

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

**CRA-D-355-DB of 2010(O&M)  
Date of Decision : 26.04.2017**

Mahavir Singh

..... Appellant

Versus

State of Haryana

..... Respondent

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**CORAM: HON'BLE MR. JUSTICE S.S.SARON  
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Dr. Naresh Kaushik, Advocate  
for the appellant.

Mr. Randhir Singh, Addl.AG, Haryana.

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**DARSHAN SINGH, J.**

The present appeal has been preferred against the judgment of conviction dated 07.07.2009, vide which the accused-appellant has been held guilty and convicted for the offences punishable under Section 302 and 201 of the Indian Penal Code, 1860 ('IPC'-for short) and the order on the quantum of sentence dated 08.07.2009, vide which he has been sentenced to undergo imprisonment for life and to pay a fine of ₹ 5000/-, in default thereof to further undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302 IPC. He was further sentenced to undergo rigorous imprisonment for a period of five years for the offence punishable under Section 201 IPC. Both the sentences were ordered to run concurrently.

2. In nutshell, the facts of the prosecution case are that on the intervening night of 29/30.06.2007, at about 12.05 a.m. PW-3 ASI Satbir Singh received a telephonic message that a dead body was lying in the house of accused-appellant-Mahavir Singh @ Babli in Budh Kund Colony, Kaithal. He visited the spot and carried out the inquest proceedings. He prepared the inquest report Ex.PE. The dead body was handed over to HC Kashmir Singh for getting the postmortem examination conducted vide application Ex.PF. As the dead body was in decomposed condition, so the same was referred to PGIMS, Rohtak. Thereafter, the police official took the dead body to PGIMS, Rohtak on 01.07.2007 and got conducted the postmortem examination on the dead body on that very day. After the postmortem examination, the doctor handed over the sealed parcels to ASI Satbir Singh, which were taken into possession and were deposited with the Moharir Head Constable of the Police Station.

3. On 02.07.2007, PW-2-Bahadur Chand (complainant) came to the Police Station, City Kaithal and made his statement alleging therein that his youngest brother-Sohan Lal @ Sonu was aged about 40 years, who was a draftsman by profession and used to visit him. Mahavir Singh @ Babli (accused-appellant), who is a notorious type of idle fellow having pending many cases against him, used to visit his brother-Sohan Lal. He came to know that a dead body was lying in the house of aforesaid Mahavir Singh. The whereabouts of his brother-Sohan Lal were not known for the last so many days. In order to search his brother-Sohan Lal, he came to the Police Station, City Kaithal with his son Rachit Kumar. PW-8-Inspector-Ravinder Singh shown him the clothes of the deceased which were identified by complainant-Bahadur Chand and his son Rachit

belonging to Sohal Lal @ Sonu, the brother of the complainant. He further stated that he had come to know through some unknown sources that on 21.06.2007 in the evening, his brother-Sohan Lal @ Sonu and Mahavir Singh @ Babli (accused-appellant) were seen in drunken condition. He was fully confident that his brother-Sohan Lal has been murdered by the accused-appellant-Mahavir Singh @ Babli with the help of his accomplices by sharp edged weapon in his house and in order to dispose of the dead body, he has concealed the same in the room of his house. Mahavir Singh @ Babli (accused-appellant) was absconding from his house since then. On the basis of statement made by complainant-Bahadur Chand, the FIR Ex.PC was registered and the investigation initiated.

