

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

Date of decision: November 11, 2016.

1. Criminal Appeal-D No. 632-DB of 2010 (O&M)

Ashok Kumar Appellant.

Versus

State of Haryana Respondent.

2. Criminal Appeal-D No. 690-DB of 2010(O&M)

Sonu Sain Appellant.

Versus

State of Haryana Respondent.

3. Criminal Appeal-D No. 690-DB of 2016 (O&M)

Sanjay Appellant.

Versus

State of Haryana Respondent.

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Ms. Loveleen Dhaliwal, Advocate
for the appellants - Ashok Kumar and Sanjay
(in CRA-D No.632-DB of 2010 & CRA-D No.690-DB of 2016).

Mr. G.S. Sidhu, Advocate
for the appellant - Sonu Sain
(in CRA-D No.690-DB of 2010).

Mr. Randhir Singh, Addl. A.G., Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Criminal Appeal-D No.632-DB of 2010 (Ashok Kumar v. State of Haryana), Criminal Appeal-D No.690-DB of 2010 (Sonu Sain v. State of Haryana) and Criminal Appeal-D No.690-DB of 2016 (Sanjay v. State of Haryana) arise out of a common judgment and order dated 08.05.2010 passed by the learned Additional Sessions Judge, Panchkula whereby the appellants in their respective appeals have been convicted for the offences punishable under Sections 120B/364/302/201 Indian Penal Code (‘IPC’ – for short) and sentenced as under:-

Offence under Section	Sentence imposed
120B IPC	To undergo imprisonment for life, besides, pay a fine of Rs.2,000/- each and in default thereof, undergo further rigorous imprisonment for one year.
364 IPC	To undergo rigorous imprisonment for ten years, besides, pay a fine of Rs.5,000/- each and in default thereof, undergo further rigorous imprisonment for one year.
302 IPC	To undergo rigorous imprisonment for life, besides, pay a fine of Rs.5,000/- each and in default thereof, undergo further rigorous imprisonment for one year.
201 IPC	To undergo rigorous imprisonment for seven years, besides, pay a fine of Rs.2,000/- each and in default thereof, undergo further rigorous imprisonment for one year.

All the three appeals are taken up for hearing together and are being decided by a common judgment as these arise out of the same judgment and order dated 08.05.2010.

The brief facts of the case are that complainant - Sushma Mittal submitted a complaint (Ex.PA) before the SHO, Police Station Sector 14, Panchkula stating that her husband Vinod Mittal was engaged in the work of garments, finance and property dealing. Due to his finance dealings, he got

acquainted with Raju and his wife Shilpa, residents of House No.102, AKS Colony, Ashiana Apartment, Zirakpur. Her husband Vinod Mittal had sold a SX4 car to Raju on installments, the balance amount of the installments were to be taken from Raju. Besides, the complainant's husband had also invested money for Raju.

The husband of the complainant namely Vinod Mittal along with their son Yashan Mittal, aged about four years, on 14.02.2009 after informing the complainant that they were going to Raju's house for collecting the installments money, left their house at about 8.30 p.m. by riding their Santro car No. CH04A-5012. The complainant's husband did not return for quite a while. Then the complainant at about 10.15 p.m. called her husband on his mobile No.9781019999 from her own mobile No.9417970554. As her husband answered the phone, she heard abuses being hurled by some persons and someone saying 'maro - maro', besides, she also heard shrieks of her husband. However, he was unable to communicate with her. Thereafter, she repeatedly telephoned her husband but no one answered his phone. The complainant then along with her neighbour and husband's younger brother ('devar') Mukesh Mittal went to Raju's house. He was not found there but his wife Shilpa met them and informed that the complainant's husband Vinod Mittal had come to their house at 9.00 p.m. but had left when Raju was not there.

The complainant, her neighbour and her brother-in-law ('devar') Mukesh Mittal then went to Police Post Baltana. They along with the police officials again went to Raju's house and made inquiries about Raju but they did not get a satisfactory response from Shilpa. They then went to Raju's

salon, namely, 'Quick Hair Salon' at Baltana where Raju's maternal uncle's son (Sonu Sain) informed them that Raju's vehicle was not parked there earlier but now someone had come and left it there. The son of Raju's maternal uncle revealed that he received a phone call from Raju some time back informing that his vehicle SX4 was parked there below and it should be taken care of.

The complainant lodged a missing report in regard to her husband and son at Sector 16, Police Post Baltana. The complainant thereafter came to know that Raju, his other companions and relatives by getting together in pursuance of a thoughtful considered conspiracy with each other had kidnapped her husband and her four year old son Yashan Mittal. She prayed for action to be taken against them. She also prayed for tracing her husband Vinod Mittal and her son Yashan Mittal.

Formal FIR No.28 (Ex.PA/1) was lodged under Section 365 IPC on the basis of the above said complaint vide DDR No.32 dated 16.2.2009.

PW1 ASI Gurdev Singh was posted at Police Station Sector 14, Panchkula on 16.02.2009. On that day a complaint (Ex.PA) was submitted by Sushma Mittal (PW7) on the basis of which formal FIR (Ex.PA/1) was registered. The special report of the present case was thereafter sent through Constable Anil Kumar and Constable Vijay Kumar. He after registration of the case made his endorsement Ex.PA/2.

The investigation of the case was then handed over by ASI Gurdev Singh (PW1) to Inspector Surjit Kumar (PW26), SHO, Police Station Sector 14, Panchkula on 17.02.2009. He moved an application to the Superintendent of Police, Panchkula for obtaining the phone call details of

Mobile Nos.9781019999, 9417006949, 9855993101 and 9855594896. He also requested for putting a tracer on the IMEI numbers 352810025813243, 356823026291539, 356823026453246 and 352485021788812. He also made a search for accused Raju at his salon at Baltana, AKS Colony and also visited Police Post Baltana. He also verified the facts from Mukesh Mittal, i.e. younger brother of Vinod Mittal ('devar' of the complainant). A police party consisting of ASI Ramesh, HC Sushil and Constable Balkar Singh were sent to Hanumangarh (Rajasthan) for search of the accused. The call details of Mobile Nos. 9855993101 and 9855594896 were obtained from the Cyber Cell office of S.P., Panchkula vide Ex.PN/II and Ex.PO/II, respectively. An application was moved on 19.02.2009 for obtaining the call details of mobile No.9251741447. A search for accused Raju was made at Banur, Zirakpur and Rajpura. The investigation was thereafter transferred on 20.01.2001 (sic. 20.02.2009) to Inspector Kulbhushan, CIA Staff, Panchkula (PW31).

