

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Criminal Appeal No.571-DB of 2002
Date of Decision: 21st February, 2015

Jitender Kumar son of Rajbir ..Appellant

versus

State of Haryana ..Respondent

Criminal Appeal No.498-DB of 2004

Smt. Santra wife of Jaibir Appellant

versus

State of Haryana ..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. B.S.Saroha, Advocate, for the appellants

Mr. Sandeep Vermani, Addl.Advocate General,
Haryana.

RAJIVE BHALLA, J.

By way of this order, we shall decide Criminal Appeal
No.571-DB of 2002 and Criminal Appeal No.498-DB of 2004 filed by
Jitender Kumar son of Rajbir and Santra wife of Jaibir,
respectively, challenging judgment and order dated 12.6.2002,
recorded by the Additional Sessions Judge, (Adhoc), Hisar,
convicting and sentencing them in the following terms:

U/s 302/34 IPC Jitender and Santra are sentenced to

undergo life imprisonment and to pay a fine of Rs.500/- In default of payment of fine, to further undergo rigorous imprisonment for six months.

U/s 201IPC Jitender and Santra are sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- In default of payment of fine, to further undergo rigorous imprisonment for six months.

Santra Devi, wife of Jaibir, made a signed statement, Ex.PB, on 19.12.1997 at 11.30 A.M., at Police Station City Hansi that she resides near Dadal Park and has two children. Jaibir, her husband, sells clothes on a 'pheri' and, therefore, visits villages Kulana, Karar, Mayar, Jagga Bara and Dhani Bukhri etc. At about 11.00 A.M, on 11.12.1997, her husband was at home and she was busy doing household work when three persons arrived, one of them, who had injuries on his fore-head, was wearing a pant and a shirt and appeared to be 22-23 years old, whereas the other two were wearing kurta pajamas. They were sitting with her husband and started smoking 'biris'. Jaibir Singh, her husband, asked her to prepare tea. She went to the kitchen and when she was preparing tea, these persons stated that they would not take tea. One of them, asked her husband, to accompany them to clear their accounts with respect to purchase of cloth. Jaibir Singh went with these persons but before leaving, told her that he is going to village Kulana to settle

their accounts. Santra Devi stated that her husband has not returned and she fears that these persons have detained her husband on a false pretext. Santra Devi also said that she had searched for her husband, but has not been able to trace her husband. She can identify these persons if they are produced before her. The statement, Ex.PB, led to registration of FIR no.590 dated 19.12.1997, under Section 368 IPC at Police Station City Hansi but the investigation, did not make any headway.

About eight months' later, PW5 Mungi Devi widow of Norang Lal and PW6 Mohan Lal son of Norang Lal (mother and real brother of Jaibir Singh) made a statement, Ex.DA, dated 24.8.1998, that Santra (appellant) had developed an illicit relationship with Jitender son of Rajbir, resident of Arya Nagar, Hansi (appellant) and despite requests to desist from this relationship, continued with the relationship. Ram Niwas son of Nathu Ram and Rajiv son of Om Parkash, residents of Dadal Park, Hansi, were also on visiting terms with Santra Devi and they suspect that Santra Devi and these three persons have murdered their son Jaibir and disposed of his body. The statement was reduced into writing. Sections 302 and 201 of the Indian Penal Code were added to the FIR and a special report was forwarded to senior authorities on 24.8.1998.

PW7 ASI Sada Ram arrested Ram Niwas, who has been acquitted, on 29.8.1998 after obtaining his remand, pursuant to a production warrant. The Investigating Officer recorded a disclosure statement by Ram Niwas, Ex.PK, dated 10.9.1998, disclosing the place where they had murdered Jaibir after serving liquor and the

place where they had thrown Rajbir's dead body. A rough site plan of the alleged place of murder is Ex.PM. A rough site plan of the place where the dead body was thrown is Ex.PN. Rajiv, another accused, who has also been acquitted, was arrested on 17.9.1998 by PW10 Inspector/SHO Abhey Singh and suffered a disclosure statement, Ex.PQ, which is in consonance with the disclosure statement made by Ram Niwas. Vide memo Ex.PR, Rajiv pointed out the place where Jaibir was murdered and vide memo Ex.PR/1, the place where they threw the dead body of Jaibir. The prosecution, however, could not find the dead body of Jaibir or his remains and was unable to apprehend Jitender.