4.           Thereafter, PW-8 Inspector-Ravinder Singh visited the spot. He lifted the pair of Chappal's, which were converted into a parcel and were taken into possession vide memo Ex.PD. He prepared the rough site plan of the place of occurrence Ex.PL. Thereafter, the investigation was conducted by PW-16 Inspector-Randhir Singh. On 15.07.07, Inspector Randhir Singh along with other police employees was present at Siwan Chowk, Kaithal for investigation of this case. PW-12-Kuldeep also met him. After some time, accused-appellant came from the front side. On pointing out of Kuldeep, he was apprehended. On interrogation, he suffered the disclosure statement Ex.PH confessing his guilt and also disclosed about the concealment of the mobile phone and the weapon of offence i.e. an axe. In pursuance of the said disclosure statement, accused-appellant got recovered an axe from his residential house lying behind the television set. The sketch of the axe Ex.PJ was prepared, which was kept in sealed parcel and taken into possession vide memo Ex.PJ/1. Thereafter,

the accused-appellant got recovered the mobile phone from near a bus shelter on bye-pass Devigarh road in the presence of PW-1-Suresh Kumar and PW-12-Kuldeep. The said mobile phone was of reliance company having no. 93155-73113. The same was converted into a parcel and was taken into possession vide memo Ex.PB. On return to the police station, the articles were deposited with the Moharir Head Constable of the Police Station, City Kaithal. During investigation, the call details of the aforesaid mobile phone number Ex.PN/3 and the consumer application form Ex.PN along with documents of identity proof were collected. PW-13-HC Kashmir Singh produced the axe recovered from the appellant before PW-15 Dr. Vinod Kumar Kangra, who gave his opinion Ex.PT/1 that the injuries shown in the postmortem report could be caused by the weapon shown to him. The recovered axe and the viscera of the deceased were sent to the Forensic Science Laboratory, Madhuban, Haryana for examination. Thereafter, on completion of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'-for short) was presented before the learned Chief Judicial Magistrate, Kaithal who committed the case to the Court of Sessions for trial.

5. The accused-appellant was charge sheeted for the offences punishable under Section 302 and 201 of IPC, vide order dated 05.12.2007 to which accused-appellant pleaded not guilty claimed trial.

6. In order to substantiate its case, the prosecution examined as many as seventeen witnesses besides bringing on record the documents.

7. After closure of the prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C., confronting him to the incriminating evidence come on record against him. The accused-

appellant pleaded that he is innocent and has been falsely implicated.

8. Though, he opted to lead the defence evidence but ultimately he closed his defence evidence without examining any witness in his defence.

9. On appreciation of evidence on record and the contentions raised by learned counsel for the parties, the learned Additional Sessions Judge, Kaithal, held guilty and convicted the appellant for the offences punishable under Section 302 and 201 IPC vide impugned judgment of conviction dated 07.07.2009 and he was awarded the sentence as mentioned above vide impugned order on the quantum of sentence dated 08.07.2009.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by the appellant.

11. We have heard learned counsel for the parties and have meticulously examined the record of the case.

12. Initiating the arguments, Dr. Naresh Kaushik, Advocate, learned counsel for the appellant contended that the accused-appellant has been falsely implicated in this case. As per the statement of the complainant, the deceased was missing since 06.06.07. it is very surprising that even then, no missing report has been made. Thus, he contended that the alleged date of occurrence alleged by the prosecution is not established.

13. He further contended that the complainant has alleged that he had come to know from unknown sources that deceased was seen with the accused on 21.06.2007, but he has not disclosed that unknown source. The Investigating Officer has not joined any such person in the investigation

who might have seen the deceased together with the accused-appellant immediately before the occurrence, so there is no last seen evidence.

14. He further contended that the prosecution has alleged that accused-appellant has suffered the extra judicial confession but PW-7 Arjun Singh, the alleged witness of extra judicial confession has not supported the prosecution version at all. He further contended that PW-1-Suresh Kumar has also not supported the prosecution case that he had handed over his mobile phone to the accused for making the call to the police giving information about the dead body lying in his house. Thus, accused-appellant Mahavir Singh @ Babli is not connected with mobile phone no. 93155-73113.

15. He further contended that there was no motive for the accused-appellant to commit the murder of deceased-Sohan Lal @ Sonu. He further contended that no blood has been found on the axe as per the report of the FSL Ex.PR/PS. Thus, it cannot be stated that the said axe is the weapon of offence.

