

(1)

Criminal Appeal No.D-151-DB of 2011
and 2 other connected appeals

In the High Court of Punjab and Haryana at Chandigarh.

(I)

Criminal Appeal-D No.151-DB of 2011
Date of Decision:- October 24, 2017

Shalinder Kaddian

.....Appellant

Versus

State of Punjab

....Respondent

(II)

Criminal Appeal-D No.152-DB of 2011

Mandeep Singh & Others

.....Appellants

Versus

State of Punjab

....Respondent

(III)

Criminal Appeal-D No.374-DB of 2013

Sandeep Kumar

.....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr. Bijender Dhankar, Advocate
for the appellant in CRA-D-151-DB of 2011.

Mr. Mansur Ali and Mr. H.S.Deol, Advocates
for appellants No. 1 & 2 in CRA-D-152-DB of 2011.

Mr. Abhimanyu Kalsy, Advocate for
Mr. Rakesh Dhiman, Advocate for appellant No. 3
in CRA-D-152-DB of 2011.

Ms. Manisha Parmar and Mr. Vipul Sharma, Advocates,
for the appellant in CRA-D-374-DB of 2013.

Mr. P.S.Bajwa, Additional Advocate General, Punjab and
Ms. Anju Arora, Additional Advocate General, Punjab.

Mr. S.S.Behl, Mr. Deepak Gupta and Mr. Rajesh Sharma,
Advocates for the victim/complainant.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned appeals filed on behalf of five accused namely Shalinder Kaddian, Mandeep Singh, Chinar @ Shallu Lamba, Chetan Kumar Yadav and Sandeep Kumar who stand convicted for offences punishable under Section 120-B and Section 302 of Indian Penal Code, 1860 (for short, 'IPC') vide separate judgments dated 8.1.2011 and 28.1.2013, arising out of FIR No.16 under Section 302/34, 120-B of IPC lodged at Police Station, City Muktsar, on 1.2.2006, passed by learned Sessions Judge, Muktsar. Since one of the accused namely Sandeep Kumar had absconded, the trial had proceeded against below named four accused who were convicted on 8.1.2011 and sentenced as under:

Name of convict	Convicted u/s	Sentence Imposed	In default of fine
Shalinder Kaddian	120-B of IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
	302 IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
Mandeep Singh	120-B of IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
	302 IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
Chinar @ Shallu	120-B of IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
	302 IPC read with Section 120-B IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
Chetan Kumar Yadav	120-B of IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
	302 IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year

2. Accused Sandeep Kumar, who had absconded at the stage when his statement under Section 313 Cr.P.C. was to be recorded, was re-arrested on 12.12.2011 and thereafter trial proceeded against him from that very stage. He was also held guilty by the learned Sessions Judge, Muktsar vide judgment dated 28.1.2013 and sentenced as under:

Name of convict	Convicted u/s	Sentence Imposed	In default of fine
Sandeep Kumar	120-B of IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year
	302 IPC	Imprisonment for life and fine of ₹ 2,000/-.	Further R.I. for one year

3. Since impugned judgments dated 8.1.2011 and 28.1.2013 arise out of same occurrence are based on same evidence, therefore, all the appeals can conveniently be disposed off by a common judgment.
4. The case pertains to death of Mohanbir Singh whose dead body was found, bearing multiple injuries. The FIR was lodged at the instance of his sister Manmohan Kaur @ Mohni aged 70 years, daughter of Balwant Singh Lamba. The gist of her statement (Ex.PW-2/A), recorded by Inspector Manwinderbir Singh, when translated to English reads as follows:

“We are four brothers and two sisters. I and my brother Mohanbir Singh, aged 65 years are unmarried. Our remaining brothers and sisters have expired. Today at about 6 AM my brother, as usual, went on bicycle with a 'dolni' (steel container) to get milk from his farm at Bura Gujjar road. The buffaloes at the farm are looked after by Kala Singh r/o Ganganagar who had been kept there by Mandeep Singh son of Joginder Singh resident of Ganganagar to whom Mohanbir Singh had given 15-20 acres of land for cultivation. Since Mohanbir Singh did not return, I got worried. At about 12 o'clock Kala Singh, servant informed me that Mohanbir Singh had died inside the main gate of his farm due to receipt of injuries. I along with Amrit resident of Guru Angad Dev Nagar Gali No.4, Muktsar went to the farm and saw that my brother had sustained injuries on his jaw, neck and other parts of body with some sharp edged weapon and had died. Some unidentified persons have killed Mohanbir Singh by causing

injuries with sharp edged weapon. After leaving Amrit at the spot, I proceeded to inform the police when you met me. I have made my statement which is correct. Action be taken.”

5. Pursuant to recording of statement(Ex.PW-2/A) of Manmohan Kaur, FIR No. 16 under Sections 302/34, 120-B of IPC was lodged at Police Station, City Muktsar, on 1.2.2006. The police party headed by Inspector Manwinderbir Singh reached at the spot and conducted inquest proceedings. The dead body was sent for post-mortem examination. The place of occurrence was got photographed. Finger-Prints Expert SI Prabhu Dayal (PW-18) was called at the spot, who lifted finger prints from the steel container lying at the spot. Blood stained earth was lifted from the place of occurrence. Since foot prints were also noticed near dead body of deceased Mohanbir Singh, foot prints moulds were also lifted from the spot. A rough site plan of the place of occurrence was prepared. On the next day i.e. on 2.2.2006 one Gurjant Singh son of Ujjagar Singh met Inspector Manwinderbir Singh in the Grain Market, Muktsar whose statement was recorded by the police.
6. It is the case of prosecution that on 7.2.2006 when the police party was present at Musti Chowk, Muktsar, then one Vinod Kumar met the Investigating Officer and stated that Chinar @ Shallu had confessed before him on 6.2.2006 that she and Mandeep Singh had conspired to kill Mohanbir Singh for acquiring his property and had killed him in conspiracy with Shalinder Kaddian and Sandeep Kumar
7. Accused Chinar @ Shallu was arrested on 7.2.2006 while she was going in

Alto car bearing registration No.PB-10-BE-8420. The car was taken into possession. Accused Mandeep Singh, Shalinder Kaddian and Sandeep Kumar were arrested from Ludhiana on 7.2.2006.

8. During interrogation, accused Shalinder Kaddian and Sandeep Kumar made separate disclosure statements on 8.2.2006 and in pursuance thereof got recovered a pair of shoes and one knife each from the disclosed place. On 9.2.2006 Mandeep Singh suffered a disclosure statement and got recovered a pair of sandal and one knife. Another disclosure statement was made by Shalinder Kaddian on 11.2.2006 and in pursuance thereof an amount of ₹23,000/- was recovered. Sandeep Kumar also suffered another disclosure statement on 12.2.2006 and in pursuance thereof got an amount of ₹7,000/- recovered. Statement of witnesses were recorded under Section 161 Cr.P.C. During investigation the police also took into possession the record of Hotel White Palace, Muktsar from its proprietor with regard to occupancy of rooms at the hotel on 31.1.2006.
9. Upon conclusion of investigation challan was presented in the Court of Chief Judicial Magistrate, Muktsar on 29.3.2006. The learned Chief Judicial Magistrate committed the case to the Court of Sessions vide order dated 6.9.2006. The case was entrusted to the Court of learned Additional Sessions Judge, Muktsar who upon finding sufficient grounds to presume that accused had committed offences punishable under Section 120-B and 302 of IPC framed charges against the accused on 29.9.2006 to which the accused pleaded not guilty and claimed trial.

