

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, CHANDIGARH

CRA-D-148-DB of 2011
Date of Decision : 29.05.2015

Rakesh Chand GuptaAppellant

Vs.

State of HaryanaRespondent

CRA-D-149-DB of 2011

State of HaryanaAppellant

Vs.

Sohan Lal and OthersRespondents

CRA-D-344-DB of 2010

Sohan LalAppellant

Vs.

State of HaryanaRespondent

CRA-D-68-DB of 2010

Harvinder Singh and othersAppellants

Vs.

State of HaryanaRespondent

CORAM : HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present:- Mr.Sudhir Sharma, Advocate,
for the appellants/accused Harvinder, Rajesh
and Sukhwinder.

Mr.Jagdish Manchanda, Advocate
for accused Sohan Lal

Mr.Naveen Kaushik, Addl.A.G.Haryana.

Mr.Simrandeep Singh Sandhu, Advocate for
Mr.Vinod Ghai, Sr.Advocate
for the complainant.

RAMENDRA JAIN, J.

By this common judgment, we shall dispose of four criminal appeals out of which one has been filed by complainant-Rakesh Chand Gupta (CRA-D-148-DB of 2011) and another by State of Haryana (CRA-D 149-DB of 2011), third by the convict appellant Sohan Lal (CRA-D-344-DB of 2010) and fourth jointly by convicts/appellants-Harvinder Singh, Sukhwinder Singh and Rajesh Kumar (CRA-D-68-DB of 2010).

Challenge in the appeals by the convicts/appellants is to the judgment of conviction dated 22.12.2009 and order of sentence dated 24.12.2009, whereby the appellants were ordered to undergo the following sentences:-

<i>Accused</i>	<i>Under Sections</i>	<i>Sentence Awarded</i>
1.Harvinder	(i) 302/34 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for two years.
	(ii) 394/120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for one years.
	(iii) 25 of the Arms Act	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- in default in fine, to undergo simple imprisonment for two months.

<i>Accused</i>	<i>Under Sections</i>	<i>Sentence Awarded</i>
2. Sukhvinder	(i) 302/34 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for two years.
	(ii) 394/120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for one years.
3.Sohan Lal	(i) 394/120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for one years.
4.Rajesh Kumar	(i) 394/120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default in fine, to undergo simple imprisonment for one years.

Substantive sentences were ordered to run concurrently.

The co-accused Inder Ram was acquitted by the trial Court, whereas accused Harpreet son of Santokh Singh expired on 11.08.2006 during pendency of the trial. Hence, proceedings had abated qua him.

In the appeals filed by the complainant Rakesh Chand Gupta the acquittal of Sohan lal and Rajesh Kumar under Section 302 IPC has been assailed and in the appeal filed by State of Haryana it is prayed for convicting all the accused for the offences under Sections 302, 396, 120-B and 412 IPC. The brief facts of the prosecution case, relevant for decision of the appeals

are that on 23.06.2005, Inspector/SHO Vijay Kumar, Incharge of the Police Station, Ambala City alongwith Head Constable Om Parkash, Constable Khuswinder Singh, was present at Aggarsain Chowk, Ambala City in his official jeep driven by constable Sharda Singh for patrolling, where ASI Shakti Singh, on his mobile informed him about happening of some incident in Kothi No.619, Sector-8, Ambala City. Consequently, he reached at the spot along with his companions and found Sarvshri Rakesh Gupta (complainant), Tarlok Chand and Ashwani Kumar present there. Sh.Rakesh Gupta son of Sh.Madan Gopal Gupta aged 49 years, resident of House No.50-A, Durga Nagar, Ambala Cantt., got recorded his statement to the effect that he does the business of manufacturing scientific instruments in Ambala Cantt. Around 8:30 p.m. on that date i.e. 23.06.2005, he received a telephone call from Dr.J.P.Gupta, who was away to Delhi for the treatment of his mother that he should immediately reach Kothi No.619, Sector-8, Ambala City of Sh.Hari Krishan, and enquire as to what had happened there. He again insisted for him to reach there without loss of any time and inform him about the happenings. Consequently, Rakesh Gupta immediately reached Kothi No.619, Sector-8, Ambala City from Ambala Cantt., accompanied by Sh.Tirlok Chand Mittal and his brother Ashwani Kumar. They found a huge gathering of persons outside the aforesaid Kothi of Sh.Hari Krishan. Then they went inside and found the dead body of his sister-in-law Pushpa Gupta, lying in the dressing room smeared with blood with her head downwards and that of his

cousin Hari Krishan lying on the ground in the adjoining bed room in a pool of blood having its face downwards. Large quantity of blood had spread on the ground. The locks of the almirah were lying open. The household articles of the suitcase were lying scattered. Some unknown persons had committed the murder of his cousin Hari Krishan and his wife Pushpa Gupta by causing injuries to them. The assailants had stolen and taken away the household articles. The details of which would be given by Dr.J.P.Gupta. The two sons of the deceased Hari Krishan were living in America with their families. He had given his statement, which was correct.

Inspector Vikay Kumar by making his endorsement Ex.PA/1 on the said complainant Ex.PA, sent the same for registration of a case to the Police Station, whereupon FIR Ex.PA/2 was recorded by SI Anil Kumar making his endorsement Ex.P/3 in this respect.

Thereafter, Dr.J.P.Gupta also reached at the spot. The police swung into action and got the place of occurrence photographed. Its Rough Site Plan was prepared. Inquest proceedings of the dead bodies of Smt.Pushpa Gupta and Sh.Hari Krishan Gupta were conducted. The postmortem examination on both the dead bodies of Smt.Pushpa Gupta and Sh.Hari Krishan Gupta was got conducted. The blood stained earth, slippers lying near the dead bodies and some other articles were taken in possession by the police from the spot. The accused were arrested on 30.06.2005. Their disclosure statements were

recorded. Call details of the mobile of the deceased Hari Krishan Gupta and that of the accused were also collected. The stolen articles were recovered from them vide different recovery memos. After completion of investigation, police report under Section 173 Cr.P.C. was presented in the Court of the Illaqa Magistrate.