16. He further contended that in case the place of recovery of the dead body was an abandoned house, accused-appellant-Mahavir Singh @ Babli had a separate residential house in the village. Thus, he contended that the accused-appellant is not connected with the commission of crime and has been wrongly convicted by the learned trial Court.

17. On the other hand, Mr. Randhir Singh, learned Addl.AG, Haryana contended that the case of the prosecution is based on sound circumstantial evidence. He contended that the dead body has been recovered from the house of the accused, which is the strongest possible incriminating circumstance. The accused-appellant was absconding from

his house, which is another incriminating circumstance against him. Though, PW-1-Suresh Kumar has turned hostile, but from his statement, it comes out that he had handed over his mobile phone no. 93155-73113 to the accused and accused has himself made the call to the police giving information about the dead body lying in his house in order to mislead the police. He has even moved an application mark A to the Human Rights Commission, projecting a false story of the deceased being killed by the robbers. He further contended that on the basis of the disclosure statement of the accused-appellant, the mobile phone and the weapon of offence i.e. the axe has been recovered. As per the opinion of the doctor, the injuries on the person of deceased were possible with the said axe. He further contended that the motive in the occurrence was the quarrel between the deceased and the accused while they were consuming liquor. The alcohol was found in the viscera of the deceased. Thus, he contended that there is no legal infirmity in the conviction of the appellant recorded by the learned trial Court.

18. We have duly considered the aforesaid contentions.

19. The case of the prosecution is based on the circumstantial evidence as no direct evidence to the commission of crime was available. The golden principles which constitute '*panchsheel*' in respect of the cases based on circumstantial evidence, which the prosecution is obliged to establish to prove the culpability of a person, are well settled and can be detailed as below:-

- “1. The facts so established should be consistent only with the hypothesis of the guilt of the accused – They should not be explainable on any other hypothesis except that the accused is guilty.
2. The circumstances should be of a conclusive nature and

tendency.

3. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
4. In scrutinizing the circumstantial evidence, a Court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused.
5. Whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.
6. In judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged – That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically pronounced.”

Reference can be made to cases **Nathiya Vs. State Rep. By Inspector of Police, Bagayam police Station, Vellore 2016 (4) R.C.R (Criminal) 868, Krishnan Vs. State (2009) Supreme Court Cases (Crl.) 1029 and Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116.**

20. We have to examine the case in hand keeping in view the aforesaid settled principles of law.

21. In the instant case, the prosecution is relying upon the following incriminating circumstances:-

1. Recovery of the dead body of deceased-Sohan Lal @ Sonu from the house of the accused-appellant.
2. Abscondance of the accused-appellant after the commission of crime.
3. Recoveries.
4. The conduct of the accused-appellant.
5. Motive.

1. **Recovery of the dead body of deceased-Sohan Lal @ Sonu**

**from the house of the accused-appellant.**

22. From the statement of PW-3-ASI Satbir Singh, it comes out that on the night intervening of 29/30.06.2007, at about 12.05. a.m., he received the telephonic message that a dead body was lying in the house of Mahavir Singh @ Babli in Budh Kund Colony, Kaithal. Thereafter, he visited the spot and the dead body of the deceased was found lying therein. He carried out the inquest proceedings Ex.PE. During the inquest proceedings, the Investigating Officer has recorded the statement of Bal Kishan, the Municipal Councilor of Ward no.5, who has stated that police had reached at the house of Mahavir Singh @ Babli (accused-appellant) and told him that in his house a dead body of unknown person was lying. Ravi son of Kashmiri Lal, Mukesh son of Raj Kumar residents of Kaithal and other persons also came at the spot. All of them had seen the dead body lying in the room, but it could not be ascertained the identity of the dead body. The Investigating Officer has also separately recorded the statements of Ravi son of Kashmiri Lal resident of Dogra Gate, Kaithal and Mukesh son of Raj Kumar resident of Budh Kund Colony, Kaithal. They have also stated about the recovery of the dead body from the house of Mahavir Singh @ Babli (accused-appellant).

