

In the High Court of Punjab and Haryana at Chandigarh.

(I) Criminal Appeal-D No. 01-DB of 2011
Date of Decision:- October 13, 2017

Gurcharan SinghAppellant

Versus

State of PunjabRespondent

(II) Criminal Appeal-D No. 531-DB of 2011

Anurudh Mandal & anotherAppellant

Versus

State of PunjabRespondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate,
for the appellants.

Ms. Anju Arora, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned two appeals filed on behalf of accused Gurcharan Singh, Anurudh Mandal and Shambu Mandal arising out of the same impugned judgment dated 23.12.2010 passed by learned Additional Sessions Judge, Ludhiana whereby the appellants have been convicted and sentenced as under :-

Name of convict	Convicted u/s	Sentence Imposed	In default of payment of fine
Gurcharan Singh	302 /120-B of IPC	R.I. for life and fine of ₹ 1,000/-.	Further R.I. for 3 months.
	201 of IPC	R.I. for 3 years and fine of ₹ 1,000/-.	Further R.I. for 2 months.
Anurudh Mandal	302 of IPC	R.I. for life and fine of ₹ 1,000/-.	Further R.I. for 3 months.
	201 of IPC	R.I. for 3 years and fine of ₹ 1,000/-.	Further R.I. for 2 months.
Shambu Mandal	302 of IPC	R.I. for life and fine of ₹ 1,000/-.	Further R.I. for 3 months.
	201 of IPC	R.I. for 3 years and fine of ₹ 1,000/-.	Further R.I. for 2 months.

2. The case pertains to death of two brothers namely Baldev Singh, aged 32 years and Gurmeet Singh, aged 45 years sons of Mal Singh whose dead bodies were exhumed from the fields of Gurcharan Singh. The FIR was lodged on the basis of statement (Ex.PE) of Jagjit Singh, brother of deceased, recorded by ASI Mohan Singh on 15.7.2009. The translated gist of the said statement reads as under :-

“I am resident of Village Jalaldiwal, P.S. Raikot, District Ludhiana and collect milk from the village and take it to Raikot. We are three brothers. Eldest is Gurmeet Singh. I am younger to him and youngest is Baldev Singh. Yesterday, i.e. on 14.7.2009 at about 9 p.m. my younger brother Baldev Singh, after having dinner went to the fields to avail the turn of canal water. At about 11 P.M., my elder brother Gurmeet Singh also went to the fields to start electric motor. However, when they did not return back till 5-6 A.M. in the morning, I along with relatives and respectables of the village went to look for them but no clue regarding their whereabouts was found. My elder brother Gurmeet Singh, aged 45 years, sports beard and long hair is wheatish complexioned and is 5 ½ feet tall.

He was wearing bawra coloured striped shirt, gray coloured pants, brown coloured slippers and a yellow checked "*parna*" (cloth worn around head). My younger brother Baldev Singh, aged 32 years, wheatish complexioned, clean shaven is 5' 2" tall and was wearing white and gray coloured shirt, gray pants and blue slippers. The cycle belonging to my brother Gurmeet Singh was found to be lying by the side of small bridge on G.T. road. I suspect that some unknown persons have kidnapped both of my brothers with an intention to kill them. I have made my statement, which is correct and action be taken."

3. Pursuant to aforesaid statement, FIR No. 97 was lodged at Police Station, District Ludhiana Rural for offence under Section 364 IPC on 15.7.2009. After registration of FIR, the police conducted investigation in the matter. Accused Anurudh Mandal and Shambu Mandal, farm hand labourers employed in the fields of accused Gurcharan Singh were arrested on 19.7.2009, having been produced by PW-3 Sat Pal Sharma. It is the case of prosecution that both the aforesaid accused suffered disclosure statements (Ex.PV & Ex.PW) on 19.7.2009 itself and also confessed their guilt to the effect that they had murdered Gurmeet Singh and Baldev Singh on the intervening night of 14.7.2009 and 15.7.2009 and had buried the dead bodies by digging a pit on the edge of paddy fields.
4. Pursuant to the said disclosure statements, the accused led the police party to the disclosed place from where the dead bodies were exhumed in the presence of Tehsildar i.e. PW-12 Harsharanjit Singh on 19.7.2009. Inquest proceedings were conducted. It is further the case of prosecution that Anurudh Mandal suffered another disclosure statement (Ex.PAB) on 22.7.2009 and in pursuance thereof got the clothes and slippers belonging to Baldev Singh recovered. One

hoe was also got recovered. Accused Shambu Mandal also made another disclosure statement (Ex.PAC) on 22.7.2009 and in pursuance thereof got a red coloured torch, slippers and hoe recovered.