Copies of 'challan' as envisaged under Section 207 Cr.P.C. were supplied to the convicts/appellants. However, since the offences under Sections 395, 396, 120-B, 302, 412 and 216 IPC, besides, Section 25 of the Arms Act were found to have been committed by the accused, being exclusively triable by the Court of Session, therefore, the learned CJM, Ambala vide his order dated 02.12.2005, committed the case to the Court of Session.

The convicts/appellants Sohan Lal, Sukhwinder, Rajesh Kumar, Harvinder Singh and Harpreet Singh (since deceased) were charge-sheeted for having committed offences punishable under Sections 120-B, 302, 396 read with Section 120-B IPC and in the alternative under Section 302 read with Sections 120-B, 412 IPC. In addition the accused Sukhwinder Singh and Harvinder Singh were charge-sheeted under Section 25 of the Arms Act and further accused Inder Ram was charge-sheeted under Section 216-A and 412 IPC, vide order dated 27.02.2006.

In order to prove its allegations, the prosecution in all examined the following 36 witnesses:-

PW-1 Rakesh Gupta, PW-2 Piyush Gupta son of deceased Hari Krishan Gupta, PW-3 Vikas Mittal, PW-4 SI/SHO Anil Kumar,

PW-5 Pankaj Channa, owner of Channa Electricals and Electronics, Ambala City, PW-6 Sanjeev Kumar owner of M/s Sethi Electricals, PW-7 Shashi Mohan owner of M/s Hitkari Garments, PW-8 Anoop Kumar, PW-9 Ashok Kumar, Divisional Engineer Telephone, BSNL, Ambala Cantt., PW-10 S.R.Kansal, Assistant General Manager BSNL, Ambala Cantt., PW-11 HC Subhash Chander, PW-12 Gurjeet Singh, PW-13 Ajay Thakur, PW-14 ASI Sat Narain, PW-15 Ram Sheetal Singh, Sub Divisional Engineer GMTD Ambala Cantt., PW-16 Naresh Kumar, PW-17 Hemant Sharma, PW-18 Dr.B.B.Lala, PW-19 Constable Naresh Kumar, PW-20 Amandeep Singh, PW-21 Ajay Thakur, PW-22 Amit Premi Owner of M/s Satyam Communications, PW-23 Dr.Sudhir Kapoor, who conducted the postmortem examination on the dead body of deceased Pushpa Gupta and Hari Krishan Gupta vide postmortem report Ex.PUU and Ex.PVV respectively, PW-24 Constable Ram Saran, Draftsman, PW-25 Constable Jaspal Singh, PW-26 Saurabh Deep Singh, PW-27 S.I.Karan Singh, PW-28 ASI Baljeet Singh, PW-29 H.C. Om Parkash, PW-30 H.C. Sunder Lal, PW-31 Madan Lal, PW-32 Anil Aggarwal, PW-33 Hari Parkash Gupta, PW-34 Dr.J.P.Gupta (wrongly shown as PW-33), PW-35 S.I.Shakti Singh, PW-36 DSP Vijay Kumar.

Besides, the prosecution also relied upon the following documents i.e. complaint Ex.PA of Rakesh Kumar Gupta, Police proceedings Ex.PA/1, FIR Ex.PA/2, Endorsement thereon Ex.PA/3, Seizure memo collecting some articles from the spot Ex.PB, Disclosure statement of accused-Harvinder Singh,

Sukhvinder Singh and Harpreet Singh @ Preet Ex.PC to Ex.PE respectively, Recovery memo of clothes, mobile phone, coin and identified coins Ex.PF, Rough Site Plan of the place of the recovered stolen coins and clothes of accused-Sukhwinder Ex.PF/1, Rough Site Plan of the recovery of Gold Bangles demarcated by accused-Sukhwinder Singh Ex.PF/II, Recovery memo of clothes of accused-Harvinder Singh Ex.P/G, its Rough Site Plan Ex.PG/1, Recovery memo Ex.PH of Sim Card and mobile phone from accused Harpreet Singh @ Preet, Rough Site Plan Ex.PH/1 of the place of their recovery, recovery and identification memo Ex.PJ of gold bangles, got recovered by accused Sukhvinder Singh, search and seizure memo Ex.PK, rough site plan of the place of recovery of motor cycle Ex.PK/1, disclosure statements of accused Sohan Lal, Sukhwinder Singh, Harvinder Singh, Rajesh Kumar, Harpreet Singh Ex.PL to Ex.PO & PQ respectively, recovery and identification memo Ex.PR of gold chain, cash, motorcycle, Site Plan of the place of their recovery Ex.PR/1, recovery memo Ex.PS of knife used in commitment of murder, site plan of the place of recovery Ex.PS/1, Sketch of knife Ex.PT, recovery and identification memo of stolen artificial bangles, cash got recovered by accused Sohan Lal Ex.PU and there place of recovery Ex.PU/1, recovery and identification memo of dollar, artificial kade and ring, silver coins and cash got recovered by accused Harvinder Singh Ex.PV, rough site plan of its place of recovery Ex.PV/1, recovery and identification memo of mobile phone Ex.PW got recovered by accused Harpreet @

