the golden principles laid down in case **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116** has reiterated the aforesaid principles as under:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) 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 on any

other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

32. In the instant case also the prosecution is relying upon certain sound incriminating circumstances against the appellant Randhir, which are detailed below.

- First : Abduction of deceased Suresh Kumar by appellant Randhir Singh in his car bearing registration No.HR-32B-7505.**
- Second : The pointing out of the places of occurrence by accused Randhir,**
- Third : The recovery of the dead body at the instance of accused Randhir,**
- Fourth : The medical evidence.**

First : Abduction of deceased Suresh Kumar by appellant Randhir Singh in his car bearing registration No.HR-32B-7505.

33. As per the prosecution version, deceased Suresh Kumar Bansal was kidnapped for ransom by accused Randhir in his car and, thereafter, he was murdered by him. Admittedly, there is no direct

evidence of last scene about abduction of the deceased by appellant Randhir but there are enough circumstances on record to establish the abduction of deceased Suresh by appellant Randhir in his car on the late evening of 29th April, 2008. Deceased Suresh Kumar has been abducted when he had gone for the evening walk on 29th April, 2008 from near ITI, Tohana. As per the statement of PW14 Rajnish Kumar complainant and PW7 EHC Om Parkash, the pair of chappals of the deceased were recovered from the said place and was taken into possession vide memo Ex.P21. In the site plan Ex.P20 also, the point whereby the chappals of deceased were lying has also been shown at point 'A'.

34. It has also come in the statements of PW14 complainant Rajnish Kumar and PW22 Hawa Singh Inspector that the tyre mark were also found at that spot. The presence of the tyre marks at the said place is also shown in the site plan Ex.P20 prepared by the draftsman PW6 Balwant Singh.

35. The place of occurrence was also inspected by PW13 Dr.Joginder Singh, SSA, Scene of Crime, District Police Office, Jind on 30.04.2008. He also observed few tyre marks near the I.T.I. corner, Tohana. His testimony is also corroborated from his report Ex.P37.

36. Thus, from the aforesaid evidence, it comes out that near I.T.I. corner, Tohana, the tyre marks were found. The pair of chappal of the deceased was also lying at the road near I.T.I., Tohana.

37. No doubt in the application Ex.P38, on the basis of which the present case has been registered, there is no reference of the car

having been seen near this place of occurrence. However, PW14 Rajnish Kumar complainant has categorically mentioned that in the morning, his brother Vikas told him that while coming from Moonak, he saw one Alto Maruti car near the park on the way where his father used to go for evening walk. He further deposed that then they came to know that said car belongs to their neighbour namely Randhir Singh. PW15 Vikas has also categorically deposed that he had seen one Alto car parked outside the park in a plot near the road. He told to his brother in the morning that he had seen the car parked and then his brother Rajnish told that the said car belongs to Randhir Singh.

38. As already mentioned this fact is not mentioned in the application Ex.P38 on the basis of which the FIR has been lodged. The main purpose of lodging the FIR is to satisfy the police officer as to the commission of a cognizable offence and to initiate the investigation in accordance with law. The primary object thereof is to set the criminal law into motion. It may not be possible to give every minute detail with unmistakable precision in the FIR. The FIR itself is not the proof of a case but it is only a piece of evidence, which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case.

39. Moreover, the factum about the presence of the car has been categorically mentioned by PW15 Vikas in his statement recorded under Section 161 Cr.P.C. by the Investigating Officer on the morning of

30.04.2008. No doubt, PW15 Vikas also accompanied complainant Rajnish to the police station at the time of moving application Ex.P38. The absence of any reference of the said car in the application Ex.P38 is no ground to disbelieve the prosecution version as it may be possible that by that time PW14 Rajnish and PW15 Vikas, the sons of the victim, might be under shock and might not have been able to recollect correctly all the attending circumstances. It may also be possible that initially PW15 Vikas did not have considered the presence of said car near the place of occurrence to be so material to get it recorded in the application Ex.P38.

