

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

**CRA-D-24-DB of 2012(O&M)
Date of decision :-27.5.2016**

Prince Bhalla and ors.

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Argued by :- Ms. Lucy Massey, Advocate
for appellant No.1.

Mr. S.S. Rana, Advocate
for appellants No.2 and 3.

Mr. Anil Kumar Bhardwaj, Advocate
for appellant No.4.

Ms. Manjri Nehru Kaul, Addl. A.G., Punjab.

GURMIT RAM, J.

1. This appeal is preferred by above-said appellants Prince Bhalla and others (accused) against the judgment and order of sentence dated 8.12.2011 passed by the learned Additional Sessions Judge, Hoshiarpur in criminal case bearing FIR No.36 dated 1.9.2007, u/Ss 302 and 201 read with Section 34 of the Indian Penal Code ('IPC' – for short), Police Station Talwara, District Hoshiarpur vide which appellants – herein (accused) were held guilty for the offences punishable under Sections 120-B, 302 and 201

of the IPC and sentenced thereunder as detailed below:

under Section	Imprisonment	Fine	In default of payment of fine
302, IPC.	Life imprisonment each	Rs.20,000/- each	R.I. of two years each
120-B, IPC.	Life imprisonment each	Rs.20,000/- each	R.I. of two years each
201, IPC.	R.I. of three years each	Rs.5,000/- each	R.I. of six months each

2. The case of the prosecution as presented before the learned trial Court, in brief, was that on 1.9.2007, a telephonic message was received at Police Station Talwara that the dead body of a young man is lying in the low lying area on the corner of the road in the area of village Puhari. Upon this, SI/SHO Kuldip Singh along with ASI Phulla Singh and other police officials proceeded to that spot in a Government vehicle. On receipt of this information, Jagtar Singh son of Kashmiri Lal, Paramjit Singh (Member Panchayat) and Swaran Singh son of Joginder Singh all residents of village Kharal Kalan, P.S. Bhogpur also reached at the spot. Said Jagtar Singh (complainant) identified the dead body of deceased as of his brother namely Gurpal Singh. He made his statement Ex.PL/1 before the police which in nutshell was as under:

“That he is running the electric motors' repair work at village Bhogpur. His brother Gurpal Singh @ Palli who was working as a driver for the last 10-15 years had left this work and now he is doing the household work. Whenever any person needed his services as a driver, he was used to be taken by that person. On 22.8.2007, one Manraj Singh son of Kehar Singh, resident of his village came to their house in the morning, who told his brother Gurpal Singh to drive his car for few days as his

brother-in-law (Jija) Tejinder Singh son of Gurbachan Singh, resident of Bhogpur has come from America, who wanted to visit in their relations. From that very day, his brother Gurpal Singh was driving Scorpio vehicle bearing registration No.PB-08-AV/8686 of said Manraj Singh, who used to come back home at night. On 29.8.2007, his brother had gone from Bhogpur alongwith car in the morning at about 8:30 A.M. and while going, he told them that he will not come back home at night. His brother took Tejinder Singh from Bhogpur for roaming, on that very day in the evening at about 4:00 p.m. His brother did not come back home till the evening of 30.8.2007. So he and his mother Resham Kaur went to the house of said Manraj Singh to know the whereabouts of his brother. Manraj Singh told them that he is already searching his brother-in-law on his mobile No.99887-77620, but failed to find out any clue. He (complainant) and Manraj Singh gave information to the Police Station Bhogpur regarding missing of said Gurpal Singh and Tejinder Singh. Today on 1.9.2007, on receipt of information that dead body of a young man is lying in the low lying area of village Puhari, P.S. Talwara, he along with above said Swaran Singh and Paramjit Singh reached at the spot and found that dead body of his brother is lying in the low lying area on the corner of the road with face downwards. The dead body was in a decomposed condition and it was emitting foul smell. There he came to know that the dead body of said Tejinder Singh is found out from the canal and action is being

taken by the police of Police Station, Mukerian. He is certitude that his brother has been murdered by some unknown persons in connivance with each other, to take away his vehicle after throwing his dead body in some low lying area/deserted place. His vehicle bearing registration No.PB-08-AV/8686 was also taken away by said unknown persons. Request was made to take action into the matter.”

3. After recording the above statement of complainant, SI/SHO Kuldip Singh made his endorsement on it and sent ruqqa to the police station for registration of the case. Inquest report with regard to the dead body of deceased was prepared. Place where the dead body was lying with face downwards was got photographed and its photographs alongwith their negatives were taken into police possession. Blood stained earth and plastic rope lying near the dead body were also taken into police possession from that spot. Dead body of Guralp Singh was sent to BBMB Hospital, Talwara for post-mortem. Statements of Hardev Singh, Manraj Singh and Bishan Singh, who were present at the spot were recorded, who suspected that the murder of Tejinder Singh and Guralp Singh has been committed by accused Hema Kumari, the proprietor of Baba Marriage Bureau, Bhogpur, her husband Prince Bhalla and one girl Mandeep Kaur in connivance with each other.

On 2.9.2007, SI/SHO Kuldip Singh along with other police officials including lady police official conducted a raid at the house of said Hema Kumari, who along with abovesaid girl Mandeep Kaur, who was working as an employee in her marriage bureau was found present. Both of them were interrogated turn by turn in the presence of lady police official.