Inspector Kulbhushan (PW31) then investigated the case on 20.02.2009. On that day Rohit resident of Parvati Enclave, Baltana handed over to him an agreement to sell Santro car in favour of Raju executed by him. The same was taken in possession and his statement was recorded. Inspector Kulbhushan (PW31) along with police officials SI Desh Raj (PW22) and SI Sewa Singh (PW30) on 28.02.2009 went to Hanumangarh in search of the accused. Parveen Kumar (PW28) son of Om Parkash met them i.e. Inspector Kulbhushan (PW31) etc. at Hanumangarh. Secret information was then received by Inspector Kulbhushan (PW31) that the accused Mobin Khan (juvenile), Sanjay (appellant in CRA-D No. 690-DB of 2016), Sonu Sain (appellant in CRA-D No.690-DB of 2010) and Ashok Kumar (appellant

in CRA-D No.632-DB of 2010) were present at Hanumangarh in car No. CH04-A-5012 belonging to Vinod Mittal and they were trying to flee. Finding the information credible, the police party proceeded to the Bus Stand, Hanumangarh. Appellants Sanjay, Ashok Kumar and Sonu Sain were found sitting in the said car at Bus Stand, Hanumangarh. All of them were apprehended. The car in question was taken in possession vide memo Ex.PQ. The car along with all the accused were brought to Panchkula, CIA Staff. The accused were put in the lock up.

Mobin Khan alias Ghotu son of Babu Khan was interrogated by Inspector Kulbhushan on 01.03.2009 on which he suffered a disclosure statement (Ex.PQ/1). The appellants Ashok Kumar and Sanjay also suffered similar disclosure statements i.e. Ex.PQ/2 and Ex.PQ/3 respectively. Sonu Sain suffered a separate disclosure statement Ex.PQ/4.

The accused Mobin Khan revealed that Raju was a friend of his elder brother Saleem, driver. He (Raju) used to run a hair salon shop at the Main Market, Baltana. Mobin Khan for some reasons had friendly relations with Raju and he used to meet him within three-four days at his shop. They would eat and drink together. One day, Raju when he was drunk informed Mobin Khan that a person had troubled him a great deal. He (Raju) in order to run his business had taken money from him on interest. Now, that person was repeatedly demanding his money back for which he was putting pressure. He was not in a position at that stage to refund the money and he had to do his work. Raju asked Mobin Khan whether he would help him. On this, Mobin Khan said that he was his friend and that he would definitely do his work. Then Mobin Khan on 14.02.2009 in the morning at 09:00 a.m.

reached the shop of Raju. Raju told him that he was to do the work which he had discussed with him. Raju said that he and his wife were fed up of him because he was repeatedly putting pressure on his wife for return of the money. Mobin Khan then said that he was his friend and if it was so, then he was ready to do whatever he (Raju) desired. He, however, said that he had a friend, namely, Ashok Kumar son of Joginder Singh, resident of Abhaypur, who was very bold and he be also associated. Raju agreed to this.

Then by getting into Raju's SX4 vehicle they from Baltana reached village Abhaypur. There from the STD booth Mobin Khan made a telephone call to Ashok Kumar, who on attending the call reached the bus stand Abhaypur. They took him in his car and Mobin Khan informed Ashok Kumar that Raju was his friend and one person had been troubling him a lot and his work had to be done and that he should help them. Ashok Kumar agreed to this and he said that his friend Sanjay son of Ramanand Yadav, who was a resident of U.P., was residing in village Abhaypur in a rented house at that time. He did coating work in Ford Ikon Agency, Ram Darbar, Chandigarh and he be also taken along.

In the car of Raju all three of them then went to Ford Ikon, Ram Darbar, Chandigarh. There Ashok called Sanjay and informed him about the entire discussion. He also got ready to join them. Raju then asked as to from where would they get a knife here. On this, Sanjay stated that there was a shop near the Gurudwara in Sector 43, Chandigarh from where a knife could be procured. Then they all four together in the same car proceeded to the shop near the Gurudwara in Sector 43, Chandigarh and from there Raju purchased a 'khokhari' like knife for Rs.650/-.

Raju then took them to Chhatbir Zoo for roaming around. From there after roaming around at about 04:00-05:00 p.m. in the evening they proceeded back to Panchkula. Raju then asked as to what would they like to eat and drink. Ashok and Sanjay said that they would drink whisky. Raju alias Pawan Kumar from the liquor vends in Sector 19, Panchkula purchased an English wine bottle. They all came to the Vatika Park in Sector 5, Panchkula where they sat and had drinks. After having drinks, Raju asked them to come home and have their meal. They all sat in Raju's car and went to his home at Zirakpur where they all had their meal. After having their meal, Raju took them for roaming around to Baltana. On the way, telephone of Raju's wife was received by Raju and she informed that Vinod Mittal had come home and he stated that neither was Raju meeting him and nor was he returning the money. On this, Raju asked his wife that if Vinod Mittal again makes a phone call or he came himself, then she should tell him that he has gone to get the money and as he returns she would make a telephone call to him. Raju in his car along with other reached the wide road on the six-ten Baltana where a person coming from front in his car took out his hand and signalled their car to stop. Raju on this stopped his car and after getting down from the car went near that person. That person also got down from his car. Both of them talked amongst themselves and Raju returned back and sat in his car. Raju disclosed that he was the same person whose work was to be done. In other words, he was to be murdered. He (Raju) on the pretext of returning the money had called him to the Amartex Chowk. At that time, Raju had two knives with him. He (Raju) gave one knife to Mobin Khan and the other knife was given to Sanjay.

All of them then came to Amartex Chowk in the car. After some time, Vinod Mittal along with his son, who was aged four years, came in his car at Amartex Chowk to meet them. Raju then told him (Vinod Mittal) to come along ahead and he would give him the money near the liquor vends of Sector 19, Panchkula as Sonu with the money had been called there. They all in both the cars reached a vacant place on the road in front of the liquor vend of Sector 19, Panchkula. Raju as per planning got the car of Vinod Mittal to stop. They all got down from the car and reached near Vinod Mittal and by opening the windows of his car, Raju got on to the front seat near Vinod Mittal while Mobin Khan himself, Sanjay and Ashok sat on the rear seat of the car. Then they all together by showing their knives threatened Vinod Mittal that in case he made a noise, then there would be danger to his life and also to his son. He was asked to quietly drive the car to Baltana near the vacant space behind the Quick Hair Salon of Raju. Then Raju from his mobile phone informed Sonu, who worked for him, that they had kidnapped Vinod Mittal and he was being concealed by taking him to the vacant space behind their hair salon. He was to be murdered. He (Sonu) should immediately get the knives from upstairs and come down. They all along with Vinod Mittal with the car reached behind the hair salon of Raju at Baltana. Sonu met them there. He was standing in front of them. They all together got the car of Vinod Mittal to stop, and then Sonu at once from the front window of the driver's side passed the knife to Raju and closed the window. He stood near the window of the car. As the car's window closed, Ashok Kumar caught hold of and pressed back the neck of Vinod Mittal. He (Mobin Khan) himself and Sanjay with the knives they were carrying in their

hands attacked Vinod Mittal on his face and Raju with the knife in his hand attacked him on his chest. Then Vinod Mittal started shouting and Sanjay put his hand in his mouth and he was brought to the altar of death. They all together pushed Vinod Mittal from the driver's seat to the seat in between the front seats. Raju sat on the driver's seat while Mobin Khan sat on the seat beside it. On seeing the incident, the child got scared but he did not say anything. Then Raju asked Sonu to handle the car and not to disclose anything to anyone.