10. The prosecution in order to establish its case examined as many as 19 witnesses. PW-1 Dr. M.G.Sharma, Medical Officer, Civil Hospital Muktsar, who had conducted post mortem examination on the dead body of Mohanbir Singh proved the post mortem report as Ex.PW-1/A. PW-2 Manmohan Kaur Lamba, complainant stated in tune with her statement Ex.PW-2/A on the basis of which FIR was lodged. PW-3 Davinder Kumar produced the original register regarding the occupancy of rooms in his hotel i.e. Hotel White Palace and proved relevant extract including entry at Sr. No.494 recorded in the name of Shalinder Kaddian as Ex.PW-3/A.
11. PW-4 Gurjant Singh is a witness of “last seen” evidence who deposed that on 28.1.2006 Mandeep and Chinara had come to farm of deceased Mohanbir Singh and demanded money but he refused and thereafter they went back in anger. He further stated that on 31.1.2006 Mandeep Singh, Shalinder Kaddian, Sandeep Kumar and Chetan Kumar Yadav came in same Alto car and they demanded money from him but Mohanbir Singh refused and stated that he was already repenting for giving land to them and upon which the accused went away. PW-5 Manpreet Singh, Revenue Patwari proved the scaled site plan of the place of occurrence prepared by him as Ex.PW-5/A.
12. PW-6 Vinod Kumar is witness before whom Chinara@ Shallau is stated to have made extra-judicial confession. He stated that on 1.2.2006, upon learning about murder of Mohanbir Singh he went to Lamba Farms and in his presence the police took into possession a cycle vide recovery memo Ex.PW-6/A and also lifted tread-marks of car tyres vide memo Ex.PW-6/B. He also stated that he attested the recovery memo Ex.PW-6/C regarding lifting of blood stained

earth and recovery memo Ex.PW-6/D regarding lifting of foot prints moulds. PW-6 deposed that on 6.2.2006 Chinara Lamba made a confession before him regarding having conspired with Mandeep Singh to kill Mohanbir Singh and having contacted Shalinder Kaddian and Sandeep to murder Mohanbir Singh to whom she had paid ₹1,00,000/- on 1.2.2006 after withdrawing the same from the bank.

13. PW-7 C. Baljinder Singh tendered his affidavit Ex.PW-7/A in evidence wherein he deposed that MHC Darbar Singh had handed over articles of case property to him which he deposited in the office of Director Finger Prints Bureau and that as long as the articles remained in his possession the same were not tampered with.
14. PW-8 Kala Singh deposed that he knows Mandeep Singh who belongs to his village and that he also knows Chinara @ Shallu who is wife of Mandeep Singh and niece of deceased Mohanbir Singh. He further deposed that Mohanbir Singh owned 85 acres of land at Muktsar and had given his entire land to Mandeep Singh for cultivation. He further stated that he had been brought there at the farm of deceased by Mandeep Singh to look after agricultural work. He further stated that Mohanbir Singh used to come to the farm to take milk in the morning and that about 2 ½ years ago Mohanbir Singh did not come to fetch milk and when he went in search for him he found him lying dead on the metalled road and thereafter he informed his sister Manmohan Kaur.
15. PW-9 Pawan Kumar, Junior Assistant, Office of DTO, Ludhiana produced the

record pertaining to registration of Alto car bearing registration No.PB-10-BE-8420 registered in the name of Chinar @ Shallu. PW-10 HC Swarn Singh tendered his affidavit Ex.PW-10/A in evidence wherein he deposed that on 5.2.2006 MHC Darbar Singh handed over the foot prints moulds and directed him to deposit the same in the office of FSL, Chandigarh and he accordingly deposited the same. He further stated therein that as long as the case property remained in his possession the same was not tampered with. PW-11 HC Sukhpal Kumar proved the photographs of the place of occurrence as Ex.PW-11/1 to Ex.PW-11/6. PW-12 Sanjiv Prabhakar, Vice President, HONG Kong Shanghai Banking Corporation, Chandigarh proved the statement of Bank accounts in respect of three different bank accounts, one jointly in the name of Manmohan Kaur Lamba and Chinar Lamba, another in the name of Chinar Lamba and third in the name of Mohanbir Singh Lamba as Ex.PW-12/A, Ex.PW-12/B and PW-12/C.

16. PW-13 Inspector Manwinderbir Singh who is Investigating Officer of the present case stated in detail in respect of the entire investigation conducted in the matter right from recording of statement of complainant Manmohan Kaur upto the filing of challan. PW-14 Inspector Balkar Singh stated that on 12.2.2006 he was posted at CIA Staff, Muktsar and on the said day he along with Inspector Manwinderbir Singh and other police officials had gone to Rohtak along with accused Shalinder Kaddian and Sandeep Kumar and Shalinder Kaddian got recovered an amount of ₹23,000/- from the place disclosed by him, as per his disclosure statement Ex.PW-13/A/10. He further stated that accused Sandeep Kumar also got recovered an amount of ₹7,000/-

from the disclosed place in Delhi as per his disclosure statement Ex.PW-13/A/12.

17. PW-15 Baldev Singh who had also remained associated with investigation of the case stated that on 1.2.2006 he was posted as Sub Inspector at Police Station City, Muktsar. He stated in respect of the investigation in corroboration to the statement made by the Investigating Officer PW Inspector Malwinderbir Singh. PW-16 HC Lakhwinder Singh tendered his affidavit Ex.PW-16/A in his evidence wherein he deposed that on 19.2.2006 MHC Darbar Singh had handed over three parcels to him for depositing the same in the office of FSL Chandigarh, which he deposited. He further deposed that as long as the same remained in his possession the same were not tampered with. PW-17 SI Darbar Singh tendered his affidavit Ex.PW-17/A in evidence wherein he deposed that he was posted as MHC at Police Station City Muktsar on 1.2.2006 and that Inspector Malwinderbir Singh had deposited the case property with him and as long as the case property remained in his possession the same was not tampered with.
18. PW-18 SI Prabhu Dayal deposed that on 1.2.2006 upon receipt of a message from Police Station, City Muktsar, he went to the place of occurrence and lifted finger prints and also foot prints moulds. PW-19 SI Hukam Chand stated that on 31.1.2006, when he was present at Kotkapura Chowk in connection with the traffic checking, then at about 7 PM a Qualis vehicle bearing registration No.HR-47-8767 was found parked on the wrong side and upon inquiry the driver Chetan Kumar was found to be without a Driving Licence and a traffic challan was issued to him for wrong parking and for

driving without licence.

19. Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to the accused to enable them to explain the same but the accused denied the prosecution case in toto and pleaded false implication. Accused Mandeep Singh in his statement stated that he has been implicated falsely being husband of Chinara @ Shallu at the instance of Preet Lamba (mother of Chinara @ Shallu) as Preet Lamba was having strained relations with Chinara and also with Mohanbir Singh. He further stated that Preet Lamba in fact wanted to grab property of Mohanbir Singh as well as of Shallu @ Chinara which had been inherited by Shallu @ Chinara from her father Ravinder Singh. He further stated therein that the witnesses Gurjant Singh and Vinod Kumar are henchmen of Preet Lamba and are stock witnesses of the prosecution. He stated that he had kept aside 'Dolmi' (steel container) on the asking of PW Manmohan Kaur at the spot and he had never made any disclosure statement. He further took a plea that in fact Preet Lamba and her paramour Harinder Singh @ Mor are behind the entire occurrence.
20. Accused Shalinder Kaddian, while pleading innocence, stated that it is a case of blind murder and he has been implicated falsely and that nothing was recovered from him. He further stated that in fact his mother had paid amount of ₹ 23,000/- to the police for settling the dispute with Happy who had cheated him of ₹ 26,00,000/- and had also kidnapped him earlier. He further stated therein that Happy had colluded with Malwinderbir Singh SHO and on his asking he had been arrested on 3.2.2006 from Ambala.

