

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

CRA No. D-1035-DB of 2011 (O&M)
Date of decision: 21.08.2017.

Sunil Kumar alias Soni and others

..... Appellants.

Versus

State of Punjab

..... Respondent.

CORAM :- HON'BLE MR. JUSTICE S.S. SARON,
ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.S. Rana, Advocate,
for appellants No.1 and 2.

Mr. Naresh Jain, Advocate,
for appellant No.3.

Ms. Ritu Punj, Additional Advocate General, Punjab,
for the respondent-State.

AVNEESH JHINGAN, J.

1. The present appeal has been preferred by the appellants against the judgment of conviction dated 23.08.2011 and the order of sentence dated 23.08.2011 passed by the learned Additional Sessions Judge, Ludhiana, vide which all the three appellants have been held guilty and convicted for the offences punishable under Sections 302, 436, 427, 380 and 201 read with Section 34 of the Indian Penal Code, 1860 (for short - 'IPC') and have been sentenced as under :-

<i>Name of the Convicts</i>	<i>U/S</i>	<i>R.I.</i>	<i>Fine</i>	<i>In default</i>
Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita	302 read with 34 IPC	Life imprisonment	Rs.10,000/-	Six months R.I.
Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita	436 read with 34 IPC	10 years	Rs.5,000/-	Three months R.I.
Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita	427 read with 34 IPC	1 year	-	-
Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita	380 read with 34 IPC	2 years	Rs.500/-	Seven days R.I.
Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita	201 read with 34 IPC	3 years	Rs.500/-	Seven days R.I.

2. The facts giving rise to the prosecution case against the appellants were that SI/SHO Varinderjit Singh P.S. Salem Tabri, Ludhiana on 02.02.2007 received a telephone call from MHC Davinder Singh that the house of Sukhdev Singh had been set on fire. Upon this, SI/SHO Varinderjit Singh along with other police officials reached the house of Sukhdev Singh situated at Aman Nagar, Ludhiana. Surjit Kaur wife of late Sohan Singh resident of Village Nagar then resident of the back of Gurudwara, Takht Garh, Phillaur aged 70 years met him. She got her statement recorded. She stated that she was resident of above said address. Her husband died about 10 years earlier. She had three sons. Her youngest son Sukhdev Singh was married and residing in a rented house at Aman Nagar, Ludhiana with his wife Kuldeep Kaur, son Devinder Singh aged about 14/15 years and another son Jatin aged about 5 years (all four deceased in the case). The complainant stated that on the said date i.e. 02.02.2007 in the morning at about 8 O'clock her eldest daughter-in-law, namely, Ramesh wife of Hargobind called her on phone from Ludhiana and informed that the house of Sukhdev Singh was

on fire. She (Ramesh) was leaving for the house of Sukhdev Singh and that she i.e. the complainant should also reach there. On hearing the phone call, the complainant along with her grandson Baljinder Singh by riding a motorcycle reached the house of her eldest son Hargobind Singh. On reaching the house of Sukhdev Singh, she saw that people had doused the fire of his house, where he resided on rent. The double bed lying in the first room of the house was completely burnt. At the bed place, the dead bodies of her daughter-in-law Kuldeep Kaur and two grandsons Devinder Singh and Jatin were lying in a completely burnt condition and these were beyond recognition. In the second room, in front of the door of the said room, the dead body of her son Sukhdev Singh was lying in a somewhat burnt condition. At the spot, the complainant also met Avtar Singh son of Harmel Singh resident of Peer Wali Gali, near Jassi Tent House, Aman Nagar, Ludhiana and Surjit Singh son of Inder Singh resident of Peer Wali Gali, Aman Nagar, Ludhiana. They informed the complainant that in the morning they noticed fire flames coming out of the rooms and that the outer iron gate of the house was locked with a lock from outside. They broke open the lock and entered inside. The rooms were also bolted from outside. All of them started extinguishing the fire with water. In the meantime the fire brigade reached at the spot. After controlling the fire they noticed that Sukhdev Singh, Kuldeep Kaur, Devinder Singh and Jatin were lying dead due to burn injuries and even the bed room was found bolted from inside. This was disclosed to the complainant by her neighbour Braham Dev Sharma and other persons. She suspected that her son Sukhdev Singh and his family had

been murdered by some persons after setting them ablaze. Action was asked to be taken. She had heard her statement and accepted the same as correct.

3. Police proceedings were recorded by SI/SHO Varinderjit Singh, Police Station Salem Tabri, District Ludhiana to the effect that he along with the police officials in connection with checking at the polling booth in village Nasabad were in a Government Vehicle, which was being driven by HC Amrik Singh. A telephone call was received there from MHC Davinder Singh that the house of Sukhdev Singh in Aman Nagar, Ludhiana had been set on fire. SI/SHO Varinderjit Singh along with other police officials reached the spot at the house of Sukhdev Singh where Surjit Kaur, complainant got her statement (Ex.PW-1/B) recorded. From the statement and the other circumstances, offences under Sections 302, 436, 427/34 were found to be made out. The writing was sent to the Police Station for registration of a case (FIR). The number of the case after its registration was asked to be intimated. Besides, special reports were asked to be issued. The Higher Officers and the Control-room were asked to be informed through wireless. Forensic science examination team was asked to be sent at the spot.

4. At the police station after recording the above said statement of the complainant, case FIR No.19 dated 02.02.2007 (Ex.PW5/A) for the offences under Sections 302, 436, 427/34 IPC was registered.

5. The case was investigated by SI Varinderjit Singh (PW-13) who was posted as SHO at Police Station Salem Tabri, Ludhiana on 02.02.2007. During investigation, he conducted inquest proceedings

Ex.PW13/C in respect of Sukhdev Singh; thereafter he also conducted inquest proceeding Ex.PW13/D, Ex.PW13/E and Ex.PW13/F in respect of Kuldeep Kaur, Davinder Singh and Jatin respectively. The dead bodies in pursuance of an application Ex.PW13/G were sent for postmortem examination to the Civil Hospital through HC Paramjit Singh.

6. On the next day, i.e. on 03.02.2007, SI/SHO Varinderjit Singh (PW13) submitted an application Ex.PW13/H to the Senior Medical Officer, Civil Hospital for conducting the postmortem examination on the dead body of Sukhdev Singh by constituting a 'Board' and for obtaining the viscera of the dead body. Similar applications Ex.PW13/H/1, Ex.PW13/H/2 and Ex.PW13/H/3 were given for conducting the postmortem examinations on the dead bodies of Kuldeep Kaur, Davinder Singh and Jatin. The said applications bear his signatures. He (PW13) prepared a rough site plan (Ex.PW13/J) with correct marginal notes of the place of occurrence on 02.02.2007. A parcel of the lock was prepared which was sealed with the seal bearing impression 'VS'. A broken lock make 'Niki' was taken in possession on 02.02.2007 vide memo Ex.PW3/A. An empty plastic bottle having smell of petrol was taken in possession. He also prepared a parcel of the bottle and sealed the same with his seal bearing impression 'VS'. He also took ash ('rakh') in possession from the place of occurrence. A parcel of the same was prepared by putting it in a container. It was sealed by SI/SHO Varinderjit Singh with his seal bearing impression 'VS'. Blood stained earth was also taken in possession vide recovery memo Ex.PW3/D which was put in a 'dibbi' (box). A parcel of the same was prepared which

was sealed with the seal bearing impression 'VS'. An identity card was also taken in possession; besides, a broken empty bottle of liquor make 'Blue Diamond' was also taken in possession. The said articles were taken in possession vide separate recovery memos Ex.PW3/B to Ex.PW3/G respectively. These were attested by SI Sarabjit Singh, SI Hardev Singh and Charanpal Singh. It is to be noticed that in terms of recovery memo of identity card (Ex.PW-3/F), an identity card in the name of Shahzaad Khan lying in the room where the dead body of Sukhdev Singh was lying, had been recovered.