ASI Sada Ram, arrested Jitender Kumar on 3.11.1998 but as Jitender was detained in another case, arrested him after obtaining his production warrant. Jitender Kumar suffered a disclosure statement, Ex.PE, attested by ASI Sada Ram and witnessed by Constable Ram Niwas and Mohan Lal son of Norang Ram giving an entirely different version of the murder and disposal of the dead body. Jitender stated that he had come to visit Santra, had sex with Santra but as Jaibir returned, he hid under the bed and then shot Jaibir by firing two gun shots. The dead body was burnt and disposed of near a canal.

After recording the disclosure statements, the police requisitioned the services of Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana and proceeded to inspect Jaibir and Santra's house. At the pointing out by Jitender, the room where Jitender admitted to having shot Jaibir was inspected by the forensic expert.

The police recorded recovery memo Ex.PF dated 5.11.1998 recovering blood stained "baan" (string) from the cot, a pawa (leg) of the cot smeared with blood, a gunny bag, "loggad" (waste cotton) stained with blood, a big box which was also stained with blood, a red coloured quilt stained with blood, blood stained earth, which were converted into sealed parcels and sealed as recorded in the recovery memo. The recoveries were effected after inspection by Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana. The scaled site plan of the room and the house where the alleged murder took place is Ex.PJ.

Apart from the articles recovered, Dr. M.K.Goel, Assistant Director, FSL, Madhuban, detected blood stains in the room, blood on the kacha floor of the room as well as on the right wall of the room and blood on a 'maroon' coloured quilt. Jitender suffered another disclosure statement, Ex.PG, giving further particulars of the murder, disposal of the dead body and got a sword, bones and ash etc. recovered.

After receipt of the report from the Forensic Science Laboratory and completion of investigation, the Investigating Officer filed a final report but as the report disclosed the commission of offences, exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The Additional Sessions Judge, Hisar, framed charges under Sections 302/34 and 201 of the Indian Penal Code, but as the appellants pleaded not guilty and claimed trial, the prosecution was directed to adduce evidence.

The prosecution, in order to prove its case, examined as

many as 10 witnesses. PW1 is Dr.M.K.Goel, Assistant Director, FSL, Madhuban, who inspected the spot. PW2 is SI Rajender Kumar who recorded the statement of Santra Devi and proved FIR Ex.PB. PW3 HC Ram Singh, proved affidavit Ex.PC. PW4 Constable Rajpal Singh, proved affidavit Ex.PD. PW5 is Mungi Devi widow of Norang, mother of the deceased. PW6 Mohan Lal is a real brother of the deceased. PW7 ASI Sada Ram is the Investigating Officer of this case. PW8 SI Ami Lal partly investigated the case and arrested Santra Devi. PW9 Constable Raju, draftsman, proved scaled site plan Ex.PJ and PW10 Inspector Abhey Singh is also an Investigating Officer. The Public Prosecutor gave up PW Constable Sanjay Kumar as unnecessary and closed prosecution evidence.

Upon closure of the prosecution evidence, the incriminating circumstances were put to the appellants under Section 313 of the Code of Criminal Procedure. The appellants denied their involvement, pleaded their innocence but did not choose to lead any evidence in defence.

After considering the evidence on record, the trial court convicted Jitender and Santra and sentenced them in terms referred to in the opening paragraph of this judgment, but acquitted Ram Niwas and Rajiv.

Counsel for the appellants submits that the prosecution has failed to prove any motive for the offence, namely, the illicit relationship between Santra Devi and Jitender Kumar. The allegation of an illicit relationship, conspiracy and murder was made by PW5 Mungi Devi, mother of the deceased, and PW6 Mohan Lal for the first

time 08 months, after the disappearance of Jaibir and after Santra Devi had left the matrimonial home. The allegations are clearly motivated and remained uncorroborated. The statement by PW6 Mohan Lal, brother of Jaibir, is false as he did not reside with Jaibir and even otherwise, has contradicted his statement, Ex.D1, recorded under Section 161 of the Code of Criminal Procedure. The recoveries of a blood stained quilt, cotton etc. from a room in Jaibir Singh's house, almost an year after the alleged occurrence, cannot be believed, much less accepted. The delay of 08 months in reporting the matter and about an year in discovery of relevant facts, has not been explained by the prosecution. If Santra and Jitender had murdered Jaibir, they would have removed the blood stains, waste cotton, the blood stained quilt etc. This apart, PW8 ASI Ami Lal has deposed that after PW5 Mungi Devi lodged a report, on 24.8.1998, that he has searched the house, but could not find any incriminating article in the room. The deposition by PW1 Dr. M.K.Goel, Assistant Director, FSL, Madhuban, that he examined the room and discovered blood stains on the floor and the wall, took into possession various blood stained articles, has to be rejected as the Forensic Science Laboratory report was unable to ascertain the blood group. The prosecution also failed to match the blood stains and the bones etc. with any relative of Jaibir, by a DNA test. The bones, allegedly, recovered at the behest of Jitender have not been proved to be the bones of Jaibir much less, are they proved to belong to a male. The sword, allegedly, recovered was not found to be blood stained. The allegation of an illicit relationship between Santra Devi and Jitender

