

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

CRA-D-1201-DB of 2011

Date of decision : 19.10.2015

Gurmail Singh @ Geli

.....Appellant

Versus

State of Punjab

.....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. P.S. Khurana, Advocate
for the appellant.

Mr. S.S. Dhaliwal, Additional A.G., Punjab.

GURMIT RAM, J.

1. Through this appeal, appellant Gurmail Singh @ Geli above-said has challenged the judgment dated 25.8.2011 and order of sentence dated 26.8.2011 passed by the learned Additional Sessions Judge, Ludhiana in criminal case bearing FIR No.120 dated 4.12.2002 under Section 302 of the IPC, Police Station Sudhar, District Ludhiana vide which accused was held guilty for the offence punishable under Section 302 of the IPC and convicted as such with the sentence of rigorous imprisonment for life and a fine of Rs.10,000/- and in default of making payment of fine to further undergo rigorous imprisonment for a period of three months.

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2. The case in nutshell as put forth by the prosecution before the learned trial Court was that on 4.12.2002, SI Hardip Singh along with some other police officials was proceeding towards villages Adiana and Rajoana Kalan in connection with patrolling on a private vehicle. Sadhu Singh, Sarpanch of village Heran met him on canal bridge, Sudhar, who made his statement before him which was as under:-

“That today he along with Harbans Singh of his village at about 10:30 A.M. was going on his scooter from village Heran to Talwandi Rai in connection with his personal work. When they were at a distance of about 2 kms. from village Talwandi Rai and reached near the fields of Darshan Singh of his village, they saw one young man lying by the side of road. They went near to him after stopping the scooter and found that the same was the dead body of Sukhdev Singh son of Charan Singh, resident of Rajoana Kalan. When they saw it minutely, then they found marks of injuries and bluish spots on his head, shoulder, chest and left leg. It appeared that he had been hit by a speeding vehicle which resulted into his death. This accident took place due to rash and negligent driving of some unknown vehicle by its driver.”

After recording his said statement, the same was read over to him, which he had signed after admitting it to be correct. Upon this statement of complainant, SI Hardip Singh made his endorsement and sent ruqqa to the police station, on the basis of which initially a case under

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Section 304-A of the IPC was registered in this case. Inquest report with regard to the dead body of deceased was prepared on its identification by one Harbans Singh son of Charan Singh and Harbans Singh son of Gurdeep Singh. Then the dead body was sent for the post-mortem examination which was got conducted from Civil Hospital, Sudhar. Then the above-said police officer visited the spot of occurrence and prepared the rough site-plan. He also recorded the statements of witnesses and inquired from Bahadur Singh and others about this incident. After post-mortem examination viscera of the deceased was sent to the office of Chemical Examiner, Patiala. Randhir Singh, DSP Raikot also visited the spot and made investigation with regard to this case. Accused Gurmail Singh @ Geli was also summoned for 06.12.2002 with regard to the investigation of this case. Statements of Surjit Singh son of Ujagar Singh and Nachhattar Kaur wife of Surjit Singh under Section 161 of Cr.P.C. were recorded on 27.4.2003. They got recorded in their statements that Gurmail Singh @ Geli had come to them and disclosed that he had served liquor to Sukhdev Singh alias Bhola laced with some insecticide as a result of which he expired. Further he requested them to get the matter compromised with the family members of deceased. This fact was also admitted by him before Rajbir Singh, Sarpanch and requested him to produce him before the police. The wife of the deceased had also moved applications in this connection, investigation of which was conducted by DSP Randhir Singh. Report of Chemical Examiner with regard to viscera of deceased was also received. On the basis of this report of Chemical Examiner, the cause of death of the deceased as given by the doctor was due

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to shock caused by Aluminium Phosphide Insecticide poisoning and aggravated by multiple injuries which were ante mortem in nature. Then offence under Section 302 of the IPC was added. Accused Gurmail Singh @ Geli was produced before the police on 6.5.2003 by Rajbir Singh, Sarpanch who was formally arrested after necessary investigation and was interrogated. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, Jagraon, who further committed the case to the Court of learned Sessions Judge, Ludhiana for its trial after making compliance of the provisions of section 207, Cr.P.C.