7. HC Darshan Singh clicked photographs at the spot. He submitted 26 snaps with negatives to SI/SHO Varinderjit Singh on 03.02.2007. These were taken in possession vide memo Ex.PW10/A, which was attested by HC Darshan Singh and signed by SI/SHO Varinderjit Singh. HC Paramjit Singh produced clothes of the deceased Sukhdev Singh which were sealed in a parcel and the parcel was sealed with the seal bearing impression 'LMCH'. The same was taken in possession vide memo Ex.PW13/K. The dead bodies of all the deceased were handed over to Ravinder Singh and Rajesh Lal vide receipt Ex.PW13/L. The case property was deposited by SI/SHO Varinderjit Singh on 02.02.2007 and 03.02.2007 with the concerned MHC namely Davinder Singh.

8. On 6.2.2007, complainant Surjit Kaur again got recorded her supplementary statement before SI/SHO Varinderjit Singh under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C. - for short). She stated that in the present case she had earlier made a statement before

SI/SHO Varinderjit Singh on 02.02.2007. On the said date, due to the frightful incident she had been nonplussed and in the state of uneasiness, she forgot to inform that some time earlier her deceased grandson Davinder Singh son of Sukhdev Singh had informed her that their relative Sunil Kumar alias Soni son of Ganesh Kumar resident of House No.956, Gali No.7, Harcharan Nagar, Ludhiana had taken a loan of Rs.70,000/- from his parents i.e. Davinder Singh's parents and he was not returning the same. Due to this reason, there were a heated argument between the parents of Davinder Singh and Sunil Kumar alias Soni. Surjit Kaur, therefore, had the full belief that her son Sukhdev Singh, daughter-in-law Kuldeep Kaur, grandsons Davinder Singh and Jatin had been murdered by Sunil Kumar alias Soni along with the help of others for usurping the money. It was also stated by Surjit Kaur that her daughter-in-law Kuldeep Kaur was wearing ear rings which were missing. Besides, the red colour mobile phone of her son Sukhdev Singh and his passport were not at his home and were missing. All these articles had been stolen and taken away by Sunil Kumar alias Soni and his companions. She had heard her statement which was correct.

9. The said supplementary statement of Surjit Kaur is not shown to be exhibited on record although deposition in this regard has been made by her while appearing as PW1 but nevertheless during the course of investigation, Sunil Kumar alias Soni was nominated as an accused. Besides, offences under Sections 380 and 201 IPC were added.

10. Baljinder Singh son of Hardial Singh, resident of Phillaur, was joined in the investigation and his statement was also recorded by the

Police. He while appearing as PW4 deposed that his father was residing abroad. His uncle (father's younger brother) Sukhdev Singh, his wife Kuldeep Kaur and their two sons Davinder Singh and Jatinder Singh were residing in a rented house at Aman Nagar, Ludhiana. He received a telephonic message on 02.02.2007 at about 7:30 a.m. from his aunt (father's younger brother's wife) namely Ramesh Rani wife of Hargobind informing him that the house of Sukhdev Singh was on fire. His aunt Ramesh Rani was also residing at Aman Nagar in street No.2. She informed him (Baljinder Singh - PW4) that she was going to the place of occurrence. Baljinder Singh (PW4) on getting this information along with his grandmother Surjit Kaur reached the house of Sukhdev Singh on a motorcycle. Many people had gathered there at the house of Sukhdev Singh. A fire brigade was also called there. They entered the house of his uncle Sukhdev Singh and saw that the dead body of Kuldeep Kaur, aunt of Baljinder Singh, her sons Davinder Singh and Jatinder Singh were lying in a burnt condition on the bed. Baljinder Singh saw that there were some injuries on the person of Kuldeep Kaur and her sons. The dead body of his uncle Sukhdev Singh was lying in another room of their house in a burnt condition. There were injuries caused by sharp edged weapon upon Sukhdev Singh. It is further stated by him that he runs a welding shop on the old G.T. Road at Phillaur. On 13.02.2007, he and his 'jija' (sister's husband) Sanjiv Kumar alias Sonu were present at his shop. Sunil Kumar alias Soni (appellant No.1), it is stated, is the son-in-law of the '*sali*' (wife's sister) of his uncle Sukhdev Singh. He (Baljinder Singh - PW4) knew the

accused Sunil Kumar. On the same day, i.e. 13.02.2007, the accused Sunil Kumar along with Shahzaad and Baldev Singh¹ came to the shop of Baljinder Singh (PW4). Sunil Kumar had informed him (Baljinder Singh) that he had borrowed some amount from his uncle Sukhdev Singh and he was pressurizing him to return the amount. Sunil Kumar further informed Baljinder Singh (PW4) that he was unable to return the money and as such he had planned to kill Sukhdev Singh. He also informed Baljinder Singh (PW4) that he had made a plan to eliminate Sukhdev Singh and his family. He further informed that on 01.02.2007 at night time, he along with other accused Baldev Singh (sic. Baljita alias Gurdit Singh) and Shahzaad had got together at the shop. He (Sunil Kumar) further informed that according to his plan, the accused Sunil Kumar had purchased some sleeping tablets and Shahzaad had taken a knife with him. Sunil Kumar further informed him (Baljinder Singh PW4) that Baldev Singh (sic. Baljita alias Gurdit Singh) had brought one empty plastic bottle. He further told Baljinder Singh (PW4) that they all stepped down at Jalandhar bye-pass, Ludhiana. Sunil Kumar further informed Baljinder Singh (PW4) that Shahzaad had brought petrol in the plastic bottle and Baldev Singh (sic. Baljita alias Gurdit Singh) had brought a bottle of liquor. Sunil Kumar further informed Baljinder Singh that all the said three persons visited the house of Sukhdev Singh. They consumed liquor at the house of Sukhdev Singh. Sunil Kumar further informed Baljinder Singh (PW4) that when Sukhdev Singh came under the influence of liquor then Shahzaad gave a blow on the head of Sukhdev

1 The name 'Baldev Singh' is a typing mistake and it should have been 'Baljita' which is the name given by Baljinder Singh PW4 in his statement recorded for the second time under Section 161 CrPC on 20.02.2007 by SI/SHO Varinderjit Singh.

Singh with the bottle. Sunil Kumar further informed him (PW4) that they administered sleeping tablets by mixing the same in the egg 'bhurji' (scrambled) to Kuldeep Kaur and her sons. Thereafter, when the sleeping pills had taken their effect and Kuldeep Kaur and her sons went to sleep on the bed, then all three of them sprinkled petrol on them on both the beds in the house of Sukhdev Singh and put the bodies on fire and after locking the door from outside, they ran away. Sunil Kumar accused further informed Baljinder Singh (PW4) that the father of Sanjiv Kumar (i.e. his 'jija' - sister's husband) was a police employee at Police Academy, Phillaur and they wanted that they should be produced before the police through his father. Sunil Kumar promised Sanjiv Kumar i.e. the brother in law ('jija') of Baljinder Singh (PW4) that he would come on the next day for the said purpose but they did not come. When the accused did not come to him for two-three days, then he (Baljinder Singh PW4) informed the police on 20.02.2007. Accused Shahzaad and Baldev Singh (sic. Gurdit Singh alias Baljita) reiterated the same version as had been stated by Sunil Kumar. They further told Baljinder Singh (PW4) that in greed of money they had joined with Sunil Kumar and committed the said offence. They also felt sorry about the occurrence. Accused Shahzaad also told Baljinder Singh that they had removed the gold ornaments from the body of Kuldeep Kaur and had even stolen the passport of Sukhdev Singh from his house.