23. No doubt, the Investigating Officer of the case has committed a serious lapse by not collecting the documentary evidence with respect to the ownership of the said house from where the dead body was recovered. That evidence could have been easily available to him. But, at the same time it is the settled principle of law that the lapses/defects in the investigation itself cannot be a ground to record the acquittal. The conclusion in the trial cannot be allowed to depend solely on the primacy

of investigation. If that is done so, it will virtually amount to play in the hands of the erring Investigating Officers. It is the legal obligation on the part of the Court to carefully examine the prosecution evidence irrespective of the lapses in the investigation to arrive at the right conclusion. The Hon'ble Apex Court in case **C. Muniappan and Others vs. State of Tamil Nadu, (2010) 9 SCC 567**, explained the law on this point in the following manner:

“There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

24. The same legal position has been reiterated by the Hon'ble Apex Court in cases **Shyamal Ghosh Vs. State of West Bengal, 2013 (1) R.C.R (Criminal) 770** and **Yogesh Singh Vs. Mahabeer Singh & Ors. 2016 (4) R.C.R. (Criminal) 753**.

25. In the instant case, there is sufficient material to arrive at the conclusion that the house from where the dead body of Sohan Lal @ Sonu had been recovered belongings to the present appellant. As already mentioned, even in the telephonic message received by ASI Satbir Singh (PW-3), it was mentioned that the dead body was lying in the house of Mahavir Singh @ Babli (accused-appellant) and when the Investigating Officer visited that the place, the said information was found to be true as the dead body was found lying in the room of the said house and the said

house was locked from outside. In the Daily Dairy Reports No. 3 and 33 dated 30.06.2007 of Police Station, City Kaithal which are part of inquest report Ex.PE also it is mentioned that as per telephonic information received, the dead body was lying in the house of Mahavir Singh @ Babli. The accused-appellant has suffered the disclosure statement Ex.PH, wherein he has disclosed that he has kept concealed the axe behind the television set in his house and in pursuance of the said disclosure statement, he has got recovered the axe from this very house. In his statement under Section 313 Cr.P.C., the accused-appellant had only pleaded simple false implication and innocence. He has nowhere taken any specific plea that the house in question does not belong to him. The accused-appellant has also not led any evidence to show that except the house in question he had other residential house. Thus, in these circumstances, it can be safely concluded that the house from where the dead body of Sohan Lal @ Sonu was recovered belongs to the present accused-appellant.

26. As per the medical evidence i.e. the statement of PW-15 Dr. Vinod Kumar Kangra, who carried out the postmortem examination on the dead body of deceased-Sohan Lal @ Sonu and postmortem report Ex.PQ, the following injuries were found:-

1. There is an incised wound of size 7 cm x 1.5 cm on the right frontal part of scalp, clear cut margin, obliquely present which situated 3 cm right to midline, 4.5 cm from superior orbital margin and 9 cm above and anterior to right pinna. On section underlying tissue showed ecchymosis and frontal bone showing cut of 2.5 cm length.
2. There was an incised wound 3 cm x 1cm on the right upper part of neck, situated 1 cm below the jaw and 3 cm right to midline. On section larynx and trachea divided in multiple pieces, hyoid also cut, cut ends showing infiltration of blood.

3. Both bones of right leg were fractured at low end, close fracture 6.5 cm above the medial malleolus, fracture ends showed infiltration of blood.

Scalp, skull were as described. Vertebrae, ribs and cartilages were healthy. Membranes were intact. Brain was liquefied and hemorrhagic like a paste. Pleura was decomposed. Right and left lungs were soft and decomposed. Heart was soft and flabby. Pericardium was decomposed. Large vessels were empty.