21. Accused Chinar @ Shallu, while pleading innocence, stated that she has been implicated falsely as she and her uncle Mohanbir Singh were having strained relations with her mother Preet Lamba since last 16-17 years. She further stated therein that she and her husband Mandeep Singh did not have any dispute with her uncle Mohanbir Singh and had cordial relations with him. She further stated that the witnesses Gurjant Singh and Vinod Kumar are the henchmen of Preet Lamba and are stock witnesses of the prosecution and she has been implicated falsely at the instance of Preet Lamba and her paramour Harjinder Singh @ Mor.
22. Chetan Yadav while pleading innocence stated that he has no concern with the blind murder of Mohanbir Singh and nothing was recovered from him and he neither came to Muktsar on 31.1.2006 nor stayed there on 1.2.2006. He further stated that he has no concern with the Qualis vehicle bearing registration No.HR-47-8767.
23. Statement of accused Sandeep Kumar who had absconded was recorded subsequently on 7.5.2012 after his arrest wherein he, while denying the prosecution case in entirety, pleaded innocence and stated that he has been falsely implicated in the case.
24. The accused in their defence examined DW-1 Jaljit Singh who produced the summoned record pertaining to FIR No. 87 dated 14.7.1995 (infact dated 15.6.97) under Sections 419, 420, 465, 467, 468, 471, 511 IPC of Police Station City, Muktsar. During cross-examination he stated that investigation of the case was closed on account of death of Mohanbir Singh. DW-2 Sachin

Sharma, Clerk, Record Room, Sri Muktsar Sahib produced the summoned record pertaining to aforesaid FIR No.87 dated 15.6.1997 under Sections 419, 420, 465, 467, 468, 471, 511 of IPC, Police Station City, Muktsar. He proved the report under Section 173 Cr.P.C. filed in the case as Ex.DW-2/A.

25. DW-3 Raj Kala Kaddian, mother of accused Shalinder Kaddian stated that Shalinder Kaddian owns farm house valued at more than one crore and who has a library of law books. She stated that the police team including Malwinderbir Singh and Balkar Singh had come to their house on 12.2.2006 and demanded ₹ 50,000/- for release of her son Shalinder Kaddian and she had given an amount of ₹ 23,000/- to them which she was possessing at that time. She also proved the electricity bill in the name of her son Shalinder Kaddian and also photo copies of Income Tax Returns for the year 2005-06 and 2006-07 as Mark DW-3/D and Mark DW-3/E. She also proved a certified copy of judgment dated 8.12.2004 in FIR No.275 dated 4.6.2004 Police Station Civil Line, Rohtak as Ex.DW-3/B.
26. DW-4 Tek Chand stated that Mohanbir Singh deceased was having account with his firm M/s Rajan Trading Company and used to sell his agricultural produce at his shop and used to sign in their ledgers. He has proved certain documents bearing signatures of Mohanbir Singh though objection as regards admissibility of said documents was kept open. During cross-examination he stated that he had not been visiting the house of Mohanbir Singh and that he could not say from where the said documents had come into existence.
27. The learned trial court upon appreciation of the evidence on record held that

prosecution had been successful in establishing the charges framed against accused and convicted the accused for offences under section 120-B and 302 of IPC and sentenced them to undergo rigorous imprisonment for life and also to pay a fine of ₹ 2000 for each of the offence. Aggrieved with their conviction, the accused have preferred the present appeals.

28. The learned counsel for the appellants while assailing the impugned judgements, have submitted that the prosecution has miserably failed to establish circumstantial evidence, much less a complete chain of circumstantial evidence. Neither do the testimonies of the star witnesses of the prosecution i.e PW-4 Gurjant Singh and PW-6 Kala Singh inspire confidence nor is the evidence pertaining to the disclosure statements and footprint trustworthy. The learned counsel further submitted that in fact, the prosecution has not been able to establish any motive with the accused, more particularly with those accused who were not even residents of state of Punjab and are not even related to the deceased in any manner. The learned counsel, thus, submitted that the impugned judgement cannot sustain and prayed for acquittal of the accused.

29. On the other hand the learned counsel representing the state has submitted that the impugned judgement is well reasoned passed after duly appreciating the evidence on record and that the evidence in the shape of disclosure statements leading to recovery of incriminating articles at the instance of the accused and also the confession made by one of the accused clearly point towards the guilt of the accused. The learned counsel has further submitted that the evidence led by the prosecution, indicating withdrawal of an amount by accused Chinar to

be paid to the contract killers and also the evidence regarding the stay of the contract killers in a hotel in Muktsar leaves no manner of doubt regarding the involvement of the accused in the crime and that the circumstantial evidence led by prosecution forms a complete chain of evidence leading to one and only one inference that it is the accused who had murdered the deceased Mohanbir Singh

30. We have considered the rival submissions addressed before this Court and with able assistance of learned counsel, have also perused record of the case. Since there is no direct evidence of the occurrence, the prosecution seeks to establish its case with the aid of circumstantial evidence, which is broadly to the following effect:

1. Disclosure statements made by accused leading to recovery of incriminating articles including bloodstained knives.
2. "Last seen" evidence in the shape of statement of PW-4 Gurjant Singh.
3. Extra judicial confession of Chinar @ Shallu before PW-6 Vinod Kumar.
4. Bank Account Statement indicating withdrawal of an amount of ₹ 1 lakh from the account of Chinar, allegedly to be paid to co-accused contract killers Shalender and Sandeep.
5. Record of hotel indicating entry in the name of accused Shalender in respect of the day of occurrence.
6. Strong motive of grabbing property of deceased who was owning

85 acres of land and was unmarried.

7. Footprint moulds lifted from the spot which as per report of FSL were found to be matching with the shoes recovered at the instance of accused.
8. Tyre prints lifted from the spot were found to be matching with the tyres of Alto Car bearing Registration No. PB-10-BE-8420, as per report of FSL.

31. Before proceeding to evaluate the above referred circumstantial evidence, it is apposite to refer to the medical evidence led by the prosecution in the shape of post mortem examination report as regards the cause of death of Mohanbir Singh, even though the same is not seriously in dispute. The prosecution has examined PW-1 Dr. M.G.Sharma who had conducted post mortem examination on the dead body of Mohanbir Singh described the injuries found on the death body as under :-

- 1) An incised wound 4 cm x 1 cm on the left side 6 cm in front of left ear. On dissection ecchymosis was also present.
- 2) An incised wound 5 cm x 1.5 cm on the upper part of neck horizontally placed just below the mandible. Underlying major vessels were found cut. Clotted blood was present on margins.
- 3) Two incised wound 3 cm x .5 cm horizontally placed, each one cm apart, from each other on the front of neck at the level of thyroid cartilage. On dissection underlying airway was found cut.
- 4) An incised wound 6 cm x 1.5 cm on left side of neck, 1 cm from injury No.3, obliquely placed. On dissection, thyroid gland and muscles, vessels were found cut.