During interrogation, accused Hema Kumari suffered disclosure statement that she, Mandeep Kaur, Rajesh Kumar @ Rinku and Prince Bhalla had called Tejinder Singh and Gural Singh (both since deceased) to her house on 29.8.2007 in connivance with each other. Cold drink laced with intoxicant tablets was served to them. When both of them became unconscious, then they all removed the gold ornaments of Tejinder Singh. Besides this, they also took out his mobile phone make Motorola and money from his pocket. Mobile phone which came to her share has been kept concealed by her on the shelf of her house meant for installing utensils. She only knew about it and can get the same recovered by making demarcation. Thereafter, her husband and Rajesh Kumar @ Rinku put said Gural Singh and Tejinder Singh, when they were in a semi dead condition, in above said vehicle No.PB-08-AV/8686 for disposing them of. Thereafter, accused Hema Kumari got recovered the above-said Motorola mobile phone as per her disclosure statement.

Then accused Mandeep Kaur also suffered disclosure statement like that of above-said Hema Kumari. Further, she also disclosed that out of the above-said booty, one *kara* of gold came to her share, which later on she got recovered as per her disclosure statement.

After recovery, the said mobile phone make Motorola and *kara* of gold were taken into police possession vide separate memos. Both accused Hema Kumari and Mandeep Kaur were formally arrested in this case.

On the same day, SI/SHO Kuldip Singh along with other police officials apprehended accused Prince Bhalla and Rajesh Kumar @ Rinku on the identification of Hardev Singh in the outer area of Hariana Town.

During interrogation, accused Rajesh @ Rinku suffered disclosure statement whereby admitting his own involvement as well as of his co-accused in the commission of the alleged crime in connivance with each other. He also disclosed that out of the '*looted* articles', one ring of gold bearing inscription of 'TS', 40 dollars of America and one passport bearing 'No.078434611' came to his share and the same were recovered from him.

Then accused Prince Bhalla during interrogation also suffered disclosure statement whereby admitting his own involvement as well as of his co-accused in the alleged occurrence. He also disclosed that one chain of gold and currency notes of Rs.10,000/- came to his share which he got recovered from his house situated at Haryana Town by making demarcation as per his disclosure statement. He also disclosed that after disposing of the dead bodies of Tejinder Singh and Gurpal Singh (both since deceased) during the night of 29.8.2007, they took Scorpio vehicle above mentioned to Meerut on the same night, where it was sold.

Articles got recovered by accused Rajesh @ Rinku and Prince Bhalla as per their respective disclosure statements were also taken into police possession vide separate memos. Then both of them were also formally arrested in this case.

Then on 4.9.2007, the police took both of them to Meerut for the recovery of above-said vehicle where both of them retracted from their disclosure statements. On 5.9.2007, accused Prince Bhalla and Rajesh Kumar @ Rinku during interrogation suffered a joint disclosure statement that they had parked the above-said vehicle at a deserted place on the back of heaps of gravel near the sugarcane field on Meerut – Muzafarpur road in order to conceal it. Thereafter, they got recovered the said vehicle as per

their disclosure statement by making demarcation which was taken into police possession vide a memo.

Prior to the above proceedings, accused Prince Bhalla and Rajesh Kumar @ Rinku during interrogation also disclosed regarding throwing of the dead body of Tejinder Singh into Shah Canal and of Gurpal Singh in the forest area of village Puhari and they got demarcated both these places. Inquest proceedings were conducted in respect of dead body of deceased Tejinder Singh under Section 174, Cr.P.C. Post mortem on his dead body was also got conducted. Documents pertaining to his dead body were also taken into police possession.

Then on 8.9.2007, accused Prince Bhalla during interrogation also disclosed that on 29.8.2007, he handed over tablets to accused Mandeep Kaur after purchasing the same from Pamma Medical Store, Bhogpur. Said Mandeep Kaur converted these tablets into powder and mixed the same in the cold drink which was served to Tejinder Singh and Gurpal Singh. The empty strips of these tablets have been kept concealed by him beneath the *gamlas* (flowerpots) in the courtyard of his house. Thereafter, he got recovered the said empty strips of the tablets upon which word 'ANXILOR-2' was written and the same were taken into police possession vide a memo after converting them into a sealed parcel.

On 17.9.2007, copy of DDR No.44 dated 31.8.2007 which was lodged at Police Station Bhogpur regarding missing of said Tejinder Singh and Gurpal Singh was also taken into police possession. Manraj Singh also produced the receipts with regard to the ownership of above said gold *kara*, gold ring and gold chain allegedly got recovered by the accused in this case which were also taken into police possession.

Statements of witnesses were recorded. On returning to the police station, the case property was deposited with the MHC concerned. Site-plans of the place of occurrence as well as of all the places from where the dead bodies were recovered and the recovery of incriminating articles was effected, were also prepared. Scaled site-plans qua the same were also got prepared. Viscera of both the deceased were sent to the office of Chemical Examiner, Kharar. The parcels containing blood stained earth and plastic rope recovered from the spot were also sent to the office of Forensic Science Laboratory, Chandigarh. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate who after making compliance of the provisions of Section 207, Cr.P.C., committed this case to the Court of learned Sessions Judge, Hoshiarpur for its trial.