All four of them in the Santro car of Vinod Mittal drove via Zirakpur, and Rajpura and then on to the Rajpura - Patiala Road. On reaching the main canal they turned the car along its right embankment and about half a kilometre from the main road, the dead body of Vinod Mittal was taken out from the car and thrown in the canal. On the asking of Raju, he (Mobin Khan) lifted the small child from the car who was alive and threw him in the canal. At that time, repeated calls came on the phone of Vinod Mittal. On seeing this, Raju threw the mobile phone in the flowing water of the canal. The knife which he (Mobin Khan) was carrying at the time of committing the murder of Vinod Mittal was also thrown in the flowing water of the canal. Before throwing the dead body of Vinod Mittal in the canal, a gold 'kara' in his hand and a gold ring that was worn were removed and handed over to Raju.

All four of them by getting in the same car drove via Patiala, Sangrur, Bathinda, Dabawali and reached Hanumangarh. After crossing Bathinda on the side of the road near the standing bushes, the blood stained car mats were taken out and thrown. At Hanumangarh, Raju took them to the

son of his maternal uncle, namely, Kulwinder, who resided at Hanumangarh. There the blood stained clothes that they were wearing were removed and given by Raju to his maternal uncle's son Kulwinder for concealing them and new clothes were brought for them to wear. They stayed the night there. In the morning, Raju said that he was going to his in-laws' house at Baroda (Gujarat) and when Sonu reaches there, then they all by getting in the same car should come to Baroda. There he would handle them. All four of them on the next day after cleaning car No. CH04A-5012 were leaving for Baroda that the police came and apprehended them.

Mobin Khan stated that he could by going along demarcate the places where Vinod Mittal was kidnapped, where he was brought and murdered, where his dead body as also his four years' old son who was alive were thrown in the flowing water of the canal, besides, the knife with which he (Mobin Khan) inflicted injuries while committing the murder of Vinod Mittal and threw it in the flowing water of the canal. He could also by going along demarcate the places where the car mats were thrown and the place where the blood stained clothes were changed and get them recovered.

Ashok and Sanjay during interrogation also made similar disclosure statements (Ex.PQ/2 and Ex.PQ/3 respectively). Sonu (accused), however, made a separate disclosure statement (Ex.PQ/4). According to Sonu, Raju alias Pawan Kumar resident of village Barokal, Police Station Sadar Fatehabad was his father's sister's ('bhua's') son. He was running a shop in the name of Quick Hair Salon at Baltana. Sonu was working with him in the said shop. Raju had obtained a huge loan from Vinod Mittal, Financer for the construction of the shop. Raju also purchased a SX4 car

which was financed by Vinod Mittal. Vinod Mittal it is alleged by Sonu was harassing Raju and demanding his money. Raju in fact was not in a position to repay the loan that he had taken. Raju being fed up with the repeated demands made by Vinod Mittal for repayment of the loan told him as also his wife Shilpa that he was unable to repay the money of Vinod Mittal. Therefore, why not they hatch a conspiracy and after getting Vinod Mittal killed they along with their articles leave this place. Sonu and Shilpa agreed with him. According to their planning, Raju purchased a knife which he handed over to Sonu for concealing the same in the shop itself. Raju also informed Sonu that he would call his mother-in-law and in case they were apprehended, then his mother-in-law would be left at the place along with Shilpa, the wife of Raju. Raju then called his mother-in-law namely Neeru Behan who reached Raju's house on 13.02.2009. All three jointly disclosed the entire matter to her. Initially, she restrained them from doing any such act, however, on the asking of Shilpa she agreed to their plan.

Raju went out in his SX4 car on 14.02.2009. He said that he along with his companions was going for committing the murder of Vinod Mittal. Sonu went to the shop. He received a phone call from Raju at the shop at about 10.00 p.m. in the night. Raju informed him that he along with his friends Mobin Khan alias Chotu, Ashok and Sanjay had kidnapped Vinod Mittal to murder him. Sonu was asked to come in his car on the back of the Hair Cutting Salon at Baltana and also get the knife along. Sonu as per the asking of Raju came with the knife which he had already concealed with him to the place where he was informed to reach. Raju and his friends along with Vinod Mittal reached there. As they stopped the car, he opened the front

window of the driver's side and handed over the knife to Raju. Sonu saw that along with Vinod Mittal his son aged about four years was also with him. Then Sonu at once closed the car door and stood near its window so that Vinod Mittal could not open it.

Sonu within his sight, saw that Ashok Kumar who was sitting on the rear seat of the car caught hold of the neck of Vinod Mittal and squeezed it towards the back. Sanjay and Mobin Khan inflicted knife blows with their respective knives on the face of Vinod Mittal. Raju with the knife that was given by Sonu inflicted several blows on the chest of Vinod Mittal. Vinod Mittal then started shouting and Sanjay put his hand in his mouth. The minor child on seeing the occurrence was perplexed but did not say anything.

After Vinod Mittal had been killed, according to Sonu, his dead body was kept in between both the front seats. Raju and Mobin Khan then got down from the car. Raju then sat on the driver seat while Mobin Khan sat on the adjoining front seat. Raju then informed Sonu that his car was parked near the liquor vends of Section 19, Panchkula and he may take care of it. Besides, he should not disclose anything regarding this murder to anyone and they were going to dispose of the body. Sonu then took the SX4 car of Raju from Sector 19 Panchkula and parked it under the Quick Hair Salon. He then went to his house. During this time, Raju also made a telephone call to his wife Shilpa and informed her that Vinod Mittal had been murdered and they were to dispose of his body and also that of his son after killing him. They were then going to Hanumangarh in the car of Vinod Mittal and she may also leave that place.

Sonu along with Shilpa and her mother Neeru Behan in the

morning of 15.02.2009 left the house. Shilpa and her mother Neeru went to Baroda (Gujarat) while he came to his house at Hanumangarh. Sonu in the house of his brother Kulwinder met Ashok Kumar, Mobin Khan and Sanjay. They informed him that Raju had left the place by informing them that he was going to his in-laws' house at Baroda and that when Sonu comes then all four of them by washing the car should reach Baroda where he would handle the matter. All four of them a day earlier to Sonu making his statement, which he made on 01.03.2009, after washing the Santro car No.CH04-A 5012 were leaving for Baroda that they were apprehended by the Police. Sonu further stated that he could demarcate the places where they had committed the murder of Vinod Mittal, the place where he had concealed the knife in his shop and brought it and given it to Raju, the place from where he got Raju's car and parked it under the Salon, besides, get the car recovered.