Kumar levelled after 08 months, recoveries effected from a room after more than 11 months are motivated and therefore, have been planted to falsely implicate the appellants. The prosecution has also failed to prove the cause of death. The accused who have been acquitted, suffered different statements, disclosing facts that are in stark contrast to the statement made by Jitender, thereby seriously comprising the prosecution version. It is further submitted that in their statements before the police neither PW5 Mungi Devi, mother of the deceased, nor PW6 Mohan Lal, real brother of the deceased, have stated or deposed in court that Jaibir was shot in the room. It is, therefore, rather surprising that incriminating blood stains etc. were found in the room. Both witnesses have deposed that Santra Devi told them that Jaibir was taken away by the accused, thereby clearly proving the falsity of prosecution evidence.

Counsel for the State, however, submits that the evidence on record, namely, recoveries of blood stained articles from the room, occupied by Santra Devi, depositions by PW5 and PW6, mother and brother of the deceased, recoveries of bones and ash, blood stained quilt etc., blood stains detected on the wall and floor of the room, when read along with disclosure statements of Santra Devi and Jitender, succinctly establish their guilt and, therefore, the trial court has rightly convicted and sentenced the appellants for the murder of Jaibir.

We have heard counsel for the parties, appraised the evidence adduced by the prosecution and the judgment recorded by the trial court. The evidence adduced by the prosecution is entirely

circumstantial in nature and, therefore, must unerringly point towards the appellants as perpetrators of the crime and to one else. A hypothesis inconsistent with the guilt of the appellants, would render the prosecution story, unreliable and entitle the appellants to acquittal.

The prosecution relies upon the evidence of motive, disclosure statement that led to discovery of the place of murder, recovery of various blood stained articles, a blood stained quilt, blood stained waste cotton, blood stains on the floor of the room occupied by Santra Devi and the deceased, blood stains on the walls, blood stains beneath a tin box, recovery of bones, ash, a sword, and a gunny bag. The task of the prosecution is, however, rendered onerous by the fact that these articles were recovered almost an year after the disappearance of Jaibir and the dead body of Jaibir has not been recovered.

Before we examine the evidence in detail, it would be appropriate to narrate the background of this case.

Santra Devi, appellant in Criminal Appeal No.498-DB of 2004, is the wife of Jaibir deceased. Jitender Kumar appellant in Criminal Appeal No.571-DB of 2002 is not related to Santra Devi or the deceased, but the prosecution alleges that they shared an illicit relationship and, therefore, Santra Devi and Jitender conspired to murder Jaibir. The prosecution alleges that Jaibir was murdered in a room in his house, his body was cut into pieces with a sword and thereafter burnt and disposed it of by throwing the bones and ash near a canal and by concealing the sword.

The prosecution case, however, commences with Santra Devi (appellant), wife of the deceased, making a statement, on 09.12.2007 Ex.PB, at Police Station City Hansi, that her husband is missing. We need not narrate her statement as it has already been detailed in the opening part of our judgment except to the extent that she stated that her husband was taken away by three persons and is missing ever since. The investigation, however, did not make any headway.

About 8 months later, PW5 Mungi Devi and PW6 Mohan Lal (mother and real brother of Jaibir) made a statement, Ex.DA, on 24.8.1998, before PW7 ASI Sada Ram, that they suspect that their daughter-in-law Santra has, in conspiracy with Jitender son of Rajbir Jogi, murdered Jaibir. They also alleged that Santra and Jitender had developed an illicit relationship and Ram Niwas son of Nathu Ram and Rajiv son of Om Parkash also visited Santra. The statement led to addition of Sections 302 and 201 of the Indian Penal Code, to the FIR.