4. Finding a prima facie case u/Ss 120-B, 302 and 201 of the IPC against the accused, they were charge-sheeted accordingly vide order dated 7.2.2008, to which, they pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case against the accused examined twenty two witnesses in total.

6. Then the accused were duly examined as required u/S 313 of Cr.P.C. Entire incriminating evidence as brought on the file during trial of the case against them was put to them, which they denied entirely and pleaded their innocence and false implication in this case.

7. The learned trial Court after hearing the learned counsel for both parties and going through the record as well held the accused guilty for the offences punishable u/Ss 120-B, 302 and 201 of the IPC and awarded them sentences as detailed above in para No.1 of this judgment.

8. The appellants - herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence have come up in the instant appeal, notice of which was given to respondent - State. Record of the learned trial Court was also requisitioned.

9. We have heard learned counsel for both the parties and perused the record with their able assistance and have given thoughtful consideration to their respective contentions.

10. In this case, it was the main plank of the case of prosecution that on 29.8.2007, the appellants after hatching a criminal conspiracy called Gurpal Singh and Tejinder Singh (both since deceased) at the residence of appellant No.3 - herein (accused) – Hema Kumari, who in accordance thereof reached at her residence i.e. Ward No.4, Baba Mast Colony, Opposite Sugar Mill, Bhogpur, District Jalandhar. There they served them cold drink mixed with powder of intoxicant tablets, who after consuming the same became unconscious and then they (appellants) removed the ornaments worn by Tejinder Singh (since deceased) and thereafter appellant No.1 – herein Prince Bhalla and appellant No.2 – herein Rajesh Kumar alias Rinku took both of them in Scorpio vehicle bearing registration No.PB-08-AV-8686 for disposing them of. In this regard, the prosecution had mainly relied upon the disclosure statement Ex.PR/1 dated 2.9.2007 of appellant No.3 – herein Hema Kumari, disclosure statement Ex.PT/1 dated 2.9.2007 of appellant No.4 – herein Mandeep Kaur, disclosure statement Ex.PT dated 2.9.2007 of appellant No.1 – herein Prince Bhalla and disclosure statement Ex.PR dated 2.9.2007 of appellant No.2 - herein Rajesh Kumar @ Rinku, besides the report of Forensic Science Laboratory, Chandigarh Ex.PQQ and reports of Chemical Examiner, Government of Punjab Ex.PD and Ex.PG/2.

The above-said disclosure statements were proved on the record during the trial of the case in the statements of PW13 Hardev Singh, PW14 Manraj Singh, PW17 Phoola Singh (Retired ASI), PW19 Mohinder Singh (Retired SI) and PW21 Inspector Kuldeep Singh, the Investigating Officer.

11. Then another material aspect of the case of prosecution was the recoveries allegedly got effected by the appellants - herein (accused) in pursuance of their respective disclosure statements. Disclosure statements of all the appellants – herein (accused) have already been discussed above in para No.3 of this judgment, so there is no need to discuss the same again herein in order to avoid repetition. Now only the alleged recoveries of incriminating materials are to be seen and appreciated. It was the case of prosecution that appellant No.3 – Hema Kumari as per her disclosure statement Ex.PR/1 got recovered one mobile phone make Motorola Ex.P14 which was taken into police possession vide recovery memo Ex.PG. Then appellant No.4 – Mandeep Kaur as per her disclosure statement Ex.PT/1 got recovered one *kara* of gold Ex.P15 bearing impressions 'TS' which was also taken into police possession vide recovery memo Ex.PU/1. Then appellant No.1 – Prince Bhalla got recovered one gold chain bearing impressions 'TS' along with currency notes of Rs.10,000/- and the same were also taken into police possession vide memo Ex.PU. Then during the personal search of appellant No.2 – Rajesh Kumar @ Rinku, one gold ring bearing impressions 'TS', passport of Tejinder Singh (since deceased) issued by Government of America and 40 dollars of America were recovered and the same were also taken into police possession vide memo Ex.PC. Then as per their joint disclosure statement Ex.PW18/A, appellants No.1 and 2 got recovered one scorpio vehicle from the area of Meerut – Mujafarpur road (U.P.).

Further the prosecution in order to establish its above-said plea also took strength from the statement of PW8 Parambir Singh who was running chemist shop at the relevant time at Bhogpur, District Jalandhar. His statement was to the effect that on 29.8.2007, appellant No.1 – Prince Bhalla (accused) demanded medicine for BD blood pressure and tension for his wife namely Hema. He provided him two strips of 'ANXILOR-2'.

Then it was also the plea of prosecution that appellant No.1 – Prince Bhalla during interrogation got recovered two empty strips of intoxicating tablets from underneath the flower pots placed in his house which were bearing letters 'ANXILOR-2' and the same were taken into police possession vide memo Ex.PW19/A. This memo was proved in the statement of PW19 Mahender Singh (SI retired) and PW21 Inspector – Kuldeep Singh, the Investigating Officer.