The disclosure statements were attested by SI Des Raj and SI Rajinder Singh. Pursuant to the disclosure statements suffered by the accused as mentioned above i.e. Mobin Khan, Sanjay, Ashok Kumar and Sonu, the place where the dead body of Vinod Mittal was thrown was got demarcated vide memo Ex.PR. Sanjay, accused got demarcated the place where the knife was thrown vide memo Ex.PR/1. Mobin Khan also demarcated the place where he threw the knife vide memo Ex.PR/2. The accused Mobin Khan, Ashok, Sanjay and Sonu in pursuance of memo Ex.PR/3 got demarcated the place where they had murdered Vinod Mittal. Sonu in pursuance of memo Ex.PR/4 demarcated the place where he parked car No.HR03-J 1083. The accused Mobin Khan, Ashok and Sanjay on 02.03.2009 also got demarcated the place from where they had kidnapped

Vinod Mittal and his son vide memo Ex.PR/5. Kulbhushan, Inspector on the same day collected the blood stains from the car vide memo Ex.PS. He also collected the hair from the car vide memo Ex.PS/1. All these memos were attested by SI Des Raj and ASI Rajinder Singh. The car No.HR03-J 1083 was taken in possession by Inspector Kulbhushan from Ashiana Apartment, Zirakpur on 04.03.2009 vide memo Ex.PS/2.

Neeru Behan was arrested from Ashiana Apartments on 05.03.2009. She made a disclosure statement Ex.PQ/5. She disclosed regarding the manner in which Raju had got married to her daughter namely Shilpa by alluring her. Since they had only one daughter, they had accepted the marriage. She also informed that Raju and Shilpa had a daughter whose name was Kathni. She further disclosed that she visited her daughter at Baltana on 13.02.2009. During the night her daughter and her son in law Raju disclosed to her about the loan they had taken from Vinod Mittal for purchasing the flat and setting up the shop, besides, purchasing a car. They told her that Vinod Mittal used to visit them every day and demand repayment of the loan. Besides, he had badly defamed them. He was not in a position to refund the amount taken as loan and therefore, they were ready to kill him. Neeru Behan further stated that she had tried to make her daughter and son in law understand that this was not proper. On this Raju her son-in-law got angry and said that in case she was not willing to help them, he would leave her daughter. In order to avoid disgrace, she said that they may do whatever they like. She also stated that then Raju told her that on the next day i.e. 14.02.2009 he along with his friends would murder Vinod Mittal and

after that he would inform her on telephone. Then she along with Shilpa after receiving the phone call may leave for Baroda.

According to Neeru Behan, her son in law Raju on 14.02.2009 in the morning after having his tea left the place with his vehicle. At about 11.00 a.m. he returned and demanded money for the fuel. Shilpa gave him Rs.1500/- from her bag and he after taking the money left the house. In the night at about 8.30 p.m. Raju along with his three friends came to the house. All of them were under the influence of liquor. After having dinner, they left the house in the vehicle. During the night, at about 11.00 p.m. Raju made a phone call to Shilpa and said that he along with his friends had murdered Vinod Mittal and his son. He along with his friends was going to the house of his maternal uncle at Hanumangarh in the same car. She may with her mother leave the place.

Neeru Behan along with Shilpa at about 6.00 a.m. in the morning came from Zirakpur to the Railway Station, Chandigarh. They got on to the train and left for Baroda. At that time the maternal uncle's son of Raju namely Sonu was also with them at their house. However, he from there only left for his house at Hanumangarh. Neeru Behan and her daughter Shilpa reached Baroda on 16.02.2009 where Raju met them. He stated that he had to go to 'Shirdi' for paying obeisance and he had to take Shilpa with him. They both left from there and she (Neeru Behan) came to her house. Shilpa and Raju while leaving had said that after some days she by taking someone with her should go to Zirakpur and from there she should bring the car and the valuable articles. Neeru Behan on 05.03.2009, had come to Zirakpur at the house of her daughter for lifting the articles and she

was arrested. Her disclosure statement was recorded, which the accused and the witnesses had signed.

The offences punishable under Sections 302/201/120B IPC were added in the FIR for committing the murder of Vinod Kumar Mittal and his son Yashan Mittal after abducting them. The dead bodies of Vinod Mittal or his son Yashan Mittal have, however, not been traced out.

A telephonic message was sent by PW31 Inspector Kulbhushan to PW23 Rajesh Kumar, the Finger Prints Expert on 02.03.2009. PW23 Rajesh Kumar on the request of Inspector Kulbhushan visited Police Station Sector 14, Panchkula and lifted finger prints from the Santro car bearing No. CH04-A-5012. He submitted his report (Ex.PT) in respect of examination of the scene of crime. According to the report, decipherable chance print was found of the left side mirror, back mirror, right window mirror, left side window mirror circle. The prints were initialled with date. Photographs were taken. The prints were also lifted. Rajesh Kumar suggested to the Investigating Officer of the case to receive the negatives and the prints that were lifted from the In charge, Finger Print Unit Ambala Range, Police Post Lal Kurti, Police Station Paro, Ambala and send them to the In charge, Finger Prints Bureau, SCRB, Madhuban (H), Karnal.

Accused Kishan Lal it was alleged had committed the offence punishable under Section 216 IPC, that is, of harbouring offenders. It is alleged that he provided shelter to the accused in his house at Hanumangarh. Krishan Lal was arrested from Hanumangarh by Inspector Kulbhushan on 13.03.2009.

The agreement to sell the Santro Car in favour of Raju was

handed over to PW31 Inspector Kulbhushan by one Rohit resident of Parwati Enclave Baltana.

Inspector Kulbhushan recovered the mobile phone of Vinod Mittal, deceased on 06.03.2009 through Tarlochan Singh (PW-3) vide recovery memo Ex.DC. According to the said memo, Tarlochan Singh of village Dhawda, Police Station Sadar Sangrur submitted a grayish-black mobile No. 9876718836 make 'Nokia' 1209. He stated that he found the mobile lying in his field which adjoins the side of the main road. There was no SIM in the mobile. On seeing the mobile phone, it was found to be in the name of Hukum Singh son of Gurcharan Singh, resident of Dhawda. The EMEI number of the mobile was 356823026291539. He informed that the SIM number had been taken in the name of Hukum Singh son of Gurcharan Singh, resident of Dhawda. For the purpose of proof, it was taken in possession by the Police in pursuance of memo which was signed by the witnesses. The memo is signed by Tarlochan Singh, Hukum Singh, SI Des Raj and Inspector Kulbhushan. PW3 Trilochan Singh deposed that he was using a mobile phone with SIM No. 9876718836 in the name of Hukum Singh. His fields adjoin the Sangrur-Patiala road. He had found a mobile phone in his fields adjoining the road. He put his SIM card in the said mobile phone and started using it. Police officials contacted him after two-three days and he handed over the mobile phone to the police. It was taken in possession vide memo Ex.PC.