40. Thus, the omission about the car in the FIR is no ground to ignore the substantive evidence coming on record, which shows the presence of the car near the place of abduction of deceased Suresh Kumar. To support this view, reference can be made to cases **Jitender Kumar Vs. State of Haryana 2012(3) RCR (Criminal) 736** and **Ramesh Vs. State through Inspector of Police 2014 (4) RCR (Criminal) 122**.

41. Accused-appellant Randhir has been arrested in this case on the night intervening 2/3.5.2008. On interrogation, he suffered the disclosure statement Ex.P41 in the presence of PW14 Rajnish and PW15 Vikas. He further suffered the disclosure statement Ex.P43 in the presence of PW19 Anil Bansal and PW17 ASI Om Parkash. In pursuance of the said disclosure statement, he got recovered the Alto Maruti car bearing registration No.HR-32B-7505. Ex.P82 is the registration

certificate of the said car, which shows that appellant Randhir Singh is the registered owner of the said car.

42. There is nothing to doubt about the recovery of the said car simply on the ground that the police party had visited the house of accused Randhir Singh on the night intervening 2/3.5.2008, whereas the said car has been taken into possession on 04.05.2008. The Hon'ble Supreme Court in case **Ramesh and others Vs. State of Rajasthan (2011) 2 Supreme Court cases (Criminal) 54** has laid down that merely because the recoveries were made from the same place which was earlier visited by the police would not itself dispel evidence of discovery and recovery. Moreover, in the instant case the car has not been recovered exactly from the house of appellant Randhir rather the same was found recovered parked under a Kikar tree on the back side of his house. In the recovery memo Ex.P44, it has been categorically mentioned the rear seat and rear mat seems to have some blood stains. The said car was kept in intact position for being examined by the experts of Scene of Crime Team. From the statement of PW13 Dr.Joginder Singh, it comes out that on 4th May, 2008 itself, he inspected the aforesaid car and found that the front main class of the car was totally replaced. It was of a different make. Small glass pieces were found scattered inside the car. The seat belt of the driver seat was found open from its base. Benzedine test was found positive for the presence of the blood on the seat cover, on the mat below the back seat, on the base of the car and just below the mat of the back seat (left side). All these facts also found mentioned in his report

Ex.P37.

43. PW18 Adish Jain had not supported the prosecution version and was declared hostile. However, in the cross-examination by the learned Public Prosecutor, he admitted that the bill Ex.P46 is in his hand and bears his signatures. So, the bill Ex.P46 can be well taken into consideration. In the bill Ex.P46, the registration number of the car of the appellant is categorically mentioned. This bill has been issued on 30th April, 2008. It shows that the front glass has been replaced. The bill Ex.P46 corroborates the report of PW13 Dr.Joginder Singh.

44. The blood stains swab, piece of seat cover, the blood stains pieces of glass were sent to the FSL for examination. The report of the FSL Ex.P96 shows the presence of the blood in the swab and rexine piece (piece of seat cover) lifted from the car of accused-appellant Randhir Singh.

45. Appellant Randhir Singh has not disputed that he is the registered owner of car No.HR-32B-7505. It is also established from registration certificate Ex.P82 that he is the registered owner of the car in question. The car has been recovered from the house of the accused in pursuance of his disclosure statement. Appellant Randhir Singh was required to explain under what circumstances the front glass of the car has to be replaced and how the blood stains were found on the seat cover and the swab lifted from the car but he had not come forward with any explanation.

46. The cumulative effect of the aforesaid circumstances i.e.

the presence of the tyre marks near the corner I.T.I., Tohana, the spotting of the car near the park by PW15 Vikas on the evening on 29.04.2008 the date of occurrence, the recovery of the pair of chappals of deceased Suresh Kumar from near I.T.I. Tohana, the replacement of front glass of the car and presence of blood stains in the car, clearly establish that deceased Suresh Kumar was abducted by accused Randhir in his car, which is very strong incriminating circumstance against appellant Randhir Singh.

