

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

(i) Crl. Appeal No.D-514-DB of 2005

Joginder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Appeal No.D-584-DB of 2005

Lakhbir Singh @ Beeri @ Lambardar

...Appellant

VERSUS

State of Punjab

...Respondent

Date of Decision: December 16, 2019

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
 HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.T.S.Sangha, Senior Advocate with
 Mr.Narinder Singh, Advocate
 for the appellant (in CRA No.D-514-DB of 2005).

 Ms.Geeta Sharma, Advocate
 for the appellant (in CRA No.D-584-DB of 2005).

 Mr.Bhupender Beniwal, Asstt. Advocate General, Punjab
 for the respondent-State.

ARCHANA PURI, J.

Challenge in the twin appeals, is to the judgment of conviction

dated 08.06.2005 and order of sentence dated 10.06.2005 passed by learned

Addl. Sessions Judge, Moga, vide which the appellants were held guilty and convicted for the commission of offences and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default</i>
302/34 IPC	Imprisonment for life and to pay fine of ₹5000/-	RI for one year
392/34 IPC	RI for six years and to pay fine of ₹2000/-	RI for four months

Both the sentences were ordered to run concurrently.

The background facts in nutshell are as herein given:-

That, complainant Gurjant Singh is resident of village Mehma Singh Wala, Moga. He was cultivating land measuring about 2½ killas of Bant Singh, for the last about 3-4 years on contract basis. He had sown green fodder in the said land. On 07.09.2002, at about 8.30 a.m., complainant along with Angrej Singh had gone to the said fields for bringing green fodder. When he went near the bore, he noticed that band of the bore was open. He developed suspicion in his mind and then saw in the well of the motor and noticed dead body of a person, which was having underwear only and blood was oozing out from the head of the dead body. *Kurta, pyjama* and *jutti* were lying near the well of the bore. He came back to the village and apprised about the same to Roop Singh, Sarpanch. Then, Roop Singh in the company of complainant, had gone to the spot. Some unknown person was killed and after removing his clothes, body was thrown into the well of the motor. Then complainant along with Sarpanch Roop Singh had proceeded to inform the police.

Proceedings in the present case were initiated, on the basis of statement got recorded by Gurjant Singh. While he was proceeding to inform the police, enroute, at bus stand Duneka, he had met the police party.

A case was registered under Section 302 IPC. Thereupon, the Investigating Officer along with complainant Gurjant Singh and Roop Singh Sarpanch, had gone to the spot, where Angrej Singh s/o Gurjant Singh was keeping a watch on the dead body. Near well of the motor, a *pyjama*, *kameez* and a footwear were found. On conducting search, from the field of barley, a conductor bag was found. There were tickets of Punjab Roadways in the said bag. Near the said bag, two purses were found. From one purse, identity card found, which was in the name of Kundha Singh, son of Sadhu Singh, resident of Buttar Kalan, conductor No.23 bearing stamp of Punjab Roadways, Jagraon. From nearby, a *chaddar* was found. A photographer was arranged and photographs of the spot were got clicked. With the assistance of Angrej Singh and Sarabjit Singh, dead body was retrieved from the well, in a gunny bag with the help of iron wire. The said dead body was recognized by Darshan Singh and Mehar Singh, as of Kundha Singh. Photography of the dead body was also got done. Inquest proceedings were initiated. Dead body was sent to Civil Hospital and post-mortem examination was got conducted. Blood-stained earth below the dead body was lifted from the spot and parcel of the same was prepared. Even, *kameez*, *pyjama*, pair of footwear and undershirt were recovered from the spot and same were also converted into parcel and taken into possession. Even, the conductor bag, tickets of Punjab Roadways tied on an iron sheet attached to a ring, a brass punch, a whistle attached to its ring, a two rupee torn note in the bag and two coins of denomination of the value of ₹5/-, a way bill from 03.09.2002 to 05.09.2002, even one purse containing identity card of Kundha Singh and a *chaddar* were lifted from the spot and

separate memos. Rough site plan of the spot was prepared.