5. Accused Gurcharan Singh was arrested on 19.7.2009 and from his personal search, a mobile phone, make Nokia was recovered, which was taken into possession vide recovery memo Ex.PAA. It is further the case of prosecution that on 22.7.2009, Gurcharan Singh made disclosure statement (Ex.PAD) to the effect that on 19.7.2009 after burying down the arm of dead body of Gurmeet Singh which had protruded out from ground and become visible, he had concealed the hoe used for burying down the arm, under the bags in 'verandah' of his motor. In pursuance to the said statement, Gurcharan Singh led the police party to the disclosed place and got the hoe recovered, which was taken into possession vide recovery memo Ex.PAE. Post-mortem examination was got conducted on the recovered dead bodies. Statements of witnesses were recorded under Section 161 Cr.P.C.
6. After conclusion of investigation, challan was presented in the Court of Sub Divisional Judicial Magistrate, Jagraon on 12.10.2009 who committed the case to the Court of Sessions vide order dated 14.10.2009. The case was assigned to the Court of Additional Sessions Judge, Ludhiana, who upon finding sufficient grounds to presume that the accused had committed offences punishable under Section 120-B, 302 and 201 IPC framed charges against the accused on 22.12.2009 to which the accused pleaded not guilty and claimed trial.

7. The prosecution in order to substantiate the charges framed against the accused examined as many as 13 witnesses. PW-1 Dr. Mohinder Singh, Medical Officer, CHC, Sudhar, Ludhiana who had conducted post-mortem examination on the dead bodies of Baldev Singh and Gurmeet Singh proved the post-mortem reports as Ex.PB and PD, respectively. PW-2 Jagjit Singh complainant stated in tune with his statement Ex.PE on the basis of which FIR was lodged. PW-3 Sat Pal Sharma stated that on 19.7.2009 Anurudh Mandal and Shambu Mandal confessed their guilt before him.
8. PW-4 Gill Hasdeep Singh stated that on 14.7.2009 at about 11:30 p.m. when he along with his cousin Mandeep Singh had gone to a liquor vend of Jalal diwal to buy liquor, the vend was not open and while they were standing there, two '*Bhaiya*' type persons came from the side of Jalal diwal who were talking to each other and saying '*Salon ko thok diya hai*' (we have taken care of them) and that they should park their (deceased's) cycle on the road by the side of bridge and nobody will suspect them. He further deposed that they did not pay much attention to their conversation and on 16.7.2009, he learnt that sons of his maternal aunt were missing then he disclosed about the conversation of two '*Bhaiyas*' which he had overheard on 14.7.2009. He further deposed that thereafter he along with Jagjit Singh and other respectables searched the area near the liquor vend and found that the '*Bhaiyas*' working on the motor of Gurcharan Singh were missing.
9. PW-5 Balwinder Singh stated that he is working as labourer in Tata Motors and B.K.Motors, Barnala road, Raikot. On 19.7.2009 at about 6 am when he was going for his work to Tata Agency on a bicycle and reached near the fields of

Gurcharan Singh, he noticed Gurcharan Singh was lifting and stacking soil in his fields and was sprinkling water on the soil and levelling the 'vatt' (boundary in the field raised by stacking soil). He further stated that after some time he got to know that dead bodies had been recovered from the fields of Gurcharan Singh from the same place where Gurcharan Singh was levelling the 'vatt' in the morning.