Second : The pointing out of the places of occurrence by accused Randhir.

47. Appellant-accused Randhir Singh has pointed out two places of occurrence on 03.05.2008. Firstly, he has pointed out the place from where deceased Suresh Kumar was abducted and secondly, the place from where the body of Suresh Kumar was thrown in the Bhakhra Canal. The pointing out of the first place of occurrence may not be admissible in evidence as the said place was already in the knowledge of the witnesses and the police officials, as the said place was already inspected by the Investigating Officer. The pair of chappals of the deceased was lifted from that place and even the site plan was prepared.

48. However, the pointing out of the second place from where the dead body was thrown in the Canal is very important as this place was not in the knowledge of the police as well as the prosecution witnesses, prior to disclosure of the accused.

49. Ex.P78 is the memo of pointing out of the place near Burji (outlet) No.15 of the Bhakhra Canal, Main branch. He has pointed out this place of occurrence in the presence of PW19 Anil Kumar and PW21 ASI Miyan Singh.

50. The memo Ex.P48, statements of PW19 Anil Kumar, PW21 ASI Miyan Singh and PW22 SI Hawa Singh, the Investigating Officer of the case, show at the time of inspection of the said spot, the Investigating Officer found the blood stained earth, wrist watch make Titan, one visiting card belonging to deceased Suresh Kumar Bansal and one left foot print. The aforesaid articles were lifted from the spot.

51. The blood stained earth lifted from the spot was sent to the FSL. The report of the FSL Ex.P96 shows that the blood was detected therein. Thus, the presence of the blood stained earth at the spot pointed out by the appellant Randhir confirms the same to be the place of crime. PW13 Dr.Joginder Singh has also inspected the spot on 03.05.2008. He also observed the presence of all these articles at the spot.

52. The recovery of these articles from the place pointed out by appellant Randhir Singh cannot be doubted simply on the ground that the said place was accessible to the general public and was a thoroughfare. Normally, the movement on the pavement/strip of the canal is not so frequent as in the other thoroughfares. The blood on the earth can only be detected on a careful inspection of the spot. A passersby, who had no reason to suspect the commission of any crime at the spot, will not care about the presence of any blood on the earth. The wrist watch and

the visiting card are not that type of articles which will attract the gaze of the passersby. It may be possible that these articles might have been mixed in the earth/dust on the pavement and in that position, it could escape the notice of the passersby. The presence of the footwear prints is also not improbable at such a place. PW22 Hawa Singh, the Investigating Officer of the case, has deposed that the watch was identified by PW19 Anil Bansal. The lapse on the part of the Investigating Officer to get the said watch identified from the family members of the deceased is no ground to ignore this evidence. Thus, from the aforesaid evidence it comes out that the crime articles were recovered from the spot pointed out by appellant Randhir Singh from where dead body of Suresh was thrown in the Bhakhra Canal and this spot was not earlier in the knowledge of the prosecution witnesses and the Investigating Officer.

53. Learned counsel for the appellants has vehemently contended that the said place was already in the knowledge of the police as the police official and people were already present at the spot before the accused was taken to that spot. But this plea carries no substance in view of the statement of PW22 SI Hawa Singh, who has stated that after recording the disclosure statement of Randhir Singh, he sent ASI Om Parkash and officials of CIA staff of PCR No.5 and motorcycle from Police Station Sadar, Tohana towards Bhakhra Canal, Burji No.15, Kudhani Head and he along with other police officials including HC Jagmel Singh left the Police Station along with accused at 10:30 a.m. So, the police officials had reached at the place of pointing out at the

directions of the Investigating Officer.

54. The pointing out of the place from where the dead body of Suresh Kumar was thrown in the Bhakhra Canal is admissible in evidence as the conduct of the accused under Section 8 of the Evidence Act, 1872. To support view reference can be made to case **H.P. Administration Vs. Om Parkash AIR 1972 Supreme Court 975**. In case **Parkash Chand Vs. State (Delhi Administration) AIR 1979 Supreme Court 400** the Hon'ble Apex court laid down as under:

There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police officer in the course of an investigating which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.