Seven parcels were handed over by PW31 Inspector Kulbhushan to PW8 Janak Raj, MHC on 04.03.2009. Four samples of hair recovered from Vinod Mittal's car along with sample seals were also handed over. PW8

Janak Raj deposed that he sent the samples vide RC No.53 dated 04.03.2009 through SI Sewa Singh for depositing the same with the FSL Madhuban. PW30 Sewa Singh deposed that PW8 MHC Janak Raj handed over 11 parcels and two sample parcels, seals with seal impression 'DR' on 04.03.2009 for depositing the same at FSL, Madhuban. The parcels along with sample seal were handed over by Inspector Kulbhushan to SI Sewa Singh on 07.03.2009 for depositing the same with the Forensic Science Laboratory, Madhuban. Ved Prakash father of Vinod Mittal was also sent along with SI Sewa Singh for DNA Test on that date. The statements of ASI Rajinder Singh and EHC Satinder Singh were recorded by Inspector Kulbhushan.

At this stage, it is relevant to note that the accused Raju and his wife Shilpa have not been traced till date and are absconding.

PW11 Dr. Pandu Guguloth, Assistant Director (DNA), FSL, Madhuban conducted the DNA test of Ved Prakash Mittal. He submitted his report vide Ex.PH. As per the report, DNA profile was extracted from items No.2 and 8 i.e. a piece of car mat marked as item No.2 and blood sample collected from Ved Prakash Mittal, marked as item No.8. These were subjected to autosomal STR analysis by using identifier kit. As per report, the DNA extracted from item No.2 matched with DNA profile of source of Ved Prakash Mittal item No.8. As per report, both of them were of same biological father. It is stated as correct that the DNA profile of a father and son would always match. Therefore, the bloodstained car mat recovered from the Car No.CH04-A-5012 matched with the DNA profile of Ved

The police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' – for short) was presented against the appellants Sonu Sain, Ashok Kumar @ Vicky, Sanjay and accused Neeru Behan and Kishan Lal after completion of the investigation. Mobin Khan was tried separately being a juvenile. Charges for the offences punishable under Sections 302/364/201/216/120B IPC were framed against the accused on 28.08.2009. They pleaded not guilty and claimed trial.

Prosecution examined as many as 31 witnesses to prove its case. All the accused in their statements under Section 313 Cr.P.C. denied the incriminating evidence and circumstances put to them. They claimed innocence and false implication.

In defence, DW1 Sukhdev Singh Sarpanch of village Akalgarh Ka Majra was examined. He stated that the appellant Ashok Kumar had come to his village to attend a 'Bhandara' on 23.02.2009. The maternal uncles of Ashok reside in this village. The police came to their village on 25.02.2009 and Ashok was in fact arrested on 25.02.2009 from village Akalgarh Ka Majra, District Yamunanagar.

The learned trial court on consideration of the evidence, facts and circumstances of the case concluded that the prosecution had proved its case against the appellants Ashok Kumar, Sanjay and Sonu Sain. They were accordingly convicted of the offences punishable under Sections 302/364/120B/201 IPC and sentenced in the manner as detailed above.

The appellants being aggrieved with the impugned judgment of conviction and order of sentence dated 08.05.2010 passed by the learned

Additional Sessions Judge, Panchkula, have preferred the above said appeals.

Learned counsels for the appellants vehemently contend that the case rests entirely on circumstantial evidence and the evidence on record does not in any manner connect them with the commission of the crime. The link in the chain of events is not complete and it cannot be said that the evidence on record leads to an inescapable hypothesis of guilt of the accused. It is contended that the dead-bodies of Vinod Mittal or his son Yashan Mittal were never traced. They have not been recovered till date. In this situation where the dead-bodies have not been found, it would, according to learned counsels for the appellants, be dangerous and unsafe to convict the appellants for the alleged murders of Vinod Mittal and Yashan Mittal. Furthermore, the alleged weapon of offence has not been recovered. There is no motive on the part of the appellants to have committed the crime. At best, the motive could be attributed to accused Raju and Shilpa who have not been apprehended by the police. The appellants do not have any connection with said Raju and Shilpa. It is only Sonu Sain who was an employee of Raju who it may be said had some casual connection with them. No specific role is assigned to him in the participation of the alleged crime. He was sought to be involved primarily on the ground that he was apprehended along with the other accused in Vinod Mittal's car at Hanumangarh.

It is contended that the appellants being apprehended at Hanumangarh is itself suspect. No entry was made by the Panchkula Police at Hanumangarh. There is no evidence of the Panchkula police being at Hanumangarh. It is opposed to all common sense that the appellants would be travelling together in the car belonging to Vinod Mittal after two weeks of his alleged murder. In this situation, the disclosure statements which have

not led to the discovery of any fact cannot be made the basis for the conviction of the appellants. Finger prints and hair samples lifted from the car of Vinod Mittal do not connect the appellants with the crime in any manner. The so-called independent witness PW28 Parveen Kumar is the brother-in-law ('Jija') of Vinod Mittal. His presence at Hanumangarh and meeting the police party at the relevant time is extremely doubtful. Therefore, the presence of the appellants in Vinod Mittal's car and they being apprehended at Hanumangarh is not proved. Furthermore, the prosecution has not led any evidence to show that any effort was made to trace out the dead-bodies from the canal.

Learned counsel for the appellants vehemently contended that the attempt of the prosecution to involve the appellant Sanjay on the basis of evidence of PW6 Dr. Aruna Dhingra is entirely misplaced. The evidence that Sanjay had suffered abrasions on his hands and the probable duration of the injuries being 10-14 days at the time of his examination on 01.03.2009 cannot prove that he was involved in the murder of Vinod Mittal.

In respect to the appellant Ashok Kumar @ Vicky, it is submitted that he was picked up from Yamunanagar at Jagadhri as proved by DW1 Sukhdev Singh, Sarpanch of village Akalgarh Ka Majra. In this situation, learned counsel for the appellants strenuously urged that the conviction and the sentence imposed upon the appellants cannot be sustained. Therefore, it is prayed that the impugned judgment and order dated 08.05.2010 should be set aside and the appellants be acquitted of the charge against them.

Learned counsel for the State while refuting the above said contentions vehemently argues that there is ample evidence to prove that the

appellants along with others had murdered Vinod Mittal and thrown his dead body in the canal. Yashan Mittal was thrown alive in the canal. It is submitted that PW14 Mohan Lal Goyal had sold the Santro Car in question to Vinod Mittal. Vinod Mittal had left his home along with his son in the said Santro car. This fact is duly recorded in the testimony of his wife Sushma Mittal (PW7). The appellants along with accused Mobin Khan were apprehended in the Santro car belonging to Vinod Mittal at Hanumangarh on 28.02.2009. The car was immediately inspected on 01.03.2009 itself at the CIA Staff, Sector 26, Panchkula.

Learned counsel for the State further submits that as per the DNA report (Ex.PH), the DNA material drawn from the car matched with that of Ved Prakash Mittal father of Vinod Mittal, which is sufficient to prove that Vinod Mittal had been murdered in his car by the accused persons. Furthermore, PW6 Dr. Aruna Dhingra examined appellant Sanjay on 01.03.2009 and deposed about the injuries on Sanjay's hands. Therefore, the link in the chain of events is complete.