3. Finding a prima-facie case under section 302, IPC, against the accused, he was charge-sheeted accordingly by the learned trial Court vide order dated 7.7.2003, to which, he pleaded not guilty and claimed trial.

4. Then after recording statements of some of the prosecution witnesses, the prosecution also moved an application under Section 319 of Cr.P.C. for summoning Rajbir Singh, Sarpanch as an additional accused which was declined by the learned trial Court vide order dated 16.9.2008.

5. Then statements of remaining prosecution witnesses were also recorded. The prosecution in all examined nine witnesses to prove its version against the accused.

6. Thereafter, the accused was duly examined as per the provisions of section 313, Cr.P.C. During his examination, the entire incriminating evidence brought against him during the trial of the case was put to him, which was denied by him. Further he pleaded his innocence and

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false implication in this case. But he did not lead any evidence in his defence.

7. The learned trial Court after hearing learned counsel for both the parties and perusing the record as well held the accused guilty for the offence punishable under Section 302, IPC and convicted him accordingly vide the impugned judgment and order of sentence.

8. The appellant being aggrieved from the impugned judgment of conviction and order of sentence has come up before this Court by way of the instant appeal, notice of which was given to the respondent - State. Record of learned trial Court was also requisitioned.

9. We have heard the learned counsel for both the parties and also analysed the record with their eminent assistance.

10. The learned counsel for the appellant has contended that the entire case of prosecution rests on circumstantial evidence, but the prosecution has utterly failed to complete the chain of circumstantial evidence in order to prove the guilt of the accused beyond the shadow of reasonable doubt. The learned trial Court has mainly relied upon the statement of PW2 Surjeet Singh that the appellant was last seen with the deceased and the extra judicial confession allegedly made before him by the appellant. In this connection, it is his submission that this PW2 was an interested witness being the uncle of the deceased and as such it was not safe for the trial Court to base the conviction of the accused on the basis of statement/deposition of such like witness. Then it is further contended by him that the statement of PW4 Nachhattar Kaur also did not inspire any

confidence since she was declared hostile at the request of prosecution, but the learned trial Court while recording the impugned judgment of conviction has gravely erred in relying upon the statement of this hostile witness. Then the learned counsel for the appellant has also contended that initially in this case FIR was lodged under Section 304-A, IPC and doctor at the first instance gave his clear cut opinion that death is due to injury suffered by the deceased which was sufficient to cause death in the ordinary course of nature. In this connection, it is further his submission that on receipt of the report of Chemical Examiner, doctor gave his second opinion that the death was due to poisoning without any justification or reason for this change of his opinion.

11. Then he also contended that as per the case of prosecution, the poison was allegedly given to the deceased by Rajbir Singh, who was neither made as an accused in this case nor cited as witness by the prosecution. Then he has also contended that in the post-mortem report, there is no indication about the poisoning or effects of poisoning or traces of poisoning on the body/clothes of deceased and that rather all the organs of the body of the deceased such as stomach, liver etc. were found healthy during post-mortem and as such the theory of poisoning as set up by the prosecution is not reliable being suspicious. The impugned judgment of conviction is purely based on presumption and assumption which is not permissible under the law and as such the same is not sustainable in the eyes of law. Further he has prayed to set aside the impugned judgment by accepting this appeal and to acquit the appellant of the charges framed

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against him in this case.

12. But on the other hand, learned State counsel has vigorously controverted the above entire contentions of learned counsel for the appellant and has contended that the version of prosecution was well proved on the record on the basis of evidence available on the file and as such there is nothing on the file to make any kind of interference in the impugned judgment of conviction and order of sentence. In support of his contention he has referred to the statements of prosecution witnesses examined by the prosecution during trial of the case. Then it is also his submission that PW4 Nachhattar Kaur has not resiled from her statement in its entirety, rather she has supported the version of prosecution on some substantial points and as such learned trial Court was justified in relying upon her statement to draw the conclusion that appellant is guilty of the commission of the offence of which he was charge-sheeted. Then it is also his submission that mere relationship of witness to the deceased or injured itself is no ground to discard his/her statement.