Preet, site plan of its place of recovery Ex.PW/1, disclosure statement of accused Rajesh Kumar Ex.PX, his property search and seizure form Ex.PY, site plan of place of recovery of mobile phone, artificial bangles, cameras and cash got recovered by him Ex.PY/1, identification memo of cameras, bangles, cash got recovered by him Ex.PZ, bill of mobile phone purchased by Sh.Hari Krishan Gupta Ex.PAA and its recovery memo Ex.PAA/1, application form of accused Harvinder singh for purchasing Sim card bearing No.8991960305013070266 for his mobile no.9896426483 Ex.PBB, photocopy of his driving licence annexed with the said application Ex.PCC, Bill/invoices of M/s Dimple Agencies, M/s Aditi Communication and M/s Hitkari Garments Ex.PDD to Ex.PFF respectively, statement of Anoop Kumar Ex.PGG, recovery memo of receipt of mobile no.93151-16577 Ex.PGG/1, call details of telephone Nos.0171-2840296 & 2535702 Ex.PHH and Ex.PHH/1, their recovery memo Ex.PHH/2, letter written by Superintendent of Police to the General Manager, BSNL, Ambala asking to furnish call details of mobile No.94162-60026 Ex.PII/1, its recovery memo Ex.PII/2, Application for registration of ration card Ex.PJJ, call details of mobile No.98961-22955 from 01.06.2005 to 27.06.2005 Ex.PKK, recovery memo of mobile No.98961-22955 and 9896426483 having IMEI No.352971009503109 Ex.PKK/1, recovery memo of the document of mobile No.98964-26483 Ex.PLL, another letter written by Superintendent of Police, Ambala to General Manager for providing call details of four phone numbers, Ambala Ex.PMM

and its reply by the Manager, BSNL Ex.PMM/1, call details Ex.PNN, letter written by Superintendent of Police, Ambala to the Manager, Reliance Co., Ambala regarding call details of mobile No.93151-16577 Ex.PQQ, recovery memo of the record of telephone/mobile No.93151-16577 Ex.PRR/1, Letter written by SHO for medical check up of accused Sukhwinder to Medical Officer, Civil Hospital, Ambala Ex.PSS and his medical report Ex.PSS/1, call details of mobile No.98964-26483 Ex.PTT and its recovery memo Ex.PTT/1 and ExPTT/II, application regarding postmortem examination of both the deceased moved by SHO to Medical Officers, Civil Hospital Ex.PUU/1, site plan of the kothi No.619 where the occurrence took place Ex.PWW and FIR Ex.PXX, call details of mobile No.9814634411 Ex.PYY and its recovery memo Ex.PZZ, letter dated 27.06.2005 Ex.PYY/1 written by S.P.Ambala to the Manager, of Spice Company, Mohali Ex.PYY/1 to provide the call details of above mobile, disclosure statement of accused Inder Ram Ex.PAAA, rough site plan of the place where dead body of the deceased were lying Ex.PBBB, statement of Madan Lal @ Madhi Ex.PBBB and Anil Aggarwal Ex.PCCC (wrongly exhibited twice) death report of Sh.Hari Krishan Gupta and Sh.Pushpa Gupta Ex.PCCC and Ex.PDDD respectively, list of stolen articles furnished by Piyush Gupta Ex.PEEE, letter written by one Rajinder Singh IPS to Sh.Amardeep Singh Rai, SSP, Patiala Ex.PFFF, identification memo Ex.PFFF, arrest memo Ex.PGGG and FSL report Ex.PHHH.

After closure of the prosecution evidence, statements of

the accused under Section 313 Cr.P.C. were recorded putting the entire incriminating evidence led by the prosecution to them. They denied the same and pleaded their innocence. In their defence they produced the following documents:

Statement of Piyush Gupta, dated 23.06.2005 and 30.06.2005 Ex.DA and Ex.DB respectively, his supplementary statements Ex.DC and Ex.DD, statement of Vikas Mittal Ex.DE, supplementary statement of Rakesh Gupta Ex.DF, statements of Pankaj Chanana, Ram Sheetal Singh, HC Subhash Chand, Amish Premi and Hari Parkash Ex.DG, statement of Jai Parkash Gupta Ex.DH, statement of HC Sunder Lal Ex.DY and some documents Mark 'A', 'B', Mark 'X' and 'DX'.

Thereafter, after hearing the learned PP and the learned defence counsel, the convicts/appellants were held guilty and convicted in the manner mentioned above.

Feeling aggrieved, the convict Sohan Lal has preferred Criminal Appeal No.344-DB of 2010, whereas, Sukhwinder Singh, Harvinder Singh and Rajesh Kumar have preferred their separate joint appeal i.e. CRA-D-68-DB of 2010 praying for their acquittal. On the other hand complainant-Rakesh Chand Gupta has preferred CRA-D-148-DB of 1011 for conviction of accused Sohan Lal and Rajesh Kumar under Section 302 IPC and State of Haryana has preferred CRA-D-149-DB of 2011 to convict all the accused under Sections 302, 396, 120-B and 412 IPC.

We have heard learned counsel for the parties and have gone through the file very carefully.

Learned counsel for the convicts/appellants Harvinder Singh, Sukhwinder Singh, Rajesh Kumar and in CRA-D-68-DB of 2010, contended that the impugned judgment is against law and facts, being based on surmises and conjecture and thus is not sustainable in the eyes of law and hence is liable to be set aside on the following grounds.

(i) The FIR was registered on 23.06.2005 upon the statement of Sh.Rakesh Kumar Gupta son of Sh.Madan Lal Gupta Ex.PA/1 against unknown persons. The complicity of the accused Sohal Lal and Rajesh Kumar came into picture for the first time on 28.06.2005, when Sh.Vikas Mittal PW-3 approached the police and got recorded his statement to the effect that on 22.06.2005, he had seen the aforesaid accused Sohan Lal and Rajesh Kumar standing outside kothi No.619, Sector 8, Ambala City of Sh.Hari Krishan Gupta deceased, while he was returning from Sector 10, Ambala City. As per prosecution story said Sohan Lal and remaining accused had worked as carpenters in the house of Sh.Hari Krishan Gupta, few days earlier to the occurrence. There is no explanation on record as to why from 22.06.2005 till 28.06.2005, Sh.Vikas Mittal PW-3 remained silent, more particularly when the news regarding murder of Hari Krishan Gupta deceased and his wife Pushpa Gupta was widespread. The story put forth by the prosecution that Sh.Vikas PW-3 had gone on a pilgrimage on 22.06.2005 and he had returned on 28.06.2005 is not genuine, because no travel ticket or any proof regarding his travelling to some place of pilgrim has been

brought on record.