- 5) An incised wound 7 cm x 3 cm on the front of neck, obliquely placed on either side of midline. Underlying trachea was found cut, 8 cm above the sternal angle.
 - 6) An incised wound 1 cm x .5 cm on right side of neck, 5 cm from midline. On dissection underlying muscles were found cut.
 - 7) An incised wound 3 cm x 1.5 cm on right side of neck, obliquely placed just above the left side of clavicle. On dissection muscles and vessels were found cut.
32. PW-1 Dr. M.G.Sharma opined that the cause of death was shock and haemorrhage resulting from injuries No.1 to 16, which were sufficient to cause death in the ordinary course of nature. Though the learned counsel for the accused has attempted to assail the medical evidence on the ground that when the doctor was examined he was admittedly not shown any weapon of offence, but a perusal of the complete statement would show that the doctor has specifically stated that a small sharp edged weapon was probably used for inflicting the injuries. The recovered weapons are also in the nature of small knives having small blades. As such it cannot be said that the medical evidence is not consistent with the recovered weapons.
33. In fact the nature of injuries are not in the shape of the deep penetrating wounds suggesting use of a long blade knife. Further, the fact that a large number of injuries numbering 17 had been caused to kill the deceased itself shows that the weapon of offence was not a very lethal weapon, but was in the nature of a small sharp edged weapon. Further, the number of injuries also suggests that the same was not handiwork of one person and that more than

one person had caused the injuries. As such we have no hesitation in affirming the findings of the trial court to the effect that it is a case of homicidal death caused as a result of the injuries sustained caused with a sharp edged weapon.

Disclosure Statements made by accused :

34. It is a case of prosecution that on 8.2.2009, during interrogation accused Shalender Singh suffered a disclosure statement Ex. PW-13/X to the effect that he had concealed a pair of shoes and one knife in the bushes near Jabelwali School on Muktsar-Kotkapura road. Pursuant to aforesaid disclosure statement, the accused led the police party to the disclosed place and got a pair of shoes as well as knife recovered from the spot which were duly taken into possession vide recovery memo Ex.PW-13/A/1.
35. It is further the case of prosecution that on 8.2.2009 accused Sandeep Kumar also suffered a disclosure statement(Ex.PW-13/Y) to the effect that he had concealed a pair of boots and a knife near pits of Jabelwali School on Muktsar-Kotkapura road. Pursuant to aforesaid disclosure statement, the accused led the police party to the disclosed place and got a pair of shoes as well as knife recovered from the spot which were duly taken into possession vide recovery memo Ex. PW-13/A/4.
36. It is the case of prosecution that on 9.2.2009, during interrogation accused Mandeep Singh suffered a disclosure statement Ex. PW-13/A/6 to the effect that he had concealed a pair of '*chappals*' (sandals) and one knife on the right side near Govt. High School, Jabelwali School on Muktsar-Kotkapura road. Pursuant to aforesaid disclosure statement, the accused led the police party to

the disclosed place and got a pair of sandals as well as knife recovered from the spot which were duly taken into possession vide recovery memo Ex. PW-13/A/7.

37. The learned counsel for the accused has, however, assailed the factum of the aforesaid disclosure statements and the recoveries made in pursuance thereof on the ground that the same are sought to be proved solely on the basis of testimonies of official witnesses i.e. PW-13 Inspector Manwinderbir Singh and PW-15 Sub Inspector Baldev Singh and that though one independent witness Mohan Singh was associated whose signatures are existing on most of the disclosure statements and the recovery memos but he has not been examined simply by assigning the reason that he has been won over by the accused. The learned counsel has submitted that the said omission renders the disclosure statements and the recoveries highly doubtful and the same cannot be relied upon.
38. We have considered the aforesaid submission. The prosecution, in order to prove the factum of disclosure statements as well as the recovery memos has examined PW-13 Inspector Manwinderbir Singh and PW-15 Sub Inspector Baldev Singh who have both stated consistently regarding the accused having suffered disclosure statements and having led the police party to the disclosed places leading to recovery of incriminating articles including blood stained knives. Both the said witnesses had performed the aforesaid acts in discharge of their official duties and had no enmity with the accused so as to have deposed falsely. In any case, if the accused were sanguine about their case, they could have chosen to examine Mohan Singh as a witness in their defence.

There was no impediment for doing so. In these circumstances, we do not find any ground to disbelieve or discard the disclosure statements and the recoveries made in pursuance thereof.

39. It is pertinent to mention here that the knives recovered in pursuance of the aforesaid disclosure statements were sent to Forensic Science Laboratory ('FSL') for examination and the FSL, vide its report Ex.PY opined that the knives were found to be stained with human blood.
40. The learned counsel for accused while referring to the report Ex.PY of FSL has submitted that the knives allegedly used for commission of offence were recovered after a week of the occurrence, that is on 7.2.2006 and were received in the office of FSL on 20/02/2006 and under all circumstances, it was not possible that they blood stains would have been still there.
41. We have considered the aforesaid submission. There is no authoritative opinion to the effect that that blood stains putrify under all circumstances after 3 or 4 weeks as contended by the learned counsel. It is not the case that the knives were recovered from muddy area or from a wet place. The courts come across reports from FSL in various cases where presence of human blood is found even on articles recovered after more than a month. There may be some scientific reason that DNA examination may not be possible after a long gap but human blood can be identified. Unless, there is anything on record to doubt the credibility or opinion given by FSL, on any authoritative scientific evidence to contradict the opinion, we do not find any reason to discard the opinion furnished by FSL regarding existence of human blood.

42. The learned counsel for the accused further raised an argument that since the blood group matching was not got done, therefore mere presence of human blood on recovered knives carries no value.
43. We have considered the aforesaid submission. Hon'ble the Supreme Court in 2002 (2) JT 637 Motiram Gaman Pawar vs. State of Maharashtra held that merely because the blood group of the blood stains found on the clothes and the knife was not ascertained could not be a reason to hold that any chain of circumstance was missing and that the recovery made at the instance of the accused cannot be discarded on the said count. In another case, Hon'ble the Supreme Court in judgment reported as (2013)14 SCC 266 R. Shaji vs. State of Kerala held that sometimes it is possible either because of disintegration of serum or due to the fact that the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question but even in such a situation unless the doubt is of a reasonable dimension no benefit can be claimed by the accused in this regard. It was further held therein that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group loses significance.
44. In John Pandian v. State represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129, Hon'ble the Supreme Court held as follows :

"....The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been

found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

45. Thus, we do not find any reason to discard the factum of recovery of blood stained knives at the instance of accused, which is an incriminating piece of circumstantial evidence.

"Last seen" evidence and also motive :

46. The prosecution has examined PW-4 Gurjant Singh in order to lend corroboration to its case as regards relations of deceased with Chinara and Mandeep and also as regards the 'last seen' evidence. PW-4 Gurjant Singh, while in the witness box, stated that he knew deceased Mohanbir Singh for the last 30-35 years and had been attending marriages in his family and that on 28.1.2006, at about 7 P.M., when he was sitting at the farm of Mohanbir Singh at Bura Gujar Road, then one white coloured Alto car came there from which Mandeep Singh and Chinara @ Shallu alighted and Mandeep Singh demanded money and land from Mohanbir Singh Lamba but he refused and thereafter they left in anger.
47. PW-4 Gurjant Singh further deposed that on 31.1.2006, in the evening, when he was again sitting at the farm of Mohanbir Singh Lamba, then the same Alto car came there in which Mandeep Singh, Shalinder, Sandeep and Chetan were sitting and accused Mandeep told Mohanbir Singh that he had been sent by Chinara and demanded money from him but Mohanbir Singh refused to pay any

amount and said that he was already repenting for giving land to them and upon which the accused went away. He further stated that on the next day when he was coming towards Muktsar City on his motorcycle then he noticed the same Alto car coming from the side of Lamba Farm in which the aforesaid four persons were sitting and that on the next day he came to know that Mohanbir Singh had been murdered.