13. Before proceeding on proper appreciation and evaluation of above rival contentions of both the parties, we deem it necessary to analyse the evidence precisely which has come on the record during the trial of the case and the same is as under:-

In this case the machinery of criminal law was set into motion on recording of statement Ex.PD of PW3 Sadhu Singh. This witness along with Harbans Singh detected the dead body of deceased lying on the road side near the field of one Darshan Singh of his village Heran with injuries

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on the various parts of his body on 4.12.2002 at about 10:30 A.M. and he informed the police in this regard vide his statement Ex.PD.

This statement Ex.PD of PW3 was recorded by PW7 SI Hardip Singh, who after recording the same made his endorsement Ex.PW7/A on it and sent ruqqa to the police station, on the basis of which the FIR Ex.PW7/B was recorded under Section 304-A of the IPC by believing it to be a case of road accident. Inquest report in respect of dead body of deceased was prepared, which was further sent to the hospital for the post-mortem.

The post-mortem on the dead body of deceased was conducted by Dr.Gurpreet Singh, Medical Officer who appeared in this case during the trial as PW1. His statement is to the effect that he conducted post-mortem on the dead body of deceased on police request Ex.PC on 4.12.2002 and he found following injuries on his person:-

1. Contusion blue coloured 24 cm x 11 cm on the lower chest left side.
2. Contusion blue coloured 38 cm x 23 cm on lateral surface of left thigh.
3. Contusion blue coloured 17 cms x 11 cms on lateral surface of left lower leg below the knee.
4. Contusion blue coloured 15 cms x 10 cms lateral surface of the right lower leg below the knee.
5. Contusion 17 cms x 9 cms on the lateral surface of right thigh.

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6. Contusion blue coloured 7 cms x 3 cms on the right side of neck.
7. Contusion blue coloured 4 cms x 3 cms on the left temporal region.
8. Contusion blue coloured 2 ½ cms x 1 ½ cms on the nose.
9. Contusion 4 cms x 2 ½ cms blue coloured on the right side of lower leg.
10. Contusion blue coloured 15 cms x 16 cms on the back of right shoulder.
11. Contusion blue coloured 10 cms x 8 cms on the back of left shoulder.

Then he gave his opinion provisionally that death was caused due to brain injuries and haemorrhage due to the spleen tear (rupture), with the observation that final opinion was kept pending till the receipt of report of Chemical Examiner. On receipt of report Ex.PA of Chemical Examiner, he gave his further opinion Ex.PA/1 that cause of death of deceased was due to shock caused by Aluminium Phosphide poisoning and aggravated by multiple injuries which were ante mortem in nature. Further he proved the carbon copy of the PMR Ex.PB and pictorial diagram showing the seats of injuries as Ex.PB/1.

PW2 Surjit Singh admitted in his statement that deceased was son of his brother, who used to purchase poppy-husk from Ex-sarpanch and accused Gurmail Singh @ Geli present in the Court. It was also in his statement that on 3.12.2002 at about 3:00 p.m., he was irrigating his land in

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his village by the side of Talwandi Rai, where his nephew Sukhdev Singh (since deceased) and accused Gurmail Singh came on a scooter. He inquired from them as to where they were going and in his presence deceased asked Gurmail Singh to pay him his amount which was due towards him. On this accused told him that he will pay the same to him after settling the accounts and selling of poppy-husk. Thereafter, they went to the house of Nachhattar Kaur in village Dholan via Talwandi Rai. On next day at about 8:00 A.M., he learnt that dead body of Sukhdev Singh was lying on the road leading from Talwandi to Heran, whereupon, he along with some other persons went to that spot. He informed the police that accused Gurmail Singh and deceased were selling poppy-husk of Sarpanch Rajbir Singh and there was some dispute between said Rajbir Singh and the deceased and as such the deceased was murdered by accused Gurmail Singh and Sarpanch Rajbir Singh.

After one month of the occurrence, accused Gurmail Singh @ Geli came to him and made extra judicial confession before him to the effect that *“on 3.12.2002 he and Sukhdev Singh purchased liquor and after consuming it, they went to the house of Nachhattar Kaur in village Dholan, who started preparing meal for them. In the meanwhile, deceased insisted him to pay a sum of Rs.6,500/- to him, besides threatening him that if this amount is not paid, he will get him arrested from the police. Then he made a telephone call to Rajbir Singh and apprised him about the threats given by the deceased. Rajbir Singh asked him to bring the deceased to village Dholan, who met them on the way. Rajbir Singh told them that he had*