(ii) As per prosecution case, the IMEI of the mobile allegedly used by the deceased Sh.Hari Krishan Gupta was 352971009503109 as per cash memo Ex.PAA. The entire prosecution story is based on circumstantial evidence. The specific stand of the prosecution is that the accused after committing the murder of Sh.Hari Krishan Gupta and his wife Pushpa Gupta took away his mobile phone having aforesaid IMEI number and by taking out its sim Harvinder Singh-accused put his own sim having No.98964-26483 in it, and all the accused went on conversing with each other with the help of the same. In support of the above stand of the prosecution, the police has collected details Ex.PKK, PII, PHH/1, PII, PNN, POO, PRR, PTT, PTT/2, but has miserably failed to prove this fact, because as mentioned above the IEMI number of mobile of Sh.Hari Krishan Gupta vide cash memo Ex.PAA was No.352971009503109, but, the Police has not been able to connect the call details of the aforesaid IMEI with that of the accused, because it, has collected the call details of IMEI No.352971009503100. Thus its last figure '0' differs from the last number of the aforesaid IMEI of Hari Krishan Gupta which is '9'. More so, prosecution has also miserably failed to prove that the mobile numbers 2840296 and 2535702 were owned by them or their relative. Hence, prosecution story is completely false on this count.

(iii) As per prosecution story accused had committed the murder of Sh.Hari Krishan Gupta and his wife, because of the

reason that they were having some mistaken belief that accused had sold some plot at Gurgaon and huge amount about Rs.2-3 crores was lying in his house. Since they had allegedly worked as carpenters in his house, they were well aware of the aforesaid transaction and as such, they committed their murder. Prosecution, however, has miserably failed to prove this fact, because no document i.e. sale deed etc. in this respect has been produced on record. More so, no money was found lying in his house.

No independent witness was joined at the time of alleged recoveries. Hence, the entire prosecution case is inconsistent and discrepant. The prosecution has miserably failed to prove beyond shadow of doubt that the knife allegedly got recovered by the accused Harvinder and Sukhwinder vide recovery memo Ex.PTT was used in the commission of crime, because as per FSL report Ex.PP no blood stains could be detected on it.

Learned counsel for the appellant-Sohan Lal further contended that there is no direct evidence of the alleged dacoity and murder of Sh.Hari Krishan Gupta and his wife Pushpa Gupta by the accused. The entire story put forth by the prosecution is based on unbelievable circumstantial evidence. There are major discrepancies in the statements of the prosecution witnesses.

In response learned State counsel in CRA-D-149-DB of 2011 and learned counsel for the complainant in CRM-A-581-MA of 2010, contended that it is quite evident that the accused Sukhwinder, Harvinder, Sohan Lal and Rajesh by hatching a

conspiracy with each other and Harpreet @ Preet who died during trial, had committed the murder of Sh.Hari Krishan Gupta-deceased and his wife Mrs.Pushpa Gupta. Therefore, the learned trial Court has erred in not having convicted the accused Sohan Lal and Rajesh for the offences under Sections 302 IPC and 120-B IPC because they were also equally responsible for committing the murders of the deceased Sh.Hari Krishan Gupta and his wife. Hence the impugned judgment of the learned trial Court qua their acquittal for the offences under Sections 302 and 120-B IPC may be set aside and they be convicted for aforesaid offences.

Learned State counsel has also contended that the findings of the learned trial Court convicting the accused under Section 394 IPC is wrong, because all the four accused had committed dacoity with murder and thus they should have been convicted for the offences under Section 396 IPC also. Death of Harpreet @ Preet, during the pendency of the trial, it is submitted does not ipso facto absolve the liability of remaining accused for the commission of offences under Sections 396, 302 and 120 IPC. The learned counsel for the complainant and the State, however, submit that insofar as the convictions of the accused are concerned the same are, in any case, correct and based on sound reasons. It is also submitted that the learned trial Court has also failed in not convicting the accused under Section 412 read with Section 120-B IPC as recovery of stolen articles were effected from them, in pursuance of their criminal conspiracy hatched by them with each other and thus the

impugned judgment of conviction and order of sentence may kindly be modified to the above stated effect.

We have given our thoughtful consideration to the submissions so made by learned counsel for the parties.

It is not disputed that IEMI number of the mobile of deceased Sh.Hari Krishan Gupta was 352971009503109 as per receipt Ex.PAA. The prosecution version is that all the accused after committing the murder of Sh.Hari Krishan Gupta and his wife took away his mobile phone. They took out its sim and inserted another sim. They used the same for conversing amongst themselves and thus it linked them with the commission of the present crime. However, contrary to it, the stand of the convicts/appellants is that the prosecution has miserably failed to prove that the mobile of the deceased Sh.Hari Krishan Gupta, which had the aforesaid IMEI No.352971009503109 was ever taken away and used by the accused.

After scanning the evidence, it is evident from the record that as per receipt/cash memo Ex.PAA, deceased Sh.Hari Krishan Gupta had purchased his mobile on 16.01.2004 having abovesaid IMEI No.352971009503109. Sh.Ajay Thakur PW-21 and Sh.Anil Aggarwal PW-32 Customer Care Executive with Bharti Cellular Ltd., have categorically deposed that the International Mechanical Equipment Identify (IMEI) No.352971009503109 would be transmitted as 35297100503100 in computerized call details generated in the system. As per their record Mobile No.9896122955 was being run on handset IMEI

No.352971009503100. The aforesaid mobile set was last used on handset bearing IMEI No.352971009503100 on 22.06.2005 at 03:01 p.m. and the same IMEI had again activated on mobile No.9896422648 at 6.30 p.m. As per prosecution story mobile number 98964-26483 and 93151-16577 belonged to accused-Harvinder. Mobile number 94162-60026 was owned by accused-Sukhvinder Singh and mobile No.98416-34411 and 98553-36234 belonged to accused Harpreet @ Preet, who died during the trial. That apart all the accused also used telephone number 2840296, 2535702, 2802089 and 2840573 belonging to their relatives and unknown persons in conversing with each other.