55. The same principle of law has been reiterated by Hon'ble Apex Court in case **A.N. Venkatesh and Anr. Vs. State of Karnataka AIR 2005 (SC) 3809.**

56. The Division Bench of this Court in case **Anupam alias Anup Vs. State of Haryana 2006(1) RCR (Criminal) 56** has also laid down that the pointing out of the place to the police officer where crime was committed would be admissible as conduct under Section 8 of the Evidence Act.

57. Thus, in view of the consistent ratio of law laid down in the cases referred above, the pointing out of the place from where the crime articles have been recovered and the dead body was thrown in the canal are further the strong incriminating circumstances against appellant Randhir Singh.

Third : The recovery of the dead body at the instance of accused Randhir.

58. From the statements of PW22 SI Hawa Singh, it comes out that the dead body was recovered at about 6:00 p.m. near Damkora Head and, thereafter the inquest proceedings were conducted. As per the memo Ex.P81, the dead body was found from the south outlet shutter of the Bhakhra Main Branch and was taken out from there. Thus, the dead body of Suresh Kumar has been recovered from the Bhakhra Canal in pursuance of the facts disclosed by appellant Randhir Singh and the pointing out of the place from where the dead body was thrown. The

recovery of the dead body of victim Suresh Kumar at the instance of appellant Randhir Singh is the clinching incriminating circumstance against appellant Randhir Singh.

59. In view of our aforesaid discussion, it has been established that deceased Suresh was kidnapped by appellant Randhir in his car and, thereafter, his dead body has been recovered from the canal in pursuance of the disclosure statement of the accused appellant. The Hon'ble Apex Court in case **Sucha Singh Vs. State of Punjab (2001) 4 Supreme Court Cases 375** has laid down as under:

“The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.”

60. From the evidence available on record, it is established that deceased Suresh Kumar was abducted by appellant Randhir Singh in his car. Later on, his dead body was recovered from the Bhakhra Canal at his instance. As per the medical evidence, he has died as a result of firearm injury. Thus, the circumstances leading to the death of Suresh Kumar were specially in the knowledge of appellant Randhir Singh, the abductor. But he has not furnished any information in his statement under Section 313 Cr.P.C. as to what happened to deceased Suresh Kumar, which resulted in his death. The withholding of the said

information from the Court raises a clear presumption under Section 106 of the Indian Evidence Act against appellant Randhir Singh, which is sufficient to conclude that he is also the murderer of Suresh Kumar.

Fourth : The medical evidence.

61. As per the testimony of PW1 Dr.Satish Garg, who was the Member of the Board, which conducted post-mortem examination on the dead body of Suresh the deceased was having the following injuries:

“There was wound of entry of oval shaped size 0.7 x 0.5 cms. in the submentum region centrally placed. Blackening around the wound was seen. Direction of the wound was upward and backwards. Piercing through the tongue and palate. Small bone pieces were seen at the base of the skull along with plenty of blood. Bullet excruciated from the base of the skull to the nasal cavity piercing the parts on its way.”

“The cause of death in our opinion was due to asphyxia which was due to the blood present in the trachea and larynx as a result of injury (fire arm). The injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.”

62. As per the statement of PW1 Dr.Satish Garg, the cause of death of deceased Suresh Kumar was due to asphyxia which was due to the blood present in the trachea and larynx as a result of firearm injury. During the postmortem examination a bullet was taken out from the body of the deceased and handed over to the police.

63. There is no dispute with proposition of law that confession before a police officer is not admissible in evidence being hit

by Section 25 of the Evidence Act but where a fact is discovered in pursuance of the disclosure statement that part of the disclosure statement can be taken into consideration. In the instant case appellant Randhir Singh has disclosed in his disclosure statement Ex.P41 that he has killed Suresh Kumar by causing firearm injury to him. The recovery of the bullet from the body of the deceased is a fact discovered in pursuance of the disclosure statement made by appellant Randhir Singh. So, the recovery of the bullet from the body of the deceased is again a strong circumstantial evidence against appellant Randhir Singh.