During the course of investigation, it was found that Kundha Singh was murdered by Lakhbir Singh @ Beeri @ Lambardar and Joginder Singh. They had murdered him with the purpose to take away the gold *karra* and HMT watch worn by Kundha Singh and also to take away official cash amount and his salary. After committing the murder, his dead body was thrown in the well of the motor. Thus, addition of offence under Section 392 IPC was also made. Search for the accused was conducted.

Even parcel of clothes of the deceased, after conducting of his post-mortem examination, was handed over to the Investigating Officer. The concerned doctor, in his post-mortem report, had stated about death of Kundha Singh to have taken place, on account of the injuries.

On 12.09.2002, accused had made extrajudicial confession before Harbhupinder Singh, Member, Zila Parishad, Moga who facilitated the production of accused before the Investigating Officer and they were arrested. During the course of interrogation, while in police custody, on 14.09.2002, accused Lakhbir Singh @ Beeri @ Lambardar and Joginder Singh had made disclosure statements about having concealed gold *karra*, HMT watch with white dial and white chain, in their respective houses. The disclosure statements were recorded. From the disclosed spot, at the instance of Lakhbir Singh @ Beeri @ Lambardar, gold *karra* was recovered. Parcel of the same was prepared and taken into possession vide separate memo. Rough site plan of the place of recovery was also prepared. Likewise, at the instance of Joginder Singh, HMT was got recovered, which was converted into parcel and taken into possession vide separate memo.

Statements of witnesses were recorded.

On 10.09.2002, Kuldip Kaur had produced bills qua gold *karra* and watch before ASI Ram Singh. On 20.09.2002, parcels of gold *karra* and watch, were taken out of the police store and identification of the same was got conducted through Inderdev, Teshildar-cum-Executive Magistrate, Moga. Harpreet Singh s/o Kundha Singh, Harpal Singh s/o Sucha Singh and Baljinder Pal Singh s/o Malkiat Rai were produced before Shri Inderdev and they had identified said articles and identification report was prepared and thereupon, they were again sealed with the seal of SI. Statements under Section 161 Cr.P.C. were recorded.

On completion of investigation, report under Section 173 Cr.P.C. was presented against accused Lakhbir Singh @ Beeri @ Lambardar and Joginder Singh.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Section 302 read with 34 IPC.

In an endeavour to establish its case, the prosecution examined as many as 21 witnesses, besides adducing documentary evidence.

PW-1 Dr.Navraj Singh, Medical Officer, has deposed about conducting of post-mortem examination on the dead body of Kundha Singh on 07.09.2002 and further deposed about the detail of injuries found on the dead body, which are herein given as under:-

1. *Lacerated wound 6 x 4½ cm. x bone deep present at middle of head. 5 cm. Behind interior hairline. On dissection, under lying bone was fractured. Clotted*

blood was present.

2. *Lacerated parietal wound 5 cm. x 1 cm. x bone deep present on right parital area. 4 cm. above right pinna. Clotted blood was present on opening the skull blood present under dura matter and over the brain on its right side.*
3. *Abrasion 8 x 10 cms. present at middle of left upper arm. Clotted blood was present.*
4. *Abrasion 16 x 10 cms. present on front of left knee joint and lower part of left thigh. Clotted blood was present.*
5. *Abrasion 6 x 2 cms. present at middle of left chin. Clotted blood was present.*
6. *Abrasion 7 x 3 cm. present lower 1/3rd on right chin. Clotted blood was present.*
7. *Abrasion 5 x 4 cms. present on left medial maleous. Clotted blood was present.*
8. *Abrasion 3 x 4 cms. on right outer maleous. Clotted blood was present.*

He further opined that the cause of death in this case was due to injury to vital organ brain and injury to lung caused by above described injuries, which were ante-mortem and sufficient to cause death in an ordinary course of nature. The probable time between injuries and death was immediate and between death and post-mortem was 24 to 36 hours. He also proved the carbon copy of post-mortem report, which is Ex.PA and pictorial diagram is Ex.PA/1.