The police arrested Ram Niwas, (who has been acquitted). During interrogation by PW10 Inspector/SHO Abhey Singh. Ram Niwas suffered a disclosure statement Ex.PK dated 10.9.1998, attested by PW10 Inspector Abhey Singh and witnessed by Constable Ajit Singh and Constable Bir Singh, that on 11.12.1997 he along with Jitender son of Rajbir and Rajiv son of Om Parkash Saini, at the asking of Santra wife of Jaibir took Jaibir to Ram Niwas's fields, on Barwala road, on a motorcycle. Jaibir was served liquor and thereafter murdered by pressing his neck. The dead body was

transported in a car and thrown into the Bhakra canal near Tohana head. Ram Niwas also stated that he could point out the place where they have thrown the dead body and, thereafter, led the police to a place in his fields, in village Bishwali Wala and pointed out the place where he along with Jitender and Rajiv, had served liquor to Jaibir and thereafter murdered Jaibir by pressing his neck. The memo, Ex.PL, dated 11.9.1998, also records Ram Niwas as stating that they stopped a car on the Barwala road by threatening the driver and then transported the dead body of Jaibir in the car and threw it into the Bhakra canal near Tohana head. The memo regarding information was signed by Inspector/SHO Abhey Singh and attested by ASI Sada Ram and Ajit Singh. A rough site plan of the place where Jaibir is alleged to have been murdered, is Ex.PM and a rough site plan showing the place where the dead body of Jaibir was, allegedly, thrown into the canal is Ex.PN.

Rajiv, accused (who has also been acquitted) was arrested and interrogated on 17.9.1998 by PW10 Inspector/SHO Abhey Singh and suffered a disclosure statement Ex.PQ, in consonance with the disclosure statement made by Ram Niwas. Rajiv accused then pointed out the places mentioned in the disclosure statement, namely, the place where Jaibir was murdered and the place where the dead body was thrown into the canal. The memo regarding this information is Ex.PR and the memo pointing out the place where the dead body was thrown is Ex.PR/1.

The Investigation of this case was again entrusted to PW7, ASI Sada Ram, who on 4.11.1998, arrested Jitender Kumar,

appellant, after obtaining production warrants, as Jitender Kumar was detained in another case. Jitender Kumar was interrogated and suffered disclosure statements, Ex.PE and Ex.PG admitting that he had shot Jaibir in the room occupied by Jaibir and Santra and disposed of his dead body.

The police, requisitioned the services of Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana and at the pointing out of Jitender, inspected Jaibir's house, on 5.11.1998, particularly the room where Jitender had statedly shot Jaibir. The police recorded, memo Ex.PF dated 5.11.1998, that led to recovery of blood stained "baan" (string) from the cot, a pawa (leg) of the cot smeared with blood, a gunny bag, loggad (waste cotton) stained with blood, a big box, the bottom side of which was stained with blood, a red coloured 'quilt' stained with blood, blood stained earth, two large white bundles of clothes stained with blood, which were all converted into sealed parcels and sealed as recorded in the aforesaid recovery memo. The recovery was effected in the presence of Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana. The police, thereafter, forwarded the recovered articles to the Forensic Science Laboratory, Madhuban. The reports received from the Forensic Science Laboratory are Ex.PA and PA/1, and shall be dealt with later. Jitender suffered another disclosure statement Ex.PG that led to recovery of bones, ash and a sword.

The prosecution case is, thus, a conspiracy based upon an illicit relationship between Jitender and Santra to murder Jaibir which was brought to fruition by Jitender firing the fatal gun shots in

the room occupied by Santra and Jaibir in the house belonging to Jaibir and thereafter disposing of his dead body.

The illicit relationship between Santra and Jitender is sought to be proved by the depositions by PW5 Mungi Devi and PW6 Mohan Lal, mother and brother of the deceased, respectively. The actual murder is sought to be proved from the detection of blood stains and blood stained articles in and from the room occupied by Santra and Jaibir deceased and disposal of the dead body, from the recovery of a sword, ash and pieces of bone. It would, however, be necessary to record that there is no direct evidence of the murder, no medical evidence as to the cause of death, or positive identification of the bones as belonging to the deceased Jaibir. Thus, the evidence on record, being entirely circumstantial, the prosecution case is based upon inferences to be drawn from inspection of the room, which was occupied by Santra and Jaibir deceased, the disclosure statement that led to recovery of blood stains and various blood stained articles from this room, recovery of a sword ash and bones etc.

The evidence of motive, as referred to earlier, is an illicit relationship between Jitender and Santra (wife of the deceased). PW5 Mungi Devi has deposed that her son was a wrestler and used to teach wrestling to many boys. Jitender, Ram Niwas and Rajiv used to come to her son to learn wrestling. Jaibir used to sell clothes on a `pheri. Jitender used to visit her house in the absence of Jaibir who began to suspect an illicit relationship between Jitender and his wife and, therefore, asked Jitender not to visit his house in his absence.