Peritoneum was decomposed. Pharynx and Oesophagus were soft and decomposed. Stomach and its contents contained 100 cc of fluid material appear to be rice. Small intestines contained small amount of chyme and gases. Large intestines contained faecal matter and gases. Liver, spleen and kidney were soft and decomposed. Bladder was empty. Organs of generation decomposed.

27. He further opined that the cause of death in this case was injuries described in the postmortem report and its complications. The viscera of the deceased was preserved for chemical examination. He further mention that the time between injuries and death was immediate and between death and postmortem examination was about one week. It shows that the dead body of Sohan Lal @ Sonu having so many injuries was found lying in the house of accused-appellant for more than seven days. The fact as to how the dead body having fatal injuries came to be present in the house of the appellant was especially in his knowledge and he was required to furnish the explanation thereof. There is no dispute that the burden to establish the case beyond shadow of reasonable doubt is always on the prosecution and this burden never shifts. However, certain cases are exceptional where it will be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience and in that eventuality, Section

106 of the Indian Evidence Act comes into play and in the absence of any explanation from the side of the accused, the irresistible presumption arises that he is the author of the crime. Reference can be made to cases **Shambu Nath Vs. The State of Ajmer, 1956 S.C.R. 1999, State of West Bengal Vs. Mir Mohammad Omar, 2000 (4) R.C.R. (Criminal) 147, Shrichand Vs. State of Chhattisgarh, 2011 Cri.L.J (NOC) 78, and Nitin Parmar Vs. State of Uttrakhand, 2014 Cri.L.J. 984.**

28. In the instant case also as already discussed except pleading false implication and innocence, the accused-appellant has not come out with any explanation as to how the dead body having so much injuries came to be present in his house. So, the presumption of Section 106 of the Indian Evidence Act arises against him that he was the author of the offence. Thus, the recovery of the dead body from the house of the accused-appellant is the strongest incriminating evidence/ circumstance available against him.

2. **Abscondance of the accused after the commission of crime.**

29. It is mentioned in the FIR Ex.PC that the accused-appellant was missing from his house since the day of crime. He has been arrested by the police on 15.07.2007. So, he was absconding after the commission of crime for number of days. The Hon'ble Apex Court in case **Rabindra Kumar Pal @ Dara Singh Vs. Republic of India, 2011 (1) R.C.R. (Criminal) 641** has laid down that the abscondance of an accused after the commission of offence being the conduct is relevant under Section 8 of the Evidence Act which is to be taken into consideration along with other evidence to prove his guilt. In case **Shyamal Ghosh Vs. State of West Bengal (Supra)** also the Hon'ble Apex Court has held that absconding for

a long period is a relevant consideration and points towards the guilt of the accused. Thus, the abscondance of the accused-appellant for number of days after the occurrence from his ordinary place of residence is another incriminating circumstance in the chain of circumstantial evidence.

**3. Recoveries from the possession of accused.**

30. Accused-appellant has suffered the disclosure statement Ex.PH which is proved from the statement of PW-4 HC Ranbir Singh, PW-12-Kuldeep and PW-16 Inspector Randhir Singh. In pursuance of the said disclosure statement, accused-appellant-Mahavir Singh @ Babli got recovered the axe, which was taken into possession vide memo Ex.PJ/1. He also got recovered the reliance mobile phone containing sim number 93155-73113, which was taken into possession vide memo Ex.PB. The recovery of mobile phone in pursuance of the disclosure statement of the accused-appellant Ex.PH is established from the statements of PW-12-Kuldeep and PW-16 Inspector Randhir Singh. Similarly, the recovery of the axe from the possession of the appellant in pursuance of his disclosure statement is established from the statements of PW-4-HC Ranbir Singh, PW-12-Kuldeep and PW-16 Inspector Randhir Singh.

