

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

CRA-813-DB-2010 (O&M)
Reserved on : May 20, 2019
Date of Decision: May 31, 2019

Harbir and others

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. V.S.Rana, Legal Aid Counsel for the appellants.

Ms. Shubhra Singh, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 31.05.2010/01.06.2010 of the Additional Sessions Judge, Panipat in Sessions Case No.42 of 2008 whereby the appellants, who along with Ravi son of Ishwar were charged with and tried for offences punishable under Sections 302/396/34 of the Indian Penal Code (in short 'IPC'), have been convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/-, each, under Section 302/149 IPC and in default to undergo further simple imprisonment for a period of two months. They were also sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/-, each, under Section 396/149 IPC and in default to undergo further simple imprisonment for a period of two months. The sentences were ordered to run concurrently. Ravi son of Ishwar was acquitted.

2. The case of the prosecution in a nutshell was that Naseeb Singh s/o Bir Singh got his statement recorded before SI/SHO Pawan Kumar on 23.06.2008 to the effect that he was a resident of Khotpura, Police Station Sadar, Panipat. He was a labourer. He had three sons and one daughter. His son Mahinder (19 years) used to work as a driver on the tractor trolley of Karambir s/o Surjan who was engaged in the work of filling earth in the plots and supplying building material. His son Mahinder used to return to home daily in the evening after finishing the work. Sometimes, he used to stay at the house of Karambir. On 21.06.2008, his son did not come home at night. He remained under the impression that his son might have stayed with Karambir. The next day i.e. on 22.06.2008 he telephoned Karambir and asked about the whereabouts of his son. Karambir informed him that the previous night at about 2.30 AM Mahinder had gone to Faridpur sand mine to lift the earth which was to be dropped by him at Panipat. The trolley of sand had not been delivered at Panipat till then. He was not aware as to where Mahinder has gone. After this Naresh, the younger brother of Karambir came to the complainant in his village. Both of them tried to trace Mahinder. He could not be located in the nearby villages. Even in the Civil Hospital there was no information regarding him. On 23.6.2008 when he and Naresh were going in search of Mahinder on motorcycle towards the mine of Faridpur 2/3 ladies met them on the way and informed that dead body of a young boy was lying in the paddy field of Harish Bhatia in the area of Garh Sarnia. On reaching there they recognized the dead body as of Mahinder. Three-four pairs of slippers (*chappels*) were lying between the road and field. He suspected that some unknown persons had robbed the tractor trolley after committing the murder of Mahinder.

3. On the basis of the aforesaid statement a case under Section 392/396/34 IPC was registered against unknown persons. Site plan of the place of occurrence was prepared. The statement of witnesses under Section 161 was recorded. The postmortem examination of the body was conducted. The accused were arrested. On completion of investigation they were sent for trial under Section 302/392/396 read with Section 149 IPC.

4. Vide order dated 17.7.2009 Ravi Tyagi son of Sat Parkash was declared as juvenile and sent for trial before the Juvenile Justice Board.

5. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. were recorded. They denied that they had committed the crime. They stated that they were innocent. They had been falsely implicated in the case. It was a blind murder and the case has been falsely planted upon them in order to solve it. Nothing was recovered from them nor had they made any disclosure statements to the police. The police had obtained their signatures on some blank papers which were used for the purpose of disclosure statement and recovery memos. Accused Sunil additionally pleaded that he was minor at the time of the occurrence.

6. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW1 Head Constable Vishnu Dutt stated that on 23.6.2018 he was posted in Police Station Sadar Panipat. After recording the FIR ASI Sultan Singh had handed over to him three envelopes containing special

were delivered without any delay. The special report was received at 9.00 PM and was delivered to the Ilqa Magistrate at 9.30 PM and thereafter to the SP Panipat.

9. PW2 Head Constable Sushil Kumar deposed that on 23.6.2008 on the asking of SI Pawan Kumar he had taken photographs of the dead body which was lying in the paddy field. The photographs Ex.P1 to P8 bear his stamp and initials.