Mungi Devi has further deposed that Jitender did not desist and kept visiting their house and sometimes Smt. Santra would meet Jitender in the street or at other places. After the death of Jaibir, the appellant Jitender continued to visit Santra at her house. She asked Santra not to allow Jitender to visit her house but Santra replied that Jitender would continue to visit her house as before.

PW6 Mohan Lal, a brother of the deceased who has deposed in similar terms has stated that Jitender developed an illicit relationship with Santra. The deceased Jaibir forbade Jitender from visiting his house, in his absence but Jitender did not desist. PW6 Mohan Lal, however, admitted that he resides separately from Jaibir. He also deposed that about 3-3½ years ago, he had seen Jitender in a compromising position with Santra in Jaibir's house. Thereafter, Santra sprinkled kerosene on herself and went to the police station. After the disappearance of Jaibir, Santra was taken away by Jitender to her uncle's house in Siwani, where he eventually shot Santra's uncle and took Santra with him.

The question that arises from the depositions by PW5 Mungi Devi and PW6 Mohan Lal is whether their depositions are sufficient to infer an illicit relationship between Jitender and Santra. An illicit relationship is rather difficult to prove by direct evidence and, therefore, has to be inferred from attending circumstances based upon depositions by witnesses, who would normally be privy to such facts. PW5 is the mother and PW6 is the brother of the deceased, who, in our considered opinion, have no reason to depose falsely, much less to falsely implicate Jitender and Santra. The

argument that this allegation of an illicit relationship and conspiracy was levelled eight months after disappearance of Jaibir, though true, disregards the fact that, in an apparent attempt to deflect any suspicion, Santra had herself lodged a report with the police that her husband Jaibir is missing. She also informed Jaibir's mother and his family members that she is pursuing the matter with the police. It would also be appropriate to point out that in her cross-examination, Mungi Devi has stated that she went to the police after she discovered a blood stained quilt, and cot in a room in her house. Mungi Devi and her family members, may have suspected the appellants but only after Mungi Devi discovered the blood stained quilt etc. in Santra's room, did their suspicion about the illicit relationship and a conspiracy to murder Jaibir crystalise into belief and led her to the making of a complaint to the police about the murder of Jaibir. The acceptance of their depositions about an illicit relationship and conspiracy must, however, depend upon the legality of relevant facts discovered pursuant to disclosure statements and recoveries, which are the primary evidence in this case.

The prosecution, as is apparent from the evidence adduced, is hampered not only by delay in reporting the matter, but also by the fact that it was unable to lay its hands upon any direct evidence and, therefore, relies entirely upon circumstantial evidence unearthed pursuant to disclosure statements and recoveries, to prove that Jitender murdered Jaibir in conspiracy with Santra. The prosecution places implicit reliance upon the disclosure statement suffered by Jitender, recoveries effected from the room occupied by

Jaibir and Santra, recoveries of ash, sword and pieces of bone recovered at the behest of Jitender. At this stage, it would be appropriate to point out that before Jitender was arrested, the police had arrested Ram Niwas and Rajiv who were apparently coerced into suffering disclosure statements which are in stark contrast to the statement made by Jitender and, therefore, have been acquitted by the trial court.

A disclosure statement, made before a police officer, is inadmissible in evidence, insofar as it records a confession, but if a disclosure statement leads to discovery of a relevant fact, the facts so discovered, may be read against an accused under Section 27 of the Evidence Act.

The appellant Jitender suffered a disclosure statement, Ex.PE, on 4.11.1998, witnessed by Constable Ram Niwas and Mohan Lal son of Norang Ram recording a confession as to the mode and manner of the murder of Jaibir. Jitender stated that on 11.12.1997, at about 9.30 P.M., in the night, he went to the house of Jaibir who was not at home, but his wife was at home and as he had already developed an illicit relationship with Santra Devi, they indulged in sexual intercourse. After about an hour, he heard the sound of some one knocking at the door and, therefore, hid under the cot. Jitender asked Santra to open the door. Santra opened the door, and her husband Jaibir entered the room. Jaibir was in an inebriated condition and lay down on the cot. After some time, Santra gave a signal, as planned, on which he came out from beneath the bed and shot Jaibir in the chest with a .12 bore country

made pistol. Jitender also stated that he fired a second shot at the head of Jaibir. After Jaibir died, he called Ram Niwas son of Nathu Ram and Rajiv son of Om Parkash to help him in disposing of the dead body. The four of them, put the dead body in a jute gunny bag and took it inside a deserted house at the rear of the house of Jaibir, sprinkled kerosene and petrol on the dead body and set it on fire. On the next day, Jitender, Rajiv and Ram Niwas put the bones and ash into an empty cement bag and threw the bag into bushes growing on the bank of the Bhakra canal at Tohana head. He also stated that the pistol used in the offence has already been recovered by the police in another case.