To prove the above fact that the accused were in conscious possession of the aforesaid mobile phones and the above telephones of their known persons/relatives, the prosecution has examined Sanjiv Kumar PW-6, who categorically deposed that he had sold the mobile number 98964-26483 to accused-Harvinder against his pre-paid Enrollment Form Ex.PBB having affixed his photograph and mentioning his date of birth as 25.12.1980. Alongwith his above application, he had also annexed a photocopy of driving licence Ex.PCC, in support of his residence proof. He had purchased the aforesaid mobile sim bearing number 98964-26483 from M/s Dimple Agency vide bill Ex.PDD. Entry regarding selling of aforesaid sim card to accused Harvinder Singh was at serial number 9896. Not only this, this witness had also identified accused-Harvinder in Court, during trial.

Sashi Mohan PW-7 proprietor of M/s Hitkari Garments, deposed that he was dealer of Reliance Company and was dealing in old and new cell phones. He had purchased 25 handsets from M/s Aditi Communications vide bill Ex.PEE bearing number 3116577 to which new number 93151-16577 was allotted. It was sold by him to Anoop Kumar proprietor of M/s Brain Electronics on 13.01.2005 vide bill Ex.PFF, who further sold the same to accused-Harvinder Singh. In his cross-examination, this witness has clarified that Anoop Kumar PW8 had given him information regarding the sale of aforesaid mobile set to accused Harvinder Singh and in turn he had further informed about the same to M/s Reliance Company. Anoop Kumar PW8 has fully corroborated the above statement of Sashi Mohan PW-7. This witness, too identified the accused-Harvinder Singh in Court, during trial. Hence, the ownership of accused-Harvinder of mobile numbers 98964-26483 and 93151-16577 is proved on record beyond any shadow of doubt.

That apart, on 20.06.2005, Vijay Kumar, DSP Naraingarh, Ambala PW36, alongwith SI Karam Singh PW27 and ASI Shakti Singh PW35 had put a barrier on the Ambala-Hisar road. Three persons came where the barrier had been put on a motorcycle bearing registration No.HR01-P-8799. On inquiry, its driver disclosed his name as Harvinder. The person riding pillion behind him disclosed his name as Sohan Lal and the third rider disclosed his name as Sukhwinder Singh. Disclosure statement of accused-Sukhwinder Singh Ex.PD shows that he had

kept concealed four gold bangles in the house of his father-in-law Inder Ram, as after crime he had stayed there for the night and had kept concealed his mobile bearing number 94162-60026, wearing clothes alongwith 100 silver coins in his house situated in Shivalik Colony, without knowledge of anyone else.

Accused-Harpreet @ Preet, who died during the trial had suffered disclosure statement Ex.PE to the effect that the mobile make Nokia having Sim Card No.98146-34411 and another sim of Spice Company having number 9855336234 used by him; besides, sim card No.98964-26483 handed over to him by his brother-in-law Harvinder Singh-accused were kept concealed by him in his house, without knowledge of anyone else.

Thereafter, in pursuance of disclosure statement Ex.PD, accused-Sukhvinder Singh got recovered one mobile nokia having sim card number 94162-60026 and one hundred silver coins from an iron box kept in his store room vide recovery memo Ex.PF. Similarly, accused Harpreet @ Preet, in pursuance of his disclosure statement Ex.PE got recovered sim card number 98964-26483, belonging to his brother-in-law Harvinder Singh, a mobile phone having sim card number 98146-34411 and another sim card number 98553-36234 vide recovery memo Ex.PH. Hence the ownership/conscious possession of accused Sukhwinder and Harpreet @ Preet over mobile phone numbers 94162-60026 and 98146-34411 respectively is also well proved on the record beyond any shadow of reasonable doubt.

It is pertinent to mention here that the above disclosure

statements Ex.PD and PE and recovery memos Ex.PF and Ex.PH are attested by Hari Parkash Gupta PW33 and Rakesh Kumar Gupta PW-1. There is nothing on the record to show that aforesaid independent witnesses had any motive or ill will against the accused in deposing against them. Since as per disclosure statements Ex.PD and PE of the accused-Harvinder Singh and accused-Harpreet respectively, recovery of mobile phones was effected from them vide recovery memo Ex.PF and PH, therefore these are quite admissible in evidence. This is more so particularly, when no contrary evidence has been brought by any of the accused to falsify or dislodge the above evidence of the prosecution.

The prosecution has also been able to establish that the accused apart from their aforesaid mobile numbers had used telephones bearing numbers 2840296, 2535702, 2802089 and 2840573, while conversing with each other because vide letter Ex.PMM/1, in response to letter Ex.PMM, Sh.Ram Sheetal Singh, Sub-Divisional Engineer Telephones, Ambala Cantt. PW-15, certified that the land line number 2840296 belonged to one Dalbir Singh, number 2535702 belonged to Om Parkash Sharma, number 28020889 belonged to Jasbir and No.2840573 belonged to Sunil Kumar.

As per prosecution story Om Parkash Sharma having telephone No.2535702 is the Mause (husband of mother's sister) of accused Sohan Lal and Sunil Kumar having landline No.2840573 is his real uncle.

Jasbir Singh having landline number 28020889 is the brother-in-law of the accused-Harvinder Singh, whereas Dalbir Singh having landline number 2840296 was his uncle.

To connect the accused with the above phones and that they used to converse with each other through the same, the deposition of Investigating Officer fully corroborated by Dr.J.P.Gupta PW-34 and Sh.Hari Parkash Gupta PW-33 is very much important, significant and relevant.