Learned counsel for the State further argues that the recovery of the dead bodies not having been made is not material in this case. It is not necessary that the *corpus delicti* should be found. The accused can be convicted in the absence of *corpus delicti* as well. He relies on the judgments of Hon'ble the Supreme Court in **Prithipal Singh etc. v. State of Punjab and another, 2011(4) RCR (Criminal) 791, Ram Gulam Chaudhury v. State of Bihar, 2001(8) SCC 311 and Raghav Prapanna Tripathi and others v. State of Uttar Pradesh, AIR 1963 SC 74.**

It is further argued that the motive on the part of the appellants

is clearly established. They were good friends of the co-accused Raju and had committed the crime in furtherance of the conspiracy hatched by them. It is submitted that there is clear, cogent and scientific evidence on record coupled with the accused being apprehended in the car of Vinod Mittal, which proves that they had committed the murder of Vinod Mittal and Yashan Mittal after abducting them. Their dead bodies were thrown in the canal to destroy the evidence. Therefore, the appellants have been rightly convicted for the offences as charged and the impugned judgment and order dated 08.05.2010 deserves to be upheld.

We have given our thoughtful consideration to the contentions as have been urged by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

The case against the appellants is based entirely on circumstantial evidence. In a case resting on a circumstantial evidence, it necessary that the link in the chain of events are complete and the facts so established must point out no other but the inescapable hypothesis of the guilt of the accused. Hon'ble the Supreme Court in **Raja @ Rajinder v. State of Haryana, (2015) 11 SCC 43** has reiterated that in a case resting on circumstantial evidence, the court has to be satisfied that:

- “(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

It is not in dispute that the dead-bodies of Vinod Mittal and Yashan Mittal were never recovered. The prosecution relied upon the disclosure statements of the accused, the statements of PW7 Sushma Mittal, PW28 Parveen Kumar, PW14 Mohan Lal Goyal and other evidence including the DNA report (Ex.PH) to prove its case against the appellants for the offences punishable under Sections 302/364/120B/201 IPC. The said circumstances and evidence are enumerated as hereunder:-

(1)The statement of Sushma Mittal (PW7) that her husband Vinod Mittal along with their son Yashan Mittal went to the house of accused Raju on 14.02.2009. When they did not return for some time, she called her husband on his mobile phone and heard sounds of abuses and then her husband's shrieks. She could not contact her husband again. Her husband and son did not return thereafter.

(2)Raju's wife Shilpa told Sushma Mittal that Vinod

Mittal had come to their house on 14.02.2009 but had left on finding that Raju was not at his house.

(3)The appellants along with accused Mobin Khan being apprehended from the Bus Stand Hanumangarh on 28.02.2009 while travelling in the Santro car belonging to Vinod Mittal.

(4)Evidence of PW28 Parveen Kumar, who was present at the spot when the appellants were apprehended at Bus Stand, Hanumangarh.

(5)According to DNA test report (Ex.PH), the DNA samples collected from a piece of the car mat of the Santro car matched with that of the blood sample collected from Ved Prakash Mittal i.e. father of Vinod Mittal and grandfather of Yashan Mittal.

(6)Evidence of PW14 Mohan Lal Goyal who proved that he sold the Santro car bearing No. CH04-A-5012 to Vinod Mittal.

(7)Disclosure statements suffered by the appellants Mobin Khan i.e. Ex.PQ/1 by Ashok Kumar Ex.PQ/2 by Sanajy Ex.PQ/3 and by Sonu Sain Ex.PQ/4 as well as the demarcation of the places of murder of Vinod Mittal, throwing of the dead body of Vinod Mittal and throwing the child Yashan Mittal, the place where the knife was thrown as well as the place where the bloodstained car mats were thrown by the

accused.

The above said circumstances and evidence has been relied upon by the learned trial court to convict the appellants. It is, however, to be seen whether the evidence on record proves the culpability of the appellants.

The complainant PW7 Sushma Mittal has deposed that her husband Vinod Mittal along with their son left for meeting the accused Raju in their Santro Car (belonging to Vinod Mittal). She heard abuses and shrieks of her husband when she called him on his cell phone. Thereafter, he could not be contacted. Sushma Mittal had then gone to Raju's house to inquire about her husband and son. The co-accused Shilpa informed the complainant that Vinod Mittal had visited their house but had left when Raju was not found there. The complainant along with her brother-in-law ('devar') who is also in their neighbourhood along with police officials yet again visited Raju's house but Shilpa failed to give a convincing reply.

A reference may be made to the evidence of PW13 Rohit Kumar to suggest that the accused Raju and two-three of his other friends were with Vinod Mittal on 14.02.2009 between 10.00 to 10.30 p.m. PW13 Rohit Kumar is running a commission agent shop in the Grain Market, Sector 26 Chandigarh. He deposed that he used to have his hair cut and shave from Raju who was running a salon at Baltana. He knew Raju as he used to get a haircut from him. His father had sold a Santro car bearing registration No. PB-70A-3521 to Raju for which he had paid Rs.70,000/- and rest of the amount was to be paid in installments. They had got an agreement Ex.PK/II (photocopy) prepared in this regard. Rohit Kumar received a phone call on 14.02.2009 at about 10.00/10.30 p.m. from Raju asking him to come to

Baltana to collect the balance payment of the installment of the car. He went to Baltana but could not meet Raju there. Rohit Kumar called Raju from Baltana who asked him to come to Zirakpur. Rohit Kumar went to Zirakpur but Raju was not even present there. Rohit Kumar then made another phone call to Raju, upon which Raju informed that he was at Banur along with Vinod Mittal and two-three friends. They were negotiating for the sale of a plot at a farm house of a friend. Rohit went to Banur but still did not find Raju there. Rohit Kumar again made a phone call to Raju who asked him to come near Chitkara College. When he went to Chitkara College, he did not find Raju there. Rohit Kumar also made a phone call to Shilpa wife of Raju. Thereafter, he got a phone call from Shilpa informing him that the police officials of Baltana Police Post had come to her house making enquiries about Raju and Vinod Mittal. Upon this it is stated by Rohit Kumar that he got scared and returned back. The next day he was summoned to the Police Post Baltana and he disclosed the aforesaid facts to the Baltana Police. He was summoned by the Panchkula Police and he informed them about all the facts in his knowledge to the CIA Staff Panchkula. He had called back to Raju on the phone number from which he had received the call and he was knowing Shilpa's phone number. Raju normally did not make phone calls to him from the phone number he made calls on 14.02.2009. His statement was recorded by the Panchkula Police, after he had handed over the copy of agreement between Raju and his father and copy of bill of mobile No.9915434666. He had informed the police about the phone number from which Raju had made a call to him on 14.02.2009. He had seen his statement. It contained the phone number from which he had received phone

call from Raju. Rohit was cross-examined by three learned counsels appearing for the defence. In cross-examination it is stated as correct that Raju was not present in Court on the date he was deposing i.e. 03.11.2009. It is stated as incorrect to suggest that he was a planted witness and he had concocted the story of selling the Santro car to Raju Sain. He did not know whether the Police had taken the details of the phone calls of his phone number along with the tower location. It is stated as correct that the said car was already on loan. It was financed from ICICI bank. It is stated as correct that when they sold the said car to Raju, they had not cleared all the installments of the ICICI bank.