12. Now let us see the reports of the FSL as well as of the Chemical Examiner as above-mentioned. As per the report Ex.PD, the Chemical Examiner after examining the viscera and other parts of the body of Tejinder Singh (since deceased) reported that no poison was detected in the contents of Exhibits I to V. Similar was the position with regard to Gurpal Singh (since deceased) as submitted by the Chemical Examiner vide report Ex.PG/2 after examining the viscera and other parts of the body of this deceased. So as such the plea of prosecution that appellants had served the cold drink adulterated with powder of intoxicant tablets to the deceased which made them unconscious is found to be quite legless. Had any cold drink mixed with powder of intoxicant tablets been served to the deceased, then certainly the same would have been detected in their respective viscera and other parts of their bodies during their examination by the Chemical

Examiner.

So far the statement of PW8 – Parambir Singh is concerned, the same is also not found to be reliable for the reason that he did not produce his bill-book in order to show that the alleged two strips of 'ANXILOR-2' tablets were sold by him to appellant No.1 – Prince Bhalla. Then in his cross-examination, it is his admission that whenever any medicine is sold, its bill/cash memo is required to be issued. Then it was also in his cross-examination that earlier also appellant No.1 – Prince Bhalla used to take medicine for B.P. and tension. As and when he demanded tablets for B.P. and tension earlier, he used to supply him 'ANXILOR-2' tablets. So as such the alleged two empty strips of 'ANXILOR-2' tablets which as per the case of prosecution were got recovered by appellant No.1 – Prince Bhalla during interrogation, the same might be already lying in his house of the said tablets which he had purchased earlier, since it had come in the cross-examination of PW 8 Parambir Singh that appellant No.1 – Prince Bhalla used to purchase from him such like medicines earlier also for B.P. and tension. Then it is also a matter of common sense that if any person purchases such like medicines with the criminal intent to commit any crime then certainly he will not keep its empty strips in his house for the reason that the same could have been used against him in the evidence, had the same been recovered from his house either during interrogation or routine investigation of the case. Then as above said, no bill-book/cash memo etc. had been produced by PW8 Parambir Singh in the Court in order to establish the fact that the said two strips of 'ANXILOR-2' tablets were really sold by him to appellant No.1 – Prince Bhalla on his demand on 29.8.2007.

Then as per the report Ex.PQQ of FSL, the articles contained in Parcels A and B were found to be stained with human blood. Parcel-A was containing soil lifted from the spot and Parcel-B was containing plastic rope lifted from the spot, where the dead body of Gurpal Singh (since deceased) was found lying. When a person is murdered then certainly his blood is to fall on the earth and if any rope is used in the commission of the crime, then the same is also to be smeared with blood. So this report Ex.PQQ is not of much significance in this case for the reason that no poison was detected in the viscera of both the deceased as per above discussed reports of Chemical Examiner Ex.PD and Ex.PG/2. Then there is nothing on record to hold that the blood found in the soil as well as on the rope lifted from the spot was belonging to Gurpal Singh (since deceased) and of nobody else.

13. In order to prove the fact that Tejinder Singh (since deceased) was owner of the above-said gold ornaments, the recovery of which was allegedly got made by appellants – herein (accused), the prosecution initially examined Kulwinder Singh, goldsmith as PW10. His statement was partly recorded on 5.8.2008 and he produced and proved two receipts Ex.PO and Ex.PP regarding the sale of one gold *kara* weighing 38/39 grams, one gold chain and one gold ring to Tejinder Singh (since deceased). Thereafter, he did not appear in the Court and his statement on the record remained incomplete. Under the law, statement of this witness could not be read into evidence for the reason that the appellants – herein (accused) were not given any opportunity to cross-examine this witness. But if in his statement anything had come on the record in favour of the accused, then it can be looked into to that extent. As per record, receipt Ex.PO is bearing Serial

No.161 dated 24.4.2007, whereas receipt Ex.PP is bearing Serial No.164 dated 2.5.2007, both issued in the name of Tejinder Singh. But the prosecution did not bring on record any evidence to show that Tejinder Singh had visited India in the months of April and May, 2007 also and had purchased the above-said ornaments vide these receipts. This fact could have been established on the record had the copy of passport of the deceased been produced on the file during the trial of the case, which the prosecution failed to do so at the relevant time. Since the prosecution did not bother to examine PW10 further to complete his statement in the Court for the reason best known to it and as such the adverse inference can be drawn against it to draw the conclusion that had this witness been examined by the prosecution to complete his statement, then certainly his statement was to go against the prosecution.

Then in the statement Ex.PL/1 of complainant Jagtar Singh, it was nowhere recorded that deceased Tejinder Singh was wearing any gold ornaments at the time when he had allegedly left with Gurpal Singh on a scorpio vehicle belonging to PW14 – Manraj Singh on 29.8.2007. Even in the missing report Ex.PW14/B lodged with the police of Police Station Bhogpur, reference was made that Tejinder Singh was wearing black coloured pant, light yellow coloured shirt and black shoes which was lodged on 31.8.2007 when Tejinder Singh along with Gurpal Singh (driver) (both since deceased) did not return till this date. There is no mention of any ornaments in this missing report allegedly worn by Tejinder Singh (since deceased). Even the prosecution did not bother to prove the supplementary statement of complainant – Jagtar Singh which he made before the police on 1.9.2007 during trial of the case, rather it came on record in the defence

version as Ex.DA. The oral evidence of PW14 Manraj Singh that Tejinder Singh used to 'wear gold *kara*, ring, chain, bracelet and having mobile phone generally' is not a sufficient proof of the fact that the alleged recovered gold ornaments were belonging to Tejinder Singh (since deceased).