10. PW3 Dr.Alok Jain, Medical Officer, General Hospital, Panipat tendered his affidavit Ex.P10 wherein he deposed that on 24.6.2008 he along with Dr.Vinod Kangra and Dr.Rahul Diwan had conducted the postmortem examination on the dead body of Mahender. There was no mark of any ligature around the neck. The body was decomposed, swollen, foul smelling. Epidermis was peeled off at places. Bullae formation and marbling was present. The scalp hair were easily pulled off. Facial features were bloated. The dead body was identifiable with difficulty. Anterior thoracic wall was having subcutaneous infiltration of blood. Thoracic cage was fractured, haemothorax was present bilaterally. In abdomen the viscera was showing sign of decomposition and semi-digested food material was present in stomach. The cause of death was due to the injuries described which were ante mortem in nature and were sufficient to cause death in ordinary course. The time between injuries and death was variable and between death and postmortem examination was 2-3 days. He also proved the postmortem report Ex.P11. In cross-examination he stated that there were no findings suggestive of drowning in this case. If a person is forcibly kept inside water to make him drown then the thoracic fracture may not be present. In a case of drowning there would have been findings

like oozing of blood, stained froth on cut-section of lungs and mud particles inside the bronchian tree. There was no muddy water inside the stomach.

11. PW4 Naresh Kumar deposed that he along with his brother Karambir was engaged in the work of earth filling with the help of tractor-trolley. Mahinder s/o Naseeb Singh r/o Kothpura was working as driver on their tractor bearing HR-055-4854 Mahendra Mark-D-262. On the night intervening 21/22.6.2002 Mahinder had gone on the tractor to take sand from Faridpur mine but he did not return. Next morning father of Mahinder telephonically enquired about the whereabouts of Mahinder. His brother Karambir told Mahender's father that he had gone to bring sand from Faridpur mine but had not returned. Thereafter, he and Naseeb Singh (father of Mahinder) searched for Mahinder. When they were going on a motorcycle in search of him towards village Garh Sarnai two-three ladies met them and informed them that a dead body was lying in the paddy field of Harish Bhatia in village Garh Sarnai. On reaching the spot they saw a dead body lying there with its face downwards. They recognized it to be of Mahinder. Some *Chappals* and button of a shirt was also lying at that place. The police was informed. They reached the spot and took into possession the *Chappals* and buttons after converting the same into sealed parcels vide recovery memo Ex P-14 which was signed by him.

12. On 3.7.2008 accused Sunil got recovered a purse containing Rs.600/- and one card of Bhatta on which their telephone numbers (i.e., of Karambir and Naresh) were written. It was taken into possession vide recovery memo Ex.P15 which also bears his signatures. On the sealed parcel being opened in Court he identified the button, four pairs of chappals

and the purse containing six currency notes of Rs.100/- each and a card

having telephone of his brother as the same that were lifted from the place of occurrence. In cross-examination he stated that dead body was lying in the paddy field and there was water to the extent of 9 inches in the field.

13. PW5 Pardeep Kumar Mittal, Clerk Upper Civil Judge (Junior Division)/Judicial Magistrate, Kairana, District Muzaffarnagar (U.P.) brought the file of case FIR No.499 of 2008 under Section 411 and 414 IPC Police Station Jinjana, District Muzaffarnagar (Ex.P29).

14. PW6 SI Siri Krishan stated that on 3.7.2008 he was posted as ASI in Police Station Sadar Panipat. On interrogation by SI Pawan Kumar accused Sunil (present in Court) made disclosure statement Ex.P30 regarding commission of some other offence in UP. He made another disclosure statement Ex.P31 that he had kept concealed Rs.600/- in his rented house in Hari Singh Colony, Panipat. Pursuant thereto he got recovered Rs.600/- from the disclosed place which was taken into possession vide memo Ex.P15. He identified the currency notes Ex.P22 to P27 as the same notes that were got recovered by the accused.

15. PW7 Head Constable Satpal Singh stated that on 5.7.2008 accused Harbir (present in Court) was interrogated in his presence by SI Pawan Kumar. He made disclosure statement (Ex.P32) that he along with Ravi Tyagi, Sunil, Amit, Ravi Bihari, Vijay @ Tunda and Kamlesh reached Garhi Sarnai in district Panipat on the night intervening 21/22.6.2008 and looted a person and snatched the tractor-trolley which had come from the side of Faridpur. They dragged him from the tractor and beat him up. They also snatched his purse containing currency notes. Rs.600/- had come to his share which he had spent. After snatching the tractor they took the same to

assailants managed to escape. The disclosure statement bears his signatures. The accused also signed it.

16. PW8 Constable Sunil Kumar tendered affidavit Ex.P33 stating that on 27.06.2008 MHC Vinod Kumar had handed over to him a parcel containing the button for depositing with FSL Madhuban which he deposited the same day. He handed over the receipt to MHC Vinod Kumar. Till the time the parcel remained in his possession it was not tampered with.

17. PW9 Karambir stated that Mahinder deceased was employed with him as driver on tractor bearing No.HR-055-4854. On 21.6.2008 in the evening he had gone to bring sand in the tractor trolley from Faridpur-Barana mine, but he did not return that night. On 22.6.2008 his father Naseeb Singh made a telephone call to enquire about the whereabouts of Mahinder. He informed Naseeb Singh that Mahinder had gone to take sand from Faridpur-Barara mine but had not returned. On 23.6.2008 he came to know that Mahinder had been killed and the tractor trolley had been snatched from him. On 25.6.2008, he was called by the police to Police Station Sadar Panipat. He saw his tractor parked in the police station and identified the same. He produced the RC of the tractor Ex.P35 which was taken into possession vide Memo Ex.P34. He stated that on 2.7.2008 accused Amit on interrogation made a disclosure statement Ex.P41 to the effect that for the commission of the offence, Rs.500/- had come to his share which he had concealed in Java Colony Panipat in the tin box of wheat. The disclosure statement bore his signatures. Pursuant to the disclosure statement Amit got recovered five currency notes of Rs.100/- each and a photocopy of the identity card of the father of the deceased which were

taken into possession vide memo Ex.P43. The currency notes are Ex.P44 to

P48 and identity card is Ex.P49.

18. Accused Ravi made disclosure statement Ex.P42 to the effect that Rs.600/- which was his share for the commission of offence had kept concealed in his rented house in Baba Ram Colony in the double bed. Pursuant thereto he got recovered Rs.600/- and a childhood photo of the deceased. The same were taken into possession vide memo Ex.P50. The currency notes are Ex.P51 to P56 and the photograph is Ex.P57.

19. PW10 SI Sultan Singh stated that on 20.6.2008 he was posted as ASI in Police Station Sadar Panipat. On receipt of ruqa Ex.P36 from Pawan Kumar SI/SHO Sadar Panipat he had recorded formal FIR Ex.P37. He had also sent special reports through EHC Vishnu Dutt to the Ilqa magistrate, SP and DSP Panipat.

20. PW11 ASI Umar Mohammad stated that on 24.6.2008 the concerned doctor after conducting postmortem examination on the body of Mahender Singh handed over to him sealed parcel containing clothes, postmortem report, sample seal and relevant papers. He handed over the same to the SHO which were taken into possession vide memo Ex.P39. The same bears his signatures.

21. PW12 Ravi Dutt Patwari Halqa Kachhroli deposed that he visited the place of occurrence and prepared scaled site plan Ex.P40.

22. PW13 Naseeb Singh stated that he had three sons and one daughter. Mahender Singh – deceased was his son and was working as driver on the tractor of Karambir who used to fill the earth in the plots and supply building material. Mahender used to return home at night after finishing the work. Sometimes he used to stay at the house of Karambir.

On 21.6.2008 Mahender did not return to the house. He thought Mahender

might have stayed at the house of Karambir. The next day he telephoned Karambir to know the whereabouts of his son. The latter informed him that Mahender had gone at about 2.30 am the previous night to Faridpur sand mine. He was to take the sand to Panipat but he had not reached the said destination. Karambir did not know where he had gone. After that the younger brother of Karambir (Naresh) came to his village and they both started searching for his son in the nearby villages, but were unable to trace him. They even visited the Civil Hospital on 23.6.2008 but Mahender was not found there. As they were going towards Faridpur sand mine they met two-three women who informed that a dead body was lying in the field of Harish Bhatia in village Garh Sarnai. On reaching there they found the dead body to be of his son Mahender. Leaving Naresh with the dead body he went to inform the police. He got his statement Ex.P36 recorded. The police visited the place of occurrence, conducted inquest proceedings and dispatched the body for postmortem to General Hospital. On 2.7.2008 the police interrogated accused Ravi and Amit in his presence. Amit made disclosure statement Ex.P41 that he had kept concealed Rs.500/- in his residential house Zina colony Panipat. The disclosure statement bears his thumb impression. Pursuant thereto accused Amit got recovered Rs.500/- from the disclosed place. He also got recovered an identity card. The currency notes and identity card were taken into possession vide memo Ex.P43 which bore his thumb impression. He identified Amit. He also identified the five currency notes of denomination of Rs.100/- each as Ex.P44 to P48 and the identity card as Ex.P49. He stated that he had handed over the identity card to his son for getting it photocopied.

disclosure statement Ex.P42 regarding commission of the offence and that he had kept concealed Rs.600/- in his rented house in Wadhawa Ram Colony Panipat. The disclosure statement bears his thumb impression. Accused Ravi son of Sat Parkash got recovered currency notes worth Rs. 600/- of the denomination of Rs. 100 each. He also got recovered a purse in which there was a childhood photo of Mahender. The said were taken into possession vide memo Ex. P50. He identified the photo Ex P57 and the currency notes Ex. P51 to P56.

24. During cross-examination he denied that accused Amit and Ravi had not made the disclosure statements in his presence or that the recoveries had not been effected by them in his presence.

25. PW15 SI Pawan Kumar deposed that on 23.6.2008 he was posted as SHO Police Station Sadar Panipat. He recorded the statement Ex.P36 of PW Naseeb Singh on which he made his endorsement Ex.P60 and sent the same to the Police Station for registration of case through HC Hari Ram. FIR P37 was recorded by SI Sultan Singh. Thereafter he along with complainant Naseeb Singh and other police officials reached the place of occurrence. On reaching there he conducted inquest proceedings Ex.P13, prepared the rough site plan Ex.P61. From the place of occurrence he recovered one button of shirt along with threads and chappals. These articles were converted into two separate sealed parcels and taken into possession vide Memo Ex P14 which were signed by Naresh and EHC Ramesh. The dead body was shifted to General Hospital Panipat. On reaching the police station the case property was deposited with MHC. He identified the button as Ex.P16 and the chappals as Ex.P17 to P20.

Mohammad handed over to him sealed parcels containing clothes and PMR which were taken into possession vide memo Ex.P39. The same day he received information from police station Jhinjana District Muzaffarnagar that one tractor along with trolley had been impounded in that police station. On receipt of this information he along with other police officials reached there and recorded the statement of SI Inder Singh Investigating Officer in that case. On 25.6.2008 he obtained permission from the Court of learned Ilaqa Magistrate (Ex.P63) for transfer of the tractor-trolley in this case. Thereafter, he went to Police Station Jhinjana and took the possession of tractor-trolley vide memo Ex.P64 which was also signed by Constable Rajbir of PS Jhinjina. On reaching the police station the tractor-trolley were deposited with MHC. The same day the owner of the tractor Karambir met him and produced the RC of the tractor (Ex.P35) which was taken into possession vide recovery memo Ex.P34.

27. On 1.7.2008 he arrested accused Sunil, Ravi and Amit, who during interrogation made disclosure statements regarding commission of the crime. The disclosure statement of Amit is Ex.P65, that of Ravi is Ex.P66 and that of Sunil as Ex.P67. He identified the aforesaid accused present in Court. On 2.7.2008 accused Harbir was taken into custody after obtaining permission from the Court. He was formally arrested. At the time of his arrest his shirt was taken into possession vide memo Ex.P68. During interrogation he made disclosure statement Ex.P69. During interrogation Amit made disclosure statement Ex.P41 to the effect that Rs.500/- had come to his share which he has kept concealed in his residence at Panipat. Amit got recovered currency notes of Rs.500/- and photocopy of the identity card

said memo was signed by Amit and thumb marked Naseeb Singh. Ravi made disclosure statement Ex.P42 regarding commission of offence and that Rs.600/- had come to his share which he had kept concealed in his rented room in Wadhawa Ram Colony. Pursuant thereto he got recovered Rs.600/- and a purse containing photos of the deceased which were taken into possession vide memo Ex.P50, which was signed by PW Karambir and thumb marked by Naseeb Singh. The next day Sunil made disclosure statement Ex.P30 and another disclosure statement Ex.P31 to the effect that Rs.600/- had come to his share which he had kept in Hari Singh Colony. Pursuant thereto Sunil got recovered Rs.600/- along with a visiting card over which mobile number of owner of the tractor and his brother were written. On 5.7.2008 accused Harbir made disclosure statement Ex.P32 which was signed by HC Sat Pal and thumb marked by the accused. During his examination a sealed parcel was opened and a shirt was taken out therefrom. He identified it as the same shirt that had been taken into possession by him.

28. During cross-examination he denied that no disclosure statements were made by accused Ravi, Amit and Sunil and that no recoveries were effected pursuant to the same. He also denied that the present case was a blind murder and the accused had been falsely implicated in order to solve the prosecution case.

29. PW16 SI Inder Singh stated that on 24.6.2008 he received secret information that two persons were sitting along with a tractor trolley in an abandoned brick kiln near Jamalpur and if raid is conducted they could be apprehended. On receipt of this information he along with police party reached the spot. One person sitting on the mudguard on the tractor

succeeded in fleeing. The person sitting on the driving seat was caught. He

disclosed his name as Harbir. He was unable to produce the documents of ownership of the tractor. On interrogation he disclosed that he along with some other persons had snatched the said tractor on night intervening 21/22.6.2008 from Panipat in the area of Khotpura falling within the jurisdiction of police station Sadar Panipat. This information was passed on to Police Station Sadar Panipat who informed that a case had already been registered in this regard in PS Sadar Panipat. The tractor was taken into possession vide memo Ex.P64. Ruqa was sent to Police Station Jhinjana on the basis of which formal FIR Ex.P29 was registered. During interrogation accused Harbir made disclosure statement regarding commission of the offence. He identified Harbir in Court.

30. PW17 SI Bijender Pal deposed that on 27.12.2008 he was posted as SI in Police Station Sadar Panipat. He moved application Ex.P73 before the Ilqa Magistrate for production of accused Ravi @ Salig Ram. On this the learned Magistrate issued production warrants vide order Ex.P74 for 3.1.2009. On production of the accused learned Ilqa Magistrate granted one day's police remand vide Ex.P76. Another one day remand was granted vide Ex.P78. During interrogation accused made disclosure statement Ex.P79 regarding commission of the present offence which he thumb marked. It was also signed by PW HC Dharambir. Pursuant to the said disclosure statement the accused demarcated the place regarding which Memo Ex.P80 was prepared. Next day accused was sent to judicial lock-up by the Ilqa Magistrate.

31. PW18 Constable Rajbir Singh Police Station Kotwali Shamli disclosed that on 24.6.2008 he was posted as Constable Muharrar in Police

recovery of tractor-trolley formal FIR Ex.P29 under Section 411, 414 IPC was recorded. On 25.6.2008 SI/SHO Police Station Sadar Panipat had taken the Mahendra tractor along with trolley into possession from Police Station Jhinjana. In regard thereto memo Ex.P64 was prepared which bears his signatures. His statement was also recorded in this regard.

32. PW19 HC Dharambir stated that on 3.1.2009 he was posted in Police Station Sadar Panipat. Accused Ravi @ Shalig Ram made disclosure statement Ex.P79 regarding commission of the offence. Pursuant thereto he demarcated the place of occurrence. Memo Ex.P80 was prepared which bears his signatures.

33. The case is based on circumstantial evidence.

34. From the evidence it comes out that Mahinder Singh (deceased) was employed with Karambir and Naresh as a driver for their tractor No.HR055-4854 Mahindra D-262. Karambir and Naresh were engaged in the business of filling earth and supplying building material. After finishing his work Mahinder used to go home in the evenings. Sometimes he even used to stay at night with Karambir (his employer). On the night intervening 21/22.06.2008 at about 2.30 am Mahinder Singh had taken the tractor trolley to fill the earth from Faridpur Sand Mine and deliver the same at Panipat. He did not come back. On 22.06.2008, his father Naseeb Singh telephonically enquired from his employer Karambir about the whereabouts of his son Mahinder. He was informed that Mahinder had taken the tractor trolley for the purpose of filling sand from Faridpur Sand mine. However the same had not been delivered at the destined place. On this Naresh and Naseeb Singh-father of the deceased went in search of Mahinder. However,

they could not find him. On 23.06.2008, both of them again went to search

him. When they were proceeding towards Faridpur Sand Mine on their motorcycle they were informed by two-three ladies that a dead body was lying in paddy field of Harish Bhatia in the area of Village Garh Sarnai. They went to the field and identified the dead body as of Mahinder. The police was informed. From near the body a button Ex.P-16 and chappals Ex.P-17 to P-20 were taken into police possession vide recovery memo Ex.P-14. FIR Ex.P-37 was registered on 23.06.2008 at 6.10 PM on the statement of Naseeb Singh-father of Mahinder Singh (deceased). On 24.06.2008 PW-16 SI Inder Singh, Police Station Jhinhana, District Muzaffarnagar (U.P.) received information about the presence of some persons with a tractor trolley in an abandoned brick kiln near Jamalpur. When the police party reached there the person sitting on the mud guard of the tractor succeeded in running away. However, the person sitting on the driver seat was apprehended. He disclosed his name as Harbir. He could not produce any document of ownership of the tractor trolley. FIR Ex.P-29 under Section 411/414 IPC was registered at Police Station Jhinhana, District Muzaffarnagar regarding recovery of this tractor. On interrogation he disclosed that the said tractor had been snatched by him and some other persons on the intervening night of 21/22.06.2008 in the area of Khotpura, Police Station Sadar, Panipat. Police Station Sadar Panipat was informed about this. After taking permission from the Illaqa Magistrate the tractor was transferred to the present case vide memo Ex.P-64 on 25.06.2008. The same day Karambir the registered owner of the tractor produced RC-Ex.P35 which was taken into police possession vide memo Ex.P-34. Accused Harbir was formally arrested in the present case on 02.07.2008. His shirt was taken

the sleeves of the shirt were intact. There was provision for six buttons on the front of the shirt. The second button from the top was found missing. The remaining five buttons were intact. The shirt and the button recovered from near the dead body of deceased Mahinder were sent to FSL Madhuban for comparison.

35. The report dated 24.07.2008 of the Forensic Science Laboratory, Madhuban is as under:-

Laboratory Examination

1.Button marked exhibit-1 was compared with the buttons marked B1, B3 to B10 intact on shirt marked exhibit-2 in respect of colour, design, no. of holes, physical parameters, physical and microscopic appearance.

2. The stitching thread intact on button marked exhibit-1 was compared with stitching thread used in stitching the buttons intact on shirt marked exhibit-2 in respect of colour, no. of plies, twist, physical and microscopic appearance. The following observations were made:

Observations

1. Button marked exhibit-1 was found similar to the buttons intact on shirt marked exhibit-2 in respect of above mentioned parameters.

2. The stitching thread intact on button marked exhibit-1 was found similar to the thread used in stitching the buttons intact on shirt exhibit-2 in respect of above mentioned parameters.

Based upon above observations, the following opinion is given:-

OPINION

Button marked exhibit-1 belongs to shirt marked

exhibit-2.

Note: 1. Exhibits are returned here with in two sealed parcels with the seals of SSO (Phy) FSL(h).

36. As per the report, the button recovered from the spot was from the shirt of accused Harbir. Accused Harbir in his statement under Section 313 Cr.P.C. failed to explain as to how the button of the shirt which he was found to be wearing at the time of his arrest and which was missing from the shirt was recovered from the place where the dead body of Mahinder Singh was found. This was one circumstance against the accused Harbir.

37. From the evidence it had been established that the deceased had left with the tractor trolley at 2.3.0AM on the intervening night 21/22.06.2008 but did not return. On 23.06.2008, in the morning his dead body was recovered from the field of Harish Bhatia in the area of village Garh Sarnai. On 24.06.2008, accused Harbir was apprehended with the tractor trolley from an abandoned brick kiln near Jamalpur. He had no document to establish his ownership or possession. Regarding this recovery FIR No.29 Police Station Jhijnhana District Muzaffarnagar (UP) was recorded. On 25.6.2008 this tractor was transferred to this case. The Engine number and Chassis number of the tractor was found to be the same as the tractor of Karambir on which the deceased was employed as a driver and which he had taken on the intervening night 21/22.06.2008 to collect sand from the Faridpur sand mine and thereafter not returned but was found dead on 23.6.2008. Harbir could furnish no explanation as to how he had come in possession of the said tractor clearly proving that on the night intervening 21/22.06.2008, the tractor-trolley was snatched by accused Harbir Singh

from Mahinder Singh-deceased. This together with the recovery of the button Ex.P-16 from the spot where the dead body of deceased Mahinder was found which as per the opinion of the FSL tallied with the buttons of the shirt which he was found wearing at the time of his arrest on 24.6.2008 completes the chain of the circumstances to connect accused Harbir with the snatching of the tractor from deceased-Mahinder and committing his murder on the night intervening night 21/22.06.2008.

38. On 02.07.2008, accused Amit made disclosure statement Ex.P-41 regarding commission of the crime and concealing Rs.500/- which has come to his share in his residence at Panipat. Pursuant thereto, he got recovered five currency notes Ex.P-44 to P-48 and a photocopy of the identity card of Naseeb Singh-father of the deceased. The currency notes and photocopy of identity card of Naseeb Singh were taken into police possession vide recovery memo Ex.P-43 in the presence of PW-9 Karambir and PW-13 Naseeb Singh. Accused Amit could furnish no explanation as to how the photocopy of identity card of Naseeb Singh came into his possession.

39. Pursuant to the disclosure statement PW-31 of accused Sunil he got recovered Rs.600/- along with visiting card of Jain Bhatta Company on which the mobile numbers of Karambir and his brother Naresh were written. The recovery memo Ex.P-15 bears the signatures of PW4-Naresh Kumar, ASI Shri Krishan and SI Pawan Kumar, SHO Police Station, Sadar Panipat. PW-4 Naresh Kumar identified his signatures and the visiting card of Jain Bhatta Company along with their telephone numbers. The currency notes are Ex P22 to P27. The card is Ex. P28. As deceased Mahinder was

working as a driver on the tractor trolley owned by Karambir and Naresh

was the brother of Karambir it was natural for him to have a visiting card of Jain Bhatta Company having the mobile numbers of both Karambir and his brother Naresh. Accused Sunil could however not explain as to how the visiting card of Jain Bhatta Company along with telephone numbers of Karambir and Naresh had come into his possession.

40. The postmortem examination on the body of Mohinder was conducted on 24.06.2008. As per PW-4 Dr. Alok Jain the time that elapsed between injuries and death was variable. The time between death and postmortem was two to three days. In the cross-examination the doctor stated that there were no findings suggestive of drowning. He stated that in a case of drowning there would be finding of oozing of blood-stained froth on cut section of lungs and mud particles on inside the bronchial tree. He ruled out the possibility of death of Mahinder by drowning.

41. From the totality of circumstances, the learned trial Court rightly concluded that it had been established that when Mahinder had gone to Faridpur Sand mine on the night intervening on 21/22.06.2008 for filling sand to be delivered at Panipat he was stopped by the accused persons with an intention to snatch the tractor trolley from him. In the ensuing altercation they inflicted injuries on him which resulted in his death. They took away the money he was carrying. They threw his body face downwards in a paddy field which was full of water. From the chain of circumstances, the guilt of the accused is clearly established.

42. There is no reason to interfere with the well reasoned judgment of the trial Court. Accordingly there is no merit in the appeal and the same is dismissed.

appellant Nos.2 and 1 namely Amit and Harbir was ordered to be suspended during pendency of the appeal. Appellant No.3 Sunil is in custody. Accordingly, the police is directed to take appellants No.1 and 2 into custody to undergo remaining sentence imposed by the trial Court vide judgment and order dated 31.05.2010/01.06.2010.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 31, 2019

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No