48. The learned counsel for the accused has however assailed the credibility of the aforesaid witness on the ground that he is a chance witness and that in fact PW-8 Kala Singh who was working in the fields of Mohanbir Singh has stated that no person by the name of Gurjant Singh came to meet Mohanbir Singh deceased in the farm and that on 28.1.2006. He stated that Mandeep Singh and Shalu did not come to meet Mohanbir Singh deceased and did not demand any land or money from him and did not exchange any hot words. He further deposed that Gurjant Singh did not come to meet Mohanbir Singh on 31.1.2006 at 7.30 PM or at any time of the day. PW-8 further stated that in fact Mandeep and Shallu were near the dead body before the police came at the spot. He further stated that Mandeep Singh and other persons never came in car on the day of occurrence.

49. A perusal of statement of PW-8 Kala Singh shows that he has virtually attempted to demolish the case of prosecution by stating facts contrary to what has been stated by PW-4 Gurjant Singh. The Public Prosecutor upon finding that the witness, during cross-examination, had stated new facts inconsistent with the case of prosecution sought permission of the Court to re-examine the witness which was permitted wherein all the suggestions given to him by the

learned Public Prosecutor were denied by him.

50. While examining the credibility of Kala Singh, a perusal of his statement shows that in the very first lines he stated that he knows accused Mandeep Singh who belongs to his village and that Chinar @ Shallu is wife of Mandeep Singh and niece of Mohanbir Singh who was owning 85 acres of land. He further stated that Mohanbir Singh had given his land to accused Mandeep Singh for cultivation and that Mandeep Singh had brought him to the farm of deceased for doing agricultural work. During cross-examination he has stated that he had started working on the farm about 5-6 months prior to the murder of Mohanbir Singh.
51. The aforesaid facts would suggest that Kala Singh was in fact more close to Mandeep Singh than Mohanbir Singh and that he had recently started working in the fields of Mohanbir Singh having been brought there by Mandeep Singh. In these circumstances there are chances that Kala Singh may not have deposed truthfully in order to help Mandeep Singh. Further, he would not even be knowing about old relations of the deceased as he had been employed recently at the farm of the deceased. The credibility of the said witness PW-8 Kala Singh is rendered doubtful from the manner he has stated during his cross-examination stating not only to the effect that Gurjant Singh had not come to the farm but also by giving an absolute clean chit to the accused by stating that they had not come to the farm on any of the days i.e. 28.1.2006 or 31.1.2006.
52. It is pertinent to mention here that though Kala Singh was working at the farm,

but surprisingly he didn't know about the murder. He tried to project that deceased never reached the farm in the morning on the day of occurrence, whereas as per the site plan the deceased was found murdered at his farm itself. Meaning thereby that either the said Kala Singh was not present in the farm all the times or had deposed falsely. Thus his statement to the effect that he didn't see Gurjant Singh on 28.1.2006 or on 31.1.2006, or that he didn't even see the accused cannot possibly cause a dent in the case of prosecution, on account of the above stated position that either he was not always present at the farm or was deposing falsely. Thus the statement of Kala Singh can not have the effect of demolishing the statement of PW-4 Gurjant Singh.

53. Statement of Gurjant Singh is also sought to be assailed by referring to his statement recorded under Section 161 Cr.P.C. The learned counsel has pointed out that while PW-4 Gurjant Singh, during his cross-examination denied having disclosed any registration number of the car to be PB-30D-0585 in his statement recorded by the police during inquiry proceedings but in fact the said registration number is actually found mentioned in his statement recorded in inquiry proceedings.
54. We have considered the aforesaid submission. A perusal of statement of PW-6 made in the court as well as his statement under Section 161 Cr.P.C. shows that in both the said statements, the registration number of the car is mentioned as PB10-BE-8420 which belongs to accused Chinar. Thus, the aforesaid submission does not carry any weight and is rejected. The learned counsel has further pointed out some minor inconsistencies in the statement of the witnesses recorded in the Court and the statement recorded under Section 161

Cr.P.C. but none of the said inconsistencies can be said to be on any material aspect of the case. Some inconsistencies or discrepancies are bound to be there even in case of the most truthful witnesses, especially when there is a gap between occurrence and the time when the statement is recorded in the Court. In the present case the statement of the witness was recorded after more than one year of the occurrence and such minor discrepancies are bound to have crept in but the same cannot have the effect of washing off his statement.

Extra Judicial Confession made by Chinara before PW-6 Vinod Kumar :

55. Another piece of evidence that the prosecution relies upon is extra-judicial confession made by Chinara alias Shallu before PW-6 Vinod Kumar. PW-6 Vinod Kumar stated that on 6.2.2006 Chinara Lamba came to his house at about 8 PM in a confused state and disclosed to him that she had got murdered Mohanbir Singh in connivance with Sandeep, Shalender and Mandeep Singh accused. She further told him that since deceased Mohanbir Singh had refused to give money and had threatened to take back the land given to them, therefore, she alongwith Mandeep Singh conspired to kill Mohanbir Singh and contacted Shalinder and Sandeep to murder Mohanbir Singh and paid an amount of ₹1,00,000/- to them on 1.2.2006 after withdrawing the same from the bank.
56. The learned counsel for accused have however assailed the statement of PW-6 Vinod Kumar, as regards extra-judicial confession on the ground that there is material contradiction as regards the date of extra-judicial confession and that while in examination-in-chief the witness disclosed that Chinara Lamba

confessed her guilt before him on 6.2.2006, but during his cross-examination, he stated that it was on 1.2.2006 that Chinar Lamba came to his house and confessed her guilt. The learned counsel has submitted that the said contradiction clearly shows that the witness is not a reliable witness and has simply been introduced by the prosecution in an attempt to strengthen its case.

57. We have considered the aforesaid submission. A perusal of entire statement of PW-6 would show that Chinar Lamba went to the house of Vinod Kumar on 6.2.2006 during night and confessed her guilt upon which Vinod Kumar asked her to come in the morning on the next day when he would produce her before the police but since Chinar Lamba did not turn up on 7.2.2006, therefore, Vinod Kumar reported the matter to the police on 7.2.2006. It was on 7.2.2006 that the statement of Vinod Kumar was recorded wherein also it is mentioned that Chinar Lamba has confessed her guilt on the previous night i.e. on 6.2.2006. Thus, it is apparent that the date of confession as mentioned to be 1.2.2006 during cross-examination is a typographical error and would not have the effect of absolutely discarding the extra-judicial confession.

58. The learned counsel for accused have however attempted to assail the extrajudicial confession on the ground that that PW-6 Vinod Kumar is hardly a person of any standing in the society and that admittedly he is neither Municipal Commissioner nor President of the Municipal Committee and as such there was no reason for accused Chinar to have chosen to confess her guilt before him. We have considered aforesaid submission. It is no doubt correct that PW-6 was not holding any public office. However, he has stated

that he is a social worker and does the work of renewal of fire-arm licences and driving licences. Normally persons who are into such kind of business would be knowing the officers of the administration as they have to deal with the officers frequently in connection with issuance of arms licences or driving licences and in these circumstances it cannot be said that PW-6 Vinod Kumar was such a person before whom accused Chinar could not have possibly made extra-judicial confession. The aforesaid submission is thus devoid of merits and is rejected.