Jitender suffered another disclosure statement Ex.PG wherein after narrating facts already narrated in his earlier disclosure statement, Ex.PE, stated that after chopping the dead body into pieces, with a sword, the pieces were stuffed into a gunny bag with the help of Rajiv and Ram Niwas. Jitender asked Santra to plaster the floor of the room and drove to Jhandwala village, district Sirsa, in a Gypsy no. HR-20-D/4434 owned by him and Lila son of Dharampal, where they concealed the remains in a gunny bag by digging a pit. He also stated that he could get the aforesaid articles recovered. Ex.PH is recovery memo dated 7.11.1998. The recovery memo records that Jitender led the police party to village Jandwala Bishnoion and sat near a canal bridge where he pointed out the place where dead body of Jaibir was burnt. The recovery memo records that at this spot "sand type ashes was lying". The ash was lifted and taken into possession. The recovery memo thereafter

records that Jitender began digging the ground and after some time produced a sword and pieces of bone. The Investigating Officer thereafter prepared separate parcels for pieces of bone and ash and the sword, each sealed with the seal bearing impressions "SR". The recovery memo is signed by the Investigating Officer, Mohan Lal son of Norang and Constable Raj Kumar. The site plans of the place of recoveries are Ex.PJ and Ex.PK. The police, thereafter, also recorded statements of the mother and the brother of the deceased.

The disclosure statements contain a confession and a disclosure of relevant facts. The part of the disclosure statements, that record a confession as to the murder, are obviously inadmissible, but parts of the disclosure statements, which led to discovery of various relevant facts, i.e., the place where Jaibir was murdered, the site where the dead body was cut into pieces and burnt, the site where bones were thrown, the place from where incriminating articles, like blood stained earth, blood from the bottom side of a metallic box and a blood stained quilt etc., were recovered, are admissible in evidence as relevant facts and can be read against Jitender under Section 27 of the Evidence Act not only to prove murder, but the disposal of the dead body and to support the depositions by PW5 Mungi Devi and PW6 Mohan Lal of an illicit relationship being the foundation of the conspiracy to murder Jaibir.

After recording, Jitender's first disclosure statement, Ex.PE, and before effecting any recovery, the police, requisitioned the services of Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana, who along with PW7 ASI Sada Ram and Jitender went to

Jaibir's house, carefully examined the house, particularly the room which Jitender had pointed out as the place where he had shot Jaibir, leading to discovery of various incriminating articles which were taken into possession. It would, therefore, be necessary to reproduce the deposition by PW1 Dr. M.K.Goel, as it is his deposition and recoveries effected, pursuant to his search of the room, that have primarily led to the conviction of the appellants.

“I examined house of Jaibir deceased. I found blood in one of the rooms at his house. Blood was present on the kuchha floor of the room as well as on the right side wall of the room and one maroon colour Rajai was also recovered from the house which was stained with blood. I.O. was advised to send the blood stained earth and Rajai to FSL Madhuban for further serological examination.

On 20.11.98, constable Rajpal No.325 deposited 4 sealed parcels for examination of blood and bones. (The witness is deposing on the basis of record brought by him.). All the exhibits were examined in the laboratory. Blood was detected on metallic box, sheets of cloth, wooden pawa, Rajai, gunny sheet, Baan, Loggad, blood stained earth. Bones were identified as human bones. The blood was of human on metallic box, sheets of clothes, pawa of charpai, Razai, gunny sheet, Baan & Loggad. However, blood on blood stained earth (Ex.2A and 2B) was found to be disintegrated. The group of the

blood could not be confirmed. In this respect my report is Ex.PA and Ex.PA/1 which bears my signature.

(At this stage one parcel bearing the seal of FSL has been opened and a metallic box has been taken out). On opening this metallic box, one rajai, one pawa, one loggad, one gunny sheet and two pieces of cloth and Baan have been found). Metallic box Ex.P1, pieces of clothes Ex.P2 and Ex.P3, wooden pawa Ex.P4, Loggad Ex.P5, razai Ex.P6, Baan Ex.P7 are the same which were sent to the FSL for examination and were examined by me. Razai Ex.P6 is the same which was blood stained and which was given to the I.O.