Investigating Officer Vijay Kumar, DSP while appearing as PW-36 deposed that on 28.06.2005, he accompanied Dr.J.P.Gupta and other police officials and went to the house of Om Parkash. He inquired from him about the calls made from his telephone No 2535702 to mobile No.98964-26483 belonging to accused-Harvinder, whereupon he informed that, it was made by accused-Sohan Lal. He was his Mause (i.e. husband of mother's sister) and that accused-Sohan Lal had come to his house on 26.06.2005 and had called from his landline on the aforesaid mobile number. Thereafter he (Investigating Officer) went to village Jalbera to the house of Jasbir Singh and on inquiry came to know that the calls received by Jasbir on his landline number 2840573 were made by his brother-in-law accused Harvinder Singh from his mobile number 98964-26483. He also disclosed that accused-Harvinder Singh had informed him that it was his new number.

A perusal of the call details of telephone number 2840296 Ex.PHH belonging to Dalbir Singh shows that the

accused-Harvinder had called him on his above telephone number on 23.06.2005 after one day of the occurrence from his mobile number 98964-26483. Earlier to this, the accused-Sukhwinder Singh from his mobile No.94162-60026 and accused Harvinder Singh from his mobile No.93151-16577 used to make call on the said number. Since it is proved on record that the aforesaid mobile number belonged to the accused, therefore, it can safely be said that telephone No.2840296 belonging to Dalbir Singh was oftenly used by them for conversing with each other, even prior to the occurrence on 22.06.2005.

The call details of phone number 2840573 Ex.PII of Sunil Kumar uncle of the accused Sohan Lal would show that the accused-Harvinder and Sukhwinder were frequently using mobile numbers 9315116577 and 9416260026 respectively for conversing with each other with the aid of above telephone number 2840573 owned by Sunil Kumar. As per deposition of Investigating Officer Vijay Kumar, DSP PW36, on inquiry, he came to know from Sunil Kumar that his above phone number 2840573 was used by his relative accused Sohan Lal to make calls on mobile number 93151-16577 to accused-Harvinder.

As discussed above, on the basis of their disclosure statements the accused had got recovered their respective mobile phones vide different recovery memos.

From the above detailed discussion of call details, it is well established on record beyond any shadow of doubt that all the accused used to converse with each other with the help of the

aforesaid mobile phones and landline numbers of their relatives/acquaintances.

On 30.06.2005, after arrest of the of accused Harvinder Singh, Sukhwinder Singh and Sohan Lal; DSP Vijay Kumar PW36 interrogated them and recorded their disclosure statements Ex.PN, PM and PL respectively. Thereafter he summoned the accused Rajesh and Harpreet through SI Karam Singh and SI Shakti Singh respectively. On interrogation, accused Rajesh suffered disclosure statement Ex.PO and Harpreet Ex.PQ. Accused Rajesh Kumar on interrogation in his disclosure statement Ex.PO accepted his involvement in the commission of crime alongwith his co-accused. He also disclosed that two cameras, two gold bangles and Rs.4500/- which fell to his share were kept concealed by him in an iron almirah kept in his house, without knowledge of anyone else.

Now the moot question which remains to be examined is whether the accused had committed the murder of Hari Parkash Gupta and his wife Pushpa Gupta and had stolen away the valuable articles from his house and further that recovery of the same was ever effected from them?

As per prosecution story, the accused in the disclosure statements Ex.PN, Ex.PL and Ex.PM dated 30.06.2005, admitted about their hatching of a conspiracy to commit the theft and that one month ago also they had attempted to commit theft, but had failed. The accused Sohan Lal further disclosed that on 22.06.2005 he along with his co-accused Harvinder, Sukhwinder

and Rajesh had committed the murder of Hari Krishan Gupta and his wife Pushpa Gupta and had stolen the household articles. The above accused also specifically informed about the stolen articles which fell to their respective shares and further about their concealment without knowledge of anyone else.

On 01.07.2005 Vijay Kumar DSP PW36, produced all the accused before the Illaqa Magistrate and obtained police remands.

Accused Sukhwinder Singh led the police party to his house and in pursuance of his disclosure statement Ex.PM got recovered one gold chain (gents) and Rs.2000/- from an iron box in his house; besides, a motorcycle Make Hero Honda Splendor, bearing No.HR01-C-1496 of black colour used in the commission of crime vide recovery memo Ex.PR attested by Piyush Gupta PW-2 and Krishan Gopal. Rough site plan of the place of recovery is Ex.PR/1.

Accused Sukhwinder Singh and Harvinder Singh also led the police party to the canal on the Ambala-Hisar road near Sehanai Park and both of them pointed out the place where they had kept concealed the knife (weapon of offence). Accused Harvinder Singh took out a knife from the bushes, which was taken in possession vide recovery memo Ex.PS, after preparing its sketch Ex.PT attested by Piyush Gupta PW2 and Krishan Gopal. Rough site plan of the place of recovery of knife is Ex.PS/1.

Accused Sohan Lal led the police party to his house and

got recovered two artificial bangles and Rs.3000/- from an iron box kept in his store vide recovery memo Ex.PU. Currency notes were of the denomination of Rs.500/- each and were six in number. Rough site plan of the place of recovery is Ex.PU/1.

Accused Harvinder Singh led the police party to his 'Dera' and got recovered two ladies purses containing 375 American dollars, two artificial armlets, two artificial bangles, one ladies (artificial) ring and one gents gold ring, 30 silver coins out of which one was of large size vide recovery memo Ex.PV attested by Piyush Gupta PW2 and Krishan Gopal. Rough site plan of the place of recovery is Ex.PV/1.

SI Shakti Singh CIA, Kaithal, PW35 deposed that on 03.07.2005 on the direction of SHO Vijay Mehta, he interrogated accused Rajesh Kumar. He suffered disclosure statement Ex.PX attested by Piyush Gupta PW-2 and Krishan Gopal. In pursuance thereof he got recovered two cameras, three lenses, two artificial bangles, one mobile phone from the almirah lying in the room of his house vide recovery memo Ex.PY. The bangles and cameras were identified by Piyush Gupta PW2 along with the currency note. On 05.07.2005 on the direction of Vijay Mehta SHO, he interrogated accused Harvinder, Sukhwinder and Harpreet and they had suffered their disclosure statements Ex.PC, Ex.PD and Ex.PE respectively and the same were attested by Sh.Hari Parkash Gupta and Rakesh Gupta.