Withdrawal of ₹ 1 Lac on the day of occurrence :

59. It is case of the prosecution that Chinar Lamba had withdrawn an amount of ₹1,00,000/- on 1.2.2006 to be paid to the contract killers. The prosecution, in order to substantiate the said fact, has examined PW-12 Sanjiv Prabhakar, Vice President, HONG Kong Shanghai Banking Corporation, Chandigarh who proved the statement of Bank accounts in respect of three different bank accounts, one jointly in the name of Manmohan Kaur Lamba and Chinar Lamba, another in the name of Chinar Lamba and third in the name of Mohanbir Singh Lamba as Ex.PW-12/A, Ex.PW-12/B and PW-12/C respectively. A perusal of Account statement Ex.PW12/C in respect of account No. 129041240006 in the name of Chinar Lamba reveals that there is an entry regarding withdrawal of ₹1,00,000/- on 1.2.2006.
60. The learned counsel for the accused has however attempted to assail the aforesaid statement on the ground that the said statement is not a certified copy as provided under Sections 4 and 5 of the Bankers' Book Evidence Act, 1891 so as to be admissible in evidence. We have considered the aforesaid

submissions. A perusal of Section 4 and 5 of Bankers' Book Evidence Act, 1891 shows that a certified copy of any entry in a bankers books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein. In the present case, it is the Vice President of the Bank itself who had appeared in person along with attested copies of the account statement Ex.PW-12/C pertaining to account No.129-041240006 in the name Chinar Lamba maintained with HSBC Bank. Furthermore apart from a formal suggestion that the witness had deposed falsely which was denied, not even a single question was put to the witness to challenge his competency to depose or as regards the authenticity of the account statement. In these circumstances it does not lie in the mouth of the accused to say that the account statement is not duly proved or is not an authentic document.

61. The learned counsel for accused has dwelled much on the document, Mark DA which is in the nature of a statement of complainant Manmohan Kaur recorded during some inquiry proceedings, wherein it is stated that Shalu had given an amount of ₹ 1 lakh to her for safekeeping on 1.2.2006 and out of which upon demand made by Shalu she had given an amount of ₹ 20,000/- to Shalu. The learned counsel, while referring to the said statement has submitted that the said admission of the complainant that Shalu had handed over the amount of ₹ 1 lakh to her virtually demolishes the case of prosecution that Shalu had withdrawn the amount of ₹ 1 lakh to be given to the alleged contract killers Sandeep and Shalender.

62. We have considered the aforesaid submission. The said document Mark DA

has not been properly proved and exhibited and is not admitted by the complainant, who denied the suggestion given to her that she had received an amount of ₹ 1 lakh from Chinara at the time of occurrence in question. The complainant, upon being shown the document in question stated as follows:

"I have seen document marked DA but do not remember to have signed on this document. Signatures on marked DA look like mine signatures"

63. Thus, the document marked DA neither having been properly proved and exhibited nor admitted by the complainant carries no value and can not be relied upon. Withdrawal of ₹1,00,000/- having been duly established would furnish another link in the chain of events which may assume importance coupled with other circumstantial evidence.

Hotel record regarding occupancy :

64. Another piece of evidence collected by the prosecution is in the shape of guest occupancy register maintained by Hotel White Palace, Muktsar. The prosecution has examined the proprietor of the said hotel PW-3 Davinder Kumar who specifically deposed that he had brought the original register regarding the rooms of his hotel White Palace and that as per entry at serial No. 494 dated 31/01/2006, Shailender Singh along with Kamara Pati and 2 others had stayed in his hotel in room No. 1 and 7 and left his hotel on 1.2.2006. He has proved the relevant extract of register as Ex. PW-3/A.
65. The learned counsel for the accused has however assailed the said evidence in the shape of extract of occupancy register on the ground that the original had

never been produced on the police file and had never been taken into possession and that in these circumstances no sanctity can be attached to the alleged entry in the name of Shailender Singh accused especially when the same is not even signed by Shailender Singh.

66. We have considered the aforesaid submission made on behalf of the accused. The witness had produced the original register in the court when his statement was recorded as is evident from the statement itself. No objection whatsoever was raised when the said document i.e. Ex. PW-3/A was exhibited. No question as regards maintenance of said register was ever put to the witness during cross-examination. Infact in the last column of said register signatures of the occupants are also obtained. At serial No. 494, the name of Shailender Singh and his address of Rohtak is clearly written therein and the entry is duly signed by Shalinder. Room No.1 and 7 had been allotted against the said entry no. 494 in the name of Shailender Singh.

67. It is further evident from a perusal of Ex. PW-3/A that almost all the 15 entries made in occupancy register are in different hand. So much so one entry is in Hindi language which is indicative of the fact that the entries had been made by the occupants themselves in the normal course of business. Nothing has been produced on record by the accused in defence to demolish the aforesaid evidence. Hence, in these circumstances this Court does not find any reason to doubt the authenticity of the hotel occupancy register Ex.-PW-3/A.

Evidence of Foot moulds lifted from the spot :

68. It is a case of prosecution that when the police party visited the place of

occurrence immediately upon receipt of information from the complainant, the investigating officer called fingerprint expert PW-18 Prabhu Dayal at the spot who lifted foot moulds which were taken into possession vide recovery memo Ex. PW-6/D. The said recovery memo was duly attested by PW-6 Vinod Kumar and also by PW-15 Baldev Singh.

69. During the course of investigation, after arrest of accused Shailender Kumar, Sandeep Singh and Mandeep Singh, they suffered disclosure statements Ex.PW-13/X, Ex.PW-13/Y and Ex.PW-13/A/6, respectively and in pursuance thereof got their shoes and sandals recovered, which were taken into possession vide recovery memos Ex.PW-13/A/1, Ex.PW-13/A/4 and Ex.PW-13/A/7, respectively. Upon comparison of the foot moulds lifted from the spot with the recovered shoes and sandals, the FSL vide its report Ex.PZ, opined that the footmoulds lifted from the spot could be of the recovered shoes and sandals. The learned counsel for accused has however assailed the aforesaid evidence regarding foot moulds on the following five grounds:

- (i) *That the report of the official is not specific and is merely suggestive inasmuch as it is reported therein that the foot mould impressions recovered from spot "could be" from the recovered footwear.*
- (ii) *That though one independent witness namely Mohan Singh was present at the time of recovery of the shoes and sandals pursuant to the alleged disclosure statements, but the said Mohan Singh has not been examined by the prosecution.*
- (iii) *That as per the procedure prescribed in Punjab Police Rules the foot moulds have to be lifted in the presence of a magistrate and since no magistrate was called at the spot, therefore, no reliance can be placed upon the same.*

- (iv) *That the place from where the foot moulds were lifted is a thoroughfare and a metaled road and thus it remains unexplained as to how lifting of footprints moulds was possible from metaled road and further as to how only three footprint moulds were identified and lifted if it was a thoroughfare.*
- (v) *That the prosecution did not examine the expert who had furnished the report Ex.PZ and that as such, neither the said report can be said to be duly proved nor can be relied upon as the accused were never afforded any opportunity to cross-examine the witness.*

70. We have considered the aforesaid five submissions. Each of the aforesaid submissions is being discussed separately.

Submission no. (i) :

71. It is no doubt correct that as per report of FSL, the opinion given is that the foot mould impressions "*could be*" from the recovered shoes and this opinion is not very specific. However, this can be due to varied reasons -- the most important being that the science of foot moulds is not as accurate as the science of identification of fingerprints. Our High Court in Om Parkash vs. State of Haryana 1993(1) RCR (Cri) 328 (DB) held that evidence of footprints is not as conclusive in nature as the science of finger prints. In any case, the fact is that the report of FSL has not absolutely ruled out the presence of the accused at the spot and the findings are not such which suggest existence of a fact inconsistent with the case of prosecution. The report of FSL as regards foot moulds is in the nature of one link in the chain of circumstantial evidence which has to be weighed along with other evidence collected by the prosecution. The report cannot be thrown out merely on the ground that the

expert has not given 100% definite opinion and has used the words "*could be*" to opine as regards similarity in foot moulds.