10. PW-6 Head Constable Sahib Singh stated that he had delivered the special reports on 15.7.2009 to SDJM, Jagraon as well as to higher officers. PW-7 Patwari Iqbal Singh stated that he had prepared scaled site place Ex.PK of the place of occurrence on 29.7.2009. PW-8 Ranbir Singh, ALM, PSEB, Raikot produced the original record pertaining to installation of electric motor in the name of consumer Mal Singh. He produced the pass book as Ex.PL. PW-9 ASI Harpreet Singh stated that he is working as Incharge Computer, Jagraon since 1998 under SSP, Jagraon and that upon request made by S.I. Mohan Dass for providing call details of mobile No.99159-91788 and 98760-15502, he obtained information from Airtel company and furnished the same to the Investigating Officer. PW-10 Head Constable Balbir Singh stated that on 14.7.2009, he was posted as Police Post Jalaldiwal, Police Station Raikot and that S.I. Mohan Dass had given a ruqa Ex.PE and sent him to police station and on the basis of the said ruqa, formal FIR Ex.PH was lodged. He has further stated regarding the disclosure statements made by Anurudh Mandal and Shambu Mandal on 19.7.2009 and 22.7.2009, respectively and the recoveries made in pursuance thereof. He has also stated about the disclosure statement made by the accused Gurcharan Singh on 22.7.2009 and the recoveries effected in pursuance thereof.

11. PW-11 SI Mohan Dass who is the Investigating Officer in the present case stated in detail in respect of the entire investigation conducted in the matter right from recording of statement (Ex.PE) of complainant Jagjit Singh up to filing of challan. PW-12 Harsharanjit Singh, Tehsildar deposed that on 19.7.2009, while he was posted as Tehsildar at Raikot, he received intimation from SDM and DSP Raikot for proceeding to Raikot for recovery of dead bodies and he accordingly went to the spot i.e. the fields of Gurcharan Singh where the accused Shambu Mandal and Anurudh Mandal got recovered the dead bodies of Baldev Singh and Gurmeet Singh as per their statements already recorded with the police.
12. PW-13 Jagdip Kumar stated that he runs a karyana shop in village Jalaldiwal and also sell sim cards and mobile sets and that on 18.10.2008, he had sold a sim card No.98760-15502 to Nanku Mandal, resident of Village Dumar Phalkan District Katyar, Bihar. He further deposed that he got to know that the said Nanku Mandal, before going to his native village, handed over the said sim to Anurudh Mandal who was working for Gurcharan Singh and that Nanku Mandal had stated that on return from Bihar, he would take back his sim.
13. Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to the accused to enable them to explain the same but the accused denied the prosecution case in toto and pleaded innocence and stated that they have been implicated falsely due to misguided suspicion. The accused, however, did not lead any evidence in their defence.
14. The Trial Court upon appreciation of the evidence on record held all the accused guilty of having committed offences for which they stood charged and

sentenced them accordingly vide impugned judgment dated 23.12.2010.

Feeling aggrieved, the accused have filed the present appeals.

15. The learned counsel for the appellants while assailing the impugned judgment have submitted that the present case is a case of blind murder and the prosecution relies solely on circumstantial evidence which is grossly insufficient to connect the accused with the crime in question. The learned counsel has submitted that it is highly improbable that the accused Anurudh Mandal and Shambu Mandal after having committed the crime and absconding from the place where they were working would confess their guilt before a person who hardly has any standing in the society so as to have instilled some confidence in the minds of the accused to prompt them to make confession before him. The learned counsel for the appellants further submitted that no independent witness was ever associated at the time of alleged disclosure statements made by the accused or even at the time of recoveries allegedly made in pursuance to the said disclosure statements. In these circumstances no sanctity can be attached to the said disclosure statements or to the recoveries made in pursuance thereof. The learned counsel for the appellants further submitted that the prosecution has not been able to prove any motive for the alleged murders and that in a case based solely on circumstantial evidence, the prosecution is expected to establish motive for commission of crime. The learned counsel further submitted that accused Gurcharan Singh in any case cannot be connected with the crime inasmuch as neither the dead bodies were recovered at his instance and nor did he have any motive to commit the crime. The learned counsel further submitted that the only evidence against Gurcharan Singh is in the shape of statement of PW-5 Balwinder Singh who

had seen Gurcharan Singh levelling his fields after about 6 days of occurrence. The learned counsel submitted that such like conduct is very normal for a farmer and by no stretch of imagination the accused Gurcharan Singh can be connected with the crime on the basis of the said statement. The learned counsel, thus, submitted that in view of the aforesaid infirmities, the impugned judgment cannot sustain and prayed for acquittal of the accused.