14. So far the concealing of scorpio vehicle by appellants No.1 and 2 in the area of Meerut – Mujafarpur road is concerned, that too is also devoid of any valid reasoning. If these appellants had to conceal this vehicle after commission of the alleged crime, then there would have been no necessity for them to go at such a long distance for this purpose. Then nothing has come on the record that these appellants had any contacts earlier in the area of Meerut which would have prompted them to go to that area for concealing this vehicle. There is a considerable distance between Bhogpur, District Jalandar (Punjab) and Meerut – Mujafarpur road (U.P.). On the way of Bhogpur to Meerut – Mujafarpur road, there is no dearth of places to conceal such like a vehicle. Moreover, had this recovery been made as alleged by the prosecution from the area of Meerut – Mujafarpur road, then the matter was to be reported in this regard to the police of that area which in the present case the prosecution did not bother to do so.

So far the recovery of American dollars from appellant No.2 – Rajesh Kumar @ Rinku and currency notes of Rs.10,000/- from appellant No.1 – Prince Bhalla is concerned, this also does not serve the purpose of prosecution because there is no sign or mark on these dollars/currency notes to establish the fact that the same were belonging to deceased Tejinder Singh. So far the recovery of passport of deceased Tejinder Singh from appellant No.2 – Rajesh @ Rinku is concerned, that also does not seem to

be reliable as this passport was of no use for this appellant and there would have been no reason for him to keep such like document in his possession had he participated in the alleged occurrence. Then from the appellant No.3 – Hema Kumari, only one mobile phone make Motorola had been recovered. This mobile phone is not such a valuable article which could prompt any person to commit the murder of another person for taking away his such like mobile phone.

15. Regarding discovery of certain articles at the disclosure of accused, the Hon'ble Apex Court has held in **Vijay Thakur Versus State of Himachal Pradesh, 2014(4) R.C.R.(Criminal) 389** that it is a weak kind of evidence and conviction in a serious matter cannot be based upon the same.

16. Another material evidence on the basis of which the prosecution has banked upon its stand in this case, is the testimony of PW13 Hardev Singh. As per the prosecution version, this witness while taking tea at Kashmiri Dhaba on 31.8.2007 at about 7:15/7:30 p.m. had heard appellant No.1 – Prince Bhalla making conversation with appellant No.3 – Hema Kumari on mobile phone regarding some vital incriminating material facts concerning the involvement of the appellants in the commission of the alleged crime. The relevant extract of the statement of this witness in this connection is reproduced as under:

“Prince Bhalla was talking to Hema Kumari on telephone by saying that whatever work was to be done, had been done, and that both have been liquidated. The Scorpio vehicle has been sold in District Meerut. He further said that an amount of Rs.29,500/- has been brought by him. He also told her that Mandeep Kaur should be asked not to worry. All these articles, ornaments and money is to distributed amongst all four persons. Prince Bhalla also told Hema Kumari that Rajesh

was sitting by his side and she could talk to him also. Prince Bhalla also asked that the evidence has been destroyed. All these facts are in the knowledge of four persons i.e. amongst us and none else knows about it. Even the police could not come to know anything. He also told that NRI Tejinder Singh has been thrown in Shah canal Mukerian in unconscious condition. The driver Palli has been thrown in the hilly area of Talwara.”

Now let us evaluate the testimony of this witness in order to ascertain its legal sanctity in the scale of justice. It had come on the record in the statement of this witness that above-said Kashmiri Dhaba at which he was taking tea at the time above stated was situated on Jalandhar – Bhogpur G.T. Road. Then it also came in his examination-in-chief that two persons were already sitting there, one of whom was the appellant No.1 – Prince Bhalla to whom he knew already and the second person sitting along with him was known to him by face. He was knowing appellant No.1 – Prince Bhalla since his wife Hema Kumari – appellant No.3 had been running a Marriage Bureau at Bhogpur. It was also found recorded in his cross-examination that many persons were sitting in the said *dhaba* when he had gone there. Police Station Bhogpur was at a distance of about 5/7 kms. from this *dhaba*. He did not go to this police station to lodge the report on the basis of alleged vital disclosures which he had heard at above-said *dhaba* made at the instance of the appellant No.1 – Prince Bhalla while making conversation on mobile phone with appellant No.3 – Hema Kumari pertaining to alleged occurrence. He went to the house of Bhupinder Singh on a motorcycle which was at a distance of about 5/6 kms. from said *dhaba*. Tejinder Singh (since deceased) was his nephew. They were on close visiting terms and they went to meet each other whenever the said deceased

used to come from abroad.