11. On the basis of the statement of Baljinder Singh, accused Sunil Kumar, Shahzaad Khan and Gurdit Singh alias Baljita were nominated as accused in the present case. SI/SHO Varinderjit Singh apprehended all the

above said three accused on 25.02.2007. The accused Sunil Kumar alias Soni, Shahzaad Khan and Gurdit Singh alias Baljita (appellants No.1 to 3) were arrested on the same day, i.e. on 25.02.2007. Arrest memo and intimation memo regarding their arrests Ex. PW13/M and Ex.PW13/N were prepared. Intimation regarding the arrests was given to Lachhman Dass. Personal search of Gurdit Singh was conducted but nothing was recovered. A memo Ex.PW13/O in this regard was prepared, which he signed. On conducting personal search of Shahzaad Khan, nothing was recovered and a memo Ex.PW13/P was prepared in this regard. A personal search of accused Sunil Kumar was conducted, however, nothing was recovered and memo Ex.PW13/Q regarding his personal search was prepared. The arrest memo Ex.PW13/R and intimation memo regarding arrest of Sunil Kumar (appellant No.1) Ex.PW13/S were also prepared by SI/SHO Varinderjit Singh. Likewise the arrest memo of Shahzaad Khan Ex.PW13/T and intimation memo regarding his arrest Ex.PW13/U were also prepared by SI/SHO Varinderjit Singh. The said memos are signed by SI/SHO Varinderjit Singh and these were attested by the witnesses.

12. The accused Shahzaad Khan on 27.02.2007 during his interrogation made a disclosure statement (Ex. PW9/C) under Section 27 of the Evidence Act to the effect that he had kept concealed one 'chhura' (knife), mobile phone of Sukhdev Singh and his blood stained clothes. These were kept concealed in an iron box lying in his rented room where he was residing and that only he knew about the same and could get the same recovered. In pursuance of the said disclosure statements, Shahzaad Khan

vide recovery memo Ex.PW9/B got recovered a blood-stained 'chhura' (knife), a parcel containing a faded colour shirt, a faded sky blue colour pant stained with blood and a black colour mobile phone make 'Nokia'.

13. Thereafter, the accused Sunil Kumar made a disclosure statement (Ex.PW9/D) to the effect that one 'chhura' (knife), ear rings of Kuldeep Kaur, passport of deceased Sukhdev Singh, his blood stained clothes, which he was wearing at the time of occurrence, had been kept concealed by him in a small Godrej Almirah lying at his shop opposite Dada Motors G.T. Road, Ludhiana and that only he knew about the same and could get the same recovered. In pursuance of the said disclosure statement, Sunil Kumar in pursuance of recovery memo (Ex.PW9/E) got recovered a pair of ear rings, a passport of Sukhdev Singh, a blood stained '*chhura*' (knife), a parcel which contained a black colour pant and a black colour 'jersey' substantially stained with blood. These were got recovered from a small 'Godrej' almirah which was as his wooden shop in front of Dada Motors, G.T. Road, Ludhiana.

14. Gurdit Singh alias Baljita son of Nirmal Singh then made a disclosure statement (Ex PW9/G) to the effect that one key of a lock and his blood stained clothes which he was wearing at the time of occurrence had been kept concealed by him under a heap of cow dung cakes lying in his residential house and that only he knew about the same and could get the same recovered. His statement was attested by the witnesses. In pursuance of the said disclosure statement, Gurdit Singh alias Baljita vide recovery memo Ex.PW-9/H got recovered a parcel containing a black colour jeans

pant stained with blood and a blue colour jeans jacket stained with blood; besides, from the right pocket of the pant, he got recovered an iron key of a lock make 'Niki' with number 54374.

15. After returning to the police station, the above said articles were got deposited in the 'malkhana' (police store room). The parcels of blood stained earth and blood stained 'chhuras' (knives) were sent to FSL, Punjab Chandigarh. A report was received that the said articles were stained with human blood. Report of the Chemical Examiner regarding viscera of the deceased was also received wherein it was mentioned that no poison was detected in the viscera. The cause of death it was mentioned had already been given in the postmortem report. The cause of death in the case of Sukhdev Singh has been mentioned as multiple injuries to vital organs and burns which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. As regards Kuldeep Kaur, the cause of death is mentioned as due to injuries to vital organs and burns causing shock and hemorrhage, which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. In the case of Davinder Singh, the cause of death is mentioned as due to shock as a result of extensive burns. All the burns were ante mortem in nature and sufficient to cause death in the ordinary course of nature. Insofar as Jatin is concerned, the cause of death is mentioned as due to haemorrhage and shock as a result of multiple injuries to vital organs and burns which was sufficient to cause death in the ordinary course of nature. The injuries and burns were ante mortem in nature.

16. After completion of necessary formalities, 'challan' (police report) was prepared under Section 173 Cr.P.C and was presented before the Illaqa Magistrate/Judicial Magistrate 1st Class, Ludhiana on 19.05.2007. Copies of the 'challan' were supplied to the accused as envisaged by Section 207 Cr.P.C. The learned Magistrate after going through the material on record, the report under Section 173 Cr.P.C. and the documents submitted with the same was of the view that these disclosed the commission of offences under Sections 302, 436, 427, 380 and 201/34 IPC. Since the case was exclusively triable by the Court of Session, it was committed to the said Court vide order dated 04.12.2007.

17. The case was assigned to the Court of learned Additional Sessions Judge, Ludhiana. The accused-appellants were charge-sheeted by the learned Additional Sessions Judge, Ludhiana, vide order dated 24.12.2007 for the offences punishable under Sections 302, 436, 427, 380 and 201 read with Section 34 IPC. It was alleged that the accused on the intervening night of 01/02.02.2007 in the area of Aman Nagar, Ludhiana in furtherance of their common intention committed murder intentionally and knowingly causing the death of Sukhdev Singh, Kuldeep Kaur wife of Sukhdev Singh, Davinder Singh and Jatinder Singh sons of Sukhdev Singh and thereby they all committed an offence punishable under Section 302 read with Section 34 IPC. Secondly, on the same date and place in furtherance of their common intention they all committed 'mischief' by fire intending to cause destruction of the house in possession of Sukhdev Singh (deceased) and thereby they all committed an offence punishable under

Section 436 read with Section 34 IPC. Thirdly, on the same date and place in furtherance of their common intention they all committed 'mischief' and thereby caused loss and damage to the property of Sukhdev Singh worth more than Rs.50/- and thereby they all committed an offence punishable under Section 427 read with Section 34 IPC. Fourthly, on the same date and place in furtherance of their common intention they all committed 'theft' of gold ear tops of Kuldeep Kaur (deceased), besides passport and mobile 'Nokia' of Sukhdev Singh (deceased) in the house of Sukdev Singh and thereby they all committed an offence punishable under Section 380 read with Section 34 IPC. Lastly, on the same date and place in furtherance of their common intention they all knowing that offence of murders of Sukhdev Singh, Kuldeep Kaur, Jatinder and Davinder had been committed intentionally caused evidence of the said offence to disappear, i.e. the dead bodies of the above said persons with the intention of screening the culprits from legal punishment and thereby they all committed an offence punishable under Section 201 read with Section 34 IPC. All the offences, it was mentioned, were within the cognizance of the Court and the accused were directed to be tried by the Court on the said charges. The charges were read over and explained to the accused in their own language. They heard and understood the charges. They pleaded not guilty and claimed trial.

18. In order to substantiate its case, the prosecution examined as many as eighteen witnesses. The accused were examined under Section 313 Cr.P.C. and the substance of the evidence appearing against them was put to them. The accused Sunil Kumar pleaded that he was innocent and had been

falsely implicated. He worked as a carpenter in the house of the complainant Surjit Kaur and he had to take Rs.37,000/- as his labour charges. He further pleaded that instead of paying the labour charges, Surjit Kaur falsely implicated him. He further stated that he did not have a shop situated opposite Dada Motors or anywhere else on rent or as owner and that no recovery was effected from him.

19. Accused Shahzaad Khan pleaded that he was innocent and had been falsely implicated. He was a carpenter and used to work with Sunil Kumar. Due to the said reason, Surjit Kaur falsely implicated him in this case.