PW-2 Kuldip Kaur is widow of deceased Kundha Singh. She has deposed that her husband was working as Conductor in Punjab Roadways. She also deposed that on 05.09.2002, he had left his house at village Buttar Kalan at 8.30 a.m. At that time, he was wearing one gold *karra*, one gold ring and one wrist watch. He was also wearing *kurta*,

pyjama having *dabbies* and a *dupatta* (soft turban) on his head. She further deposed about having produced two receipts of gold *karra* and wrist watch before the police. She identified the said articles, when shown to her and deposed that the same were worn by her husband, when he left the house on 05.09.2002.

PW-3 Head Constable Surjit Singh and **PW-4 Head Constable Surinder Pal Singh**, have tendered into evidence their affidavits Ex.PD and Ex.PE, respectively, which is formal evidence.

PW-5 Head Constable Gurdial Singh deposed about having associated ASI Ram Singh on 14.09.2002. He also deposed about accused Lakhbir Singh to have been interrogated by ASI Ram Singh, whereupon, he had made disclosure statement Ex.PF, on the basis whereof, gold *karra* was recovered. He further deposed about Joginder Singh to have also been interrogated and having made disclosure statement Ex.PG, on the basis whereof, he had also got recovered the wrist watch. Parcels of the same were prepared and were taken into possession vide separate memo Ex.PF/1 and Ex.PG/1, respectively, which was attested by him. His statement was recorded.

PW-6 Kartar Singh, Photographer has deposed about having clicked the photographs of the spot, the negatives whereof are Ex.P5/1 to 10 and positives are Ex.P5/11 to 20 and the same were produced by him before the Thanedar, which were taken into possession vide memo Ex.PH.

PW-7 Gurjant Singh, is the complainant, at whose instance, the proceedings were initiated. He has deposed about the manner in which the dead body was spotted from the land, which was tilled by him and he

Sarpanch, of the tracing of the dead body and further also deposed about the manner in which they had proceeded to the spot and he had got recorded his statement to the police. His deposition is in verbatim with the version so put forth by the prosecution in the report under Section 173 Cr.P.C.

PW-8 Harpreet Singh is son of Kundha Singh. Besides deposing about his relationship with the deceased, he has also deposed that his father Kundha Singh was Conductor in Punjab Roadways. He also deposed about his father of having taken a room on rent near bus stand Moga, where after duty hours, he used to take rest. He further deposed that he also used to come to this room, after his duty hours and after taking rest, they used to proceed further to the house. He further deposed that on 05.09.2002, at about 7.00 p.m., he came to the rented room, after duty hours. His father was sitting there along with Lakhbir Singh @ Beeri and Joginder Singh and they were consuming liquor. He also deposed that he had asked his father to accompany him to village Buttar Kalan but his father had asked him to proceed to the village Buttar Kalan and that Lakhbir Singh @ Beeri and Joginder Singh shall leave him at village Buttar Kalan. He also deposed that at that time, his father was wearing one HMT wrist watch and a gold ring. He also deposed that his father was having cash bag and salary. He also deposed that on 07.09.2002, he came to know about death of his father Kundha Singh. He identified various ornaments as well as wrist watch and clothes of his father, which were shown to him at time of recording of his statement.

PW-9 Gurmail Singh has deposed about having spotted Kundha Singh (now deceased) with Lakhbir Singh and Joginder Singh on

Kundha Singh. He deposed about having recorded his statement to the police.