Submission no. (ii) :

72. A perusal of the recovery memos Ex.PW-13/A/1, Ex.PW-13/A/4 and Ex.PW-13/A/7 shows that the same bear the signatures of the Investigating Officer Manvinderbir Singh and also bear signatures of 3 witnesses namely SI Baldev Singh, HC Kishore Chand and one Mohan Singh. The prosecution has examined PW 13 inspector Manvinder Bir Singh and also PW 15 Baldev Singh , who have both consistently stated regarding the factum of recovery of incriminating articles at the instance of the accused. There is no mandate of law that recovery is to be effected only in the presence of an independent witness or that an independent witness must be examined to prove the factum of recovery. In case the official witnesses are trustworthy, there can possibly be no impediment to accept their testimony to prove the factum of recovery. Both the said witnesses had investigated the matter as a part of their official duties and they had no enmity against the accused, so as to depose falsely. As such, this Court has no hesitation in accepting their testimonies from which the factum of recovery at the instance of accused is duly established.

Submission no. (iii) :

73. The learned counsel, in order to hammer forth the argument that the foot moulds ought to have been taken in the presence of a Magistrate has referred to the procedure prescribed in *Rule 25.26 of Punjab Police Rules, 1934, Volume 3, CHAPTER 25*, which reads as under:

“In making moulds for production as evidence the following precautions should be observed :-

- (a) The footprints found on the scene of the crime must be pointed out to police witnesses at the time and these same witnesses must be present during the preparation of the moulds.*
- (b) The latter must also be signed or marked by the witnesses and the officer preparing them while still setting.*
- (c) After the procedure described in sub-rule (2) above has been completed a mould should be prepared in the presence of the magistrate or witnesses of one of the foot-prints of the suspect made in their presence. This mould should be signed by the Magistrate or witnesses when still setting.*
- (d) Both moulds should be carefully preserved for production in court for identification by witnesses and comparison by the Court.”*

74. We are afraid we cannot accept the aforesaid contention on behalf of the accused as the procedure referred to above is to be followed when accused in person is produced before a Magistrate for identifying his footprints/shoes sole moulds. The procedure prescribed in Punjab Police Rules provides that the foot mould identification, when accused is present, is to be done in the same manner as in case of Test identification Prade. The present case is different inasmuch as the foot moulds lifted from the place of occurrence are sought to be compared with the shoes recovered at the instance of the accused pursuant to their disclosure statements. Law does not mandate presence of Magistrate in such cases of lifting of foot moulds from place of occurrence or for effecting any recovery at the instance of accused. The aforesaid contention is rather misconceived and thus rejected.

Submission no. (iv) :

75. The learned counsel for the accused has submitted that as per the site plan Ex.PW-5/A the points from where the foot moulds were lifted were at a distance of 8-35 feet away from the dead body and that since a thoroughfare in the shape of metalled road abuts the place of occurrence, therefore, it remains unexplained as to why the police chose to lift only three foot moulds only.
76. We have considered the aforesaid submission and have also perused the site plan Ex.PW-5/A. The said site plan was prepared by the Patwari after about 18 days of the occurrence. However, there is another site plan i.e. the rough site plan Ex.PW-13/E which was prepared at the spot and from which it is clearly evident that the place from where the foot moulds were lifted was in fact the private property. Thus, it cannot be expected that there would be foot prints of many other persons at the spot. Still further a perusal of the photographs Ex. PW-11/1 to Ex. PW-11/6 of the place of occurrence shows that the dead body is lying in a kutchra area in the fields, which certainly does not look to be a thoroughfare. The police was expected to lift moulds which were near the dead body and which were clearly visible and well defined. As such, the mere fact that only three foot moulds were lifted from the spot cannot be said to be a circumstance doubting the case of the prosecution. It is also pertinent to notice that infact the foot moulds were lifted on the day of occurrence itself i.e on 1.2.2006, whereas the accused were arrested a week thereafter. As such it cannot even be said that the same were planted subsequently. The contention raised in this regard is thus devoid of merits and

rejected.

Submission no. (v) :

77. As regards the contention regarding omission of prosecution to examine the expert, who had furnished the report Ex.PZ, the reports of Forensic Science Laboratory are *per-se* admissible in terms of provisions of section 293 of Cr.P.C. The learned counsel for the accused has placed reliance upon 1999 (4) RCR (Crl) 80 State of H.P. vs. Jai Lal, wherein, during a trial for offences under section 468, 420, 120-B of IPC and under 52 of Prevention of Corruption Act, the State, in order to prove the fruit bearing capacity of orchards had examined District Horticulture Officer as an expert. Hon'ble the Supreme Court while referring to section 45 of Evidence Act held that in order to make opinion of an expert admissible, it has to be shown that he has made a special study on the subject, or has acquired a special experience therein and has to be examined as a witness in the Court and has to face cross-examination. While there is no dispute to the proposition of law laid down in context of section 45 of Indian Evidence Act, it needs to be borne in mind that in the present case the report is of Deputy Director, FSL who is specified as a Government Scientific Expert in Section 293(4) of Cr.P.C. and as such the report would be *per-se* admissible. When the said report was tendered in evidence on 22.9.2010 by Additional Public Prosecutor, no objection whatsoever was raised on behalf of the accused. After the amendment of Cr.P.C. in 1973, it is no longer obligatory to summon and examine the expert and the provision for summoning the expert at the instance of the accused has been specifically omitted and it has been left solely to the discretion of the

Court to *suo-moto* summon the expert, in case the Court deems fit to summon and examine the expert. In any case, in the absence of any objection having been raised by the accused when the report of FSL was tendered in evidence and no infirmity having been pointed out to this Court in the report, the exhibiting of report of FSL without examining the expert cannot be said to be any infirmity in the case of prosecution. In the cited case the report relied upon by the State was that of District Horticulture Officer who is not covered under section 293 of Cr.P.C. and the same being a material distinction, the judgment rendered in Jai Lal 's case (supra) is of no avail to the accused as far as the present case is concerned.

78. As such, no fault can be found in exhibiting the report of official without examining any expert from FSL.

Omission of prosecution to produce report of Fingerprints Expert :

79. The learned counsel for accused submitted that though the prosecution had pressed into service the fingerprints expert who had lifted fingerprints from 'dolni' (steel container) recovered from the spot near the dead body but for the reasons best known to the prosecution, report of FSL has not been brought on record. The learned counsel submitted that the prosecution has resorted to pick and choose policy in leading evidence and the evidence that pointed towards innocence of the accused has been withheld from the court.
80. We have considered aforesaid submission. It is indeed correct that though fingerprints were lifted from the steel container recovered from the spot but no report in respect of examination of fingerprints is forthcoming. However the

accused on account of said omission cannot be said to have been prejudiced in any manner. Even if it is presumed that fingerprints lifted from the steel container did not match with any of the accused still it is not the case of prosecution that the accused had ever handled the said steel container. Rather the case of prosecution is that the deceased had gone to his farm with a steel container to fetch milk. In these circumstances the probability of fingerprints of deceased could be expected but not of the accused. As such even the situation of there being no fingerprints of the accused on the steel container cannot be said to be any defence of the accused. The omission on part of prosecution to bring on record any such report of FSL pertaining to fingerprints examination has neither caused any prejudice to the accused nor can be said to be fatal to the case of prosecution.

81. It is the case of prosecution that accused Chinar was arrested on 7.2.2006 while she was going in her car Alto bearing registration number PB-10-BE-8420, which was also taken into possession vide a recovery memos Ex.PW-13/K. The registration certificate was separately taken into possession, vide recovery memo Ex.PW-9/A. On the day of occurrence that is on 1.2.2006, the police had lifted two tyre marks prints from the place of occurrence, which were got compared with the tyre prints from the recovered Alto car bearing registration number PB-10-BE-8420 and as per the report of FSL (Ex. PZ), the tyre impressions lifted from the spot of crime could be from any of the test tyre impressions of vehicle bearing registration number. PB-10-BE-8420. The said evidence is also an evidence which is in the shape of another link in the chain of circumstantial evidence.