20. Accused Gurdit Singh alias Baljita pleaded that he was innocent and had been falsely implicated in this case.

21. In defence, HC Rajinder Kumar, Police Station Salem Tabri, Ludhiana was examined as DW1. He brought the DDR register of the year 2007. Photocopy of DDR No. 6 dated 02.02.2007 was exhibited as Ex.DW1/A. Besides, photocopy of entry made at serial No. 2 dated 19.03.2007 regarding the departure of SI/SHO Balwinder Singh was exhibited as Ex. DW1/B. The photocopy of entry at serial No. 1 dated 27.02.2007 regarding the departure of SI Varinderjit Singh was exhibited as Ex. DW1/C. He also brought the 'road certificate' dated 15.03.2007 and relevant copy of the entry was Ex. DW1/D. It is stated that there was no 'road certificate' dated 19.03.2007 in their record. He had brought register No. 19 for the year 2007. The entry made at serial No. 410 dated 02.02.2007 was Ex. DW1/E. He had not brought the log book of 'Bolero' jeep vehicle of

Police Station Salem Tabri whose driver was Constable Amrik Singh on 27.02.2007. It was with the M.T. Branch, Police Lines, Ludhiana. In cross-examination, he stated that he had no personal knowledge regarding such entries in the above registers. Besides, these were not made in his presence and these were not in his handwriting.

22. HC Malkit Singh, M.T. Branch, Ludhiana was examined as DW2. He had brought the log book of the year 2007 relating to the official 'Bolero' jeep with registration No. PB-10-BU-8017 whose driver was HC Amrik Singh. The jeep was allotted to SHO, Police Station Salem Tabri, Ludhiana. The photocopies of relevant entries of the log book dated 02.02.2007 and 27.02.2007 made at pages No. 35 and 48 were Ex. DW2/A and Ex. DW2/B respectively. These entries were in the handwriting of HC Amrik Singh which he identified. There was no entry dated 27.02.2007 of this case relating to FIR No. 19 dated 02.02.2007 under Sections 302 and 427 IPC, Police Station Salem Tabri, Ludhiana in the record brought by him regarding the vehicle referred to above. In cross-examination, he stated that he had not brought the allotment order vide which the above said 'Bolero' jeep whose driver was HC Amrik Singh was allotted to SHO, Police Station Salem Tabri, Ludhiana. He did not know who allotted the same and he also did not know on which date. The entries Ex. DW2/A and Ex. DW2/B were not in his hand and he did not see HC Amrik Singh writing and signing. He had no knowledge about the case/FIR No.19 dated 02.02.2007 under Sections 302 and 427 IPC registered at Police Station Salem Tabri, Ludhiana. He had never remained posted at Police Station Salem Tabri,

Ludhiana at any point of time. It is stated as correct that separate registers were maintained in different police stations. He could not say regarding the entries referred to in his deposition at Police Station Salem Tabri.

23. The learned trial Court on appreciating the evidence brought on record and the contentions raised by learned counsel for the parties, held all the three accused-appellants guilty and convicted them vide impugned judgment dated 23.08.2011 for the offences punishable under Sections 302, 436, 427, 380 and 201 read with Section 34 IPC. They were sentenced vide impugned order of sentence dated 23.08.2011, as mentioned above. Aggrieved from the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

24. We have heard learned counsel for the parties and with their assistance have examined the record of the case.

25. Shri S.S. Rana, Advocate, learned counsel for Sunil Kumar alias Soni and Shahzaad Khan (appellants No.1 and 2) contended that the entire case that has been set up is based on hearsay evidence of Devinder Singh (deceased) grandson of the complainant and son of Sukhdev Singh (deceased). He further contended that as per the statement of the complainant - Surjit Kaur, when she reached the place of occurrence, fire brigade was there, but no statement of any official of the fire brigade was recorded. He further contended that the entire case has been set up on the basis of supplementary statement of the complainant. Concluding his arguments, learned counsel submitted that in the inquest report, there is no mention of liquor bottle and glasses.

26. Shri Naresh Jain, Advocate for Gurdit Singh alias Baljita (appellant No.3) contended that the said appellant has been falsely implicated. He further contended that the case has been made against him on the basis of an alleged extra judicial confession. His contention is that the extra judicial confession is suspicious, because the arrest of the appellants is shown on 03.02.2007, whereas the extra judicial confession was made on 13.02.2007. He further contended that the extra judicial confession before Baljinder Singh (PW4) cannot be relied upon as said Baljinder Singh was the nephew of deceased Sukhdev Singh.

27. Learned counsel further contended that there was delay in giving information to the police, as the confession before Baljinder Singh was made on 13.02.2007 and the police was informed on 20.02.2007.

28. He further contended that one plastic bottle lying near the body of Sukhdev Singh was recovered, which was having smell of petrol. It was submitted that since there was fire, the plastic bottle, in fact, would have got burnt. Continuing his arguments, learned counsel relied upon the analysis report stating that there was smell of petrol in the ashes.

29. He further contended that Surjit Kaur can be said to have attributed the motive only to Sunil Kumar. She does not allege any motive against the other two accused, namely, Shahzaad Khan and Gurdit Singh alias Baljita.

30. Learned counsel further contended that only two recoveries of key and blood stained clothes were effected from accused Gurdit Singh alias Baljita. He further contended that there were three witnesses to the recovery

memo, out of whom two official witnesses were not examined. Learned counsel relied upon the decisions of Hon'ble the Supreme Court in *Manthuri Laxmi Narsaiah Versus State of A.P. AIR 2012 Supreme Court (Criminal) 810*; *Sangili alias Sanganathan Versus State of Tamil Nadu AIR 2014 Supreme Court 3756* and *Vijay Thakur Versus State of Himachal Pradesh 2014 (4) RCR (Criminal) 389*.

31. In response, Ms. Ritu Punj, Additional Advocate General, Punjab, contended that the incident was reported on 02.02.2007 in the morning at 08:30 a.m., and at 11:30 a.m. DDR No. 8 was recorded. After registering the FIR, special report was delivered to the learned Judicial Magistrate Ist Class, Ludhiana. It was further argued that on 06.02.2007, a supplementary report of missing of ear rings and passport of the deceased was recorded.

32. Learned State counsel further contended that an extra judicial confession was made by the accused Sunil Kumar alias Soni before Baljinder Singh (PW4). The identity card of accused Shahzaad Khan was recovered from the place of occurrence, which was identified by Moqueed Alam (PW-15), Chairman of Aman Sewa Society, Ludhiana. The accused Shahzaad Khan in his statement under Section 313 Cr.P.C. stated that he was working as a carpenter and that he used to work with accused Sunil Kumar. Besides, Sunil Kumar in his statement under Section 313 Cr.P.C. stated that he was working as a carpenter in the house of complainant Surjit Kaur.

33. Learned Additional Advocate General, Punjab, further relied upon the statement of PW14 Dr. Jaspreet Singh Gill, Medical Officer, In charge R.C. Madhopur, to show that the cause of death in his opinion was multiple injuries to the vital organs and burns, which were ante-mortem in nature and sufficient to cause in the ordinary course of nature.

34. We have duly considered the above said contentions of the learned counsel appearing for the parties.

35. The contentions as raised by Shri Naresh Jain, Advocate, the learned counsel for appellant No.3 (Gurdit Singh alias Baljita) may be considered in the first instance. According to him, appellant No.3 has been falsely implicated and the case is based upon an extra judicial confession, reliability of which is doubtful for the reason that the extra judicial confession was made on 13.02.2007, whereas the appellant is shown to have been arrested on 03.02.2007. Moreover, it has been contended that the extra judicial confession was made before Baljinder Singh (PW4), who was nephew of deceased Sukhdev Singh.

36. The aforesaid contention of Shri Naresh Jain, however, lacks merit. The incident in the present case occurred on 02.02.2007. The extra judicial confession was made by the accused Sunil Kumar on 13.02.2007. All the three accused were arrested on 25.02.2007. The memo of arrest (Ex.PW13/M) of accused Gurdit Singh son of Nirmal Singh is dated 25.02.2007. The memo of information regarding arrest (Ex. PW13/N) of accused Gurdit Singh son of Nirmal Singh is also dated 25.02.2007. The memo of arrest (Ex. PW13/R) of accused Sunil Kumar alias Soni son of

Ganesh Kumar is also dated 25.02.2007. The memo of information regarding his arrest (Ex. PW13/S) is also dated 25.02.2007. Similarly, the memo of arrest (Ex. PW13/T) of accused Shahzaad Khan son of Mohd. Yameen and memo of information regarding his arrest (Ex. PW13/U) are also dated 25.02.2007. The issue raised by learned counsel for appellant No.3 that the extra judicial confession dated 13.02.2007 cannot be relied upon, as the appellants were arrested on 03.02.2007 is, therefore, ill founded. The exhibits mentioned above clearly show that all the accused were arrested on 25.02.2007 and not on 03.02.2007.