PW-10 SI Kirpal Singh deposed about having conducted part investigation of the present case. He has deposed about recording of statement of the complainant, which is Ex.PJ and endorsement upon the same is Ex.PJ/1. Copy of FIR is Ex.PJ/2. He further deposed about having visited the spot, while taking Gurjant Singh along with him and also deposed about the detail of the proceedings having conducted there. He deposed about a pair of jutti, undershirt, shirt, pyjama, having found there, which were converted into parcel and taken into possession, vide recovery memo Ex.PK. One bag of conductor, punch for punching tickets, one whistle and one key as well as way bill of bus from 03.09.2002 to 05.09.2002, were also recovered in the said bag. Some tickets were found in the said bag. Even chaddar was lying there. Two purses were also found on the ground and one purse was containing identity card of Kundha Singh deceased. Even he deposed about the detail of the currency notes/coins recovered from the purse and all such articles were converted into parcel and taken into possession vide memo Ex.PM. He also deposed about the dead body having retrieved from the well with the help of villagers and the same was identified to be that of Kundha Singh. Even blood-stained earth was lifted from the bottom of the well and converted into parcel and taken into parcel, vide memo Ex.PN. He further deposed about inquest report having prepared which is Ex.PB. Photography of the dead body and the spot was got conducted. Post-mortem of the dead body was also facilitated through Head Constable Surinder Pal and Constable Sukhdev Singh. He

produced before him, which was taken into possession vide memo Ex.PO. Rough site plan of the spot was also prepared. He recorded statements of the witnesses and thereafter, challan was presented.

PW-11 Sadhu Singh, who is employee of Punjab Roadways., has deposed about knowing Kundha Singh, who was Conductor in their department. He proved his identity card, which is Ex.P26. He also proved the waybill Ex.P20, which was issued by him on 03.09.2002 to Kundha Singh. Bundle of tickets is Ex.P21. On that day, tickets worth ₹11,812/- were issued to Kundha Singh, Conductor. He identified signatures of Kundha Singh in the record brought by him about receipts of tickets.

PW-12 Baljinder Pal, gold smith, has proved the bill Ex.P27 relating to preparation of gold *karra* from his shop. **PW-13 Harpal Singh** has proved the guarantee card Ex.P28, pertaining to HMT watch sold to Kundha Singh on 05.12.2001, which was purchased from his shop.

PW-14 Head Constable Gurmail Singh and **PW-15 Head Constable Paraha Singh**, tendered into evidence their affidavits Ex.P29 and Ex.P30, which is formal evidence.

PW-16 Inderdev Singh has deposed about himself to be posted as Tehsildar at Moga on 20.09.2002 and further deposed about having facilitated the identification of the items of the case property of the case on the basis of the application filed by SI Kirpal Singh and the articles, watch and *karra* were identified by Manpreet Singh and two other persons, who were Baljinder Singh and one goldsmith. He also made report of identification proceedings, which is Ex.P31.

PW-17 ASI Ram Singh, is the Investigating Officer of the present case. He has deposed about receipts produced by Kuldip Kaur on

10.09.2002, which were taken into possession. He further deposed about disclosure statements made by Lakhbir Singh and Joginder Singh during the course of interrogation on 14.09.2002. He also deposed about recovery of various articles at their instance and having converted the same into parcels and taken into possession vide separate memos. He also deposed about having prepared the rough site plan of the place of recovery, which are Ex.PF/2 and Ex.PG/2.

PW-18 Darshan Singh, Patwari, has deposed about having prepared scaled site plan of the spot, which is Ex.P32.

PW-19 Gurcharan Singh has deposed about himself, being driver of vehicle bearing registration No.PB-08-2039 and also deposed that in the year 2002, he was coming from Badhni while driving the said vehicle and when he was little short of Bhugipura Chowk, he had taken turn towards Mehma Singh Wala. When, he was about half a kilometre short of village Mehma Singh Wala, then he spotted two persons standing on the side of the road. Amongst them was Lakhbir Singh, whom he knew but he did not knew the name of other person. However, he identified him while deposing in the Court. He has deposed about the aforesaid persons to have made request for lift and he had extended lift to both the said accused, he boarded his vehicle and they came with him upto Kot Kapura bypass road turn. On the third day, thereafter, he was called by the police and was told that a murder had taken place at the spot at short distance from where accused had taken lift in his vehicle.

PW-20 Kulwinder Kaur, Clerk, Punjab Roadways, had deposed about transfer order of Kundha Singh, Conductor number 82,

Conductor was holding conductor number 123 at Depot Jagraon and on his transfer to Depot Moga, number assigned to him was 82.