(At this stage one another parcel bearing the seal of FSL has been opened and a box containing blood stained earth has been taken out). Ex.PB is the parcel containing the blood stained earth examined by me. (At this stage one another parcel sealed with the seal of FSL has been opened and contents have been taken out). The parcel containing the bones which were examined by me is Ex.P9. (At this stage one parcel bearing the seal of FSL has been opened and a sword has been taken out.) Sword Ex.P10 is the same which was examined by me. After examining all these articles, the same were made into parcel and sealed with the seal of FSL. When the parcels were received by me, the same were bearing the seal of SR.”

However, during his cross-examination, PW1 Dr. M.K.Goel, admitted that the sex and age of the bones could not be ascertained.

At this stage, it would be necessary to reproduce Ex.PF, recovery memo dated 5.11.1998, recorded by the police with respect to articles recovered from the room where Jaibir was, allegedly, shot by Jitender Singh:-

“ Recovery Memo

In the presence of following witnesses, during the inspection of spot from the place of occurrence on pointing out by accused Jitender, spot from the bundle of clothes lying on the cot, two bundle of white colour stained with blood, on the 'Baan' of cot and one pawa smeared with blood, cut the Baan and taking out the pawa, one gunny bag of Taat and some Loggar_ (waist cotton) having stains of blood, and one big box (SANDOOK) under which there is stain of blood and after inspection by the team of D.F.S.L. Dr. M.K.Goel lifted one quilt (Razai) of red colour stained with blood, and some, blood stained earth, gave to me (the ASI), which was put in a tin box, (Razai) quilt in metallic box, gunny bag Taat, (pieces of waist cotton) LOGAR KE TURKE, PAVA and Baan of cot, two white thaans, all stained with blood, put the same in a large metallic box and a parcel along with parcel of blood stained earth, was prepared and sealed with the seal of S.R., and were taken into police possession vide memo as

a piece of evidence. Seal after use, entrusted to Mohan Lal witness. On the memo, signatures of witnesses were obtained.”

Sd/-(In English)
Sada Ram ASI, PS City
Hansi, dated 5.11.98.”

It would also be appropriate to reproduce Ex.PH recovery memo of bones, ash and sword from a place pointed out by Jitender. The recovery memo, Ex.PH, reads as follows:-

“ In the presence of following witnesses aforesaid accused Jitender, according to his disclosure statement of 6.11.98, led police party to Jandwala Bishnoion village, near canal bridge a rain water drain, and point out one place and disclosed that at this place dead body of Jaibir was burnt. At this places, sand type ashes was lying, which was lifted, and at little distance, accused after digging the earth got produced one sword and some pieces of bones. After preparing separate parcels pieces of bones, ashes, and sword separate parcel were prepared and sealed with the seal of S.R after taking from Mohan Lal witness and the seal after use was given to Mohan Lal. Both the parcels were taken into police possession as a piece of evidence vide memo. On the memo signatures of witnesses were obtained.”

The site plan of the place of recovery, in essence, pointing out the place where the dead body was burnt, bones and ash recovered and the sword buried, is Ex.PK.

The disclosure statements suffered by Jitender having led to discovery of various relevant facts, namely, the place of the murder of Jaibir, i.e., a room in the house of Santra, recovery of a blood stained quilt, baan (string), pawa (leg), cotton, blood stained earth from the floor and the wall of the room, the site where the dead body was burnt, the sword with which the dead body was cut into pieces, the gunny bag and ash containing bones and skeletal remains of a dead body can be read against Jitender as they lead to discovery of the site of murder, the remains, blood stained sword, blood articles from the room and, therefore, cannot be discarded as inadmissible in evidence.

The articles recovered were forwarded to the Forensic Science Laboratory for examination by PW1 Dr. M.K.Goel, Assistant Director, FSL, Madhuban, Haryana. The bones were identified as human bones, blood was detected on the bottom side of big box, clothes, pawa (leg), quilt, gunny bag, baan (string) and waste cotton are found to be stained with human blood. The earth taken from the earthen floor of the room was also found to be stained with human blood, but the blood group could not be ascertained as the material had disintegrated. The recovery of the aforesaid articles from the room occupied by Santra and Jaibir in the house owned by Jaibir and the fact that human blood was detected on these articles, in our considered opinion, are relevant facts that add a significant link in the chain of circumstances and prove with a degree of certainty the exact place where a murder took place, namely, a room wherein Jaibir and Santra resided as husband and wife.