It is relevant to note that on the date of the occurrence i.e. 14.02.2009 none of the appellants are said to be in touch with PW-13 Rohit Kumar. In fact from the evidence of PW-13 Rohit Kumar all that can be gathered is that Raju and Rohit Kumar had been conversing amongst themselves after 10.00/10.30 p.m. on 14.02.2009. Rohit Kumar had been following Raju and going to places where he was asked to reach by Raju. In any case, none of the appellants from the said deposition are proved to be present with Vinod Kumar or Yashan Mittal in the evening/night of 14.02.2009. The above said evidence cannot constitute a piece of 'last seen evidence' qua the appellants. Therefore, no reliance can be placed on the deposition of PW-13 Rohit Kumar insofar as the appellants are concerned.

Great reliance is placed by the prosecution on the disclosure statements made by the appellants coupled with the fact that the appellants along with accused Mobin Khan were apprehended at Bus Stand Hanumangarh when they were allegedly travelling together in Santro car No.

CH04-A-5012. The said car belonged to Vinod Mittal.

The prosecution case rests heavily on the disclosure statements of the appellants. It is trite that the prosecution cannot lay its foundation on the disclosure statements of the accused. Section 27 of the Evidence Act reads as under:-

27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

In the present case, no such fact was discovered which would render the said disclosure statements to be admissible in evidence against the appellants. The blood stained mats stated to be thrown away by the appellants after murdering Vinod Kumar Mittal or the weapons of offence were never recovered. As per the disclosure statement of appellant Ashok Kumar, the mobile phone belonging to Vinod Mittal was thrown in the canal. However, as per the prosecution case it was found by PW3 Tarlochan Singh in his fields adjoining the Sangrur-Patiala road and was being used by him. It is relevant to note at this stage that as per the recovery memo (Ex.PC), the recovery of this mobile phone was affected from Tarlochan Singh son of Jaswant Singh, resident of Dhawda P.S. Sadar Sangrur. However, Tarlochan Singh who has deposed as PW3 before the learned trial court to prove

Ex.P.C., is reflected as son of Darshan Singh resident of Ghadan, District

Sangrur. This fact casts a serious doubt on the prosecution version.

We find that the disclosure statements by the accused were made while they were in police custody. No new fact which was not already in the notice of the police has been brought out. Besides, no fact is shown to have been discovered in consequence of the disclosure statements made by the accused while in the custody of the Police. In the present case, there are mere disclosure statements of the accused which have been referred to above regarding the throwing of the dead body of Vinod Mittal and also throwing his minor son Yashan Mittal in the flowing water of the canal. However, the dead bodies have not been recovered. Therefore, the disclosure statements as made by the accused do not lead to the discovery of any fact.

There is merit in the argument raised by the learned counsel for the appellants that the presence of the accused in the said car on 28.02.2009 at Bus Stand Hanumangarh is not proved beyond reasonable doubt. We say so for various reasons. Admittedly, no entries were recorded by the Investigating Officer PW31 Inspector Kulbhushan when he proceeded to Hanumangarh for apprehending the accused. It is admitted by PW31 Inspector Kulbhushan that they did not inform the local police at Hanumangarh. There is no entry regarding their presence at Hanumangarh. Furthermore, the presence of PW28 Parveen Kumar is highly suspect. PW28 Parveen Kumar allegedly accompanied the police as an independent witness when the accused were apprehended at the Bus Stand Hanumangarh. Vinod Mittal was the brother-in-law ('jija') of said Parveen Kumar. PW28 Parveen Kumar, who is a resident of village Muklawar, District Ganganagar, has stated

purchase of some articles for his shop. He came to know that his brother-in-law Vinod Mittal was missing and the accused were present at Hanumangarh. Parveen Kumar stated that the appellants as well as the accused Mobin Khan were seen near the Bus Stand, Hanumangarh in car No. CH04-A-5012 and the police officials apprehended them. The car was taken in possession vide memo Ex.PQ which bears his signatures.

The testimony of Parveen Kumar does not inspire any confidence. It rings hollow in the factual matrix of the case. There is no explanation as to how Parveen came to know about the presence of the police officials at Hanumangarh. PW31 Inspector Kulbhushan has categorically stated that Parveen Kumar was not known to him earlier. He allegedly met the police party about 200 meters away from the Bus Stand. Parveen Kumar has also admitted that they did not visit any police station of District Hanumangarh nor was any information given in the local police station at Hanumangarh. It is highly improbable and incredulous to believe the chance presence of Parveen Kumar near the Bus Stand, Hanumangarh at a particular time when the police party was proceeding thereto. Therefore, Parveen Kumar was a chance witness and such a witness as is well known may not necessarily be a false witness but nevertheless it is proverbially rash to rely upon such a witness. Furthermore, there is no explanation as to why the police authorities chose to associate Parveen Kumar as an independent witness and why no other independent witness was associated despite the place where the appellants were apprehended is stated to be at the Bus Stand, where sufficient number of other persons would also be present.

does not advance its cause either. The Santro car No. CH04-A-5012 belonging to Vinod Kumar Mittal was allegedly recovered on 28.02.2009 vide recovery memo Ex.PQ from the Bus Stand Hanumangarh. The appellants along with accused Mobin Khan were allegedly sitting in this car which was found parked at the Bus Stand Hanumangarh. The said car was driven to Panchkula and then subjected to forensic examination. PW12 Dr. Anita Kadiyan visited the Police Station CIA Staff, Sector 26, Panchkula on 01.03.2009. She was told by PW31 Inspector Kulbhushan that one Santro XL Hyundai car was recovered from Hanumangarh. She along with her team searched the car. She advised the Investigating Officer to get the car photographed. The finger prints on the car, the blood and hair found inside the car were directed to be taken. Her report is Ex.PJ. PW12 Dr. Anita Kadiyan when cross-examined has stated that the registration number of the car was not known to her as no number plate was attached with the car. The engine number and chassis number are not mentioned in the report Ex.PJ. The observations in her report Ex.PJ are as under:-

- “1. A Santro Xing XL car of silver golden colour was in the premises of P.S. CIA, Sector 26, Panchkula.
2. No number plate was seen on it.
3. Inside the car hair were found in the left side handle of the car door.
4. Hair were also present on the left side of the car front seat.
5. Dried blood was seen on the mat, seat belt on the front left sides, Dashboard and blood splashes on the roof.”

She advised the Investigating Officer as under:-

- “1.To get the car photographed.
2. To get the fingerprints done on the car.
3. To take into possession hair and blood found inside the car and pack it separately and send to FSL MBN for serological and gp. examination for further necessary action.”