PW-21 Harbhupinder Singh, has deposed about himself to be Member of Zila Parishad of Zone Dhudike, District Moga. He also deposed that on 12.09.2002 at about 7.00 a.m, when he was present at his residence at Moga, Lakhbir Singh and Joginder Singh had come and had disclosed to him about having murdered Kundha Singh resident of Buttar Kalan, who was Conductor in Punjab Roadways. He also deposed about the manner in which Lakhbir Singh had disclosed the episode. In this manner, even Joginder Singh had disclosed about the episode. He also deposed that he had produced both the accused before SI Kirpal Singh at about 10.00 a.m. He further deposed about both to the accused to have been arrested by SI Kirpal Singh and various memos relating to their arrest having prepared, which was attested by him and his statement was recorded.

Thereafter, learned Public Prosecutor tendered into evidence report of FSL Ex.P37 and then evidence was closed.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements under Section 313 Cr.P.C. However, both the accused denied those allegations and pleaded innocence and false implication.

In defence, learned counsel for accused Joginder Singh, tendered into evidence, certified copy of complaint and summoning order Ex.D1 and Ex.D2, respectively and thereafter, evidence of the accused was closed.

After hearing learned Public Prosecutor, learned counsel for the

accused and on appraisal of the evidence, brought on record, vide judgment of conviction dated 08.06.2005, both the accused were held guilty and convicted for commission of offence under Section 302 read with Section 34 IPC and vide order of sentence dated 10.06.2005, they were sentenced as detailed in the earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants Lakhbir Singh @ Beerli @ Lambardar and Joginder Singh have filed the respective appeals.

We have heard learned counsel for the appellants and learned State counsel and have perused the record.

At the very outset, learned counsel for the appellants, in unison, have submitted that in the present case, there is no eye witness to the occurrence in question and in the absence of any witness to the occurrence, the prosecution is duty bound to establish the chain of circumstantial evidence, to this extent that it only leads to the conclusion of accused persons, being the culprits. However, they pointed out that the circumstantial evidence, so relied upon by the prosecution is incoherent and insufficient in form, continuity and content and falls short of the legally prescribed standards, to return a finding of guilt, on the basis thereof. Making reference to the so called circumstances, allegedly surfacing from the evidence brought on record, it has been emphatically submitted that the prosecution has failed to establish the guilt of accused persons, beyond shadow of reasonable doubt. Learned counsel for the appellants, in unison, have very painstakingly drawn our attention to the various aspects of the case, which according to them, demolish the very substratum of prosecution

in all human probability, do not link the accused persons, to the commission of crime. In fact, it is pointed out that there is no acceptable evidence to establish the linkage of the accused, vis-a-vis the commission of the crime. The circumstantial evidence, so relied upon by the prosecution, is the padding coming forth, in exaggeration, to establish the connectivity of the accused with the occurrence in question. It is submitted that evidence coming on record as it is, so taken, at the maximum, can be taken to raise suspicion, but it does not conclusively prove the guilt of the accused. Rather, it is pointed out that the version of extra-judicial confession, recovery on the basis of disclosure statement, spotting of the accused persons, near the spot of taking place of occurrence as well as having been last seen in the company of victim, have been padded down. Even, learned counsel for the appellants submitted that witnesses, so relied upon by the prosecution, are related to the deceased, which in itself raises suspicion about the truthfulness of the version, so put forth by them. Thus, learned counsel for the appellants, in unison, have a made prayer for acquittal of both the appellants.

In refutation, learned State counsel has submitted that even though, there is no direct evidence vis-a-vis the murder of Kundha Singh, coming on record, but however, the circumstantial evidence brought on record, does amply establish the complicity of both the accused, in causing the death of Kundha Singh and extortion, having been committed, at their instance. It is pointed out that the chain of circumstantial evidence has been completely linked to both the accused, which unerringly point the needle of guilt towards them. He has submitted that the prosecution has proved the

circumstances coming forth, as from the testimonies of various witnesses examined by the prosecution. He has pointed out various circumstances, spelt out in the evidence, relating to making of extra judicial confession, making of disclosure statement and the recovery of the incriminating articles, on the basis thereof, as well as spotting of the accused by the prosecution witnesses, near the spot of occurrence and also about the deceased, to have been lastly seen in the company of both the accused. Even, it is submitted by learned State counsel that fact of relationship existing between the deceased and the prosecution witnesses, solely does not raise doubt about the truthfulness of the testimonies of the aforesaid witnesses. In fact, at the maximum, the testimonies are to be appraised with caution but even then, they inspire confidence. Thus, summing up his arguments, learned State counsel has submitted that learned trial Court has rightly appraised the evidence, so brought on record and rightly convicted and sentenced the accused.