37. The contention that the case is based only upon the extra judicial confession also cannot be accepted. There is other evidence on record and recoveries have been effected from the accused on the basis of their respective disclosure statements. One of the limb of this argument is that the extra judicial confession is said to have been made before Baljinder Singh (PW4) son of Hardial Singh who is the nephew of Sukhdev Singh (deceased). There is no doubt that Baljinder Singh (PW4) was nephew of the deceased, but the extra judicial confession made before him cannot be doubted, merely because of this relationship. It has also come on record in the statement of Baljinder Singh (PW4) that even accused Sunil Kumar was known to him. In fact Sunil Kumar alias Sonu is the son-in-law of the wife's sister ('sali') of his uncle Sukhdev Singh (deceased). Further, it has also come in his statement that accused Sunil Kumar knew that the father of his brother-in-law ('Jija') was a police employee at Police Academy, Phillaur. It was in order to get some help from Baljinder Singh (PW4) himself who was

already known to accused Sunil Kumar alias Soni and also help from the brother-in-law ('jija') of Baljinder Singh, who was in police, so that the accused could be produced before the police through his relative that the confession was made before Baljinder Singh (PW4). Further, no allegation of any animosity of Baljinder Singh (PW4) with the accused has been alleged. In such circumstances, because of the close acquaintance there was no reason for Baljinder Singh (PW4) to implicate the accused in the murder of his uncle and his uncle's family.

38. The decision of the Supreme Court in *Manthuri Laxmi Narsaiah's case* (supra), relied upon by learned counsel for appellant No.3, is of no help in the present case, as the facts in that case were different. In the said case, the prosecution story never figured up in any of the statements given by the prosecution witnesses under Section 161 Cr.P.C. It was only by way of an improvement made during the course of evidence that the story was built up. Secondly, the last seen evidence of the prosecution was not relied upon, as in the said case, the person had just seen the accused and his son returning from the fields and the deceased was not with them. It was held to be not a case of 'last seen evidence'. Most importantly, the person before whom the extra judicial confession was made, was found to be a convenient witness for the police, as he admitted that he had stood bail in a large number of excise cases and was running a toddy shop. Further, various links were missing in the chain and the above referred case was held to be a case of 'no evidence'.

39. In the present case, Baljinder Singh (PW4) though was nephew of deceased Sukhdev Singh but he was also known to accused Sunil Kumar. There is a reason for the accused to come before Baljinder Singh (PW4) and disclose the facts and circumstances of the case, which justify the making of an extra judicial confession before him. Moreover, in the instant case, it is not merely the extra judicial confession on which the prosecution has based its case, rather the circumstantial evidence, the medical evidence and the recoveries that have been effected together complete the chain of circumstances, which go to establish the guilt of the accused.

40. Reliance can be placed upon the observations of Hon'ble the Supreme Court in Chattar Singh and another Vs. State of Haryana, 2008 (4) R.C.R. (Criminal) 133; Munna Kumar Upadhyaya alias Munna Upadhyaya Vs. State of A.P., 2012 (2) R.C.R. (Criminal) 962; R. Kuppusamy Vs. State Represented by Inspector of Police, Ambeiligai, 2013 (2) R.C.R. (Criminal) 326; and Sahib Hussain @ Sahib Jan Vs. State of Rajasthan, 2013 (3) R.C.R. (Criminal) 159.

41. In Chattar Singh's case (supra), the Supreme Court observed as under :-

“18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the

reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.” (Emphasis added).

42. In Munna Kumar Upadhyaya's case (supra), the following observations are relevant :

*“35. In **Balwinder Singh v. State of Punjab [1995 Supp. (4) SCC 259]**, this Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care*

and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

*36. In **Pakkirisamy v. State of T.N. [(1997) 8 SCC 158]**, the Court held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra judicial confession.*

*37. Again, in **Kavita v. State of T.N. [(1998) 6 SCC 108]**, the Court stated the dictum that there is no doubt that conviction can be based on extra judicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.*

*38. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of **State of Rajasthan v. Raja Ram [(2003) 8 SCC 180]** stated the principle that an extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court further expressed the view that such a confession can be relied upon and conviction can be founded*

thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

*39. In the case of **Aloke Nath Dutta v. State of W.B.** [(2007) 12 SCC 230], the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed:*

“87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

XXX XXX XXX

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole

basis thereof.”

40. *Accepting the admissibility of the extra-judicial confession, the Court in the case of Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604] held that :-*

“29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore, Mulk Raj v. State of U.P., Sivakumar v. State (SCC paras 40 and 41 : AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of W.B.]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.”

41. *Dealing with the situation of retraction from the extra judicial confession made by an accused, the Court in the case of Rameshbhai Chandubhai Rathod v. State of Gujarat [(2009) 5 SCC 740], held as under :*

“It appears therefore, that the appellant has retracted his confession. When an extra judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

42. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it.”

43. In **R. Kuppusamy's case** (supra), with regard to the extra judicial confession, the following observations have been made by the Supreme Court :

“7. It is unnecessary, in the light of above pronouncements, to embark upon any further review of the decisions of this Court on the subject. The legal position is fairly well-settled that an extra judicial confession is capable of sustaining a conviction provided the same is not

made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty.”

44. In **Sahib Hussain's case** (supra), the Supreme Court observed as under :-

“10. The prosecution heavily relied on the extra judicial confession. The extra judicial confession, though a weak type of evidence, can form the basis for conviction if the confession made by the accused is voluntary, true and trustworthy. In other words, if it inspires the confidence, it can be acted upon. We have already noted that the appellant-accused mentioned the details of the incident to Satish (PW-4) and the courts below accepted his version as reliable and trustworthy.”

45. Further, the argument raised by learned counsel for appellant No.3 with regard to delay in giving information to the police, is also without any substance. A perusal of the statement of PW4 Baljinder Singh shows that the extra judicial confession was made before him on 13.02.2007 and

the accused promised to come on the next day for the purpose of producing them before the police through the father of the brother-in-law ('Jija') of Baljinder Singh. It was only after waiting for some days, when the accused did not turn up that the information was given to the police. In this regard, reliance can be placed upon the observations of the Supreme Court in *Zahoor and others Vs. State of U.P., 1991 (1) R.C.R. (Criminal) 484*, wherein it has been laid down that the delay is of no consequence where the offence was proved beyond doubt. It was further laid down that the delay in lodging the FIR by itself is not sufficient to reject the prosecution case unless there are clear indications of fabrications.

46. Learned counsel for appellant No.3 contended that from the report of the Forensic Science Laboratory, it is clear that no traces of petroleum product were found from the burnt material and the clothes. The traces of petroleum product were detected only from the plastic bottle. This contention is also of no help to the accused. It may be mentioned that the burnt material would not have traces of petroleum product, as the petroleum product burns and no trace, therefore, was found in the burnt material. Insofar as the clothes are concerned, the clothes which would have been drenched with petrol, would have caught fire. Only those clothes which never came in contact with the fire, remained and hence, there was no trace of petroleum product on the clothes. The plastic bottle admittedly had traces of petroleum product. Reliance by learned counsel for the appellants on the cross-examination of Dr. Jaspreet Singh Gill, Medical Officer, In charge R.C., Madhopur (PW14) to the extent that the plastic material starts melting

at temperature of 10-12 degree Celsius; however, is of no avail to the appellants. It is to be noticed that the plastic material would melt only if it is within the range of the flames and in case it is away from the flames, it would neither get burnt nor melt.