16. On the other hand, the learned counsel representing the State has submitted that even though the case is based solely on circumstantial evidence, but still the evidence led by the prosecution forms a complete chain leading to one and only one conclusion that it is the accused who had committed the crime. The learned State counsel has submitted that the disclosure statements leading to incriminating articles especially the recovery of dead bodies which had been buried in the fields of Gurcharan Singh leave no manner of doubt that it is the accused who had committed the crime in question. The learned State Counsel has prayed for dismissal of the appeals.
17. We have considered the rival submissions addressed before this Court and with their able assistance have also perused record of the case.
18. Before referring to the circumstantial evidence, it is apposite to refer to the medical evidence as regards the cause of death. The dead bodies which were recovered on 22.7.2009 were subjected to post-mortem examination which was conducted by PW-1 Dr. Mohinder Singh along with other members of the Medical Board. PW-1 Dr. Mohinder Singh, while proving the post-mortem report in respect of Baldev Singh (Ex.PB), described the injuries found on the dead body as follows :-

- “1. Contusion 5” x 3” on the occipital region of skull.
2. Contusion 6” x 4” on the left side of the chest around the nipple.
3. Contusion 3” x 3” on the back of the neck in the centre.

The 4th, 5th, 6th and 7th ribs on the right side of the chest was fractured. The 6th, 7th and 8th ribs on the left side of the chest were fractured. On exploration of skull the fracture of occipital bone was fractured. The whole of the internal organs were putrified. Both lungs were lacerated and putrified.”

19. PW-1 Dr. Mohinder Singh opined that the cause of death was haemorrhage and shock due to injuries on the vital organs, which were sufficient to cause death in the ordinary course of nature.
20. PW-1 Dr. Mohinder Singh, while proving the post-mortem report in respect of Gurmeet Singh (Ex.PD), described the injuries found on the dead body as follows:-

- “1. Contusion 5” x 4” on the left temporo parietal region of the skull.
2. Contusion 3” x 2” on the occipital region of the skull.
3. Contusion 5” x 3” on and around of the middle of the sternum.

The 5th, 6th and 7th ribs on the right side of the chest were fractured. The 4th, 5th and 6th ribs were fractured on the left side of the chest. Fracture of middle part of sternum bone was present. On exploration of skull-

1. Fracture of left temporal and parietal bone present.
2. Fracture of occipital bone present.”

21. PW-1 opined that the cause of death was haemorrhage and shock due to injuries on the vital organs, which were sufficient to cause death in the ordinary course of nature. PW-1 has further opined that the probable time that had elapsed between death and post-mortem report was about 4-5 days in both the cases. The witness was briefly cross-examined on behalf of the accused but nothing could be elicited so as to doubt the veracity of his statement or his opinion regarding the cause of death. In any case, there is no serious dispute regarding the factum or cause of death. As such, the findings to the effect that it is a case of homicidal death of Baldev Singh and Gurmeet Singh are affirmed.

22. It is the case of the prosecution that the accused Anurudh Mandal and Shambu Mandal had murdered Baldev Singh and Gurmeet Singh at the instance of accused Gurcharan Singh and had buried the dead bodies in the fields of Gurcharan Singh. Since there is no eye-witness to the occurrence, the prosecution seeks to establish its case on the basis of circumstantial evidence. The said circumstantial evidence is mainly in the following form :-

- (1) Extra-judicial confession made by the accused Anurudh Mandal and Shambu Mandal before PW-3 Sat Pal Sharma.
- (2) Disclosure statements made by the accused Anurudh Mandal and Shambu Mandal leading to recovery of two dead bodies from the fields of Gurcharan Singh.
- (3) Other disclosure statements of the accused leading to recovery of incriminating articles.
- (4) Last seen evidence in the shape of statement of PW-4 Gill Hasdeep Singh who had also overheard the accused talking about the occurrence.