Sukhwinder Singh accused initially had led the police party to his house in Shivalik Colony, Ambala and got recovered

100 silver coins, a pair of pant and a shirt, one mobile phone and one sim card from an iron box lying in a store type room, vide recovery memo Ex.PF. The same were identified by Hari Parkash Gupta.

Accused Sukhwinder Singh led the police party to the house of his father-in-law Inder Ram and got recovered four gold bangles from behind the television lying in the drawing room vide recovery memo Ex.PJ attested by Hari Parkash Gupta and Rakesh Gupta.

The Investigating Officer also prepared rough site plans of the places of recoveries, pointed out by accused Rajesh as Ex.PY/1, that of accused Harpreet as Ex.PH/1, that of accused Harvinder Ex.PG/1 and two site plans pointed out by accused Sukhwinder Singh Ex.PF/1 and Ex.PF/2.

It is needless to mention here that since the disclosure statements of the accused led to the recovery of valuable stolen articles, therefore, they were legally admissible in evidence. Disclosure statements Ex.PL, PM, PN, PO, PQ of accused Sohan Lal, Sukhwinder Singh, Harvinder Singh, Rajesh Kumar and Harpreet @ Preet respectively also prove beyond shadow of doubt that they categorically accepted that they were all friends. Accused Sohan Lal had worked as a carpenter in Kothi No.619, Sector 8, Ambala Cantt. of Sh.Hari Krishan Gupta-deceased and had informed his co-accused that the owner of the said kothi had lot of jewellery and money. Two months earlier, they by sitting in the house of Sukhwinder Singh at Singhawala had conspired

for committing theft in the said kothi. Accused-Sohan Lal purchased a knife from the market at Ambala City and gave it to accused Harvinder. One month prior to it also, they had gone to the above kothi, but since son of the landlord was present there, so they could not commit theft. Thereafter, on 21.06.2005 they again went to commit theft, but could not do so. On 22.06.2005 accused-Harvinder Singh and Sukhvinder Singh together on the motorcycle of Harvinder Singh and Rajesh Kumar on the motorcycle of Sukhwinder Singh went for committing theft. Accused Rajesh Kumar stayed outside the kothi to watch while Harvinder Singh and Sukhwinder Singh went inside. Sukhwinder Singh rang the bell, whereupon landlady opened the door. They both entered the house. It was day time. They closed the door from inside. Sukhwinder Singh accused closed the mouth of the landlady and Harvinder-accused inflicted knife blows on her neck and body, due to which, she died. They threw her dead body on the floor of the dressing room. When they were searching the almirah of the room and were removing jewellery, cash and camera, then somebody knocked at the door. On opening it, by accused Harvinder Singh, the landlord entered into the room. They also caught hold of him by closing his mouth and took him to the bed room. Accused-Harvinder Singh inflicted injuries with knife on his neck and body and threw him on the floor. He too died. The right finger tip of accused Sukhwinder Singh had also got injured with knife. After committing the murder, they stole 10 gold bangles, one gold chain (gents) and two artificial kade,

one artificial ring having white pearls, one gold ring, 374 American Dollars, two cameras, thirty silver coins, one mobile phone and Rs.12,000/- and distributed these amongst themselves.

It is pertinent to mention that recovery of articles i.e. American dollars, cameras, gold bangles and rings effected from the accused is very unusual and quite expensive. Hence, it is impossible for the complainant-party or the police to procure the same by spending huge money from their own pocket to falsely implicated the accused, more particularly, when no ill will or motive of them against the accused has been brought on the record by the accused in their defence. Even in their statements under Section 313 Cr.P.C., the accused did not put forth any plausible defence, rather simply pleaded their innocence. The inter se relationship of Rakesh Gupta PW1, Piyush Gupta PW-2 and Vinay Mittal PW-3, J.P.Gupta PW34, Hari Parkash Gupta PW-33, is not fatal to the prosecution case, because nothing has come on record, that they had any intention to falsely implicate the accused by leaving the actual culprits go scot free. It is quite unnatural also that the relatives of any victim would like to falsely implicate anyone, in place of the actual culprits. In any circumstances, everyone would like to bring the truth on record to get the actual culprit punished .

The recovery of stolen articles effected from the accused and attested by Piyush Gupta PW-2 son of deceased Hari Krishan Gupta is in consonance with the list Ex.PEEE given by him to the

police after returning from America. He gave statements to the police on 25.06.2005 and thus from this angle too, the prosecution case is fully proved.

It hardly makes any difference, if accused Sukhwinder Singh and Harvinder Singh were taken jointly to effect the recovery of knife, in pursuance of their disclosure statements Ex.PB and PN respectively by the police, because accused Sukhwinder in his statement Ex.PM had stated that the knife was kept concealed by his co-accused Harvinder Singh in the bushes near the 'Sua' (canal minor) going along Hissar road to Sonda and at that time he was accompanying him. Accused Harvinder Singh in his disclosure statement Ex.PN verified the above fact that he had kept concealed the knife, near the canal on the Hisar Road going to Sonda. In pursuance thereof the accused Harvinder Singh vide recovery memo Ex.PS got recovered the knife stained with dust. The arguments of learned counsel for the appellants that the knife was not found to be stained with blood per FSL report is quite inconsequential as the FSL report is only corroborative in nature.

The knife Ex.P129 allegedly used in the commission of crime, was shown to Dr.Sudhir Kapoor and he opined that the possibility of injuries being inflicted with it on the person of Hari Krishan Gupta and Pushpa Gupta deceased could not be ruled out.