47. The contention of learned counsel for appellant No.3 that complainant Surjit Kaur (PW1) had not alleged any motive against accused Shahzaad Khan and Gurdit Singh, carries no weight. Baljinder Singh (PW4) specifically stated that accused Shahzaad Khan and Gurdit Singh committed the offence with accused Sunil Kumar in greed of money. Accused Shahzaad Khan, in his statement under Section 313 Cr.P.C., stated as under :

“I am innocent and have been implicated falsely in this case. I am a carpenter and used to work with Sunil Kumar and due to this reason, Surjit Kaur implicated me in this case falsely.”

The aforesaid fact coupled with the recoveries that have been effected go to show the involvement of the accused in the commission of the crime. Gurdit Singh alias Baljita (appellant No.3) made a disclosure statement Ex. PW9/G that one key of a lock, besides, blood stained jeans pant and a jeans jacket that he was wearing at the time of occurrence had been concealed by him in a bucket under the heap of cow dung cakes which was in a room for keeping firewood fuel in his residential house. Only he knew about it and could get it recovered. In pursuance of the said disclosure statement (Ex. PW9/G), he got recovered the said articles from the place that he had disclosed. He produced a black colour jeans pant stained with blood, besides, one blue

colour jeans jacket stained with blood. These he took out with his hand from an iron bucket which was beneath the cow dung cakes and he also produced the key of a lock make 'Niki' No. 54374 from the right pocket of the pant. These were made into separate parcels and taken in possession vide recovery memo Ex. PW9/H. Shahzaad Khan made a disclosure statement (Ex. PW9/C) to the effect that he had concealed a 'chhura' (knife), the mobile phone set of deceased Sukhdev Singh and the blood stained pant and shirt which he was wearing at the time of occurrence in a black colour iron trunk lying in the corner of the room which he had taken on rent. Only he knew about it and could get them recovered. In pursuance of the said disclosure statement (Ex. PW9/C), Shahzaad Khan while in police custody led the police party to the room which he had taken on rent and after opening a black colour iron trunk lying in the north-western corner of the room, he with his hands took out a blood stained 'chhura' (knife), a parcel which contained blood stained faded colour shirt and a faded sky-blue colour pant, besides, a red colour mobile phone make 'Nokia'. These articles were produced before SI/SHO Varinderjit Singh. The length of the blade of the blood stained knife was about nine fingers and the length of the handle was about five fingers. A sketch of the blood stained knife was prepared. A separate parcel for the articles was prepared and was taken into possession vide recovery memo Ex. PW9/B. Similarly, Sunil Kumar alias Soni made a disclosure statement (Ex. PW9/D) to the effect that he had concealed a 'chhura' (knife), the ear ring tops of Kuldeep Kaur (deceased), the passport of Sukhdev Singh and the blood stained pant and jersey, which

he was wearing at the time of occurrence in a small size Godrej almirah which was lying in his shop in front of 'Dada Motors', G.T. Road, Ludhiana. Only he knew about them and after demarcation could get them recovered. In pursuance of the said disclosure statement (Ex.PW9/D), Sunil Kumar alias Soni in police custody led the police party to his wood shop in front of 'Dada Motors', G.T. Road, Ludhiana and from the small size Godrej almirah lying inside, he with his hands got recovered a pair of tops (ear rings), one passport of Sukhdev Singh, a blood stained 'chhura' (knife), a parcel which had a black colour pant and a black colour jersey which were substantially blood stained. He produced these articles before SI/SHO Varinderjit Singh which were taken in possession vide recovery memo Ex.PW9/E. All the memos of the disclosure statements, i.e. Ex. PW9/G of Gurdit Singh alias Baljita, Ex. PW9/C of Shahzaad Khan and Ex. PW9/D of Sunil Kumar alias Soni; besides, the recovery memos Ex. PW9/H in respect of Gurdit Singh alias Baljita, Ex. PW9/B in respect of Shahzaad Khan and Ex. PW9/E in respect of Sunil Kumar alias Soni have been witnessed by SI Mohan Singh, 397/J, Police Station Salem Tabri; ASI Hardev Singh, 813, Police Station Salem Tabri, Ludhiana and Avtar Singh son of Ravel Singh, resident of Aman Nagar, Ludhiana. These were signed by SI/SHO Varinderjit Singh.

48. Learned counsel for the appellants contended that there were three witnesses to the recovery memos, out of whom two were official witnesses and none of the official witnesses was examined. Moreover, from accused Gurdit Singh alias Baljita, only a key of a lock and his blood stained clothes were recovered.

49. This contention, in our opinion, is also of no help to Gurdit Singh alias Baljita (appellant No.3) as also the other two accused/appellants. The objection of learned counsel regarding non-examining of any of the official witnesses who witnessed the recovery memos, causes no prejudice to the prosecution case. In fact, the independent witness, namely, Avtar Singh son of Ravel Singh was examined as PW9 and he proved the disclosure statements Ex. PW9/G, Ex. PW9/D and Ex. PW9/C made by Gurdit Singh alias Baljita, Sunil Kumar alias Soni and Shahzaad Khan; besides, he also proved the recovery memos Ex. PW9/H, Ex. PW9/E and Ex. PW9/B as regards the recoveries made from Gurdit Singh alias Baljita, Sunil Kumar alias Soni and Shahzaad Khan respectively. Besides, SI/SHO Varinderjit Singh (PW13) was examined and he is the witness who had recorded the disclosure statements Ex. PW9/G, Ex. PW9/D and Ex. PW9/C and also prepared the recovery memos Ex. PW9/H, Ex. PW9/E and Ex. PW9/B. In his statement, he again proves the said disclosure statements made by the accused and also the recovery memos as regards the recoveries effected on the disclosure statements of the accused/appellants. Therefore, failure to examine the other two official witnesses, namely SI Mohan Singh and ASI Hardev Singh of Police Station Salem Tabri is not shown to have caused any prejudice to the case of the defence and neither is it shown to have occasioned a failure of justice to the defence.

50. With regard to the recovery effected from accused Gurdit Singh alias Baljita, the blood stained clothes recovered from him proves his active presence at the time of the offence, and the key recovered was of the lock of

main gate. The accused locked the main gate and took the key along with them, which was recovered from accused Gurdit Singh. The recovery was effected as per Section 27 of the Indian Evidence Act, 1872.

51. Before dealing with decisions of the Supreme Court relied upon by learned counsel for appellant No.3, we would like to first deal with the arguments raised by Shri S.S. Rana, Advocate, learned counsel for appellants No.1 and 2 as well. He basically raised three-fold arguments, submitting that the case was set up on hearsay evidence of Devinder Singh, i.e. the grandson of Surjit Kaur - complainant being the son of Sukhdev Singh; secondly, that as per Surjit Kaur (PW1), when she reached the place of occurrence, fire brigade was there but no statement of the fire brigade official was recorded and, thirdly, the inquest report nowhere mentions regarding the broken liquor bottle.

52. The case it can safely be said has not been set up merely on hearsay evidence of Devinder Singh (deceased). The incident had occurred on 02.02.2007, in which Sukhdev Singh and his family died and their house was put on fire. Surjit Kaur (PW1) stated that her grandson Devinder Singh (deceased) had told her that a few days back, Sukhdev Singh (deceased) and accused Sunil Kumar had some altercation for return of Rs.70,000/- borrowed by Sunil Kumar from Sukhdev Singh. From the place of incident, an identity card (Ex.PW15/A) of accused Shahzaad Khan was recovered. On the basis of disclosure statements made by all the three accused, two blood stained 'chhuras' were recovered from accused Sunil Kumar alias Soni i.e. Ex.P10 and Shahzaad Khan i.e. Ex.P11. Blood stained clothes were

recovered from all the three accused. Gold ear rings (Ex.P1 and Ex.P2) of Kuldeep Kaur (deceased) were recovered from Sunil Kumar alias Soni. These were identified by Surjit Kaur, complainant (PW1) and Raja Ram son of Nathu Ram vide memo of identification of tops (gold ear rings) (Ex. PW1/A). Besides, the passport of Sukhdev Singh (deceased) was also recovered from accused Sunil Kumar alias Soni. Apart from blood stained clothes and 'chhura', one mobile phone of Sukhdev Singh (deceased) was recovered from accused Shahzaad Khan. From accused Gurdit Singh alias Baljita, apart from blood stained clothes, one key (Ex.P7) of the lock of main gate of Sukhdev Singh's house was also recovered.

53. Learned counsel for the appellants has tried to take advantage of the omissions, like non-mentioning of liquor bottle in the inquest report. It is a fact that in the recovery memo (Ex.PW3/G), recovery of empty broken liquor bottle make 'Blue Diamond' from the place of occurrence and from the room of Sukhdev Singh (deceased) where the dead body was lying is specifically mentioned. Similarly, since the fire had been extinguished, therefore, the non-recording of statement of the officials of fire brigade will not favour the case of the appellants or in any manner affect the prosecution case.

54. We may, at this stage, consider the medical evidence. Firstly, regarding the post mortem examination of Sukhdev Singh (deceased) son of Sohan Singh, Dr. Jaspreet Singh Gill (PW14) stated as under :-

“Tongue was clenched between teeth. Blood stained fluid present in nostrils and mouth. Signs of decomposition nil. Mouth, pharynx and esophagus all congested. Ligature mark

Nil. Laryns and trachea congested and black soot present. Other findings were Nil. I found the following injuries on the person of deceased :

- 1. Superficial to deep burns present all over the body, there is cherry red discolouration of the skin at places, there is charring of right foot and part of left leg, there is sparing of lower abdomen, pubic region, penis and scrotum.*
- 2. 1.3/4 inch x 3/4 inch incised wound obliquely placed 4 inch above and one inch lateral to the umbilicus communicating inside.*
- 3. 1.3/4 inch x 3/4 inch incised wound vertically placed 3 inch above injury no.2 and lateral to it communicating inside.*
- 4. 1/2 inch x 1/4 inch incised wound vertically placed 1 inch above the nipple and 1 inch lateral to the midline communicating inside.*
- 5. 1/2 inch x 1/2 inch incised wound 3 inch above and 2 inch lateral to the right nipple communicating inside.*
- 6. 1 inch x 1 inch incised wound obliquely placed 4 inch lateral to spine on the right side at the level of 11th rib communicating inside.*
- 7. 1.3/4 inch x 3/4 inch incised wound horizontally placed 1 inch on the right of spine at the level of third lumbar vertebra communicating inside.*
- 8. 1.3/4 inch x 3/4 inch incised wound obliquely placed 1 inch below and lateral to injury no.7 communicating inside.*
- 9. Face and scalp swollen on the right side.*

On exploration injury no.2 communicating to the abdomen injuring momentum and small gut. Injury no.3 communicating through abdominal wall injuring right outer and superior

surface of liver. Injuries no.4 and 5 are muscle deep does not communicate to thoracic cavity. Injury no.6 communicating to right side of thorax and lung lacerated. Injury no.7 communicating to the left side of kidney lacerated cut present. Injury no.8 communicating upto the spine and cut on the bone present. Scalp skull described. Vertebrae not exposed. Meninges and brain congested. Spinal cord not exposed. Walls, ribs and cartilages described. Pleural cavities congested. Lungs bilateral congested right side lung lacerated with hemothorax. Pericardium heart, large vessels coronary vessels healthy and right side of heart contains dark coloured blood. Peritoneum congested and haemoperitoneum present, stomach and its contents congested. Small intestine and its contents congested and gases. Large intestine and its contents congested, contained gases and faecal matter. Liver described. Spleen congested. Kidneys congested and described. Bladder healthy and empty. Organs of generation, external and internal healthy. Sent to chemical examiner, Patiala. Jar no.1 sample of preservative. Jar no.2 part of small and large intestine and stomach with its contents. Jar no.3 part of lungs and heart, Jar no.4 part of liver, kidney and spleen, Jar no.5 sample of blood. The cause of death in this case in our opinion is multiple injuries to vital organs and burns which are ante mortem in nature and sufficient to cause death in ordinary course of nature.”

55. The cause of death in the case of Sukhdev Singh in the opinion of the Board has been mentioned as multiple injuries to vital organs and burns which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. The viscera was, however, sent to Chemical Examiner to ascertain any additional cause. The time between injury and

death is mentioned as immediate and between death and post mortem examination is mentioned between 24 to 36 hours. After receipt of Chemical Examiner's report, it was observed that no poison had been detected in the contents of Exhibits I, II, III, IV and V. The cause of death, it was mentioned, had already been declared by the Board and report was being sent to the police station. The post mortem examination report of Sukhdev Singh was tendered in evidence as Ex.PW-14/K and the injury chart as Ex.PW-14/L.

56. Regarding the post mortem of deceased Davinder Singh, aged 15 years, son of Sukhdev Singh, Dr. Jaspreet Singh Gill (PW14) *inter alia* stated that the length of the body was 3 feet 1 inch in pugilistic attitude. Completely charred dead body of a male child. Scotum and penis partly preserved in a pugilistic attitude. Part of both upper and lower limbs missing at the level of wrist joint and knees. Extent of rigor mortis, postmortem staining it is stated was difficult to ascertain due to charred body. Mouth, pharynx and oesophagus is mentioned as congested. Larynx and trachea it is mentioned had black soot present. No external mark of injury was identifiable. The cause of death in the case of Davinder Singh in the opinion of the Board of doctors was due to shock as a result of extensive burns. All the burns were ante mortem in nature and sufficient to cause death in the ordinary course of nature. However, the viscera was sent to the Chemical Examiner to ascertain any additional cause. Time between the injury and death is mentioned as immediate and between death and post mortem examination is mentioned between 24 to 36 hours. After receipt of Chemical

Examiner's report, it was observed that no poison was detected in the contents of Exhibits I, II, III, IV and V. Cause of death had already been declared and the report was sent to the SHO, Police Station Salem Tabri with the original copy. The copy of the post mortem examination report of Devinder Singh was tendered in evidence as Ex.PW-14/G and injury chart was tendered in evidence was Ex.PW-14/H.

57. On the same day, the Medical Board was constituted by SMO Dr. Subhash Gupta, Civil Hospital, Ludhiana. The Board comprised of Dr. Jaspreet Singh (PW14), Dr. Amandeep Sandhu and Dr. Sumita. The post mortem examination on the dead body of Kuldeep Kaur, aged 35 years, female, wife of Sukhdev Singh was conducted. It was *inter alia* observed as follows:-

“On exploration 1.1/2 inch x 1/2 inch incised wound present over the anterior surface of the stomach going posteriorly puncturing posterior wall and transverse colon below through and through. Clotted blood present in the left thoracic cavity. Lung congested. Scalp skull described. Vertebrae not exposed. Meninges and brain congested, spinal cord not exposed. Walls, ribs and cartilages described. Pleural cavities described. Lungs described. Pericardium heart, large vessels coronary vessels congested and empty. Peritoneum described. Stomach and its contents congested and described. Small intestine and its contents congested and gases. Large intestine and its contents congested, contained gases and faecal matter. Liver pale. Spleen pale and charred. Kidneys pale and charred left side. Bladder congested and empty. Organs of generation Uterus empty. Sent to chemical examiner, Patiala. Jar no.1 sample of preservative. Jar no.2 part of small and large

intestine and stomach with its contents. Jar no.3 part of lungs and heart, Jar no.4 part of liver, kidney and spleen, Jar no.5 sample of blood. The cause of death in this case in our opinion is due to injuries to vital organs and burns causing shock and hemorrhage which are ante mortem in nature and sufficient to cause death in ordinary course of nature.”

58. After receipt of Chemical Examiner report it was recorded that no poison was detected in the contents of Exhibits I, II, III, IV and V. the cause of death had already been declared by the Board. The report was being sent to the SHO Salem Tabri with original copy for information and necessary action. The copy of the post mortem examination of Kuldeep Kaur was tendered in evidence as Ex. PW-14/A; besides, the injury chart was tendered in evidence was Ex.PW-14/B.

59. Similarly, with regard to the post mortem examination of deceased Jatin son of Sukhdev Singh, it was *inter alia* stated as under :-

“1. Oval shaped stab wound measuring 1.1/2 inch x ½ inch present on front of chest at the level of xiphisternum clotted blood (discoloured) present at the sight of wound. On exploration of wound communicating through chest into the heart. (Right side interior aspect) injuring the right side of pericardium and right side of heart.

2. Oval shaped stab wound measuring 2 inch x 1 inch on the right side of anterior abdominal wall through which abdominal viscera are protruding out and charred. On exploration of wound communicating through anterior abdominal wall to abdominal cavity injuring small and large intestines.

Scalp skull described. Vertebrae not exposed. Meninges and brain described, spinal cord not exposed. Walls, ribs and

carilages described. Pleural cavities congested. Lungs congested. Pericardium heart, large vessels coronary vessels described. Peritoneum congested. Stomach and its contents congested and gastic juices. Small intestine congested and gases. Large intestine and its contents congested gases and faecal matter. Liver spleen, kidneys pale. Bladder healthy and empty. Organs of generation described. Sent to chemical examiner, Patiala. Jar no.1 sample of preservative. Jar no.2 part of small and large intestine and stomach with its contents. Jar no.3 part of lungs and heart, Jar no.4 part of livery, kidney and spleen, Jar no.5 sample of blood. The cause of death in this case in our opinion is due to hemorrhage and shock as a result of multiple injuries to vital organs and burns which is sufficient to cause death in ordinary course of nature.”

60. After receipt of Chemical Examiner's report it is mentioned that no poison was detected in the contents of Exhibits I, II, III, IV and V. The cause of death had already been declared by the Board and the report was being sent to SHO Salem Tabri with original copy for information and necessary action. The copy of the post mortem report of Jatin was tendered in evidence as Ex.PW-14/D and the injury chart as Ex.PW-14/E.

61. The causes of deaths of Sukhdev Singh, Kuldeep Kaur and Jatin deceased in the case are injuries and burns while that of Davinder Singh (deceased) was due to shock as a result of extensive burns. There are also recoveries in the case inasmuch as the identity card of accused Shahzaad Khan was recovered from the room where the dead body of Sukhdev Singh was lying in pursuance of recovery memo Ex.PW-3/F. Moreover, Shahzaad Khan got recovered a blood stained '*Chhura*' (knife), a parcel containing a faded colour shirt, a faded sky blue colour pant stained

with blood, which was worn by him at the time of committing the crime and a black colour mobile phone make 'Nokia' in pursuance of recovery memo Ex.PW-9/B. Sunil Kumar alias Soni got recovered a pair of ear rings of Kuldeep Kaur (deceased), the passport of Sukhdev Singh (deceased), besides, a parcel containing a black colour pant and a black colour jersey substantially stained with blood, which were worn by him at the time of committing the crime in pursuance of recovery memo Ex.PW-9/E. Gurdit Singh alias Baljita got recovered a key of a lock make 'Niki', a black colour jeans pant stained with blood and a blue colour jeans jacket stained with blood in pursuance of recovery memo Ex.PW-9/H. The said recoveries were effected on the basis of the disclosure statements of the respective appellants i.e. Ex.PW-9/C of Shahzaad Khan, Ex.PW-9/D of Sunil Kumar alias Soni and Ex.PW-9/H of Gurdit Singh alias Baljita. These establish beyond doubt the presence of the accused persons at the place of incident and their causing injuries to the deceased persons before putting their house on fire.

62. Now, dealing with the decisions of the Supreme Court relied upon by learned counsel for the appellants with regard to the circumstantial evidence. In *Sangili @ Sanganathan's case* (supra), the motive was missing and even the recoveries made were doubtful. The witness relied upon for conclusion of motive turned hostile. Apart from these two factors, the Supreme Court concluded as under :-

“20. We have carefully scrutinized the evidence of PWs 7 and 9. We find one aspect, which is material, and is quite intriguing. As per the

prosecution, the appellant had made confessional statement; there is a recovery of blood; recovery of knife; and recovery of bicycle. In the panchnama drawn for these recoveries, there is only one person who has allegedly witnessed these recoveries, namely PW-7 Mathivanan, son of Thangamani. Though this by itself may not be very suspicious, when we examine this aspect in conjunction with other evidence emerging on record, such recoveries become little doubtful. The Investigating Officer himself, who appeared as PW-15, has stated in his deposition that the witness who signed the confessional statement of the appellant is not Mathivanan, son of Thangamani, thereby doubting the identity of PW-7. The manner in which PW-7 reached the spot and was allegedly requested by the Investigating Officer to accompany him to witness the recoveries is also shrouded in mystery. Further, in his chief-examination he stated that on that day from 8.00 p.m. to the next morning 3.30 a.m. he was with the Police on the request of PW-15. In his cross examination he stated that he was taken to the police station at about 6.00 p.m. for a short while and let off by the Police thereafter. All these facts taken together, which are not considered by the Courts below, make the recoveries little doubtful.

21. It is to be emphasized at this stage that except the so called recoveries, there is no other circumstances worth the name which has been proved against the appellant.”

63. In Vijay Thakur's case (supra), the Supreme Court did not rely upon the circumstantial evidence, as the chain was broken and it was held as under :-

“13. It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.”

64. It is not that on the basis of circumstantial evidence, conviction cannot be recorded. In this regard, the Supreme Court in Aftab Ahmad Anasari Vs. State of Uttaranchal, 2010 (1) R.C.R. (Criminal) 832 observed as under :

“4. This Court has heard the learned counsel for the parties and considered the documents forming part of the appeal. It is relevant to notice that the prosecution has not claimed that the rape and murder of the deceased was witnessed by anyone and no direct evidence regarding the same is adduced before the court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion howsoever strong cannot be allowed to take place of proof and, therefore, the Court has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturization of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that “men may tell lies, but circumstances do not”. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is

conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the

accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.”

65. Further, the Supreme Court in **Shanti Devi Vs. State of Rajasthan, 2013 (2) R.C.R. (Criminal) 102**, while laying down the principles for examining the conclusions arrived at by the Courts below while convicting the accused based on circumstantial evidence, observed as under :-

“8. Having heard learned counsel for the respective parties and having bestowed our serious consideration to the judgment impugned before us and other material papers, as it is a case of circumstantial evidence, we wish to quote the well settled principles laid down by this Court in various decisions which are to be applied in order to examine the conclusions arrived at by the Courts below while convicting the accused based on circumstantial evidence. The principles laid down in those decisions can be mentioned before finding out whether or not the conviction and sentence on the appellant can be held to have been established as stated in the judgment of the

High Court as well as that of the learned Trial Court. The principles can be set out as under:

(i) The circumstances from which an inference of guilt is sought to be proved must be conjointly or firmly established.

(ii) The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

(iii) The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that with an all human probability, the crime was committed by the accused or none else.

(iv) The circumstances should be incapable of explanation on any reasonable hypothesis, save that of the guilt of the accused.”

66. In the present case, witnesses and the evidence produced by the prosecution proves the guilt of all the three accused. The chain of circumstantial evidence in this case is so complete that it leaves no room of doubt for any other hypothesis except that the appellants were responsible for the four deaths that were committed in the case. No other inference can be drawn, especially keeping in view the medical evidence. The circumstances point towards the guilt of the accused. The cumulative effect of all the circumstances is that the crime was committed by the accused.

67. Keeping in view the aforesaid discussion, the prosecution has established its case beyond doubt against the appellants.

68. Consequently, the appeal is dismissed. The judgment of conviction dated 23.08.2011 and the order awarding sentence dated 23.08.2011 are upheld.

(S.S. SARON)
ACTING CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

August 21, 2017
ndj

Whether speaking/reasoned : Yes

Whether Reportable : Yes