23. As per the case of prosecution, accused Anurudh Mandal and Shambu Mandal confessed their guilty before PW-3 Sat Pal Sharma on 19.7.2009. PW-3 stated that when he was going to village Jalaldiwal from Raikot to collect milk, then Anurudh Mandal and Shambu Mandal met him and took him aside and confessed that they had murdered Gurmeet Singh and Baldev Singh and had buried their dead bodies in the fields of Gurcharan Singh on the edge of paddy fields. He further stated that he produced both the accused before the police and the police had recorded his statement.
24. The learned counsel for the accused has assailed the aforesaid extra-judicial confession on the ground that PW-3 Sat Pal Sharma is a milk vendor and admittedly he is neither a Sarpanch, Panch or Municipal Councilor of the area and as such, there was no reason for the accused to have made extra-judicial confession before him. The learned counsel has thus submitted that PW-3 Sat Pal Sharma could not have rendered any kind of help to the accused so as to prompt the accused to confess their guilty before him and he has simply been introduced by the prosecution to fill up the gaps in the case of prosecution.
25. We have considered the aforesaid submission. It is no doubt correct that PW-3 Sat Pal Sharma was not holding any public office and apparently is not an influential person. However, it also needs to be borne in mind that even the accused Anurudh Mandal and Shambu Mandal are merely farm labourers belonging to Bihar and they cannot be expected to know someone highly placed in the administration or the police. In case, they have to confess their guilt due to any remorse or fear, they would do so before any such person in

whom they repose some kind of confidence. PW-3 Sat Pal Sharma is a resident of the same area i.e. Raikot. There is nothing on record to suggest that he was related to the deceased or to suggest anything else so as to furnish any reason for him to have deposed falsely against the accused. It is not shown that he had any enmity with the accused to falsely implicate them. As such the extra-judicial confession cannot be discarded merely on the count that PW-3 is not highly placed in society, though of course it is well settled that extra-judicial confession itself is a weak kind of evidence and is not sufficient to base conviction solely on the same. The aforesaid extra-judicial confession would assume importance in case there is other evidence to corroborate the same.

26. It is further the case of prosecution that the accused Anurudh Mandal made a disclosure statement (Ex.PV). The translated gist of the said statement reads as follows :-

“In the presence of the following witnesses, accused Anurodh Mandal disclosed that - “I and Shambu Mandal my younger brother on Tuesday night i.e. night of 14/15-7-09, murdered Gurmit Singh and Baldev Singh, whose fields are adjacent to the fields of our employer Gurcharan Singh at the instance of Gurcharan Singh and buried them by digging a pit on the edge of paddy fields. I and my brother Shambu Mandal only know about this. I can get it recovered by pointing out.”

27. A similar disclosure statement (Ex.PW) was made by Shambu Mandal which reads as follows:-

“In the presence of the following witnesses, during interrogation, accused Shambu Mandal above disclosed that “I and Anurodh Mandal

my elder brother, on Tuesday night i.e. night of 14/15-7-09, murdered Gurmit Singh and Baldev Singh, whose fields are adjacent to the fields of our employer Gurcharan Singh at the instance of Gurcharan Singh and buried them by digging a pit on the edge of paddy fields. I and my brother Anurodh Mandal only know about this. I can get it recovered by pointing out.”

28. Pursuant to the said statements, both the accused led the police party to the disclosed place where, in the presence of PW-12 Harsharanjit Singh, Tehsildar, they got the dead bodies of Baldev Singh and Gurmeet Singh recovered by digging soil with hoe and with their hands.

29. Though the learned counsel for the accused has assailed the disclosure statement on the ground that the same are not made in the presence of an independent witness but we are unable to accept the said contention, as there is no mandate of law that the disclosure statements should be made only in the presence of an independent witness, to be made admissible in the evidence. In fact, in the present case, pursuant to the disclosure statements the accused got the dead bodies recovered by digging earth and the said process was duly videographed in the presence of PW-12 Tehsildar Harsharanjit Singh. It is not the case of an ordinary recovery of any household implement etc. but recovery of dead bodies which cannot be said to be planted. PW-12 Tehsildar Harsharanjit Singh, while in the witness box, has specifically stated regarding the fact that the accused Anurudh Mandal and Shambu Mandal had got the dead bodies recovered from the place pointed by them. The dead bodies were duly identified by the complainant Jagjit Singh and PW-4 Gill Hasdeep Singh.