brought some liquor for them which he handed over to him. After putting the liquor in the glass, he handed over the same to deceased who went to the side of motor to consume the same. In his absence, Sarpanch told him (Gurmail Singh) not to take liquor as he has mixed some insecticide in it. In order to deceive the deceased, he also put some liquor in the glass and threw it away in a furtive manner. Similarly was done by Rajbir Singh. Then they all started towards Talwandi Rai. When they reached near poplar trees, they stopped their scooter and deceased fell on the ground since the poison had started effecting him and he got injuries. They both took the deceased from there and threw him at the place where his dead body was found lying by complainant Sadhu Singh and others. He informed some persons about the death of Sukhdev Singh in the morning and then fled away.”

PW4 Nachhattar Kaur was related to the accused as well as the deceased since it has come in her statement that accused is his nephew (*bhanja*) and whereas deceased was his brother-in-law (*jeeja*). Her statement is to the effect that accused and deceased had come to her house on a scooter on 3.12.2002 at about 5:00 p.m., who had already taken the liquor. While she was preparing meal for them, they were talking with each other about the money with regard to poppy-husk transaction. Deceased left on the pretext to make some telephone call to his house who returned after making that call. Then accused also left on the plea to make some telephone call, who was accompanied by her son Lakhbir. They left her house without taking meal, but they were given *chapatis* in polythene bag and *daal* in a

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tiffin. Then on the next day on coming to know about the death of deceased, she went to village Rajoana where police told her that deceased had died due to receiving injuries in some accident. Then it is also in her statement that accused told her in the police station that he had committed a mistake and requested her to get him released from the police otherwise his children would be ruined. Then this witness was declared hostile on the request of the prosecution and during her cross-examination, the remaining part of her statement made by her before the police under section 161, Cr.P.C. was put to her in small portion, to which, she replied that she did not remember as to whether she made any such statement before the police. Meaning thereby, she neither admitted nor denied her said statement to the extent which was put to her in her cross-examination made by the prosecution.

PW9 Shinder Pal Kaur was the widow of the deceased. Her statement was to the effect that on 3.12.2002 at about 3:30 p.m., accused came to her house and took her husband along with him on a scooter. Accused made a telephone call in the house of her neighbour at about 7:00 p.m. from village Dholan that he and her husband would stay there in the house of Nachhattar Kaur, who was her sister in relation. Then it is further in her statement that when her husband did not turn up, then she inquired from the accused about the whereabouts of her husband to which he did not give any reply satisfactorily. Then on the next day i.e. 4.12.2002 she came to know that dead body of her husband was lying on Talwandi road and there were injuries on his entire body. Her husband did not die in any accident. She proved application Ex.PW9/A sent to Hon'ble Prime Minister

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of India and others with regard to this incident through registered post, postal receipts of which are Ex.PW9/1 to Ex.PW9/9. Then she also proved another application, which she sent to the Chairman, Punjab Human Rights Commission, Chandigarh and other higher police authorities, the photocopy of which is Ex.PW9/B.

PW7 SI Hardeep Singh was the Investigating Officer in this case and on the relevant date, he was posted at Police Station Sudhar. He recorded the statement Ex.PD of complainant Sadhu Singh, on which he made his endorsement Ex.PW7/A, on the basis of which FIR Ex.PW7/B was recorded in the instant case. Further he visited the spot of occurrence and prepared the inquest report Ex.PD (re-exhibited) of the dead body in presence of Harbans Singh son of Charan Singh and Harbans Singh son of Gurdeep Singh. Then he sent the dead body for post-mortem examination vide his request Ex.PC. He recorded the statements of witnesses during investigation of the case. Further he also proved the rough site-plan Ex.PW7/C of the place of occurrence. On 27.4.2003, he recorded the statements of Nachhattar Kaur and Surjit Singh under Section 161 of Cr.P.C. On receipt of report of Chemical Examiner, the offence under Section 302, IPC was added in the present case. Accused was arrested in this case on 6.5.2003 and memo Ex.PW7/D was prepared with regard to his personal search.

PW8 SI Jaswinder Singh deposed to the effect that accused was produced before him by Rajbir Singh, Sarpanch on 6.5.2003. He arrested him vide arrest memo Ex.PW8/A and on completion of investigation, he

presented the challan in the Court against the accused.