17. As per the prosecution story, the alleged occurrence took place on 29.8.2007. As above discussed, PW13 - Hardev Singh had heard appellant No.1 – Prince Bhalla on 31.8.2007 at a *dhaba* situated on Jalandhar – Bhogpur G.T. Road while making conversation on mobile phone with appellant No.3 – Hema Kumari containing incriminating disclosures qua the participation of the appellants in the alleged occurrence. But herein it is to be noted that no sane person will discuss such like matters by sitting either face to face or on mobile phone with somebody else while sitting at a public place i.e. *dhaba* as in the case in hand which too was situated on the busy Jalandhar – Bhogpur G.T. Road, when particularly some other people were also present in the premises of said *dhaba*. Then as above-said, it had come in the statement of this PW that he was already knowing appellant No.1 – Prince Bhalla for the reason that his wife Hema Kumari – appellant No.3 was running a Marriage Bureau at Bhogpur. When this witness was acquainted with appellant No.1 – Prince Bhalla, then there would have been no occasion for the appellant No.1 to make any conversation on mobile phone with his wife Hema Kumari – appellant No.3 in the presence of this witness concerning this occurrence involving murder of two persons, destroying away the relevant evidence etc. etc. relating thereto. Then it had also come as above-said in the statement of this witness that Tejinder Singh (since deceased) was relating to him being his nephew and that he had gone to above-said *dhaba* on 31.8.2007 in the evening time on motorcycle. Police station Bhogpur was at a distance of 5/7 kms. from this *dhaba*. So then as a matter of common prudence and natural human conduct, he was supposed to approach the police of Police Station

Bhogpur or of any other police station nearby to lodge the report since the mobile phone conversation made by the appellant No.1 – Prince Bhalla, which he had allegedly heard, was containing sufficient incriminating material to make out *prima facie* a cognizable offence against appellant No.1 and his associates. So far the factum that appellant No.1 – Prince Bhalla and appellant No.2 – Rajesh Kumar @ Rinku had sold away the scorio vehicle in question in Meerut District (U.P.) is concerned, it was also not substantiated on the record by any sort of evidence during the trial of the case. Herein we deem it proper to discuss few lines of the statement of PW18 SI Balwan Singh. It came in his statement that on 2.9.2007 in his presence during interrogation appellant No.1 – Prince Bhalla (accused) disclosed that he had sold vehicle No.PB-08-AV-8686 in the area of Meerut. Then he and his co-accused Rajesh Kumar @ Rinku were taken to Meerut and nothing was got recovered. So statement of this witness (PW13 – Hardev Singh) that on 31.8.2007 he had heard appellant No.1 – Prince Bhalla making conversation on a mobile phone regarding disposing of the above-said vehicle is held to be quite out of place as well as bereft of any reasoning to rely upon it. Then further it was the case of prosecution itself that said vehicle was got recovered by appellants No.1 and 2 subsequently on 4.9.2007 as per their joint disclosure statement Ex.PW18/A from the area of road leading from Meerut to Mujafarpur. So on this count also, the above discussed statement of this witness (PW13) is held to be doubtful. Then this joint disclosure statement Ex.PW18/A allegedly suffered by both the appellants No.1 and 2 - herein (accused) during interrogation is itself legally defective also for the reason that disclosure statement of each and every accused is to be written distinctly as well as separately on the basis of their

respective voluntary statements/disclosures in order to make the same admissible in the eyes of law. Then as above-said, it was also found recorded in the statement of this witness (PW13) that Tejinder Singh (since deceased) while in unconscious condition was thrown in Shah Canal, Mukerian. His this statement is inconsistent with the medical evidence as PW1 Dr. Shavinder Singh Mathon in his cross-examination had stated that in the case in hand, asphyxia is not possible due to drowning since there was no fluid in the lungs and other pathogonomics features of drowning were absent. So had Tejinder Singh (since deceased) been thrown in the above-said canal in unconscious condition, then certainly water of the canal was to be entered into his lungs by breathing. Hence, legally it is not safe to act upon the statement of this witness.

18. Then the prosecution examined PW12 Bishan Singh in a strive to complete the chain of circumstantial evidence that Tejinder Singh and Gurpal Singh (both since deceased) were last seen in the company of present appellants (accused) on 29.8.2007 at about 4:00 p.m. His deposition in precise was to the effect that said Tejinder Singh was son-in-law of their village and that on the said date and time, he had gone to Bhogpur for his personal work and he found present said Tejinder Singh and Gurpal Singh along with vehicle of black colour bearing registration No.PB-08-AV-8686 in the company of the appellants near the Baba Marriage Bureau. They were talking with each other, but he did not hear anything. Then he left that spot in connection with some marriage.

Then it had come in the cross-examination of this witness that above-said Marriage Bureau was situated on the Mill Road, Bhogpur which was at a distance of about 4/5 furlongs from the G.T. Road. He came to

Bhogpur on a tempo from his village and the tempo stand was situated near railway station which was at a distance of 3 furlongs from the said Marriage Bureau. He had come to Bhogpur on that day to purchase sugar, tea etc. since these articles were cheaper in the town though the same were available in the village itself also. He purchased these articles from a shopkeeper of Bhundian, but he did not notice any vehicle parked either outside this shop or at railway station. The third person who was seen present in the company of above-said deceased and the present appellants as stated by him in his examination-in-chief was not got identified from him in any test identification parade. Then this witness is also held to be an interested witness for the reason that Kehar Singh, the father-in-law of Tejinder Singh (since deceased) and this witness are the co-residents of one and the same village i.e. village Kharal Kalan. Both of them belong to same caste i.e. Saini. Then both of them had migrated from Pakistan and allotted land in village Kharal Kalan. Then the reasoning given by this witness that he had come to Bhogpur on the above-said date and time for purchasing grocery articles being cheaper in town than the village is held to be not holding any water for the reason that he might have spent some amount on the tempo charges for coming to Bhogpur from his village and vice versa. Then in this process, he also might have spent at least 3-4 hours.