There is nothing on record to doubt the said factum. The said fact is a very

material piece of evidence pointing towards the guilt of the accused.

30. It is further the case of prosecution that the accused Anurudh Mandal had made another disclosure statement (Ex.PAB) on 22.7.2009 regarding his having concealed clothes, slippers and a hoe on the western side of paddy fields of Gurcharan Singh. Pursuant to the said disclosure statement, the accused led the police party to the disclosed place and got recovered a white coloured shirt, brown coloured pants, black coloured underwear, blue coloured slippers and a hoe which were taken into possession vide recovery memo Ex.PH. The recovered articles were identified by the complainant Jagjit Singh and wife of Gurmeet Singh to be of Baldev Singh.
31. It is also the case of prosecution that the accused Shambu Mandal also suffered a disclosure statement (Ex.PAC) on 22.7.2009 to the effect that he had concealed a red coloured torch, slippers and hoe in the open space in the fields of Gurcharan Singh.
32. Pursuant to the said disclosure statement, the accused Shambu Mandal led the police party to the disclosed place and got the aforesaid articles recovered which were taken into possession vide recovery memo Ex.PG. The torch and slippers were identified by complainant Jagjit Singh and his sister-in-law Mandeep Kaur to be torch of their house and the slippers to be of Gurmeet Singh.
33. The recovery of the aforesaid articles especially slippers and the torch which have been identified by complainant Jagjit Singh and also by his sister-in-law to be belonging to their house is material circumstance pointing towards the

guilt of the accused who had made the said disclosure statements.

34. The '*last seen*' evidence is in the shape of statement of PW-4 Gill Hasdeep Singh who stated that on 14.7.2009 at about 11:30 p.m., when he along with his cousin were looking for liquor at the liquor vend of Jalaldiwal, then two "*bhaiya*" looking persons came there who were talking to each other saying '*Salon ko thok diya hai*' (we have taken care of them) and that they should park the cycle by the road side near the bridge. He further deposed that after he came to know that sons of maternal aunt were missing since 16.7.2009, he disclosed about the conversation which he had overheard at the liquor vend and thereafter he along with Jagjit Singh and other respectables made inquiries from the nearby motors of the area and got to know that two '*bhaiyas*' of identical description who were working at the motor of Gurcharan Singh were missing and that upon further inquiries, they came to know the name and parentage of the said *bhaiyas*.
35. The learned counsel for the accused has assailed the statement of PW-4 Gill Hasdeep Singh by submitting that it remains unexplained that despite the fact that the witness had come to know about the fact that his cousins were missing on 15.7.2009, he did not disclose about what he had overheard from the '*bhaiyas*' on 14.7.2009 to anybody at that time.
36. We have considered the aforesaid submission. PW-4 Gill Hasdeep Singh during his cross-examination explained that in fact on 15.7.2009, he had gone to Chandigarh in connection with issuance of his passport and it was after he returned back to Raikot that his father told him at about 11 P.M. that his cousins were missing. He did not try to make any contact with Jagjit Singh or

any other family member at that time as it was quite late. Though PW-4 is stated to be related to the family of Jagjit Singh but the mere fact that he did not contact Jagjit Singh on 15.7.2009 itself when he came to know about missing of his cousins at about 11 p.m. cannot said to be a highly unnatural circumstance as much would depend upon the relationship between the two families and as to how closely he was bonded with Jagjit Singh. As such, the mere fact that he went to Jagjit Singh family on the next day and disclosed about the conversation that he had overheard on 14.7.2009 cannot be said to be a circumstance to absolutely discard his statement.

37. The collective effect of the above referred circumstantial evidence in the shape of disclosure statements dated 19.7.2009 of the accused leading to recovery of dead bodies of the deceased which had been buried in the fields of Gurcharan Singh and also the disclosure statements dated 22.7.2009 leading to recovery of clothes and slippers of the deceased and also a torch belonging to the deceased coupled with the extra-judicial confession made by the accused before PW-3 Sat Pal Sharma and the '*last seen*' evidence in the shape of statement of PW-4 Gill Hasdeep Singh leave no manner of doubt that accused Anurudh Mandal and Shambu Mandal had killed Baldev Singh and Gurmeet Singh and after killing them had buried their bodies in the fields of Gurcharan Singh.