Before proceeding further, to the factual and evidential appraisal, in the case in hand, it is important to make mention about the manner of appraisal of evidence, in a criminal trial. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of **“may be true”** but has to essentially elevate it to the grade of **“must be true”**. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion, do not take the place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit

reasonable and not imaginary, fanciful, intangible or non existent, but as entertain-able by an impartial, prudent and analytical mind, judged on the touch stone of reason and common sense. Very close to the same, there has to be underlying string running throughout about the inalienable interface of presumption of innocence and the burden of truth, in a criminal case, which is always on the prosecution.

Very true, as pointed out during the course arguments, that there is no direct evidence to connect the accused with the crime. However, the prosecution has relied upon circumstantial evidence, to prove the charges against the accused persons. In a case of circumstantial evidence, all the circumstances must be fully established and all the facts, so established, must be consistent only with the hypothesis of the guilt of the accused. The circumstances, so established, should exclude every other possible hypothesis except one, sought to be proved. The circumstances must be conclusive in nature. The circumstantial evidence is a close companion of factual matrix, creating a fine network, through which, there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit the Court to arrive at any other inference, but one indicating the guilt of the accused. At the same time, while dealing with the case of circumstantial evidence, the Court has to be circumspect. A note of caution has been sounded by the Hon'ble Courts, time and again, while dealing with a case of circumstantial evidence. The Courts have to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof.

In this backdrop, now adverting to the case in hand.

To establish the fact of death, the prosecution has examined

PW-1 Dr.Navraj Singh, who had conducted post-mortem examination on the dead body of Kundha Singh on 07.09.2002. This witness has categorically deposed about the conducting of the post-mortem examination and detail of the injuries found on the dead body of Kundha Singh, which has already been reproduced in the earlier portion of the judgment. He has also proved the photocopy of the post-mortem report, which is Ex.PA and pictorial diagram is Ex.PA/1. The said witness has further opined that cause of death in this case was due to injury to the vital organ brain and injury to lung caused by the aforesaid injuries which were ante-mortem and sufficient to cause death in an ordinary course of nature. The probable time between injuries and death was immediate and between death and post-mortem was 24 to 36 hours. Thus, from the testimony of the aforesaid witness, the fact of death of Kundha Singh, stands amply established.

Now, it has to be ascertained, whether the death was due to homicidal violence or not. Undisputedly, in the present case, there is no eye witness to the occurrence in question. The ball was rolled at the instance of PW-7 Gurjant Singh, who is complainant. He was the one, who had firstly spotted the dead body in the well existing in his fields. Thereupon, he had informed Roop Singh Sarpanch and thereafter, he had suffered statement Ex.PJ before the police. He is an independent witness, who has no connection with the either party. There is nothing, coming on record about the said witness to be having vested interest in the false implication of both the accused.

Considering the same, now moving forward, reference is made to the testimony of PW-8 Harpreet Singh, who is son of deceased Kundha Singh. He had categorically deposed that Kundha Singh had rented a room