Finger prints from the said car were lifted on 02.03.2009 by PW23 Rajesh Kumar, Finger Prints Expert, Ambala Range, Ambala Cantt. as reflected in his report Ex.PT. As per his report Ex.PT, Kulbhushan CIA Inspector, Panchkula showed him the car No.CH04-A 5012 make ‘Santro’ colour silver. They applied requisite powder and thoroughly checked the car windows, mirrors, body, desk board and right back mirror with the boot of the car. Decipherable chance prints were found on the left side mirror, back mirror, right window mirror, left side window mirror. The prints were circled and initialed with date. Photographs of the prints were lifted. Rajesh Kumar suggested to the Investigating Officer of the case to receive the negative and lifted prints from the Finger Print Unit, Ambala Range, Police Post Lal Kurti, Police Station Paro, Ambala and send them to the In charge Finger Prints Bureau, SCRB, Madhuban (H), Karnal. In cross-examination it is stated that he has lifted finger prints from rear windowpane, both windows and from the back mirror and left side mirror. He could not, however, tell whose finger prints were on the vehicle. He voluntarily stated that the same were compared by the SCRB, Madhuban and only they could tell about the same.

by lifting the finger prints.

The said deposition of PW-23 Rajesh Kumar, Finger Prints Expert, Ambala Range, Ambala Cantt. and his Examination of Scene of Crime report Ex.PT does not in any manner establish that the finger prints found on the car match with the finger prints of any of the appellants.

The samples of hair of Mobin Khan, Ashok Kumar and Sanjay were taken by PW17 Dr. Rakesh Saini, Medical Officer, General Hospital, Sector 6, Panchkula on 14.03.2009 on the request of the police in pursuance of the Court order dated 14.03.2009 passed by the Chief Judicial Magistrate, Panchkula. After collection of the samples, these were sealed and handed over to the police along with forwarding letter to the Director, FSL Madhuban. In cross-examination it is stated he could not recognise the accused individually.

Samples of hair recovered from the car are not shown to match with those of the appellants. The DNA material lifted from the car matched with that of Ved Prakash Mittal i.e. father of Vinod Kumar Mittal and grandfather of Yashan Mittal. Even if the said car is accepted to be that of Vinod Kumar Mittal on the basis of the statement of PW14 Mohan Lal Goyal and the documents recovered therefrom, it is to be noted that the sanctity on the forensic examination is lost or at least is seriously impaired when the car is driven by the police personnel from Hanumangarh to Panchkula. Furthermore the scientific examination fails to connect the appellants with the crime. The DNA report (Ex.PH) at best proves that a piece of car mat marked as item No.2 matches with the DNA profile of Ved Prakash Mittal i.e.

that these were of the same biological origin. Thus in these circumstances, a serious dent is rendered on the prosecution version.

Another relevant point to be considered is that the dead-bodies of Vinod Mittal and his son Yashan Mittal were never recovered. There is no quarrel with the contention of the learned counsel for the State that recovery of the deadbody is not a condition precedent for the conviction of the accused persons. However, in cases where the dead body/bodies are not found and 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character which unerringly point to the victim having met a homicidal death at the hands of the accused. Hon'ble the Supreme Court in **Rishipal v. State of Uttarakhand**, (2013) 12 SCC 551 has held that:-

“In the absence of *corpus delicti* what the court looks for is clinching evidence that proves that the victim has been done to death. If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder. Failure of the prosecution to assemble such evidence will, however, result in failure of the most essential requirement in a case involving a charge of murder.”

In the present case, there is no evidence to show that any effort was made by the police authorities to trace out the dead bodies by any available method. A dead body would eventually float on the surface of

authorities having even lifted a finger to recover or trace out the dead bodies. Although it is well settled that in a trial for murder it is neither an absolute necessity nor an essential ingredient to establish *corpus delicti*. The fact of death of the person or persons who are reported to have died is to be established like any other fact. *Corpus delicti* in some cases may not be possible to be traced or recovered. In fact what is required to base a conviction for an offence of murder is that there should be cogent and convincing evidence that the offence of murder was committed which fact is liable to be proved by the prosecution by direct or circumstantial evidence. This would depend on the facts and circumstances of each case and no universal or straitjacket rule can be applied. However, it is essential in a case where a dead body is there that it be thoroughly identified. Besides, the proof of *corpus delicti* is to be established normally before a sentence can be safely passed in a murder trial. There have been instances where persons reported dead had walked in the Court rooms. The Courts look for strong circumstantial evidence for recording a finding of guilt in the absence of *corpus delicti*.

Be that as it may, the prosecution has to establish its case against the accused on the basis of clinching evidence. The evidence on record is not such which proves the murder of Vinod Mittal and Yashan Mittal at the hands of the appellants beyond reasonable doubt. The judgments relied upon by the learned counsel for the State do not come to his aid in the facts and circumstances of this case.

To convict the appellants of the offences in question on the basis

Mittal at Hanumangarh after two weeks, the DNA report (Ex.PH) or the so-called 'last seen evidence' would be extremely unsafe. The DNA report Ex.PH at best can prove that the DNA material lifted from the car may be of Vinod Mittal. As discussed above evidence on record does not unerringly point to the guilt of the appellants. It cannot be said that the appellants 'must have' committed the murder of Vinod Mittal and thrown the child Yashan Mittal alive into the canal. The prosecution has failed to traverse the crucial distance between 'may have' to 'must have' by producing cogent and reliable evidence. In this context the question of motive qua the appellants assumes relevance, especially in the light of above said circumstances. Lack of motive by itself cannot be a ground to acquit the accused, however, absence of motive would be one of the circumstances to be considered in a case resting upon circumstantial evidence. Hon'ble the Supreme Court in Rishipal's case (supra) has observed that while motive does not have a major role to play in cases based on eye-witness account of the incident, it does assume importance in a case resting entirely on circumstantial evidence. In this case, the motive, if any, may be against accused Raju and his wife Shilpa who were never apprehended. There is nothing on record to prove any connection between the appellants Ashok Kumar and Sanjay with the deceased or Raju and Shilpa. The appellant Sonu Sain was merely an employee of Raju. There is no explanation as to why the said persons would agree to commit the murder of Vinod Mittal, throw his dead body in the canal as well as throw the little child in the canal while he was alive at the asking of Raju. Learned counsel for the State has suggested that there could be a monetary aspect involved but such is not the case of the prosecution and

neither has it been pleaded leave alone proved on record.

The learned trial court has clearly erred in convicting the appellants for the offences punishable under Sections 302/120B/364/201 IPC. For the reasons discussed hereinabove we find that the prosecution has failed to prove its case beyond reasonable doubt against the appellants. Consequently, all the three appeals are allowed and the impugned judgment and order dated 08.05.2010 passed by the learned Additional Sessions Judge, Panchkula are set aside. The appellants are acquitted of the charges against them. However, nothing stated or observed herein shall be taken as an expression of opinion on the merits of the case against the absconding accused – Raju and Shilpa.

(S.S.SARON)
JUDGE

(LISA GILL)
JUDGE

November 11 , 2016.

‘om’

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No