64. Learned counsel for the appellants have assailed the recovery on the plea that no independent witness has been associated. They also pleaded that it is highly improbable that the sons will not accompany the Investigating Officer for taking out the dead body from the Canal when the fact was disclosed by accused Randhir Singh. It is well settled principle of law that the non-joinder of the independent witness at the time of seizure, itself does not create any dent in the prosecution evidence, unless something more is made visible. The people have become more self-centred and they watch their own interest even in doing any public act. There are very few people who come forward for the social cause and are prepared to sacrifice themselves for the larger interest of the society. The Hon'ble Supreme Court in case **State Govt. of NCT of Delhi Vs. Sunil 2001 (1) RCR (Criminal) 56** has laid down as under :

“Hence it is a fallacious impression that when recovery is

effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.”

65. The same principle of law has been laid down by the Division Bench of this Court in case **Manohar Lal and another Vs. State of Haryana 2005(2) RCR (Criminal) 431.**

66. Thus, the non-joining of the independent witness cannot be a ground to discard the evidence of recoveries. Learned defence counsel have not been able to point out any ill-will or enmity on the part of the prosecution witnesses towards the accused for the false implication.

67. Appellant Randhir Singh had disclosed on 03.05.2008 that after committing the murder of Suresh Kumar, he has thrown the dead body in the canal. Before that point of time, complainant Rajnish and his brother Vikas PW15 were having no knowledge about the murder of their father. On receiving this information, they might be shocked and

perplexed. PW14 Rajnish has categorically stated in the cross-examination that he and his brother Vikas left the Police Station at about 10:00 a.m. and came to their house. They did not go thereafter at any place and kept on weeping at their house because their father had expired. This is the natural conduct of the sons of the deceased. So, their absence at the time of taking out of the dead body from the canal, is also not a ground to create any dent in the prosecution case.

68. No doubt, as per the prosecution version the motive for the abduction of the deceased was ransom but the prosecution has not been able to adduce any evidence to establish the demand of any ransom. No doubt, in the cases based on circumstantial evidence, the motive for commission of offence plays a significant role. But the Hon'ble Apex Court in case **Nathuni Yadav Vs. State of Bihar and another, AIR 1997 Supreme Court 1808** has laid down that motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which implies a man to do a particular act. In view of the aforesaid ratio of law the prosecution cannot exactly establish the motive for the commission of the offence in certain cases. A Division Bench of this Court in case **Dalbir Singh @ Beera Vs. State of Punjab, 2007(1) RCR (Criminal) 1000** has laid down that absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime nor militates against the prosecution case. Failure to discover the motive of offence does not signify its non-existence. Similarly, in case **Ujjagar**

Singh Vs. State of Punjab, 2008(1) RCR (Criminal) 305, the Hon'ble Supreme Court has laid down that in the cases relating to the circumstantial evidence motive does assumes significance but to say that absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. In case **Mannu Sao Vs. State of Bihar, 2010(3) RCR (Criminal) 813**, the Hon'ble Supreme Court has laid down as under:

“With the development of law, now it is a settled principle that motive is not absolutely essential to be established for securing conviction of an accused who has committed the offence, provided the prosecution has been able to prove its case beyond any reasonable doubt.”

69. In case **G. Parshwanath Vs. State of Karnataka, AIR 2010 Supreme Court 2914**, the Hon'ble Supreme Court has laid down as under:

“In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence, where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no

absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC.”

70. In case **Uday Kumar Vs. State of Karnataka, AIR 1998 Supreme Court 3317** also the Hon'ble Supreme Court has laid down that motive though is one of the circumstance which assumes importance but it cannot be said that in the absence thereof proved circumstances would be of no consequence. All the above referred cases were based on the circumstantial evidence. So, plea raised by learned counsel for the appellant on this aspect also has no substance.