at Moga, which was being used by them for retiring after their job fatigue. He has also deposed that he had seen Kundha Singh in the company of both the accused while taking liquor in the said room. He had asked Kundha Singh for going to his village but he stated that he would be taken to Buttar Kalan by the accused. Even, Harpreet Singh has deposed that at that time, his father was wearing one HMT wrist watch and one gold ring and was having cash in bag and his salary. He also deposed that he came to know about the death of his father on 07.09.2002 and he identified various articles of his father. His testimony proves that when he left for his village, he had left behind Kundha Singh in the company of both accused. Besides the aforesaid, it is important to note that PW-9 Gurmail Singh resident of Buttar Kalan, had also deposed that while he was proceeding to his village on scooter, on way, he saw Kundha Singh in company of accused i.e. Lakhbir Singh @ Beeri @ Lambardar and Joginder Singh. He had asked Kundha Singh to accompany him to the village. However, Lakhbir Singh @ Beeri @ Lambardar and Joginder Singh stated that they would leave Kundha Singh to his village. Even, said witness deposed that on 07.09.2002, he came to know about the death of Kundha Singh. Thus, from his testimony, it is evident that he had seen Kundha Singh in the company of accused lastly before his death.

Furthermore, PW-2 Kuldip Kaur, who is widow of Kundha Singh deceased, has deposed that on 05.09.2002, her husband had left the house and at that time, he was wearing golden karra, gold ring, wrist watch, *kurta*, pyjama having dabbies and *dupatta* (soft turban) on his head. She had also produced two receipts regarding *karra* and wrist watch. She also identified the *karra*, ring, wrist watch of her husband, on opening of the

parcels. Her testimony proves about various articles, which were worn by her husband, while he parted the company from her.

Very close to the same, it is important that both the accused had made extra-judicial confession to PW-21 Harbhupinder Singh and on the basis thereof, he had produced both the accused before the Investigating Officer. Throughout the arguments, learned counsel for the appellants, have submitted that 'extra judicial confession' is a weak type of evidence and it would be unsafe to rely upon extra judicial confession to base conviction of the accused. However, the aforesaid submission is not tenable.

It is settled law that an extrajudicial confession, if voluntary and true and made in the fit state of mind, can be relied by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness, to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness, who gives evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend upon the nature of the circumstances, the time when the confession was made and the credibility of the witness, who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon, if the evidence about the confession comes from the mouth of witness, who appears to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. After subjecting the evidence of the witness to a rigorous test on the

can be the basis of a conviction, if it passes the test of credibility.

In this backdrop, now adverting to the case in hand, it is important to make mention that PW-21 Harbhupinder Singh, is member of Zila Parishad of Zone Dhudike. He has categorically deposed that on 12.09.2002, both the accused Lakhbir Singh @ Beerli @ Lambardar and Joginder Singh, had come to his house and confessed before him about having committed murder of Kundha Singh, while being pricked with greed. He also deposed about having produced both of them before ASI Ram Singh at 10.00 a.m. This witness has been subjected to lengthy cross-examination but nothing material elicited out, to dislodge his version, vis-a-vis, making of confession of the guilt by both the accused to him.

Not only this, even further credence is lent to the prosecution version, as during the course of investigation, in the presence of said witness, both the accused had made disclosure statements, about having kept concealed the gold *karra* as well as wrist watch of Kundha Singh in their possession and on the basis thereof, recovery had also been effected. The disclosure statements as well as the recovery on the basis thereof and the memos relating to the same, have been duly proved by the prosecution witnesses. Thus, the recovery of the articles, worn by the deceased, lastly when seen in the company of both the accused, have been duly proved by the son and widow of deceased namely PW-8 Harpreet Singh and PW-2 Kuldeep Kaur. The said articles have also been got identified from the concerned persons in the presence of Inder Dev, Tehsildar-cum-Executive Magistrate, who had proved the identification report Ex.P31. Thus, the version of making of the extrajudicial confession and the disclosure statement and recovery of articles, at the instance of both the accused,

stands duly proved and the same strengthens the prosecution version.

Another circumstance, to establish the connectivity of the accused with the occurrence in question, is about the accused having taken lift from PW-19 Gurcharan Singh, near the spot of occurrence. This witness has categorically deposed that he was driver of vehicle bearing registration No.PB-08-2039 and in the year 2002, at about 9.30 p.m., he was proceeding from Badhni while driving said vehicle. When he reached Bhughipura chowk, to avoid picketing of DTO, he took turn towards Mehma Singh Wala and when he was about half kilometer short of village Mehma Singh Wala, he saw two persons standing on the side of the road. On their asking for lift, he had extended lift to them. He categorically deposed that he knew Lakhbir Singh @ Beeri @ Lambardar accused, who was one of the said persons and the other person, was not known to him but he identified the said accused, when his statement was being recorded. He further deposed about having extended lift to the said persons to Kot Kapura by-pass road turn. Thus, from his testimony, it stands established that both the accused were given lift by the said witness, from the place very near to the spot of occurrence.

It is also submitted by learned counsel for the appellants that in the present case, testimonies of PW-8 Harpreet Singh and PW-2 Kuldip Kaur do not inspire confidence as they are interested witnesses, being son and widow of the deceased. However, the aforesaid submission is not tenable.

Relationship is not a factor to effect credibility of a witness. It is more often than not that relation would not conceal actual culprit and make allegations against an innocent person. Ordinarily, a close relation

would be the last to screen the real culprit and falsely implicate an innocent person. However, where, only related witnesses have been examined, the Courts are required to adopt a careful approach and analyze the evidence to find out, whether it is cogent and reliable. The credibility of a witness cannot be judged, mainly on the basis of his close relation with the deceased and as such, cannot be a ground to discard his testimony. However, there cannot be a mechanical rejection of the witness, who is related to the deceased. Thus, it is required to be kept in mind that each case has to be adjudicated in the backdrop of its own factual position and the Courts have to adopt careful approach and analyse the evidence, whether it is cogent and reliable. If the witnesses stepping in the witness box are related to the deceased, it only cautions the Court to scrutinize their statements more carefully. Considering this caution, the statements of aforesaid witnesses, who are son and widow of the deceased, have been carefully appraised by learned trial Court. No reason, as such, is coming forth, as to why these witnesses would depose to implicate both the accused, more particularly, when no such, enmity or animosity of the victim side qua both the appellant is alleged or evident. Thus, the submission, so made, pales into insignificance.

Furthermore, it has been submitted that no reliance can be placed upon the testimony of PW-21 Harbhupinder Singh, to whom the extra-judicial confession is allegedly made by both the accused, as a complaint has been filed against Harbhupinder Singh, while alleging that he had made wrong statement under Section 161 Cr.P.C. and he had been summoned in the same. Learned counsel for the accused Joginder Singh

complaint and the summoning order, which are Ex.D1 and Ex.D2. The perusal of the same reveals that a complaint has been filed against Harbhupinder Singh and one Tek Chand under Section 500 IPC and therein, there are allegations about Harbhupinder Singh to have made wrong statement under Section 161 Cr.P.C. Vide order dated 24.04.2004, witness Harbhupinder Singh along with co-accused, has been summoned to face trial for offence punishable under Section 500 IPC. However, filing of such criminal complaint and summoning of Harbhupinder Singh, as accused, in said criminal complaint, cannot ipso facto, be taken to disbelieve his version, so coming forth, more particularly, when he has been cross-examined at length and nothing substantial has come forth, to disbelieve his testimony. What is the status of that complaint, as such, is also not coming forth. Thus, no ground is made out to disbelieve the testimony of PW-21 Harbhupinder Singh.

Thus, in the light of aforesaid discussion, the chain of circumstantial evidence stands completely linked to the accused leading to the conclusion of both the appellants to have committed murder of Kundha Singh and extorted valuable articles from him, while causing injuries to him and in fact, caused death of Kundha Singh. Therefore, learned trial Court has appraised the evidence in correct perspective and rightly held both the appellants guilty and convicted them and adequately sentenced them.

As such, the impugned judgment merits no interference. As such, both the appeals sans merit and they are consequently dismissed.

As accused-appellants, namely, Joginder Singh and Lakhbir Singh @ Beeri @ Lambardar, are on bail, their bail bonds stand cancelled

and they are directed to surrender themselves before the jail authorities

immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

(JITENDRA CHAUHAN)

JUDGE

December 16, 2019

Vgulati

(ARCHANA PURI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No