19. The Hon'ble Apex Court dealt with the theory of last seen in a case law titled **Parkash Versus State of Karnataka, 2014(2) Crimes 207**. In this case accused was present in the house of deceased at 8:30 p.m. on the fateful night. Murder of deceased was committed at midnight. There was no evidence that accused had remained with the deceased till midnight. The High Court convicted the accused on the ground that it was probable that

accused was in the house of deceased. It was held that in a case of circumstantial evidence, there has to be some degree of trustworthiness and certainty about the existence of circumstances, mere probabilities are certainly not enough. Conviction was set aside.

In the case in hand also, there is no evidence on the record to show that the appellants had remained with the deceased w.e.f. 4:00 p.m. of 29.8.2007 when they were allegedly seen with the deceased as per the statement of PW12 Bishan Singh till their alleged murder. Then according to PW12 Bishan Singh, he saw both the deceased in the company of the appellants on 29.8.2007 at about 4:00 p.m. near Baba Marriage Bureau, Bhogpur whereas PW14 Manraj Singh had stated in his cross-examination that said Tejinder Singh came to his village Kharal Kalan District Jalandhar at 4:00 p.m. on 29.8.2007. Then it was further his admission that he (Tejinder Singh) had gone on his scorpio vehicle at 4:00 p.m. from their village alongwith driver to village Harsi Pind to see his friends.

20. Then as per the prosecution version, supplementary statement Ex.DA of complainant – Jagtar Singh was recorded on 1.9.2007 from which it came to surface that Tejinder Singh (since deceased) had been visiting usually to Baba Marriage Bureau, Bhogpur to see one girl Mandeep Kaur (appellant No.4 - herein) who was employed in said Bureau. This statement was also to the effect that said Tejinder Singh was intending to marry with said Mandeep Kaur (appellant No.4) and to take her to U.S.A. alongwith him. As abovesaid this supplementary statement was not proved on the record by the prosecution. Rather it came on the record in the cross-examination of PW21 Inspector Kuldeep Singh, the Investigating Officer, as Ex.DA. If this version of the prosecution is held to be true, then in that

eventuality the said Mandeep Kaur (appellant No.4) had never thought to annihilate Tejinder Singh or to join any conspiracy to commit his annihilation in the company of her present co-appellants or of anybody else. The reason for this is that now-a-days there is mad rush in our country particularly in the northern India to enter into any western country as well as U.S.A. by hook or crook. Even the people are ready to spend hefty amount to the tune of Rs.20 to 30 lacs in order to land their foot in the above-said countries. Since Mandeep Kaur – appellant No.4 was having a golden mean to enter into United States through Tejinder Singh (since deceased) so her involvement in any capacity in the commission of the alleged crime is held to be not justifiable as well as reasonable. So the genesis of prosecution version from its very core becomes doubtful.

21. Then there are statements of few prosecution witnesses regarding the formalities which they did in discharge of their official duty which in brief are narrated as below:

PW1 Dr. Shavinder Singh Mathon was one of the Members of the Board of doctors constituted to conduct post-mortem on the dead body of deceased Tejinder Singh son of Gurbachan Singh. He proved the post-mortem report of deceased as Ex.PA and the pictorial diagram showing the seats of injuries as Ex.PA/1. On receipt of report of Chemical Examiner Ex.PD, the cause of death of deceased was given as asphyxia which was allegedly due to smothering which was sufficient to cause death in the ordinary course of nature.

PW3 Dr. Amarjeet Singh was one of the Members of the Board of doctors constituted to conduct post-mortem on the dead body of deceased Gurpal Singh son of Kashmiri Lal. He proved his post-mortem report as

Ex.PH. On receipt of report of Chemical Examiner Ex.PG/2, the cause of death of deceased was given as obstruction of air way due to smothering which was sufficient to cause death in the ordinary course of nature.

22. Herein it is to be noted that it was never the version of prosecution that the appellants had caused any smothering of any kind to any of both the deceased to commit their murder. The prosecution version simply was that both the deceased became unconscious after taking cold drink mixed with powder of intoxicant tablets. One of them was thrown in Shah Canal and the second one was thrown in the forest area of village Puhari, Police Station Talwara. So this medical evidence is also held to be inconsistent with the ocular version of prosecution.

23. PW4 HC Harminder Singh was posted as MHC at Police Station Talwara on the relevant date. The case property of this case was also deposited with him. Further on receipt of ruqqa, he recorded formal FIR Ex.PL.

PW5 Shalinder Singh was the Photographer. On 1.9.2007, he went to the spot where the dead body of deceased Gurpal Singh was lying and took five photographs Ex.P1 to Ex.P5 of the dead body of this deceased. Ex.P6 to Ex.P10 were the negatives of these photographs.