The argument that disclosure statements by Ram Niwas and Rajiv having been found to be false, cast a serious doubt on the disclosure statements made by Jitender, in our considered opinion, though credible, cannot be accepted as it is Jitender's disclosure statements which led to discovery of the site of the murder, namely, a room in the house occupied by Santra and Jaibir, corroborated by discovery of blood stained articles from the room and blood stains from the wall and the floor, bones ash and the sword.

The argument that no-one would leave a blood stained quilt, blood stained cotton and blood stained earth would not be visible after almost an year, though attractive in its first blush, does not merit acceptance as blood may disintegrate over a period of time but stains, if not physically removed, generally remain and can be detected after a careful forensic examination of the crime scene. The quilt was of 'maroon' colour and apparently even Santra may not have been aware of blood stains on the quilt. The blood stained cotton may, however, raise a doubt but other blood stained articles like, stains on the bottom side of the metallic box, pawa (leg of a bed), baan (string) of the cot, earth in the room and the floor could not have been planted by the police and, therefore, in our considered opinion, is not such an argument, as would enable us to cast a doubt on the facts discovered pursuant to the disclosure statements so as

to rule them out of consideration.

Counsel for the appellants has also argued that the room was initially examined by PW7 ASI Sada Nand but he did not detect these articles but when it was examined on 5.11.1998, these articles were suddenly found in the room. The argument disregards the fact that when the room was examined on 5.11.1998, it was examined by a forensic expert PW1 Dr. M.K.Goel. The Investigating Officer is not the forensic expert nor was he equipped with any scientific tool to appraise a crime scene. The admissions by PW7 ASI Sada Nand, cannot be construed as a circumstance, to infer that these articles were planted by the police or the complainant.

The disclosure statement, that led to discovery of relevant facts, as detailed hereinbefore, prove when read with the evidence of an illicit relationship and a consequent conspiracy that the evidence produced by the prosecution is sufficient to raise an inference that the murder of Jaibir took place in the room occupied by Santra and Jaibir. The dead body of Jaibir was cut into pieces, burnt and disposed it of in the manner reproduced in the disclosure statement Ex.PG. The FSL reports, Ex.PA and Ex.PA/1, records that all articles, recovered from the room, occupied by Santra and the deceased, were stained with human blood. The report with respect to blood stained earth is inconclusive as material was found to be

disintegrated. The sex and age of the bones could not be identified as the bones were too fragmented.

An argument has been raised that in case the sword had been used for cutting the dead body of Jaibir, it would definitely have been blood stained, disregards the fact that the sword was buried and recovered after about an year. Admittedly, Jaibir and Santra resided together as husband and wife in the room where various blood stained articles were found. Admittedly, Santra went to the police and filed a complaint that her husband has been taken away by three unknown persons. Admittedly, Jaibir has not been heard of since then. The onus, therefore, to explain special facts as how these blood stained articles came to be found in her room, lay upon Santra. The appellant Santra is, however, silent as to any explanation and, therefore, enables us to raise an inference that her failure to explain relevant facts proves the case of the prosecution of a conspiracy between Santra and Jitender to murder Jaibir, the eventual murder of Jaibir in this room and disposal of the dead body by Jitender in the manner disclosed.

The inability of the prosecution to prove by medical evidence the cause of death or the sex of the bones recorded, in our considered opinion, is not sufficient to grant the benefit of doubt. As we have already accepted that Jaibir was murdered by Jitender and Santra in furtherance of a conspiracy and are able to draw an inference as to culpability of the appellants in

the murder of Jaibir and, therefore, do not place any significance upon these facts.

A significant fact that has convinced us to take the view that we have taken is that neither PW5 Mungi Devi nor PW6 Mohan Lal, mother and brother of the deceased, had any thing to gain from falsely implicating Jitender or Santra and the fact that had Santra intentionally made a false report to the police about disappearance of her husband, goes a long way in proving culpability of the appellants. The trial court has, therefore, after a considered appraisal of evidence on record, recorded clear and cogent findings as to the culpability of the appellants.

Consequently, finding no merit, the appeals are dismissed. The bail bonds and surety bonds furnished by the appellants are cancelled. The appellants shall be taken into custody forthwith, to undergo the remainder of their sentences.

(RAJIVE BHALLA)
JUDGE

21st February, 2015
VK

(AMOL RATTAN SINGH)
JUDGE