CONCLUSION:-

82. From the evidence led by the prosecution, we find that the prosecution has led sufficient evidence to show that Shalu alias Chinar and Mandeep Singh had conspired to kill Mohanbir Singh and had availed services of contract killers Sandeep Singh and Shalender Singh. The disclosure statements leading to recovery of bloodstained knives, coupled with the extra-judicial confession of Chinar @ Shalu and also existence of tyre marks of car belonging to Shalu at the spot point towards the involvement of the aforesaid accused in the occurrence.
83. It is evident that Mohanbir Singh was a man of means having valuable assets in the shape of land, etc. and was unmarried. A perusal of the documents Ex.DW-4 (FIR), Ex.D-5 to Ex.D-8 which are copies of various civil suits and other litigation, indicates that there was a dispute between Preet Lamba(mother of accused Chinar) and Mohanbir Singh regarding shares in dividends and also between Preet Lamba and Chinar Lamba regarding ownership of land. Some criminal cases had also been instituted inter-se the parties which also indicates that there was a dispute between Chinar Lamba and her mother Preet Lamba and also between Preet Lamba and the deceased . The aforesaid litigation shows that the deceased was a man of means having landed property and that there were disputes in the family over the assets. Apparently it was the property which was the motive for the crime.
84. Though the deceased may also be having litigation with his sister but in the absence of any evidence to show that the said sister had any role to play in the crime, the accused cannot draw any benefit from the said enmity.

85. Further, the date of withdrawal of an amount of ₹1 lakh from the bank account of Chinara @ Shalu and the date of checking in at Hotel White House, Muktsar by Shalender and others coincide with the date of occurrence. Accused Shalender could have very conveniently challenged his signatures in the occupancy register produced by the prosecution, but he has neither challenged the same nor furnished any explanation justifying his presence in Muktsar on the day of occurrence.
86. It has been argued on behalf of Shalender that he is infact an advocate practising in Rohtak and that the income tax returns placed on record as Mark DW-3/D and Mark DW-3/E also reflect the status of the accused as a lawyer and that being a lawyer, it is unlikely that he would indulge into contract killing.
87. We have considered aforesaid submission as regards the income tax returns. We find that the income tax returns have not been properly proved. Even otherwise, the same do not reflect that the income of Shalender was from profession as an advocate. The learned State counsel has further pointed out that in fact Shalender is a seasoned criminal wanted in several other cases. The learned counsel in order to substantiate the aforesaid submission has drawn the attention of this Court to zimni order dated 2.12.2008 wherein it is recorded that upon an application filed on behalf of Shalender Singh, production warrants were issued to Superintendent, District Jail Gazipur(UP), for production of accused Shalender who was specifically stated to be in custody in 4 other cases, as per the application filed on behalf of Shalender himself. In zimni orders dated 20.7.2009 and 29.8.2009 it is recorded that production

order be issued to Superintendent, Central Jail, Baksar (Bihar), indicating that he was in custody in some case registered in Bihar also. Thus, the contention that the accused Shalinder is actively in profession as a lawyer is not substantiated.

88. It is worthwhile to notice that is Shalender Singh in his statement under section 313 Cr.P.C. has taken a stand, that the amount of ₹ 23,000/- allegedly recovered by the police was in fact paid by his mother to the police on the representation of the police that his dispute with Happy would be sorted out and that the said Happy had earlier cheated him of ₹ 26 lakhs and had also kidnapped him and that the said Happy had colluded with Manwinder Singh SHO.
89. However, when the mother of Shailender Singh stepped into witness box as DW-3, she furnished a different explanation as regards the said recovery of ₹ 23,000/- by stating that in fact she had paid the said amount to the police for early release of his son Shalender Kaddiyan from this case and that the police had in fact demanded ₹ 50,000/- but she had only ₹ 23,000/- at that time with her. The said contradiction in stands between mother and son clearly shows that the accused Shalender Singh has come out with a false version to create a doubt regarding the recovery of ₹ 23,000/- in pursuance of his disclosure statement.
90. We find that the evidence led by the prosecution establishes all the vital links in the chain of circumstantial evidence leading to one and only one conclusion that the accused Chinara and Mandeep Singh had conspired to kill the deceased

with the help of Sandeep and Shalender.

91. Now coming to the role of Chetan Kumar, we find that apart from the statement of PW-4 Gurjant Singh there is no other incriminating evidence against him. He is neither related to the deceased or to other accused nor is stated to be a contract killer like Sandeep and Shalender who as per the case of prosecution had been hired by Chinara and Mandeep Singh to execute the killing. No disclosure statement was ever made by Chetan Kumar and nor recovery of any incriminating article made from him. There were no foot moulds at the place of occurrence which could connect him with a crime.
92. Though the prosecution has brought on record evidence to show that infact Chetan Kumar was present in Muktsar on 31.1.2006 by examining PW-19 Hukam Chand has deposed that on 31/01/2006 while he was present at Kotkapura Chowk in connection with checking of traffic, one Quallis vehicle bearing registration number HR-47-8767, was found parked on the wrong side. He further deposed that upon Inquiry the driver disclosed name as Chetan Kumar who was not even having driving licence and that the said Chetan Kumar was challaned for wrong parking and for not having driving licence. He has proved the challan from the original challan book as Exhibit DW-19/A wherein signatures of Chetan Kumar had also been obtained.
93. However, the said evidence of mere presence in the city, is rather insufficient to connect him with the occurrence. It could also be a case that the accused Sandeep and Shalinder hailing from Delhi and Rohtak might have hired the Quallis vehicle to come to Muktsar. Unless there is some convincing evidence

to suggest his complicity in the crime or having been a part of conspiracy to eliminate deceased, it would not be safe to hold him guilty merely on account of the fact that he was present in the city on the day of occurrence. Further, even the tyre prints found at the spot were not of the Quallis vehicle but of Alto vehicle bearing registration number PB-10-BE-8420 belonging to Chinar. Still further, while Chinar was arrested on 7.2.2006 from Muktsar, the accused namely Mandeep Singh, Sandeep Singh and Sikandar were arrested on the 7.2.2006 from Ludhiana, Chetan Kumar was not with them and was arrested much later i.e. on 13.03.2006 from Delhi. It is further pertinent to note is that even in the extra-judicial confession made by Shalu alias Chinar before PW-6 Vinod Kumar, she had confessed having conspired with Mandeep Singh for getting Mohanbir Singh killed through contract killers Sandeep and Shalender. She nowhere named Chetan Kumar as an accomplice.

94. In these circumstances it is difficult to hold that Chetan Kumar was also part of the conspiracy to kill deceased Mohanbir Singh. He certainly deserves the benefit of doubt in the given circumstances.
95. Consequently we do not find any infirmity in the findings as regards the conviction for offence under section 302 and 120-B IPC as recorded by the trial court qua the accused Chinar @ Shalu, Mandeep Singh, Sandeep Singh and Shailender Singh and the same are hereby affirmed. The appeals filed by the accused Chinar @ Shalu, Mandeep Singh, Sandeep Singh and Shailender Singh are devoid of merits and are dismissed. However, while giving benefit of doubt, the conviction of Chetan Kumar is set aside and he is acquitted of all the charges framed against him. The appeal filed on behalf of Chetan

Kumar, thus, stands accepted.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

October 24, 2017
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No