The contention of learned counsel for the appellants that silence on the part of PW-3 Vikas Mittal from 22.06.2005 to

28.06.2005 in not reporting the matter to the police is fatal to the prosecution has no substance. This witness had categorically stated that he had supplied iron and cement to Hari Krishan Gupta deceased for construction of his house. In that connection he used to visit his house quite often. Sukhwinder and Sohan Lal, accused were identified by him in the Court. They had done the job of wood work in the house of Hari Krishan Gupta. They were working under contractor Kulwant. On 22.06.2005, he had gone to Sector 10, Ambala City for taking order and while returning to his shop, accused Sohan Lal and another boy were standing wearing pink shirt were standing in front of the house of Hari Krishan Gupta-deceased. While passing near them, he asked the accused Sohan Lal that why were they standing there and he in turn replied that he had come to inquire about construction work going on nereby. Thereafter, he proceeded to the shop and then went to for pilgrimage. He returned around 3.30 pm on 28.06.2015. He does not keep any mobile phone and thus was not informed about the occurrence, during that period. His wife had also gone with him. He had not purchased any mobile so far as he felt no necessity for it.

It is needless to mention here that in the ordinary circumstances, no body gets suspicious on any body. Even otherwise, there was no reason for him to doubt accused Sohan Lal standing in from of Kothi of Hari Krishan Gupta on 22.05.2005 as he had worked as Carpenter in the said kothi. Hence, his testimony is quite natural and worthy of credence.

The non-recoveries of the bills of the stolen articles relates to insignificant aspect of the case, because, in routine, no body normally keeps bills of the entire household articles or jewellery, for life time. Even otherwise over a passage of time the bills get misplaced.

Piyush Gupta (PW-2) had no reason to falsely implicate, any innocent person, more particularly, when he resides in America.

All the accused had failed to explain as to how the aforesaid articles were got recovered from them, or how these came in their possession, besides, as to how they had knowledge about concealment of the same. Section 114 of the Indian Evidence Act, 1872, envisages that the Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of a particular case. A man, who is in possession of stolen goods, soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.

Accused Harpreet @ Preet had expired on 11.08.2006 during trial. Thus, the trial has abated qua him.

Accused Inder Ram charge-sheeted under Section 216 and 412-A IPC has rightly been acquitted by the learned trial Court because in pursuance of his disclosure statement Ex.PAAA, nothing was recovered. His disclosure statement does not

establish anything against him. He had simply informed that Sohan Lal and Sukhwinder as also his relative Rajesh had come to his house. They had stayed there during that night. Afterwards, he came to know that they had committed the crime on 22.06.2005.

Since prosecution has been able to establish by leading overwhelming, cogent and convincing evidence that all the accused were conversing with each other, therefore, their complicity in the present occurrence cannot be ruled out.

Since all the other accused apart from accused-Harpreet @ Preet, who died during trial, were less than five in number, who actually participated in the commission of crime, therefore, they are not covered under the definition of "dacoity" because from the disclosure statements Ex.PC to PF and recovery memos Ex.PL to PO, it is evident that deceased Harpreet @ Preet was not even present with any of the accused at the time of hatching conspiracy to commit the present crime or at the time of its commission. As per disclosure statements of Harpreet @ Preet Ex.PE and Ex.PQ and recovery memos Ex.PH and Ex.PW, he had only got recovered sim card No.98964-26483 having IMEI No.352971009503109 given to him by his brother-in-law accused-Harvinder to keep it by saying that whenever he would be in need of them, he would take back the same. Except for the above, he had no role, therefore, by any stretch of imagination, he cannot be counted as the fifth accused to make the case fall under the definition of "dacoity" given under Section 391 IPC.

Hence, they cannot be convicted under Section 396 IPC. However, since the remaining appellant-accused had voluntarily caused hurt to Hari Krishan Gupta and Pushpa Gupta-deceased which led to their death, therefore, the learned trial Court has rightly convicted them under Sections 394 and 302 IPC.

Since accused Sohan Lal and Rajesh Kumar did not enter the house of the deceased Hari Krishan Gupta and were watching the affairs by standing outside, as such, they have rightly not been convicted under Section 302 IPC. There is nothing on record that they also had any common intention of murdering Hari Krishan Gupta and Pushpa Gupta deceased, though they might have common object to commit theft in their house.

The appellants-Harvinder Singh and Sukhwinder Singh, it has been held committed the murder of Hari Krishan Gupta and his wife Pushpa Gupta. In the case of **Ankush Shivaji Gaikwad v. State of Maharashtra 2013 (2) RCR (Criminal) 1036 (SC)**, it has been held by the Hon'ble Supreme Court that after order of conviction, it is mandatory for the Court to consider the question of award of compensation to the victim of offence under Section 357 Cr.P.C., the capacity to pay compensation it was held would involve certain enquiry albeit summary. From the material on record the son of the deceased namely Piyush Gupta PW2 had appeared as a witness in the case. He had on 26.06.2006 handed over a list Ex.PEEE of the stolen articles to the Inspector. The stolen articles were recovered which were taken in possession vide different memos Ex.PU and Ex.PR and

Ex.PB etc. There is no material on record to assess the paying capacity of the appellants. In the facts and circumstances and after considering the fact that the said two appellants Harvinder and Sukhwinder had committed the murder of two persons, it would be just and expedient that the appellants Harvinder and Sukhwinder pay an amount of Rs.50,000/- each as compensation to Piyush Gupta PW-2 the son of deceased which shall be shared by other legal heirs, if any, of the deceased. For further claim, we leave it to the legal heir(s) of the deceased to claim the same by way of appropriate remedies.

Hence, we find no illegality or perversity in the impugned judgment of conviction and order of sentence passed by the learned trial Court and thus all the appeals are hereby dismissed. The appellants Harvinder and Sukhwinder shall however, pay an amount of Rs.50,000/- each to Piyush Gupta son of Hari Krishan Gupta and Pushpa Gupta (deceased) as compensation.

(S.S.SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

29.05.2015
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