PW6 Vishal Dutt Sharma was also a Photographer. On 30.8.2007, he took three photographs Ex.P11 to Ex.P13 of the dead body of Tejinder Singh from the spot, where it was recovered.

PW7 Naval Kishore Mehta was the Draftsman. He prepared the scaled site-plan Ex.PN of the spot from where the dead body of Tejinder Singh was recovered.

PW9 Paramjit identified the dead body of deceased Gurpal

Singh at the time of the preparing its inquest report Ex.PK.

PW15 HC Harvinder Singh proved the missing report Ex.PW14/A dated 31.8.2007 lodged with the police of Police Station Bhogpur at the instance of PW16 Bhupinder Singh.

The above discussed evidence of prosecution is merely corroborative in nature. Such like evidence can only be used if the other evidence of prosecution to connect the accused with the commission of alleged crime is held to be complete from all the aspects as well as reliable. Such like evidence alone itself is not sufficient proof of the fact that the alleged crime has been committed by the accused facing trial and none-else.

PW21 Kuldeep Singh, Inspector who was the Investigating Officer proved the statement Ex.PL/1 of complainant Jagtar Singh, his own endorsement Ex.PAA and FIR Ex.PL. Further, he also proved the memo Ex.PW17/A vide which blood stained soil and one string recovered from the spot, where the dead body of Gurpal Singh was lying, were taken into police possession. Then he had also stated about the arrest of the appellants – herein (accused) in this case as well as about disclosure statements suffered by them during their interrogation. Their disclosure statements as well as the recoveries are already discussed in detail in Para Nos.10 and 11 of this judgment, so there is no need to encore the same herein. Further he proved the rough site-plans of the places from where the alleged recoveries were made as well as the memos vide which recovered articles were taken into police possession.

24. Admittedly, there is no direct evidence in the case in hand qua the alleged occurrence. The entire case of prosecution was based on circumstantial evidence as discussed above in para Nos.13 to 18 of this

judgment. The Hon'ble Apex Court has laid down parameters for arriving at a conclusion in regard to proof of a prosecution case on the basis of circumstantial evidence in **Sharad Birdhichand Sarda Versus State of Maharashtra [(1984) 4 SCC 116]** which are as under:

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in [Shivaji Sahebrao Bobade v. State of Maharashtra \[\(1973\) 2 SCC 793\]](#) where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

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

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

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

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial

evidence."

The principles laid down in **Sharad Birdhichand Sarda's** case (supra) were further followed by the Hon'ble Apex Court in **Vinay D. Nagar Versus State of Rajasthan, [(2008) 5 SCC 597]**.

25. Then it is found that PW14 Manraj Singh while appearing in the Court had made drastic improvements in his statement which also render his statement untrustworthy as well as shaky. For instance in his cross-examination, he stated that he got recorded in his statement before the police that Tejinder Singh had demanded from him Rs.10,000/- on 29.8.2007. He also got recorded in his statement that Tejinder Singh was already having some American dollars with him. He also got recorded in his statement that he gave Rs.10,000/- to said Tejinder Singh. Then he also got recorded in his statement before the police that Tejinder Singh (since deceased) used to wear gold *kara* , ring, chain and bracelet bearing letters 'TS'. Then he also got recorded in his alleged statement that his brother-in-law (Tejinder Singh – deceased) used to keep Motorola cell phone bearing No.99887-77620, but when he was confronted with his alleged statements Ex.PC/2 and Ex.PC/3, then all the above mentioned facts were not found to be so recorded in these statements.

26. Then in this case material witnesses examined by the prosecution namely PW11 – Jagtar Singh, PW12 – Bishan Singh, PW13 – Hardev Singh, PW14 – Manraj Singh and PW15 – Bhupinder Singh are found to be interested witnesses being related to both the deceased. In their statements it has come on the record that PW11 – Jagtar Singh was the real brother of Gural Singh (since deceased) whereas PW14 – Manraj Singh was the brother-in-law of Tejinder Singh (since deceased). Then it had also

come in the statement of PW12 – Bishan Singh that he is the co-resident of the village of father-in-law of Tejinder Singh (since deceased). Both of them also belong to Saini community. Then it also came on the record in the statement of PW13 – Hardev Singh that Tejinder Singh (since deceased) was his nephew. In this connection PW15 – Bhupinder Singh had deposed that Tejinder Singh (since deceased) was the son of his uncle. Though generally if the witnesses are related to the deceased/victim in any manner, they are not held to be interested witnesses if their statements are found to be credible as well as confidence inspiring to prove the commission of the alleged crime, but when the statements of such like witnesses are held to be otherwise, then their interestedness either on account of some relation or for any other reason with the deceased/victim can be held to be a ground to ignore their depositions.

27. In the light of above discussion, this appeal is liable to be accepted and as such accordingly, it stands accepted. Consequently, the impugned judgment and order of sentence passed by the learned trial Court are set aside. The appellants are acquitted of the charges of which they have been held guilty and convicted in this case by granting them the benefit of doubt. The appellants (accused) who are in custody are ordered to be released forthwith from jail, if they are not required in any other case. Appellant (s) (accused), who is or are on bail, he/she or they as well as their surety (s) as the case may be also stand discharged from their liability of bail bond and surety bond (s) respectively.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

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

27.5.2016
Brij

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE