

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

(1) CRA-D-111-DB of 2011 (O&M)

Mahavir

.... Appellant

Versus

State of Punjab

..... Respondent

(2) CRA-D-217-DB of 2011

Anil Bhamboo and another

.... Appellants

Versus

State of Punjab and others

..... Respondent

(3) CRA-D-767-DB of 2011

State of Punjab

.... Appellant

Versus

Mahavir and another

..... Respondents

Reserved on : 05.09.2019

Date of decision : 10.09.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellant in CRA-D-111-DB of 2011,
for respondent No.2-Mahavir in CRA-D-217-DB of 2011 and
for respondent No.1-Mahavir in CRA-D-767-DB of 2011.

Mr. A.P.S. Mann, Advocate,
for the appellants in CRA-D-217-DB of 2011.

Mr. H.S. Grewal, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these appeals, i.e. CRA-D-111-DB of 2011, CRA-D-217-DB of 2011 and CRA-D-767-DB of 2011, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 13.01.2011 and order dated 14.01.2011, rendered by learned Sessions Judge, Ferozepur. Appellant Mahavir along with co-accused Ram Kumar was charged with and tried for the offences punishable under Section 302 IPC on three counts for committing murders of Ranbir, Suman and Sumit and under Section 460 IPC. They were convicted and sentenced to undergo imprisonment for life, but with the condition that they shall not be released before completing actual term of 20 years and to pay a fine of ₹ 10,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for two years under Section 302 IPC, on three counts for committing murders of Ranbir, Suman and Sumit. They were also convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of ₹ 5,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for one year under Section 460 IPC. All the substantive

sentences were ordered to run concurrently.

3. Co-accused Ram Kumar has not preferred an appeal.
4. Complainant Anil Bhamboo (brother of deceased Suman) and Veenu (minor daughter of deceased Ranbir and Suman) have filed CRA-D-217-DB of 2011 seeking enhancement of sentence from life imprisonment to death sentence to both the accused, namely Mahavir and Ram Kumar. Appellant No.2 Veenu is also seeking compensation.
5. The State of Punjab by way of CRA-D-767-DB of 2011 sought capital punishment for both the accused.
6. The case of the prosecution, in a nutshell, is that on 02.09.2008, a telephonic message was received in Police Station Khuian Sarwar to the effect that Ranbir son of Manphool as well as his wife Suman and son Sumit, all residents of village Dhinganwali, were murdered. SI/SHO Sat Pal Singh accompanied by ASI Rajdeep Singh and some other police officials, immediately rushed to village Dhinganwali. He visited the spot. Complainant Anil Bhamboo was present. He disclosed before SI/SHO Sat Pal Singh that his sister Suman was married to Ranbir Saharan 14 years ago. She had two children, namely daughter Veenu, aged about 12 years, who was getting education at her maternal parents house, and son Sumit Kumar, aged about 8 years. Suman along with her husband Ranbir and son Sumit was living separately from her in-laws, for the last 4 years. Suman used to tell him (complainant) that her brother-in-law (Jeth) Mahavir and sister-in-law (Jethani) were jealous towards them on the ground that Suman had one son, whereas they had two sons, and at the time of partition, the property would be divided into two equal shares. Thus, their sons would get lesser

share than that of the son of Suman. Brother-in-law and sister-in-law of Suman used to pressurise her father-in-law that the property should not be divided into two shares, rather it should be divided into three shares. Last night, at about 1.30 AM, Suman made a call from the Cell phone No. 094176-31521 of her husband on his Cell phone No. 094611-77733. She told him that her brother-in-law Mahavir and his old agriculturist servant Ram Kumar were causing injuries to all her family members. Thereafter, the phone went off. He rang up his brother-in-law on his mobile phone as well as on the landline phone, but no body responded. Assuming it to be a minor quarrel, he did not opt to come at night to village Dhinganwali. In the morning, he again rang up, but he could not contact the family members. At about 9.00 AM, he along with his uncle Hans Raj came to village Dhinganwali. He came to know that his sister Suman, her husband Ranbir and son Sumit had been murdered by Mahavir and Ram Kumar. FIR Ex.P31/B was registered. The spot was inspected by the police officials. The Investigating Officer took into possession spade (Kahi) smeared with blood. He also lifted blood lying under the beds of deceased Ranbir, Suman and Sumit in separate plastic containers. Pillow stained with blood lying near the bedsteads was also converted into a parcel. A wooden seat (Piri) smeared with blood, which was lying at the spot, was also taken into possession. A pair of nylon chappals smeared with blood lying at the spot was converted into a parcel. Another pair of chappals of the child was also taken into possession. A wooden three pronged Tirangi smeared with blood was lying near the cot of Suman and her son Sumit. It was also converted into a parcel. Some hair were lying on the floor near the cot of deceased

Ranbir, which were put into a plastic container. Inquest reports Ex.P3, Ex.P6 and Ex.P9 were prepared qua three deceased. The post mortem of all the three deceased was got conducted. On 04.09.2008, PW.14 Babu Lal Juneja produced accused Ram Kumar before SI/SHO Sat Pal Singh. He was interrogated. He made disclosure statement Ex.P48 that he had kept concealed one gold necklace contained in a glazed envelop in his house underneath the ground. He got recovered the said necklace from the pre-disclosed place. On 05.09.2008, accused Mahavir was produced by PW.13 Parvesh Kichar before the Investigating Officer. He also made disclosure statement Ex.P46 to the effect that he had kept concealed a gold chain along with locket in the room meant for storing chaff in his residential house. He got recovered the same. An application was also moved before Judicial Magistrate, Abohar, for obtaining sample of hair of accused Ram Kumar. He refused to give sample of his hair. However, Mahavir consented to give the sample of his hair. A hair dresser was called. The hair of Mahavir were taken as sample. These were converted into parcel. On 08.09.2008, accused Mahavir was again subjected to custodial interrogation. He made disclosure statement Ex.P63 that a Kameej, Pyjama along with hand gloves smeared with blood, wrapped in a glazed paper, were kept concealed under the ground in the fields of cotton. He got recovered the clothes from the disclosed place. These were taken into possession. The Investigating Officer prepared the rough site plan of the place of recovery. Accused Ram Kumar also made a disclosure statement Ex.P66 that he had kept concealed the clothes i.e. shirt, in the pocket of which there was gold ring wrapped in a lower (pyjama), in the cremation ground of village Dhinganwali. He got

recovered the same from the pre-disclosed place. The Investigating Officer prepared rough site plan. The investigation was completed and challan was put up after completing all the codal formalities.

7. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They examined nine witnesses in their defence.

8. The appellant and co-accused Ram Kumar were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

9. Learned counsel appearing on behalf of appellant Mahavir in CRA-D-111-DB of 2011 has vehemently argued that the prosecution has failed to prove its case.

10. Learned counsel appearing for the State has supported the judgment of conviction of the learned Court below. However, with regard to sentence, he has submitted that the sentence awarded to the accused be enhanced to capital punishment.

11. Learned counsel appearing on behalf of the complainant Anil Bhamboo as well as Veenu, minor daughter of deceased Ranbir and Suman, has vehemently argued that compensation be awarded to appellant No.2 Veenu in CRA-D-217-DB of 2011, as she has lost her parents and younger brother.

12. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

13. PW.1 Dr. Kanchan conducted the post mortem examination on the body of Suman. She noticed following injuries on her person :-

- (1) There was lacerated wound of size 15 cm x 4 cm x 3 cm on left side of face involving fracture of left mandible. Multiple fractures were present in the mandible. Near angle of the mouth fracture of left cheek bone and lacerated left ear and below the ear.
- (2) Oblique lacerated wound of size 12 cm x 1 cm x 1.5 cm extending from left side of fore head, obliquely towards left ear with fracture of underlying frontal bone.
- (3) Lacerated wound of size 10 cm x 2 cm x 1 cm extending from lower lip. (Whole lower lip was lacerated and separated pushed to right) to obliquely towards upper part of neck.
- (4) Incised looking wound of size 15 cm x 1 cm x 1 cm with fracture of underlying left parietal bone.

According to her opinion, the death was due to injury to great vessels in the neck and head injury which were sufficient in ordinary course of events to cause death. All the injuries were ante mortem in nature. Probable time that elapsed between injuries and death was immediate and between death and post mortem examination was within 36 to 48 hours. She proved the post mortem report Ex.P1. In her cross-examination, she deposed that injury No.4 could be caused by a blunt weapon. According to her, the deceased might have taken her last meals about two or three hours prior to her death. She further deposed in her cross-examination that possibility of all the injuries appearing on the body of Suman could not be ruled out while she was lying on the bed.

14. PW.2 Dr. Alka Khurana conducted the post mortem examination on the body of Ranbir. She noticed following injuries on his person :-

- (1) An incised wound 8 cm x 5 cm on the right side of cheek, 4 cm below the right eye.
- (2) A cut about 3 cm x 2 cm on right ear.
- (3) An incised wound 10 cm x 1 cm on the right side of cheek, 1 cm above the injury No.1.
- (4) An incised wound 5 cm x 1 cm on the right side of cheek, 1 cm below the injury No.1.
- (5) An incised wound 6 cm x 2 cm on the right side of neck.

According to her opinion, the cause of death was injury to great vessels in neck and head. Injuries were sufficient to cause death in ordinary course of events. All the injuries were ante mortem in nature. Probable time that elapsed between injuries and death was immediate and between death and post mortem examination was within 36 hours. She proved the post mortem report Ex.P4. She also conducted the post mortem examination on the body of Sumit. She noticed following injuries on his person :-

- (1) An incised wound 4 cm x 1 cm on the left side of skull, 2 cm from the left ear pinna.
- (2) A cut about 2 cm x 1 cm on the left ear.
- (3) An incised wound 10 cm x 3 cm on the left side of cheek, 3 cm below the left eye.
- (4) An incised wound 6 cm x 2 cm on the left side of cheek, 3 cm below the injury No.3.

In her opinion, the cause of death was injury to great vessels in neck and head, which was sufficient to cause death in ordinary course of events. All the injuries were ante mortem in nature. Death in this case was immediate on sustaining injuries, whereas the probable time that elapsed between death and post mortem examination was within 36 hours. She proved the post mortem report Ex.P7.

15. PW.3 Raj Kumar Verma prepared the scaled site plan Ex.P10 .
16. PW.4 Arvinder Kumar had prepared the video CD Ex.P12 of the place of occurrence as well as of the dead bodies.
17. PW.5 ASI Rajinder Kumar had clicked the photographs Ex.P14 to Ex.P29 of the dead bodies from different angles.
18. PW.6 Davinder Pal Mahajan produced the call details of Cell phone Nos. 94611-77733 and 94176-31521 vide Ex.P30. In his cross-examination, he deposed that if the call is not answered, its duration is not recorded. Duration shown as '0' in Ex.P30 depicts that SMS was made.
19. PW.7 Anil Bhamboo is a material witness. According to him, his sister Suman was married to Ranbir Saharan, resident of village Dhinganwali, about 14 years ago. One daughter Veenu and one son Sumit were born out of their wed-lock. Veenu was studying with them at village Makkasar. As and when his sister Suman used to visit them, she used to disclose that the brother of her husband (Jeth) Mahavir and his wife Indra were bearing grudge against them on the ground that she had one son, whereas elder brother of her husband had two sons, and in case, the property is partitioned, her son would get double the property than that of the sons of her Jeth Mahavir. Accused Mahavir and his wife used to put pressure upon the father-in-law of his sister Suman that the entire property be partitioned in three shares. On the intervening night of 01/02.09.2008, at about 01.30 AM, he received a telephonic call on his cell phone No. 94611-77733 from the cell phone No. 94176-31521 of the husband of his sister. At that time, his sister Suman told him that her Jeth Mahavir and their old agriculturist servant Ram Kumar were killing her family. Thereafter, the cell phone went

off. He rang up his brother-in-law on the aforesaid number, but there was no response. He also rang up on the landline phone No. 01634-365321 from his Cell phone. It was also not attended. Thereafter, he rang up the landline phone of Mahavir bearing No. 01634-265636, but even that phone was not attended by any one. He was under the impression that there might be some minor quarrel. Therefore, he did not make any effort to visit village Dhinganwali at night time. Again in the morning, he made a telephonic call, but he did not get any response. In the morning on 02.09.2008 at about 9.00 AM, he accompanied by his uncle Hans Raj reached village Dhinganwali. He found that his sister Suman, brother-in-law Ranbir Saharan and his sister's son Sumit had been killed by Mahavir and Ram Kumar accused with sharp edged weapons. He rang up his father and gave him information about the occurrence. His father along with other relatives reached village Dhinganwali. The police also reached the spot. His statement was recorded. The motive behind the occurrence was in respect of division of the land due to which the elder brother of husband of his sister Mahavir and Ram Kumar committed the murder of his sister. In his cross-examination, he deposed that he had one brother. He had only one sister, who was deceased. Ram Niwas, his brother, was elder to him. His family owned about 27-28 bighas of agriculture land. The land was in the name of his father in the revenue record. He further deposed in his cross-examination that the land was partitioned for agricultural purposes in between Mahavir accused and Ranbir deceased and father Manphool. But in the revenue record, the land was shown to be joint in the name of all the three persons. He was not aware that accused Mahavir obtained loan from Oriental Bank, Abohar, by

mortgaging the joint land. He admitted that five and half acres of land was mutated in the name of Veenu alias Raveena, after the murder of her father Ranbir. He also admitted that Ranbir used to live separately from his brother Mahavir along with his family members. He also admitted that during the life time of Ranbir, his father purchased about eight killas of land in the name of Suman and wife of Mahavir accused vide two separate sale deeds in favour of both the ladies. He also admitted that he had sold cotton crop grown in the field of Ranbir for a sum of ₹ 1,00,000/- approximately, after the death of Ranbir. He had also sold orange grown in the land owned by Ranbir for a sum of ₹ 95,000/-. When he came to village Dhinganwali in the morning on 02.09.2008, he left his Cell phone at his house at village Makkasar.

20. PW.12 Hans Raj deposed that his niece Suman was married to Ranbir for the last 14-15 years, prior to the occurrence. She was blessed with two children. Elder was a daughter. She was aged about 14 years and was being brought up since her childhood by her maternal uncle at village Makkasar. Another child of the deceased was Sumit, who was about 10 years of age. On 02.09.2008, he along with ASI Rajdip Singh and some other police officials was present at village Dhinganwali, where the instant occurrence had taken place. A spade smeared with blood was lying at the place of occurrence, which was converted into a parcel. The police officials also lifted the blood lying under the cot of the dead body of Ranbir. It was put into a plastic container. Similarly, blood lying under the cot of Suman and Sumit was also lifted. A pillow smeared with blood lying near the cots of the deceased was also converted into a parcel. A wooden Piri smeared

with blood, a pair of nylon chappals and another pair of chappals were also taken into possession. In his cross-examination, he deposed that he was not directly related to Anil Bhamboo. The dead bodies were lying in the inner court yard of the house of Ranbir. Anil Bhamboo and 2/3 other members of his family were presently residing at the house of Ranbir, since deceased.

21. PW.13 Parvesh Kichar deposed that on 05.09.2008, he produced Mahavir before SHO Police Station Khuian Sarwar. He was interrogated. He made a disclosure statement Ex.P46 that in the intervening night of 01/02.09.2008, he, after committing the murder of his brother Ranbir, sister-in-law Suman and nephew Sumit, removed the gold chain along with locket from the neck of Suman. Accused Mahavir also disclosed that he had kept concealed the gold chain and locket under the chaff lying in the room of his residential house. Accused got the chain and locket recovered. These were taken into possession vide recovery memo Ex.P47.

22. PW.14 Babu Lal Juneja produced accused Ram Kumar on 04.09.2008 before SHO, Police Station Khuian Sarwar. He made disclosure statement Ex.P48 that he had kept concealed necklace of gold underneath the earth. He got recovered the same from the pre-disclosed place. It was taken into possession vide memo Ex.P49.

23. PW.15 Prithvi Raj deposed that on 08.10.2008, he visited Police Station Khuian Sarwar. Sat Pal Singh SHO of the police station produced before him a necklace of gold, one gold chain along with locket and one gold ring, for the purpose of identification. These articles were given as gift at the time of marriage of Suman about 15-16 years ago. This gold jewellery was got prepared by them from a gold smith at

Hanumangarh.

24. PW.16 Inspector Sat Pal Singh deposed that Anil Bhamboo got recorded his statement Ex.P31. Its contents were read over to him. FIR was registered. He took into possession a spade (Kahi) smeared with blood, after converting the same into parcel. He also lifted blood lying under the bed of deceased Ranbir as well as under the bed of Suman and Sumit. A pillow stained with blood was also taken into possession. A wooden seat (Piri) smeared with blood, a pair of nylon chappals smeared with blood and another pair of chappals of the child were also taken into possession. Some hair were also lying on the floor near the cot of deceased Ranbir. These were also taken into possession. The strips of nylon of the cot of deceased Ranbir and of the other cot of Suman and Sumit, smeared with blood, were also taken into possession. He prepared inquest reports. The post mortem was got conducted. On 04.09.2008, accused Ram Kumar made a disclosure statement to the effect that he had kept concealed one gold necklace contained in a glazed envelop in his house underneath the ground. He got it recovered. On 05.09.2008, accused Mahavir was produced before him by Parvesh Kichar. He made disclosure statement that he had kept concealed a gold chain along with locket in the room meant for storing chaff in his residential house. He got it recovered. On 08.09.2008, accused Mahavir was again interrogated. He made disclosure statement Ex.P63. He got recovered the clothes smeared with blood. Accused Ram Kumar also made a disclosure statement Ex.P66. He also got recovered the clothes stained with blood. In his cross-examination, he admitted that on the gold chain and locket, there was no dust. These were not sent to Forensic Science

Laboratory for test. Similarly, there was also no dust on the gold necklace. There was no blood on the gold ring. He categorically deposed that they reached at the spot within half an hour. At that time, large number of persons were present at the spot. Anil Bhamboo, Mahavir and his family, Hans Raj elder brother of the father of Anil Bhamboo etc. were present at the spot. Accused Mahavir was arrested by him at about 12.00 noon/1.00 PM on 05.09.2008. Accused Ram Kumar was produced by Babu Lal at about 11.00 AM on 04.09.2008. Dog squad was also pressed into service in the instant case, but this fact was not brought on judicial file. He did not take into possession the Cell phone belonging to Anil Bhamboo complainant. Volunteered, only the call details in respect of SIM number of Anil Bhamboo were collected during investigation of this case.

25. PW.18 Mrs. Girish, Judicial Magistrate, deposed that accused Ram Kumar refused to give sample of his hair. Mahavir agreed for the same.

26. DW.1 Sandeep Kumar deposed that a Tata Safari vehicle bearing registration No. HR 26L-3023 was transferred in the name of Anil Kumar Bhamboo. It was transferred by Sanjiv Jain. He proved the report Ex.D3.

27. DW.2 Praveen Kumar Yadav deposed that account No. 02837511000025 was in the joint name of Mahavir and Ranbir sons of Manphool as well as that of Manphool. The loan was obtained by the aforesaid persons from the bank for horticulture purpose. It was sanctioned by the bank on 08.02.2007.

28. DW.3 Bhupinder Singh proved the ration card Ex.D4.

29. DW.5 Rajinder Kumar proved the issuance of licence for the sale of pesticide to Ranbir Singh.

30. DW.6 Pippal Singh proved the voter lists.

31. DW.8 Durga Ram deposed that Mahavir accused and Ranbir deceased were sons of his sister Nathi Bai. His sister Nathi Bai was married to Manphool Ram. A partition was got effected in respect of agricultural land in between accused Mahavir and deceased Ranbir in the month of January, 2003. A writing to this effect was put into black and white in the Bahi. He had signed the same. Mahavir accused and Ranbir had also signed the same. He proved the writing dated 13.01.2003 Ex.D18. In his cross-examination, he deposed that he had not brought personally the Bahi, but it was brought by the persons who were defending accused Mahavir.

32. Accused Mahavir also got his statement recorded, according to which, the police had taken away his blood stained clothes as an attack epitaxis which took place while he was engaged in apiculture (honey bee keeping) a day prior to the occurrence. He contested the election as Member of Gram Panchayat of his village held in the month of May, 2008. His brother, since deceased, acted as his polling agent.

33. The FSL report is Ex.P72. According to it, the exhibits contained in parcels 742A, i.e. hair lifted from the place near the dead bodies, were stained with human blood. However, the exhibits contained in parcels 742A and 744A, i.e. hair lifted from the place near the dead bodies and the sample hair of Mahavir taken in court, did not show similar characteristics. According to the FSL report Ex.P73, the exhibits contained in parcels 722A to 740A, i.e. Peede, Kahi, pillow, chappal, kameez, pyjama,

gloves, alleged to be stained with blood, dry scrappings alleged to be blood, Nawar, three Sutta of tringla, kameez and lower, alleged to be stained with blood, were stained with human blood. According to the Chemical Examiner report Ex.P74, no poison was detected in the contents of exhibits I, II, III and IV. As per the Chemical Examiner report Ex.P75, no poison was detected in the contents of exhibits I, II, III and IV. Similarly, according to the Chemical Examiner report Ex.P76, no poison was detected in the contents of exhibits I, II, III and IV.

34. The case of the prosecution is based on circumstantial evidence. In order to prove a case based on circumstantial evidence, the chain must be complete. All the circumstances must categorically point towards the guilt of the accused.

35. The motive attributed to the appellant in this case, as per the statement of PW.7 Anil Bhamboo, is that as and when his sister Suman used to visit them, she used to disclose that the brother of her husband, namely Mahavir, and his wife Indra, were jealous with her on the ground that she had got one son, whereas they had two sons, and in case, the property is partitioned, her son would get double the property than that of their sons. Accused Mahavir and his wife used to put pressure upon the father-in-law of Suman that the entire property be partitioned in three shares. The motive attributed by PW.7 Anil Bhamboo in his examination-in-chief was that the incident happened due to division of land. In his cross-examination, he categorically admitted that the land was already partitioned for agricultural purposes in between Mahavir accused and Ranbir deceased and their father Manphool. DW.8 Durga Ram has deposed that Mahavir accused and Ranbir

deceased were sons of his sister Nathi Bai. His sister Nathi Bai was married to Manphool Ram. A partition was got effected in respect of agricultural land in between accused Mahavir and deceased Ranbir in the month of January, 2003. He proved writing made in Bahi in this regard. PW.7 Anil Bhamboo admitted in his cross-examination that Ranbir used to reside separately from his brother Mahavir along with his family members. He also admitted that during the life time of Ranbir, his father purchased about eight killas of land in the name of both of his daughters-in-law, i.e. Suman wife of Ranbir and Indra wife of Mahavir accused, vide two separate sale deeds. He also admitted that about three months prior to the occurrence, election of Panchayat of village Dhinganwali was held and in that election, Mahavir accused was elected as Member Panchayat. PW.7 Anil Bhamboo also admitted that he had sold the produce grown on the land of Ranbir, after his death. The fact of the matter is that the partition had already taken place, as per the statement of PW.7 Anil Bhamboo himself as well as the statement of DW.8 Durga Ram. Thus, the prosecution has failed to prove the motive attributed to the appellant to commit the murder of his brother, sister-in-law and nephew. The families of both the brothers were living separately, as per the statement of PW.7 Anil Bhamboo. All the three male members, i.e. Mahavir, Ranbir and Manphool had taken joint loan from the bank, as per the statement of DW.2 Praveen Kumar Yadav. PW.12 Hans Raj has admitted in his cross-examination that Anil Bhamboo and 2-3 other members of his family were now residing in the house of Ranbir.

36. Now, we will advert to the other circumstances attributed to the appellant. According to PW.7 Anil Bhamboo, on the intervening night of

01/02.09.2008 at about 1.30 AM, he received a telephonic call from his sister from the mobile phone No. 94176-31521 of his brother-in-law that they were being killed. Surprisingly, PW.7 Anil Bhamboo did not come to village Dhinganwali immediately. He came there only at about 9.00 AM on 02.09.2008. In case, he had already come to know about the distress of his sister and her family in the night, he should have reached the village of his sister immediately. The prosecution has not proved that Cell phone No. 94176-31521 belongs to Ranbir - brother-in-law of Anil Bhamboo. The police has not taken into possession Cell phone Nos. 94611-77733 and 94176-31521. In case, the phone call was made by deceased Suman from the Cell phone of her husband Ranbir, Cell phone should have been lying near the dead bodies. However, the same is not mentioned in any of the inquest reports, Ex.P3, Ex.P6 and Ex.P9. The prosecution has relied upon the statement of PW.6 Davinder Pal Mahajan to prove that phone call was made from Cell phone No. 94176-31521 to Cell phone No. 94611-77733. It was necessary for the police to recover both the Cell phones as well as SIM cards, which the police has failed to do, to prove that call was made from the Cell phone belonging to Ranbir to the Cell phone of PW.7 Anil Bhamboo, the complainant. PW.6 Davinder Pal Mahajan has not placed on record any certificate, as required under Section 65-B of the Indian Evidence Act, 1872. It was necessary for him to prove that the computer from which the call details had been taken was in a working order.

37. It has come in the statement of PW.16 Inspector Sat Pal Singh that on 02.09.2008, when he visited the spot, appellant Mahavir was present on the spot. In case, appellant Mahavir had committed serious crime, he

would have run away from the spot. He was produced before PW.16 Inspector Sat Pal Singh by PW.13 Parvesh Kichar on 05.09.2008. Co-accused Ram Kumar was produced by PW.14 Babu Lal Juneja on 04.09.2008. According to the prosecution case, appellant Mahavir made a disclosure statement that he had kept concealed gold chain along with locket. These were got recovered at his instance. However, as per the statement of PW.16 Inspector Sat Pal Singh, these were never sent for FSL examination. It was not expected from the appellant to remove the gold ornaments from the body of the deceased. Similarly, on the basis of disclosure statement of co-accused Ram Kumar, gold necklace was recovered. It was also not sent for FSL examination. According to PW.16 Inspector Sat Pal Singh, the dog squad was pressed into service by the police, but the report in this regard was not placed on record. The alleged recovery of blood stained clothes from appellant Mahavir and co-accused Ram Kumar was effected only on 08.09.2008. Appellant Mahavir got recovered gold chain and locket on 05.09.2008 vide memo Ex.P47. Co-accused Ram Kumar got recovered the gold necklace on 04.09.2008 vide Ex.P49. Appellant Mahavir, as per the prosecution case, got recovered his blood stained clothes and gloves vide memo Ex.P64 on 08.09.2008. These were got recovered by him from a platform constructed for Lord Shiva Ji in the western wall in his fields of cotton. Co-accused Ram Kumar got recovered his clothes along with gold ring vide memo Ex.P67 on 08.09.2008. He got recovered the same from the cremation ground in village Dhinganwali. The disclosure statements were made by the accused only in the presence of police officials. No independent witnesses were associated.