71. The case of appellant Vikramjit is entire on different footing.

72. As far as the case of accused-appellant Vikramjit is concerned, he has been implicated on the disclosure statement of co-accused Randhir Singh. As per the prosecution allegation, accused-appellant Vikramjit Singh hatched a criminal conspiracy with Randhir Singh to abduct Suresh Kumar in order to extract ransom. He supplied the weapon to Randhir Singh. The weapon was returned to him after the commission of crime. The same is alleged to have been recovered from his possession in pursuance of his disclosure statement. The most significant circumstance relied upon by the prosecution against accused Vikramjit Singh is the recoveries from him in pursuance of his disclosure statement.

73. Accused-appellant Vikramjit Singh was arrested in this case on 04.05.2008. On interrogation, he suffered disclosure statement

Ex.P26 on 05.05.2008 but in pursuance of the said disclosure statement, no recovery was effected. He was again interrogated and suffered the disclosure statement Ex.P42 on 08.05.2008 but again with the same result as no recovery was effected on the basis of said disclosure statement. His third disclosure statement has been recorded on 10.05.2008 in the presence of PW16 ASI Om Parkash and Head Constable Jagmel Singh, which is Ex.P27. It is alleged that in pursuance of this disclosure statement, he has got recovered the country-made revolver of .32 bore, three live cartridges, two empty cartridges, one slip on which the telephone numbers including the telephone number of PW15 Vikas were written and these articles were taken into possession vide memo Ex.P29.

74. The version of prosecution about the recovery of the aforesaid articles from the possession of appellant Vikramjit Singh does not inspire any confidence. Accused Vikramjit Singh is now resident of Patel Nagar, Narwana, whereas the place of recovery as per the statement of PW22 SI Hawa Singh is situated near Baliala Rest House near a tower in Tohana. It is not believable that accused Vikramjit Singh, who was residing in Narwana will cover such a long distance to come nearby the town where the occurrence has taken place to conceal such articles. It is also alleged that a chit bearing some telephone numbers including the mobile number of PW15 Vikas, the son of the deceased and two empty cartridges were also got recovered along with the country-made revolver and three live cartridges. The said paper chit and empty cartridge cases were valueless articles and it is highly improbable that accused Vikramjit

Singh would have kept concealed such worthless articles which could have of no use to him, that too after the commission of the crime. The alleged recovery of the chit and empty cartridges shown by the prosecution adversely affect the veracity of the prosecution case with respect to even the other articles.

75. The Investigating Officer has clearly misused the provisions of Section 27 of the Evidence Act and repeated disclosure statements of accused Vikramjit Singh Ex.P26, P42 and P27 have been shown to be recorded. In the first disclosure statement Ex.P26, it is mentioned that these articles were concealed at Alwar. In the second disclosure statement Ex.P42 it is mentioned that these articles are lying concealed at Bahadurgarh, District Patiala and in the third disclosure statement Ex.P27, these articles were stated to be concealed near Tohana i.e. the town where the occurrence has taken place. It appears that these disclosure statements have been manufactured just to procure the police custody of the appellant for a sufficient long period.

76. As per the prosecution version, these articles have been recovered on 10.05.2008 but this version of the prosecution has been shattered from the statement of PW15 Vikas, the son of the deceased, who was also the witness to the disclosure statement of this appellant Ex.P42 dated 08.05.2008. This witness has categorically stated that on 08.05.2008, he remained in the Police Station upto 10:00 a.m. After disclosure, the police party left the Balia Rest House and recovered the revolver, one slip and two live cartridges there from. He did not see said

revolver etc. Om Parkash had accompanied on 08.05.2008 with the said ASI and Om Parkash informed him in the evening that above said revolver etc. have been recovered. The said revolver etc. were recovered near Baliala Rest House. So, as per the statement of this witness, these articles were recovered on 08.05.2008 whereas, the recovery has been shown by the Investigating Officer on 10.05.2008. This material contradiction renders the case of the prosecution totally doubtful about the recovery of the revolver, cartridges and chit from the possession of appellant Vikramjit Singh. Once the recovery of the aforesaid articles from the possession of appellant Vikramjit Singh is not established, there remains no evidence against him except the disclosure statement of co-accused Randhir Singh, which is not a legal evidence.

77. It is admitted case of the prosecution that at the time of the occurrence appellant Vikramjit Singh did not accompany co-accused Randhir Singh. As per the disclosure statement of Randhir Singh he alone had abducted deceased Suresh Kumar, committed his murder and thrown his dead body in the Canal. No doubt, there could be no direct evidence to establish the criminal conspiracy but at the same time, in order to convict a person for such a serious offence, there must be the legal, cogent and reliable evidence, may be circumstantial or indirect. In the instant case there is absolutely no evidence to establish any criminal conspiracy between the appellants for the abduction of victim Suresh Kumar for ransom and to commit his murder. There is no evidence except the disclosure statements that the weapon was arranged by appellant

Vikramjit Singh and was further handed over to appellant Randhir. The recovery of the revolver, cartridges and chit, alleged from the possession of appellant Vikramjit Singh is not established in view of our aforesaid discussion. There is also no evidence to establish that there was any meeting of mind or agreement between the appellants for the commission of this offence prior to the occurrence. The Investigating Officer has also not collected any evidence to show any connection between the appellant. If both the appellants would have conspired to abduct Suresh Kumar for ransom i.e. to extort money for their common benefit, it is not believable that every act shall be done by co-accused Randhir alone. If there would have been any such conspiracy or agreement between the appellants, appellant Vikramjit Singh must have accompanied Randhir Singh. Thus, the prosecution has not been able to establish that Vikramjit Singh appellant was a party to any criminal conspiracy with appellant Randhir Singh for the commission of the present offence and he deserves the benefit of doubt.

78. Thus, keeping in view our aforesaid discussion, it is established that deceased Suresh Kumar was abducted by appellant Randhir in his car on the late evening of 29th April, 2008. Thereafter, he committed his murder by causing the firearm injury. He has pointed out the place from where the dead body was thrown in the Bhakhra Canal. The blood stained earth and other articles were recovered from that spot. The dead body of Suresh Kumar was recovered on the evening of 03.05.2008 from the Bhakhra Canal nearby the place pointed out by

appellant Randhir Singh, so, the dead body has been recovered at the instance of appellant Randhir Singh. Appellant Randhir Singh has not explained under what circumstances deceased Suresh Kumar, who was abducted by him, met with death, which raises an adverse inference under Section 106 of the Indian Evidence Act against him. In the absence of any explanation thereof, he is proved to be the murderer.

79. Thus, the incriminating circumstances are fully established against appellant Randhir Singh. These circumstances are consistent with hypothesis of his guilt and are not explainable on any other hypothesis except that appellant Randhir Singh is guilty. These circumstances are of conclusive nature and excludes every other possible hypothesis except the guilt of accused Randhir Singh. These circumstances are consistent with the guilt of the accused-appellant Randhir Singh and totally inconsistent with his innocence and clearly shows that in all human probability, the offence has been committed by him.

80. Consequently, the prosecution has been able to establish beyond shadow of reasonable doubt that deceased Suresh Kumar was abducted by appellant Randhir Singh. He also committed his murder and threw the dead body in Bhakhra Canal in order to destroy the evidence. So, the conviction and sentence of appellant for the offence punishable under Section 302, 364 and 201 IPC is hereby affirmed. However, the prosecution has failed to establish its case beyond shadow of reasonable doubt against accused appellant Vikramjit Singh.

81. Resultantly, CRA No.D-850-DB of 2009 is hereby allowed. The conviction and sentence of appellant Vikramjit Singh are hereby set aside. He stands acquitted of the charges as a result of benefit of doubt. He be set at liberty forthwith if not detained in any other case. However, CRA No.D-995-DB of 2009 filed by appellant Randhir Singh has no merits and same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

12.01.2015
sunil yadav

(DARSHAN SINGH)
JUDGE