Statement of PW5 Gurbhej Singh, Constable was to the effect that he got conducted post-mortem on the dead body of deceased from Civil Hospital, Sudhar as per the direction of SI Hardip Singh. After the post-mortem, the doctor handed over to him sealed jars of viscera of deceased and one sealed envelope which he handed over to AMHC Sukhdarshan Singh with seals intact. He further deposited these articles in the office of Chemical Examiner, Patiala with seals intact after receiving the same from above said AMHC and on return to police station, he handed over the receipt to AMHC. He kept the above-said articles in intact condition so long as the same remained in his possession.

PW6 Tarsem Lal, Draftsman was the formal witness in this case. He proved the scaled site plan Ex.PW6/A which he prepared after inspecting the spot on 8.6.2003.

14. So far the fact that appellant was last seen with deceased is concerned, in this connection PW2 Surjit Singh has stated that he saw both of them together on 3.12.2002 at about 3:00 p.m. in the area of his village while going on a scooter which was being driven by the appellant and deceased was sitting on its pillion seat. Then both of them on the same day reached at the house of PW4 Nachhattar Kaur at about 5:00 p.m. on a scooter in village Dholan. Then as per the statement of PW4 Nachhattar Kaur both of them left her house in the late night hours on the same very day on the scooter. Then as per the statement of PW9 Shinder Pal Kaur widow of deceased, the appellant had come to her house on 3.12.2002 at

about 3:30 p.m. and took her husband on a scooter. So the depositions of these three prosecution witnesses are held to be up to the mark to establish the fact on record that deceased was last seen in the company of the appellant on 3.12.2002 till late night hours. Then in this case dead body of deceased was found lying on the road side in the area of village Heran on 4.12.2002 at about 10:30 A.M. by PW3 Sadhu Singh.

15. Then the learned counsel for the appellant in support of his above contention and the manner in which the principle of last seen is to be exercised has relied upon an authority of Hon'ble Apex Court as delivered in **Subhash Chandra Nanda Versus Sanjay Thakran and another, 2007(2) R.C.R.(Criminal) 458.** Para No.30 of this authority is relevant for the purpose above mentioned which is as under:-

“From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration.

There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons.”

In the case in hand, no material had come on the record during trial of the case to show that deceased was seen in the company of somebody else other than the appellant after his departure from the company of the appellant during the relevant period in issue i.e. from the late night hours of 3.12.2002 when the appellant and deceased left together from the house of PW4 Nachhattar Kaur on a scooter till about 10:30 A.M. of 4.12.2002 when dead body of deceased was detected. Then the gap between the time when the appellant and deceased were last seen together and the time when dead body of deceased was recovered is not too much and the same is held to be rather reasonable as well as explainable. Though PW4 Nachhattar Kaur was declared hostile qua the later part of her statement, but her statement qua the fact that appellant and deceased were last seen together on 3.12.2002 till late night hours is found to be quite firm and hence the same can be relied upon to decide the above point in issue. Then it is also to note that this witness was also related to deceased as well as to

the appellant as above discussed.

The sole statement made by PW5 Constable Gurbhej Singh in his cross-examination that father and wife of deceased had told the police that deceased had left his house on 4.12.2002 in the morning is held to be not suffice to dislodge the above discussed depositions of PW2, PW4 and PW9 qua the fact that appellant and deceased were last seen together on 3.12.2002 in the evening as well as till late night hours on that date. So nothing has come on the record to disbelieve the theory of last seen as relied upon by the learned trial Court while holding the accused guilty in this case. Moreover, the principle laid down in the case law **Subhash Chandra Nanda Versus Sanjay Thakran and another** (supra) supports the version of prosecution and not the defence version.

16. Then it was also the plea of counsel for the appellant that it was the case of prosecution that the alleged extra judicial confession was made by the appellant before Rajbir Singh, Sarpanch but he was not cited as prosecution witness in this case nor examined as such during trial of the case. So the learned trial Court has gravely erred in relying upon this extra judicial confession there being no evidence supporting as well as corroborating to it. In support of his contention he has also relied upon the case law as laid down by the Hon'ble Apex Court in **Sahadevan and another Versus State of Tamil Nadu, 2012(2)R.C.R.(Criminal) 899**. In this case the person in whose presence extra judicial confession was made was not examined. It was held that such like confession could not be relied upon.