Appellant Mahavir, as per the statement of PW.16 Inspector Sat Pal Singh, was present on the spot, when the police came. It is not the case of the prosecution that the appellant had gone away from the spot, hidden the clothes and thereafter appeared on the spot.

38. The cause of death of Suman, as per PW.1 Dr. Kanchan, who conducted post mortem examination on the body of Suman, was injury to great vessels in the neck and head injury. The probable time that elapsed between injuries and death was immediate. Similarly, PW.2 Dr. Alka Khurana, who had conducted post mortem examination on the body of Ranbir Singh, deposed that the cause of death was injury to great vessels in neck and head. The probable time that elapsed between injuries and death was immediate. She had also conducted post mortem examination on the body of Sumit. According to her opinion, the cause of death of Sumit was also injury to great vessels in the neck and head. Death in this case was immediate on sustaining injuries.

39. According to the prosecution, the hair were also recovered from the spot. The appellant agreed for chemical examination of his hair, as per the statement of PW.18 Mrs. Girish, Judicial Magistrate. Sample of his hair was sent for FSL examination. The hair lifted from the place near the dead bodies were contained in parcel '742A' and the sample hair of the appellant taken in court were contained in parcel '744A'. As per the FSL report Ex.P72, the hair contained in both these parcels, i.e. '742A' and '744A' did not show similar characteristics. All the articles lifted from the spot were smeared with blood but no blood grouping was undertaken. The blood samples of appellant Mahavir and co-accused Ram Kumar were never taken

to prove that the blood found on the articles belonged to them. It has come in the post mortem reports of all the three deceased persons that deaths were immediate after receipt of injuries. From the post mortem reports, it can be gathered that Ranbir, Suman and Sumit were killed during their sleep. PW.1 Dr. Kanchan in her cross-examination also admitted that possibility of all the injuries appearing on the body of Suman could not be ruled out while she was lying on the bed. PW.1 Dr. Kanchan had noticed injuries on the left side of the body of Suman, i.e. a lacerated wound of the size of 15 cm x 4 cm x 3 cm on left side of face involving fracture of left mandible, fracture of left cheek bone and lacerated left ear and below the ear; oblique lacerated wound of size of 12 cm x 1 cm x 1.5 cm extending from left side of forehead, obliquely towards left ear with fracture of underlying frontal bone; lacerated wound of size of 10 cm x 2 cm x 1 cm extending from lower lip to obliquely towards upper part of neck; and incised looking wound of size of 15 cm x 1 cm x 1 cm with fracture of underlying left parietal bone. Similarly, PW.2 Dr. Alka Khurana had noticed injuries on the body of Ranbir on the right side of body and on the left side of the body of Sumit. Thus, it fortifies the submission of learned counsel appearing on behalf of the appellant that the deceased were inflicted injuries while they were sleeping on one side.

40. PW.15 Prithvi Raj identified the gold jewellery recovered at the behest of the accused. According to him, these articles were given as gifts at the time of marriage of Suman about 15-16 years ago. The best person to identify the jewellery would have been the parents of Suman. How PW.15 Prithvi Raj knew about the kind of jewellery given to his niece Suman in

gift at the time of marriage.

41. The matter is required to be considered from another angle. The incident took place on the intervening night of 01/02.09.2008. Appellant Mahavir was already present on the spot, when the police reached the spot on 02.09.2008. In his statement Ex.P31 before the police, PW.7 Anil Bhamboo deposed that appellant Mahavir and his agriculturist servant Ram Kumar were responsible for the death of his sister, her husband and son. Strangely, the police did not arrest Mahavir, but he was produced before PW.16 Inspector Sat Pal Singh on 05.09.2008 by PW.13 Parvesh Kichar, a resident of Sadool Shehar, Matili, District Ganga Nagar (Rajasthan). The prosecution has not led any cogent evidence how Parvesh Kichar knew Mahavir, because both of them belonged to different villages. In case the crime would have been committed by the appellant, he would not have remained at the spot at the time of arrival of the police on 02.09.2008 itself. He was produced before the police by a stranger i.e. PW.13 Parvesh Kichar. PW.14 Babu Lal Juneja produced co-accused Ram Kumar before PW.16 Inspector Sat Pal Singh on 04.09.2008. He also belongs to Hanumangarh (Rajasthan). Village Dhinganwali was at a distance of about 80 Kms. from Hanumangarh. There was no occasion for co-accused Ram Kumar to visit Khalsa School being run by PW.14 Babu Lal Juneja.

42. Their Lordships of the Supreme Court in ***Dandu Jaggaraju vs. State of Andhra Pradesh, (2011) 14 Supreme Court Cases 674*** have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution. Their Lordships have held as under:-

“9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.”

43. Their Lordships of the Supreme Court in ***Pudha Raja and another vs. State, represented by Inspector of Police, (2012) 11 Supreme Court Cases 196*** have held that the motive assumes great significance and importance in case of circumstantial evidence and absence of motive puts court on its guard and causes it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. Their Lordships have held as under:-

“16. Furthermore, in such a case, motive assumes great significance and importance, as the absence of motive puts the court on its guard and causes it to scrutinise each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. The evidence regarding existence of motive which

operates in the minds of assailants is very often, not known to any other person. The motive may not even be known, under certain circumstances, to the victim of the crime. It may be known only to the accused and to none other. It is therefore, only the perpetrator of the crime alone, who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime.”

44. Their Lordships of the Supreme Court in ***Rishi Pal vs. State of Uttarakhand, (2013) 12 Supreme Court Cases 551*** have held that while motive does not have a major role to play in cases based on eye witness account of incident, it assumes importance in cases that rest entirely on circumstantial evidence. Their Lordships have further held that essence of requirements that must be satisfied in cases resting on circumstantial evidence is that not only should circumstances sought to be proved against the accused be established beyond reasonable doubt, but also that such circumstances form so complete a chain, as leaves no option for court, except to hold that accused is guilty of offences with which he is charged.

Their Lordships have held as under:-

“15. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing

for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs.15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See Sukhram v. State of

Maharashtra (2007) 7 SCC 502, Sunil Clifford Daniel v. State of Punjab (2012) 8 SCALE 670, Pannayar v. State of Tamil Nadu (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

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19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased-Abdul Mabood. In doing so, the trial Court over looked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does not require any reiteration. The decisions of this Court have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to hold that the accused is guilty of the offences with which he is charged. The

disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered.”

45. Since the case is based upon circumstantial evidence, it was necessary for the prosecution to prove the entire chain and all the circumstances must categorically point towards guilt of the accused. Their Lordships of the Supreme Court in **Balu Sonba Shinde Vs. The State of Maharashtra**, 2002 (7) SCC 543, have summarised the principle of circumstantial evidence. Their Lordships have held as under :-

*“3. The word of caution introduced in the judgment of this Court about five decades ago in that direction, however, still stands as an acceptable guide. This Court in **Hanumant Govind Nargundkar v. State of Madhya Pradesh (AIR 1952 SC 343)** stated:*

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive

nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

4. Subsequently, the Constitution Bench of this Court in **MG Agarwal vs. State of Maharashtra (AIR 1963 SC 200)** in a similar vein and without any contra note stated the law with utmost lucidity in the manner noted below:

"It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the

Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt."

5. Similar however is the opinion of this Court in **Pawan Kumar v. State of Haryana [2001 (3) SCC 628] : 2001 (2) RCR (CrL) 161 (SC)** in which one of us (U.C. Banerjee, J.) was a party. The opinion of the Court runs as under :

"Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of

*the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without, however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting, however, noting the observations of this Court in the case of **State of U.P. Vs. Ashok Kumar Srivastava (AIR 1992 SC 840) : 1992 (3) RCR (CrL) 63 (SC)** wherein this Court in paragraph 9 of the report observed:-*

"9. This Court has, time out of numbers, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon

must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."

*3. The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this Court in the case of **Balwinder Singh Vs. State of Punjab (AIR 1987 SC 350)** lends concurrence to the above."*

46. Accordingly, the prosecution has failed to prove its case against appellant Mahavir beyond reasonable doubt. CRA-D-111-DB of 2011 is allowed. The judgment dated 13.01.2011 and order dated 14.01.2011 qua appellant Mahavir are set aside. Appellant Mahavir is acquitted of the charges framed against him by giving him benefit of doubt. He is in custody. He be released forthwith, if not required in any other case. His release warrants be issued.

47. Since conviction and sentence of Mahavir has been set aside, therefore, CRA-D-217-DB of 2011 seeking compensation and CRA-D-767-DB of 2011 filed by the State of Punjab for enhancement of sentence stand dismissed.

(RAJIV SHARMA)
JUDGE

September 10, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No