38. Though the learned counsel for the accused has submitted that in the absence of any motive for the crime, the accused cannot be held guilty solely on the basis of circumstantial evidence in view of the facts and circumstances of the present case where the disclosure statements made by the accused led to

exhuming the dead bodies of Baldev Singh and Gurmeet Singh in the presence of Tehsildar Harsharanjit Singh, there is hardly any room to doubt that it is the accused Anurudh Mandal and Shambu Mandal who had killed the deceased.

39. Now, coming to involvement of Gurcharan Singh from whose fields the dead bodies were recovered, the evidence in this regard is in the shape of inculpatory extra-judicial confession before PW-3 Sat Pal Sharma. PW-3 has stated that the accused Anurudh Mandal and Shambu Mandal had confessed their guilt before him on 19.7.2009 and have stated that they had committed the murder of Baldev Singh and Gurmeet Singh on the asking and at the instance of Gurcharan Singh.
40. Apart from the above referred statement, the other evidence against Gurcharan Singh is in the shape of statement of PW-5 Balwinder Singh who stated that on 19.7.2009 at about 6 AM when he was going for his work to Tata Agency on a bicycle and reached near the fields of Gurcharan Singh, he noticed that Gurcharan Singh was lifting and stacking soil in his fields and was sprinkling water on the soil and levelling the 'vatt'. He further deposed that subsequently he got to know that dead bodies had been recovered from the fields of Gurcharan Singh from the same spot.
41. Apart from the above referred evidence, the prosecution also relies upon call detail record in the shape of Ex.PM, Ex.PN, Ex.PO and Ex.PQ which are sought to be proved by examining PW-9 ASI Harpreet Singh who deposed that he is working as Incharge Computer in the office of SSP and that upon request made by S.I. Mohan Dass he sought call details from Airtel company and provided the same to the Investigating Officer. However, during cross-

examination, he admitted that none of the said documents bear signatures of any employee of the company and that the same had been mailed to him. He further specified that the said documents are not certified to be true copies of the original by any employee of the company and the same had been received through mail. It is pertinent to mention that no official from the service provider i.e. Airtel company has been examined by the prosecution to lend authenticity to the call detail record and in the absence of the same, no reliance can be placed upon the said call details. In any case, even otherwise, even if, some calls have been made by Gurcharan Singh to his farm hand labourers namely Anurudh Mandal and Shambu Mandal, the same cannot said to be an unnatural circumstance as an employer would be making calls to his employees. In these circumstances, the evidence regarding the phone calls on mobile number would not advance the case of the prosecution as regard involvement of Gurcharan Singh in the occurrence especially when no previous enmity is shown between the parties.

42. As far as the testimony of PW-5 Balwinder Singh is concerned, the facts stated by him do not seem probable as Gurcharan Singh would not be levelling the place where the dead bodies had been buried 4-5 days after the occurrence and that too 4-5 feet below the ground. Even otherwise, even if, he is working in the fields is quite natural. Though the prosecution has also relied upon a disclosure statement leading to recovery of hoe at the instance of Gurcharan Singh but hoe is a common agricultural implement which any agriculturist would be having. It is not the case that the hoe was found to be blood stained. As such, the recovery of hoe at the instance of Gurcharan Singh cannot be said

to be an incriminating circumstance against him. Extra-judicial confession made by co-accused before PW-3 Sat Pal Sharma is again very weak type of evidence qua Gurcharan Singh. The case of Anurudh Mandal and Shambu Mandal is entirely on a different footing inasmuch as their disclosure statements had led to recovery of the dead bodies which have been buried deep in the ground.

43. As a sequel to the discussions made above, while we do not find any infirmity in the findings of the trial Court as regards conviction of Anurudh Mandal and Shambu Mandal, but the conviction of Gurcharan Singh cannot sustain on the basis of evidence led by the prosecution.
44. Consequently, while the appeal filed on behalf of Anurudh Mandal and Shambu Mandal is dismissed and their conviction and also sentence is upheld. The appeal filed on behalf of Gurcharan Singh is accepted and he is acquitted of all the charges framed against him.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

October 13, 2017

kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No