But in the case in hand, it was the case of prosecution that

alleged extra judicial confession was made by the appellant before PW2 Surjit Singh also, who narrated in this regard in detail in his deposition. So the above plea of the counsel for the appellant that alleged extra judicial confession was not proved on record during the trial of the case for want of evidence is held to be not correct being against the record.

Then in the case in hand, a peculiar fact is that the complainant party had been claiming from the very beginning that deceased was murdered by the present appellant along with above-said Rajbir Singh, Sarpanch. During the investigation of this case, this Rajbir Singh was neither arrested as an accused in this case nor was ever interrogated. Then during the trial of the case after recording evidence of prosecution in part, an application was filed under Section 319, Cr.P.C. for summoning him as an additional accused in this case which was declined by the learned trial Court. No revision was preferred by the prosecution against this order. Meaning thereby, the prosecution from the very beginning was hand in glove with him by siding with him. So it was of no use to cite such a person as a witness in the case in hand. Had he appeared as a witness in this case then certainly his statement would have spoiled the case of prosecution instead of supporting it, the investigation of which was done already in a perfunctory manner.

17. Then the learned counsel for the appellant has pointed out regarding the interestedness of the star witnesses of the prosecution namely PW2 Surjit Singh and PW9 Shinder Paul Kaur. In order to clear his contention, he has submitted that PW2 Surjit Singh is the brother of the

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father of deceased whereas PW9 Shinder Paul Kaur is widow of the deceased and as such it was not safe for the learned trial Court to rely upon their statements while holding the appellant guilty in this case. So far PW4 Nachhattar Kaur is concerned, she is related to both the deceased as well as the appellant. It had come in her statement that deceased was her brother-in-law (*jeeja*) and whereas appellant is his nephew (*bhanja*). From their statements, it was well established on record that one day prior to the occurrence in question appellant and deceased were seen together by these witnesses. Hence their statements were very much relevant and admissible for the proper adjudication of this case. Mere relationship/interestedness is no ground to disbelieve their statements. It was for the appellant to challenge the veracity of their statements by bringing on the record some substance to evince that whatever they had deposed in their statements is incorrect being incompatible to the facts of the case. The appellant had failed to bring on the record any such material to disbelieve their statements. Herein the learned State counsel has cited an authority of the Hon'ble Apex Court in **Mookkaih and another Versus State, AIR 2013 (SC) 321**. In this case the learned trial Court disbelieved the statement of PWs being related to the deceased and acquitted the accused. In appeal the Hon'ble High Court set aside the judgment of the learned trial Court and accepted the appeal. In this case the star witness was the father-in-law of the deceased. The Hon'ble Apex Court dismissed the appeal and affirmed the judgment of the Hon'ble High Court and held as under:-

“Though the trial Court has rejected his evidence because of

his relationship, we are of the view that merely because a witness is related, his evidence cannot be eschewed. On the other hand, it is the duty of the Court to analyze his evidence cautiously and scrutinize the same with other corroborative evidence. The High Court has rightly relied on his evidence and we fully agree with the course adopted by the High Court in relying upon his evidence.”

The case in hand rests purely on the circumstantial evidence. It was the above-said PWs who had seen the appellant in the company of deceased one day prior to the occurrence. So in the light of this circumstance of this case and principle laid down in the case law **Mookkaih and another Versus State** cited supra, the above contention of learned counsel for the appellant is also held to be not tenable.

18. Then the learned counsel for the appellant has pointed out the improvements which PW2 Surjit Singh has made in his statement while appearing in the Court. Admittedly, this witness has made certain improvements in his statement some of which are detailed as under:-

- (i) He stated before the police that Gurmail Singh disclosed to him that on 3.12.2002 he and Sukhdev Singh purchased some liquor and after taking the same, they went to the house of Nachhattar Kaur at village Dholan;
- (ii) he also stated before the police that in the meantime Sukhdev Singh again insisted Gurmail Singh to pay his amount of Rs.6,500/-;
- (iii) he also stated before the police that Gurmail Singh confessed before him that Nachhattar Kaur was his mother's sister;
- (iv) he also stated before the police that Gurmail Singh confessed before him

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that he made a telephone call to Rajbir Singh and informed him about the threats given by the deceased;

(v) he also stated before the police that Gurmail Singh confessed before him that in the absence of Sukhdev Singh, Sarpanch Rajbir Singh told him not to take liquor as he had mixed some insecticide in it; and

(vi) he also stated before the police that Gurmail Singh also confessed before him that to cheat Sukhdev Singh, he put liquor in a glass and threw it away secretly, which was also so followed by Rajbir Singh.

But when this witness was confronted with his statement Ex.DA allegedly made by him before the police, then above-said all the facts were found to be not so recorded or missing in it.

But in a case of circumstantial evidence a person making any statement under Section 161, Cr.P.C. before the police on a particular date stated about the facts, which are to his knowledge about the alleged occurrence up to that date. If some new facts, thereafter, had come to his notice qua the alleged occurrence, then remedy available to him is either to make a supplementary statement before the Investigating Officer, if the Investigating Officer so permits him or depose in this regard in the Court while appearing as witness. In the Indian legal system, the Investigating Officer of the case plays a pivotal role in the investigation of the case and if he does not record the supplementary statement of the witness under Section 161, Cr.P.C. qua the new facts discovered, then the witness concerned has no other alternative but to depose about these facts as a witness during the trial. The matter would have been different had there been any eye-witness

to the alleged occurrence. If in such a case any person makes some improvements while appearing as witness in the Court by travelling beyond his statement made by him under Section 161 of Cr.P.C., then in such like case, his statement could be discarded on the ground of alleged improvements.

19. Then it is also to be seen in a case of circumstantial evidence as to whether the alleged improvements are having any relevancy with regard to the occurrence in question or not. In the case in hand, as per the Chemical Examiner report Ex.PA, Aluminium Phosphide Insecticide was detected in the stomach, small and large intestine of the deceased. Further phosphine, a constituent of aluminium phosphide was detected in the sample of blood of deceased.

So the alleged improvements made by PW2 in his statement are held to be relevant to a great extent in the case in hand for determining the involvement of the appellant in it.

Then it is also a fact that if any accused is to make any confession regarding his involvement in the commission of any offence, then he will not make it in a loud tone by calling the public at large. Rather he will make it in a precise form in a depressed tone, so that it may not come to the notice of other persons. So the alleged improvements made by PW2 in his statement did not affect the case of the prosecution adversely from any point of view.

20. Then motive in this case is also established on the record. It was proved in the statement of PW2 Surjit Singh and PW4 Nachhattar Kaur

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that deceased as well as appellant were dealing in the business of poppy-husk. A sum of Rs.6,500/- of the deceased was due towards the appellant which he was demanding from him time and again. Then it has also come in the statement of PW2 Surjit Singh that the appellant had confessed before him that the deceased had threatened to get him arrested from the police in case his said amount is not paid to him. Then it has also come in the statement of PW4 Nachhattar Kaur that appellant as well as deceased were talking with one another with regard to the transaction of poppy-husk. So the possibility that the appellant had annihilated the deceased in order to avoid the payment of above-said amount cannot be ruled out.

21. Then it was also contended by learned counsel for the appellant that at the time of post-mortem examination, all the main organs of the deceased were found to be normal and healthy and as such the theory of prosecution that deceased was served liquor laced with insecticide is neither believable nor plausible. Herein he has referred to the statement of PW1 Dr.Gurdip Singh. But on the other hand, as per the case of prosecution viscera of deceased was preserved and the same was sent to the office of Chemical Examiner, Patiala for its analysis. On its chemical examination, report of Chemical Examiner was brought on record as Ex.PA. As per this report Aluminium Phosphide Insecticide was detected in Exhibit-I containing piece of stomach, Exhibit-II containing pieces of small and large intestine and phosphine in Exhibit-III containing sample of blood. So it shows that less quantity of Aluminium Phosphide Insecticide was mixed with liquor which intruded into the body parts of the deceased after its

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consumption and consequently the remaining main organs of the deceased remained unaffected. In that event, when the deceased started feeling the effect of insecticide, then he became unconscious and he was thrown on the road side by the appellant. This act and conduct of the appellant also shows that his intention towards the deceased was non else but to cause his death. Had he any other intention then he would have taken him to some hospital to provide him medical aid in order to save his life. While lying on road side, deceased was hit by some vehicle and sustained injuries which further facilitated to cause his death coupled with the effect of poisoning. So this point also does not help the appellant to hold him innocent in this case.