31. The plea raised by learned counsel for the appellant that the accused-appellant is not connected with mobile phone no. 93155-73113 carries no substance. From the statement of PW-11 Col. Ashok Bhatia, Alternate Nodal Officer, Reliance Communication, Ltd. Tower F.DLF Complex, Mani Majra, I.T. Park, Chandigarh, it comes out that the said mobile number was issued to PW-1-Suresh Kumar on the basis of his consumer application form Ex.PM and documents of identity proof i.e. photocopy of the ration card Ex.PN/1. No doubt, PW-1-Suresh Kumar has

resiled from his statement and did not support the prosecution case. But, it

is the settled principle of law that the evidence of hostile witness cannot be treated as effaced or washed off from the record altogether. But, it can be accepted to the extent of his version which is found to be dependable on a careful scrutiny thereof. Reference can be made to cases **Khujji alias Surendra Tiwari Vs. State of Mahdya Pradesh 1992 (3) R.C.R. (Criminal) 158** and **Ishwar Singh Vs. State of Haryana 2014 (3) R.C.R. (Criminal) 115**.

32. PW-1-Suresh Kumar in his testimony has deposed that he is running a STD booth. He does not know Mahavir (accused-appellant) present in the Court. He further deposed that a person came to his shop on 29.06.2007 at 8.00 or 9.00 p.m. He was having mobile connection no.93155-73113. Said person did not take his mobile on that day. That person did not make a telephone call from his mobile set or from his STD booth. He further deposed that after sometime he left the spot with his mobile phone no. 93155-73113. From his STD booth, he had requested the said person to return his mobile phone. Till date, he has not received back his mobile phone. Police did not take the said mobile phone in possession in his presence. From the aforesaid statement of PW-1-Suresh Kumar, it appears that he is colliding with the accused and has given a self contradictory statement. On the one hand, he has stated that the person who had come to his STD booth has not taken away his mobile phone. But, he has further stated in his testimony that the said person had left the spot with his mobile phone no. 93155-73113. He then stated that he requested that person to return his mobile phone. So, the later version of PW-1 clearly shows that his mobile phone was taken away by the person who has come to his STD booth. He has further stated that he had

requested the said person to return his mobile phone from his STD booth. If, he was not known to that person who had come to his STD booth on 29.06.2007, then how he could have contacted him through his STD booth to return the phone. It shows that PW-1-Suresh Kumar had tried to conceal the identity of the person who had taken away his mobile phone from his STD booth. From the statement of PW-12-Kuldeep and PW-16-Inspector Randhir Singh, it comes out that the mobile phone bearing no. 93155-73113 was recovered from the possession of the appellant. So, there is no escape from the conclusion that the person who had taken away the mobile phone of PW-1-Suresh Kumar was non-else then the present appellant.

33. PW-11-Col. Ashok Bhatia has proved the call details Ex.PN/3 which shows that a telephone call was made from mobile phone no. 93155-73113 on 29.06.2007 at 21:40:13 hours and 21:50:45 hours to telephone no. 1746645125. The STD code of Kaithal (Haryana) is 1746. Copies of DDR's Nos. 3 and 33 dated 30.06.2007, Police Station, City Kaithal are the part of the inquest report Ex.PE which show that telephone no. 654125 is the land line telephone number of Police Station, City Kaithal. Thus, it comes out that accused had made the telephone call from mobile phone no. 93155-73113 to Police Station City Kaithal by concealing his identity to give information that the dead body was lying in the house of Mahavir Singh @ Babli at Budh Kund Colony, Kaithal. It shows that the intention of the accused-appellant was only to mislead the police. Thus, the recovery of the mobile phone having sim-card no. 93155-73113 from the accused-appellant is another link in the chain of circumstantial evidence.

34. As already discussed, accused-appellant has got recovered the

axe from his house in pursuance of his disclosure statement. The said axe was produced before PW-15- Dr. Vinod Kumar Kangra vide application Ex.PT to seek his opinion as to whether injuries on the person of deceased could be possible with the said axe. PW-15- Dr. Vinod Kumar Kangra has given the opinion Ex.PT/1 that the injuries described in the postmortem report can be caused by this type of weapon. Thus, as per the opinion of PW-15- Dr. Vinod Kumar Kangra, the injuries on the person of deceased could be possible with the axe recovered from the accused.

35. No doubt, as per the report of the F.S.L Ex.PS, the blood could not be detected on the said axe. But, the accused has disclosed in the disclosure statement Ex.PH that he has washed the said axe and then wrapped in the paper. Due to this reason, the blood might not have been detected on the axe. Moreover, a Division Bench of this Court in case **Raj Daler @ Kala Vs. The State of Punjab 2003 (3) R.C.R. (Criminal) 294** has laid down that the absence of the blood on the weapon of offence can have no adverse effect on the prosecution case. Another Division Bench of this Court in case **Rajpal alias Raju and others Vs. State of Haryana 2013 (6) R.C.R. (Crimnal) 545** has laid down as under:-

“ The other contention is that no blood stains was found on the knife (Ex.P-5). The recovery of knife is proved from the deposition of Lakhmi Chand (PW-10) who has proved the disclosure statement (Ex.P-26) of Rajpal @ Raju (appellant No.1). In his statement, it is stated that he was associated by the police on 26.02.2000 on which date Rajpal @ Raju (appellant No.1) was arrested. In terms of the disclosure statement (Ex.P-26), it has been stated by Rajpal @ Raju (appellant No.1) that he had concealed the knife (Ex.P-5) used by him in the commission of crime in the room of his residential house. In pursuance of the disclosure statement (Ex.P-26), the knife (Ex.P-5) was recovered. The sketch of the knife (Ex.P-27) was prepared. Rajpal @ Raju (appellant No.1) got the knife recovered, which was taken in possession by the police vide recovery memo (Ex.P-28). In terms of the FSL report (Ex.P-33), indeed

no blood was found on the knife (Ex.P-5) that was used by Rajpal @ Raju (appellant No.1) in the crime. The learned trial Court observed that the incident had occurred in the night of 21.02.2000 at about 9.00 pm, whereas the knife was got recovered by accused Rajpal @ Raju on 26.02.2000, therefore, there were five days with the accused to remove the blood stains from the knife and perhaps, he cleaned the knife to the full extent in an effort to remove the connection between the crime and the knife. The said reasoning of the learned trial Court is quite sound. Even otherwise merely because there are no blood stains on the knife, is not a ground to discard the prosecution case particularly when the FSL reports are used primarily for corroboration of a fact and these do not in any manner dislodge the prosecution case.”

So, non-detection of the blood on the axe recovered from the appellant is no ground to conclude that this was not the weapon of offence. Thus, the weapon of offence i.e. axe has also been recovered from the possession of the accused-appellant in pursuance of his disclosure statement.

#### **4. Conduct of the accused-appellant.**

36. The conduct of the accused-appellant is also very relevant. The dead body of the deceased was found lying in his house, which was lying there for the last more than one week. It is not believable that during this period he might not had visited the house. But, he kept silent for a period of about seven days and did not gave any information to the police. Thereafter, on the night intervening 29/30.06.2007 he had given the information to the police about the dead body lying in the house without disclosing his identity and by using the mobile phone of PW-1-Suresh Kumar. The copy of DDR No. 3 dated 30.06.2007, Police Station City Kaithal shows that the said information was given by some unknown person. If, the accused-appellant had no role in the commission of the offence, so there was no need for him to conceal his identity and to use the

mobile phone of somebody else. As already mentioned, he also remained absconding from his house after the commission of offence till the date of his arrest. Thus, this conduct of the accused is also a strong incriminating circumstance against him.

5. **Motive.**

37. The contention raised by learned counsel for the appellant that there was no motive for the commission of offence by the appellant carries no substance. In the disclosure statement Ex.PH, it has been disclosed that the accused-appellant and deceased had taken the drinks and thereafter, they had quarrel. The report of the FSL Ex.PR shows that ethyl alcohol was detected in the viscera of the deceased, which confirms the fact disclosed by the accused-appellant in his disclosure statement that he and deceased had taken the drinks. The Investigating Officer had got the spot photographed. The photograph Ex.P3 clearly shows the quarrel which has taken place in the room where the occurrence has taken place as the chair and table were lying in scattered condition. Thus, the quarrel between the deceased and accused-appellant was motive for the commission of the crime. Moreover, the Hon'ble Supreme Court in case **Nathuni Yadav vs. State of Bihar and another, AIR 1997 Supreme Court 1808** has laid down that motive for doing a criminal act is generally a difficult area for the prosecution. One cannot normally see into the mind of another. Motive is the emotion which implies a man to do a particular act. In view of the aforesaid ratio of law the prosecution cannot exactly establish the motive for the commission of the offence in certain cases. A Division Bench of this High Court in case **Dalbir Singh @ Beera Vs. State of Punjab, 2007 (1) R.C.R. (Criminal) 1000** has laid down that

absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime nor militates against the prosecution case. Failure to discover the motive of offence does not signify its non-existence. Similarly, in **Ujjagar Singh Vs. State of Punjab, 2008 (1) R.C.R. (Criminal) 305 (S.C.)**, the Hon'ble Supreme Court has laid down that in the cases relating to the circumstantial evidence motive does assumes significance but to say that absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. In case **Mannu Sao Vs. State of Bihar, 2010(3) R.C.R. (Criminal) 813**, the Hon'ble Supreme Court has laid down as under:-

“With the development of law, now it is a settled principle that motive is not absolutely essential to be established for securing conviction of an accused who has committed the offence, provided the prosecution has been able to prove its case beyond any reasonable doubt.”

38. In case **G. Parshwanath Vs. State of Karnataka, AIR 2010 Supreme Court 2914**, the Hon'ble Supreme Court has laid down as under:-

“In a case when the motive alleged against accused is fully established, it provides foundational material to connect the chain of circumstances. It affords a key on a pointer to scan the evidence in the case in that perspective and as a satisfactory circumstance of corroboration. However, in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted under Section 302 IPC.”

39. In case **Uday Kumar Vs. State of Karnataka, AIR 1998 Supreme Court 3317** also the Hon'ble Supreme Court has laid down that motive though is one of the circumstance which assumes importance but it cannot be said that in the absence thereof proved circumstances would be of no consequence. All the above referred cases were based on the circumstantial evidence.

40. In view of the aforesaid consistent rule of law laid down in the cases referred above, motive is not the absolute essential to be proved to secure the conviction and the absence of proof of motive does not break the chain of the proved circumstances to dislodge the prosecution case. Moreover, in this case quarrel in drunken condition was the motive for this crime.

41. PW-2-Bahadur Chand (complainant), the brother of the deceased has mentioned that his brother was missing since 06.06.2007 and he had not seen him after 06.06.2007. PW-2-Bahadur Chand was residing at Chandigarh. The deceased was residing at Kaithal. Thus, mere this fact that the complainant had not seen or met the deceased since 06.06.2007 or that he had not lodged any missing report with the police is also no ground to create any dent in the prosecution case.

42. Thus, keeping in view our aforesaid discussion, the incriminating circumstances discussed above and relied upon by the prosecution are fully established. These facts are consistent only with the hypothesis of the guilt of the appellant and are totally inconsistent with his innocence. These, circumstances in all human probability established that the murder of Sohan Lal @ Sonu has been committed by appellant Mahavir Singh @ Babli.

43. Therefore, in view of our aforesaid discussion, we do not find any legal infirmity in the conviction of the appellant as recorded by the learned trial Court and the sentence awarded to him.

44. Resultantly, the present appeal has no merits and the same is hereby dismissed.

**(S.S.SARON)**  
**JUDGE**

**(DARSHAN SINGH)**  
**JUDGE**

April 26, 2017

s.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No