22. Then learned counsel for the appellant has also contended that the alleged statements Ex.DA of PW2 Surjit Singh and Ex.DB of PW9 Shinder Paul Kaur recorded under Section 161, Cr.P.C. were made by them before the police at a very belated stage and as such the same are nothing, but sheer concoction, made up, as well as an afterthought story. In this connection, he has also submitted that it is of no use to rely upon such like statements, the same being far from the truth and are helpful in no manner to hold the appellant guilty in this case. But, in the instant case, as above-said, the investigating machinery from the very beginning was acting on the line that the alleged incident was on account of road side accident and the alleged death of deceased was accidental one. Then Shinder Paul Kaur PW9 from the very beginning had been asserting that her husband had been murdered by the appellant and Rajbir Singh, Sarpanch. He had not died in the alleged road side accident. Further she also wrote letters to higher

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authorities in this connection, which have come on the record as Ex.PW9/A and Ex.PW9/B sent through registered post and the postal receipts in support thereof were brought on the record as Ex.PW9/1 to Ex.PW9/9. In the light of these two letters, the plea of the counsel for the appellant that statements Ex.DA and Ex.DB were recorded at belated stage does not have any much significance in order to ignore the prosecution version.

23. Then the incriminating circumstances which have come on the record in this case in the light of above discussion are as under:-

- (i) Extra judicial confession of the appellant.
- (ii) Serving of liquor to the deceased laced with Aluminium Phosphide Insecticide which fact is duly corroborated by the report of Chemical Examiner Ex.PA.
- (iii) Motive, since the appellant was intending to avoid payment of money to the deceased.
- (iv) Appellant as well as deceased were last seen together till the late night hours of 3.12.2002, prior to alleged occurrence when the dead body of deceased was found on the next day at about 10:30 A.M.
- (v) Act and conduct of the appellant since he did not take the deceased to hospital for his medical treatment when he started feeling effect of insecticide and rather threw him on road side.

The above circumstances are held to be quite convincing and to complete the chain of circumstantial evidence to draw the conclusion that the alleged murder of deceased was committed by none-else, but by the

present appellant.

24. Then there is a latest authority of the Hon'ble Apex Court on this point as delivered in **Madhu alias Madhuranatha & Anr. Versus State of Karnataka, AIR 2014(SC) 394**, wherein 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.”

Then in the case in hand, the investigation is found to be quite faulty being conducted in a very cursory manner. The investigating agency from the very beginning remained sticking to the principle that the alleged incident is a case of road side accident in which deceased had died. Even after the receipt of report of Chemical Examiner Ex.PA, it did not bother to start the investigation of the case on the line that the alleged incident is not merely a case of road side accident, rather it was a case of conspiracy to commit murder of the deceased after serving him liquor laced with

insecticide above-mentioned. The evidence which had come on the record during the trial of the case clearly manifests the involvement of somebody-else along with the accused (present appellant) in the commission of the offence in question. Then the prosecution filed an application under Section 319, Cr.P.C., as above-said for summoning of Rajbir Singh, Sarpanch as an accused in this case at a very belated stage, when seven material prosecution witnesses had already been examined. Then it did not bother to approach the High Court by way of revision against the order vide which its application under Section 319, Cr.P.C. above-said was declined. So in case of faulty investigation, the complainant party is not to suffer at all for that.

25. Then in a case of blind murder, the culprit/s will do his/their best to destroy all kind of evidence, which can possibly be used against him/them, if recovered, while committing the crime. Now-a-days, the criminals have become more wiser. They are committing the crimes in such a manner and destroy all kind of evidence relating to it, that no body can have any suspicion regarding their involvement in the commission of alleged crime. Now the time has come to re-think the century old term 'let nine guilty persons may go scot free, than an innocent to be punished' keeping in view the fact that crime rate in our society has been increasing day by day very alarmingly.

26. In the light of above discussion, this appeal stands dismissed being devoid of merit. Impugned judgment and order of sentence under appeal stands affirmed and this appeal stands disposed of accordingly.

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Copy of this order be sent to the quarter concerned for strict compliance.

October 19, 2015.
Brij

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE