

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-889-DB-2015 (O&M)
Date of decision : 20.12.2019

Navdeep Singh
..... Appellant

versus

State of Punjab
..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present :- Mr. P.S.Ahluwalia, Advocate with
Mr. Vipul Joshi, Advocate
for the appellant.

Mr. Sandeep Vermani, Addl. A.G., Punjab.

Mr. A.P.S.Mann, Advocate
for the complainant.

AJAY TEWARI, J.

1 This appeal has been filed against the judgment of conviction and order of sentence dated 27.04.2015 whereby the appellant has been convicted under Sections 302 IPC in FIR No.72 dated 19.07.2011 registered at Police Station Sadar Ropar. The sentence awarded to the appellant is as under:-

Under Section	Sentence
Under Section 302 IPC	To undergo Life Imprisonment and also to pay fine of Rs.10,000/- (ten thousand) and in default of payment of fine to further undergo rigorous imprisonment for three months.

2 Appellant Navdeep Singh was a young soldier of 25 years in the Indian Army. He was married to deceased-Harinder Kaur in the last part of the year 2010 and had come to his village for leave of one month and was to return back on 19.07.2011. On the night intervening 18th and 19th July, 2011 he and his wife were returning from Chandigarh. At about 12.30 AM the complainant-father-in-law of the appellant received a call from the mother of the appellant informing them about some mishap and that they were going to the Ropar Hospital. The complainant along with his wife, sister-in-law and nephew reached the Hospital Ropar where the appellant was admitted in emergency in an injured condition. The medical record of his admission to the hospital at Ropar is exhibit DW 5/A as per which at about 02.05 AM he was brought by his father in an unconscious condition with the following injuries :-

1. *Incised wound 6cm x ½ cm x 1 ½ cm Rt. occipital region of skull.*
2. *Incised wound ½ cm x .3cm x .3cm occipital region.*
3. *8 cm bruise mark on right side of neck and difficulty in breathing.”*

3 He was given first aid and referred by the doctor to the PGI where he was taken by his father and some other persons and as per document exhibit DW 5/A he was admitted there at 04.26 AM and at that time it was found that he had an injury on the right side of the scalp which was 5 cm in length and was sutured. (Thereafter he was admitted to the Command Hospital, Chandigarh and was discharged and returned to his unit on 20.07.2011). The complainant along with his aforementioned companions reached village Magror near brick kiln, where Swift Car bearing registration No.PB-12-N-1195 belonging to the appellant was

lying parked on the road in which the dead body of the victim was lying on the front passenger seat. There were injuries caused with sharp edged weapons on her neck. In the FIR the complainant alleged that some un-known persons had caused the death of his daughter and injuries to his son-in-law.

4 On the examination of the spot the police found the following :-

- (i) Blood stained turban*
- (ii) Black colour Fifti alongwith hairs of head*
- (iii) Blood stained patka*
- (iv) One spectacle having white lenses*
- (v) A pair of boot of muddy colour on which make tracer was written.*
- (vi) A white colour button stained with blood has been recovered which was lying near the feet of deceased.*
- (vii) Hairs of head were picked up which were lying caught in the left hand of the deceased.*
- (viii) Hairs of head were picked up which were lying on the metteled (pacca) road near the door of driver side of Swift Car.*
- (ix) Front glass of car was in broken condition and blood stains were lying on the glass and the driver seat and front adjoining seat of driver seat are totally smeared with blood and blood stain and hairs are lying in the whole inner part of the car.*
- (x) Hairs of head lying in between the driver seat and its adjoining seat of the car.*
- (xi) Marriage card and photograph.*
- (xii) Clothes of accused and mobile phone was recovered.*
- (xiii) Blood stained datar.*

Photographs were also taken which were marked as Exhibit PW-10.

5 On 20.07.2011 the appellant was nominated as an accused and was arrested. Sukhwinder Singh father of the appellant was also nominated as accused in this case due to his role played in destruction of evidence of the case and was arrested on 24.07.2011.

6 It may be mentioned that on the arrest of the appellant he made disclosure pursuant to which the following recovery was made :-

“Polythene bag in which iron datar (blood stained) was concealed.”

Likewise on the arrest of the father, he made a disclosure on which the following recoveries were made :-

- “i. Plastic bag.*
- ii. One phone make SAMSUNG of grey colour having SIM No.9888293260.*
- iii. White colour shirt.*
- iv. One pant muddy colour.*
- v. One blue colour patka.*
- vi. One pant jean black colour.*
- All the clothes were washed.”*

7 Both of them were sent up for trial. The Trial Court acquitted the father of the appellant. The appellant was convicted and sentenced as mentioned above. To convict the appellant the Trial Court primarily relied upon the recovery of the datar at the instance of the accused and his blood stained clothes, at the instance of his father. The Court also invoked Section 106 of the Evidence Act, 1872 (for short 'the Act').

8 During the trial, as many as 13 witnesses were examined by the prosecution, while the appellant and his father examined 5 witnesses including the appellant who appeared as DW-3. Out of the prosecution witnesses PW-1 Sukhminder Singh (complainant) (father of the deceased), PW-2 Harjit Kaur mother of the deceased, PW-3 Tejwinder Singh, PW-4 Gurcharan Singh, PW-7 Dr. Guriqbal Singh retired as MO, PW-8 HC Devinder Singh No.11-R, PW-10 HC Sanjay Joshi, PW-11 HC Parminder Singh, PW-12 Dalbir Singh Investigating Officer and PW-13 Jagan Nath, Retired Inspector are the material witnesses.

9 In his testimony dated 24.01.2012 **PW-1 Sukhminder Singh** S/o Kharak Singh stated that he had received a phone call from the mother-in-law of his daughter at 12.30 AM that they had lost everything (lut gaye) and were in hospital at Ropar. He also left for hospital with his wife, nephew and wife of his brother and son of his brother. When he reached the hospital at Ropar he saw that the appellant was being shifted to the ambulance as he was referred to PGI Chandigarh. Thereafter father of the appellant disclosed to him that car of his son was parked near brick kiln in the area of Magror Village. Then he along with his wife, nephew and sister-in-law went to the disclosed place and found that dead body of his daughter was lying in the front seat along side the driver seat of the car and her throat was cut. As per his statement, a person was also found present near the car who was the man of appellant's father. He further stated that after seeing the dead body, he got perplexed and on reaching the police at the spot the said man had narrated all the facts to the police upon which he was asked to put signatures. Further he stated that the police recovered a piece of cloth, one patka, specs, pair of shoes, one

button lying at the feet of his daughter and some hairs from her right hand. The police also recovered one bunch of hair from outside the car. The wind shield of the car was having a crack and the cloth of the roof of the car was torn. He further stated that scene of the crime was staged managed by the accused who after committing murder of his daughter had placed turban and patka in the fields of crop to show it to be a case of attack by someone else.

10 In his subsequent testimony on 01.03.2012, PW-1 stated that Gurcharan Singh, who was his uncle's son had also accompanied him to the place of occurrence on that date alongwith his wife, sister-in-law and his nephew Amandip Singh. He stated that after receiving the telephone from mother-in-law of his daughter, firstly he had gone to the place of occurrence alongwith others. He further stated that the appellant was unconscious and he had no talk with him in the hospital. He then deposed that Sukhwinder Singh accused was also present in the Civil Hospital and at that time the dead body of his daughter was lying at the place of occurrence. He then added that no police official was present in the hospital when he remained there and during his stay in the hospital he was not aware of the manner in which the occurrence had taken place. From the hospital he along with his wife, sister-in-law, his brother Avtar Singh, his nephew went to the place of occurrence and the police arrived at the spot after 10 minutes of their arrival. He then testified that he was very much perplexed at that time and whatever articles were recovered from the spot were not shown to him. Police also showed him Dat i.e. weapon of offence which was recovered from the field. Further, as per his statement the dat was having some hair stuck to it. Dead body of his

daughter was lying on the front left seat of the car along side the driver seat and one turban and fifty was recovered from the Chari field.

11 **PW-2 Harjit Kaur** wife of Sukhminder Singh and mother of the deceased in her testimony dated 24.02.2012 stated that the appellant was working in the Military. On 14.07.2011 her daughter (deceased) along with the appellant came to them. Her daughter told her that her husband i.e. appellant was having a doubt and saying that the child in her womb was not his and he will settle the scores with her for this. She disclosed this fact to Avtar Singh who is the brother of her husband. Further she stated that the appellant had committed the murder of her daughter. She also said that she did not disclose to the police on 19.07.2011 about the said allegations of illicit pregnancy made by the appellant. Further she stated that they did not state to anybody including the police that some unidentified persons had assaulted their daughter and the appellant had killed her nor did her husband said so i.e. PW-1. Further, she stated that she did not know what was recorded by the police in the statement of her husband as she was sitting at some distance.

12 **PW-3 Tejwinder Singh** nephew of Sukhminder Singh in his testimony dated 05.06.2012 stated that he got information on his mobile phone on 19.07.2011 that the appellant and his cousin sister (deceased) were injured by some unidentified persons due to which his cousin sister had died and the appellant had been sent to PGI Chandigarh due to serious injuries. After receipt of the said information he reached the Civil Hospital, Ropar where he identified the dead body of his cousin. On 26.07.2011 he had gone to PS Sadar Ropar where he joined the investigation where I.O. interrogated accused Sukhwinder Singh in his

presence and in the presence of SI Jagan Nath. He further stated that during interrogation accused Sukhwinder Singh suffered disclosure statement before I.O. that in the intervening night of 18/19.07.2011 he received a telephone from his son (i.e. appellant) to reach the spot and he reached the spot where he saw the dead body of Harinder Kaur (deceased) in the right direction in the car and her mobile phone along with SIM and gold chain were also lying broken at the spot which he lifted and tied the appellant with parna carried by him. In this process his clothes became blood stained and he had concealed the blood stained pant of the appellant along with mobile phone, SIM and gold chain of the deceased after placing the same in a plastic envelope in the area of Command Hospital, Chandi Mandir under the bushes and later on lifted the aforesaid articles and took the same to his home and washed away the same and now he had concealed the washed clothes, mobile phone and gold chain in the *peti* underneath the clothes in his house about which he only knew and could get the same recovered at his identification. Thereafter PW-3 Tejwinder Singh stated that the police party under the supervision of the I.O. along with him, accused Sukhwinder Singh and S.I. Jagan Nath reached at the disclosed place where during police custody and police remand, accused Sukhwinder Singh opened the cover of the *peti* and produced mobile phone, SIM, shirt white colour, pant, blue patka and one Jeans of black colour before the I.O. The police took the possession of the aforesaid articles.

13 Further **PW-4 Gurcharan Singh**, who was the key witness for the prosecution, in his testimony dated 10.07.2012 stated that on 19.07.2011 he visited PGI Chandigarh in connection with treatment of

Mandip Kaur who was his relative. When he visited the emergency, the appellant was also admitted in the emergency. He enquired as to what happened to him and then he disclosed that the police had suspicion on him that he had committed the murder of his wife and if he could sort it out with the police and with the panchayat. On that PW-4 assured him that he would take up the matter with the concerned persons. Then on 20.07.2011, he informed the police that the appellant had admitted the fact regarding the murder of his wife (deceased) and police recorded his statement on the same date. Then he again visited Police station on 21.07.2011. Before he reached the Police Station, the appellant was also present with the police and he was being interrogated by the police. In his presence, the appellant disclosed that he had committed the murder of his wife with datar and he could get it recovered. Then the appellant was taken to the place of occurrence from where they recovered one datar from the bushes which was wrapped in a glazed paper and it was smeared with blood. The said datar was taken into possession.

14 Further **PW-7 Dr. Guriqbal Singh**, the then M.O. at Civil Hospital, Ropar in his duly sworn affidavit Ex.PW7/A deposed that a medical board of three doctors was constituted by the SMO, Civil Hospital Rupnagar, for conducting the post mortem of the deceased Harinder Kaur. He stated that the same may be read as his examination in chief. He had also brought the original post mortem report which was Ex.PW7/B. The said doctors noted the following injuries in the body of the deceased :-

“1. Neck left side

(i) Incised wound 15cm x 4 cm x bone deep extending from 5

cm below the left ear to anterior surface of neck, obliquely placed, clear cut margins, clotted blood present.

(ii) Just below 12cm x 3cm x bone deep incised wound with clear cut margins, obliquely placed extending to mid line.

(iii) Just below incised wound 9cm x 2 cm x bone deep clear cut margins extending upto clavicle, obliquely placed.

On dissection clotted blood present in subcutaneous tissue, muscle layer, nerve, major vessels of the neck sharply cut, trachea also cut in middle third.

2. Incised wound 22cm x 3 cm x bone deep (outer table of skull bone cut) extending from right maxillary region – cutting the pinna of right ear upto to temporal region in horizontal direction, clear cut margins. On dissection subcutaneous clotted blood seen in right side of neck, maxillary region under lying bone cut, temporal regions under lying bone (outer table cut) right temporal area meninges and brain contused.

3. 6cm x 2cm x bone deep incised wound present on anterior surface of chin clear cut margin.

4 Incised wound 8cm x 2 cm x bone deep present behind the left ear on skull, clear cut margins.

5. Incised wound 5cm 1cm x bone deep present on back of left forearm oblique nature clear cut margins.

6. Incised wound 5cm x ½ cm x bone deep present just below the injury No.5 on left forearm.

7. Incised wound 5 cm x ½ cm x bone deep present on back of left hand, oblique placed.

8. On right hand dorsal aspect :-

(i) 2cm x ½ cm x bone deep incised wound just below the fingers.

(ii) 9cm x 2 cm x bone deep incised wound obliquely placed below (i)

(iii) 6 cm x 1cm x bone deep incised wound below (ii).”

15 Further **PW-8 HC Devinder Singh** posted at Barmalla Check Post, BBMB Nangal had tendered into evidence his affidavit Ex.PW8/A. PW-8 deposed that on 01.08.2011 HC Parminder Singh (PW-11) had taken out the property of this case from the Malkhana i.e. 15 different parcels duly sealed and handed over to him for depositing the same and directed him that first he should get the docket issued from the office of S.S.P. Rupnagar and then to deposit the same in D.F.S.L. Phase-4, Mohali. He followed his instructions. However, upon raising objections by the concerned Clerk, he returned back to the police station and deposited the case property with M.H.C., PS Malkhana. On 02.08.2011, after removing the objections, HC Parminder Singh (PW-11) had taken out the parcels of this case from the Malkhana and handed over to him which were duly sealed. Thereafter, the case property was deposited by him in D.F.S.L. Phase-4, Mohali. The office staff had raised objections that the parcels had to be deposited at Hyderabad for D.N.A. Test. So, on his returning back he handed over the receipt of deposited property and objected parcels were deposited by HC Parminder Singh (PW-11) in the Malkhana. Thereafter, on 23.08.2011 HC Parminder Singh (PW-11) had sent HC Devinder Singh (PW-8) and one Joginder Singh to deposit the case property of the above case to C.D.F.D. D.N.A. Test centre Hyderabad. On 25.08.2011, the parcels were deposited in intact position and on 29.08.2011 on returning the receipt was handed over to HC Parminder Singh (PW-11). Further he deposed that so long as the above case property remained with him neither he himself had tampered with it nor any one else was allowed to tamper with the same.

16 **PW-10 HC Sanjay Joshi** in his testimony dated 12.02.2013 stated that he took the photographs Ex.PW10/1 to Ex.PW10/41 which were clicked by him with a digital camera. He reached the spot at about 5.30 AM. None of the accused was present at the spot. He did not take photographs of Navdeep Singh (appellant). The police was present at the spot before his arrival. The dead body was lying in the car. The blood was lying on both the front seats and rear seat. Black patka was lying in the chari field at a distance of 20-25 feet. There were marks of violence in the chari field. Shoe was also lying in the chari field. The hairs were also lying in the chari field. From the photographs it appeared that the violence had also taken place in the fields.

17 Further **PW-11 HC Parminder Singh** had tendered into evidence his affidavit Ex.PW11/A and stated that the same may be read as part of his examination in chief. In his said affidavit, he deposed that on 09.07.2011 he was posted as M.H.C., PS Sadar Rupnagar and he was having charge of Malkhana of police station. On 19.07.2011 Inspector Dalbir Singh had deposited the following articles with him :-

“A. One parcel containing two gold bangles, two gold rings 24 gram 209 mg, two coloured bangles artificial having stones, one kara steel, one small ring, duly sealed with seal of D.S were deposited with me in the malkhana vide DDR No.28 dated 19.07.11.

B. One parcel containing turban of light blue colour sealed with seal of D.S

C. One parcel containing Spectacle sealed with seal of D.S

D. One parcel containing Fifti of black colour sealed with seal of D.S

- E. One parcel containing patka sealed with seal of D.S.*
- F. One parcel containing pair of boot (of Navdeep Singh) sealed with seal of D.S*
- G. One parcel containing hairs of head which were stated to be recovered from the metaled road near the window of driver side of swift car No.PB-12N-1195 sealed with seal of D.S*
- H. One parcel containing blood stated to be removed from the front glass of car No.PB-12N-1195 sealed with seal of D.S*
- I. One parcel containing blood stated to be taken from the above car parked at the spot, sealed with seal of D.S*
- J. One parcel containing button sealed with seal of D.S*
- K. One parcel containing hairs which were stated to be removed from the left hand of deceased Harinder Kaur.*
- L. One car no.PB-12N-1195 front glass of which is cracked.*
- M. One parcel containing hairs which were stated to be picked up from in between the driver seat and the adjoining front seat of car No.PB-12N-1195 sealed with seal of D.S.”*

On 20.07.11 H.C. Simranjit Singh had deposited the following items with him vide DDR No.19 dated 20.07.11:-

- “A. One parcel of viscera of deceased Harinder Kaur duly sealed with 10 seals of C.H. Rupnagar.*
- B One envelope duly sealed with 5 seals of C.H Rupnagar.*
- C One parcel duly sealed with three seals of C.H Rupnagar.*
- D One parcel duly sealed with 5 seals of doctor.”*

18 Thereafter, one parcel containing iron dat was deposited with him on 21.07.2011. Further, on 26.07.11 ASI Rajinder Singh had

deposited the following parcel with him :-

“A. One parcel of bottle sealed with seal of CH containing of accused Navdeep Singh.”

19 Further he stated that items no.B,C,D,E,G,H,I,J,K,M were taken out from the Malkhana and were sent to Director Forensic Laboratory Phase-41 Mohali through H.C. Ranjit Singh for depositing the same with Chemical Examiner Kharar out of which items No.A,B,C,D were retained to be deposited at Hyderabad.

20 Thereafter, items No.B and C were deposited at Chemical Laboratory Hyderabad through H.C. Devinder Singh (PW-8) for DNA test. Further, he deposed that so long as the case property remained with him neither he himself had tampered with it nor anyone else was allowed to tamper with the same.

21 **PW-12 Inspector Dalbir Singh** in his testimony dated 12.03.2013 stated that on 19.07.2011 he had received information through telephone that a dead body was lying near village Magror. When he reached the spot along with other police officials, one Sukhminder Singh (father of the deceased) met him and he had suffered a statement before him that his daughter (Harjinder Kaur) was married to the appellant who was working in the Indian Army and had come on leave for one month and he had to return back on 19.07.2011. Further he stated that in the previous night at about 12.30 AM he received a telephone call from Jasbir Kaur i.e. mother-in-law of the deceased that appellant Navdeep Singh and his daughter Harjinder Kaur had received injuries. When he reached the Civil Hospital, Ropar, he saw that the appellant was lying admitted in the emergency of Civil Hospital, Ropar in an injured

condition and he was referred to PGI, Chandigarh by the doctor and the other persons took him to Chandigarh and when he reached the brick kiln of village Magror he noticed that the Swift car of the appellant bearing No.PB-12-N-1195 had been lying parked on the road and on the front seat of the car along side the driver seat, the dead body of his daughter was lying and huge blood was present on the dead body. After hearing the statement, Sukhminder Singh signed in Punjabi language. His statement was exhibited as Ex.PW1/N. Thereafter he examined the place of occurrence and prepared a rough site plan. Thereafter he took possession of said Swift Car. The front wind screen of the car was broken and was blood stained. Further he took into possession from the place of occurrence the following articles :-

- “(i) One button of white colour stained with blood lying along side the driver seat near the dead body.*
- (ii)Hairs from the left hand of the dead body.*
- (iii)Hairs lying between the two front seats.*
- (iv)Blood lying in the car.*
- (v)Blood from the wind screen of the car.*
- (vi)Hairs lying outside the car along side the driver seat on the road.*
- (vii)One fifty of turban of black colour along with some hairs lying in the chari crop along side the road.*
- (viii)One spectacle from the chari field near the car.*
- (ix)One pair of shoes recovered from the chari field.*
- (x)Turban stained with blood.*
- (xi)Patka stained with blood found near the place of occurrence.”*

22 Further, he stated that the dead body of Harinder Kaur was lying on the front seat along side the driver seat. Thereafter, he examined

the dead body and prepared inquest report and got clicked the photographs. ASI Dhanno Devi, put off the gold ornaments of deceased Harinder Kaur i.e. two bangles of gold and two finger rings of gold and two other bangles of multiple colour which were artificial and one ring made of steel. Further, he stated that the post mortem of the deceased was got conducted through SI Jagan Nath from Civil Hospital, Ropar. Thereafter, on 20.07.2011 appellant Navdeep Singh was nominated in the case and was arrested by SI Jagan Nath (PW-13). On 23.07.2011, appellant Navdeep Singh was on police remand and during interrogation he made his voluntary statement (Ex.PW12/G). As per the said statement, his father Sukhwinder Singh was also nominated in this case and he was arrested on 24.07.2011 by PW-12. On 26.07.2011, during police remand Sukhwinder Singh suffered statement under Section 27 of the Act and as per that statement he got recovered one mobile phone having SIM No.98882-93260, one shirt of white colour, one pant of earth colour and one blue patka and one jean pant black colour. All the above said clothes were washed. The same were taken into possession by making a parcel. The further investigation was conducted by SI Jagan Nath and ASI Sarup Singh. He recorded the statement of witnesses from time to time. During the investigation of this case he also took the call details of mobile phone of the accused. The report Ex.PW-12/K and Ex.PW-12/L was also received from FSL. He further stated that sample for DNA Finger Printing and Diagnostic Hyderabad was also sent which was given by the doctor.

23 **PW-13 Jagan Nath**, the then Inspector in his testimony dated 08.08.2013 stated that on 19.07.2011 he along with the SHO and

other police officials reached the spot where Sukhminder Singh met them and he got recorded his statement that his daughter was married to appellant Navdeep Singh who was serving in Army and was on leave on those days. Thereafter, he also gave details about the articles taken into possession by them vide recovery memo which is similar to that of the statement of Inspector Dalbir Singh (PW-12). Further, he stated that during investigation the appellant Navdeep Singh suffered disclosure statement regarding the datar which was used for killing Harinder Kaur. Again on 23.07.2011 appellant Navdeep Singh suffered a disclosure statement Ex.PW2/G and the disclosure statement dated 26.07.2011 Ex.PW3/B which was suffered by the accused Sukhwinder Singh (father of the appellant). The disclosure statement dated 25.07.2011 was Ex.PW13/D. On the same day, the parcels of the articles recovered from the accused and mobile phone were taken into possession. The sketch of the datar (Ex.PW13/E) was signed by the attesting witnesses. Further in his examination-in-chief, PW-13 stated that he had seen datar which was recovered and sealed in his presence which was Ex.P1.

24 **DW-1 Mann Singh** in his testimony dated 22.04.2014 stated that he along with Jagdish Singh had gone to PGI with the appellant who was referred by the authorities of Civil Hospital, Ropar. They reached PGI at 2.30 AM. Police came there at 8.00 AM. The appellant was unconscious at that time. Nobody met the appellant at PGI till the arrival of police, nor he talked on phone with anybody as he was unconscious.

25 **DW-2 Jagdish Singh** in his testimony dated 22.04.2014 stated that on 19.07.2011 he along with Mann Singh had gone to PGI with the appellant who was referred by the authorities of Civil Hospital,

Ropar and he repeated the same testimony as given by Mann Singh (DW-1).

26 Further **DW-3 Navdeep Singh**-appellant-in his testimony dated 22.04.2014 stated that he had very good relations with his wife. She had been pregnant for 7 months at the time of her death. He and his parents never demanded any dowry or any articles from the parents of his wife. He never committed the murder of his wife. The allegations made against him by the prosecution were totally false. The prosecution had totally fabricated the evidence. He and his father did not make any conspiracy to commit the murder of his wife. The recoveries made by the police were totally false. The alleged pant planted upon him did not fit him. The alleged mobile phone had been planted upon him by the prosecution.

27 Further, in his testimony dated 24.07.2014 the appellant stated that at that time he was also using the mobile phone of his wife. On the day of occurrence, the mobile was with his wife and they both were using the same. The police had wrongly shown the recovery of the mobile phone from the house. The police had forcibly taken his finger prints in the police station and his hairs were also taken in the police station. The police had taken the hairs of his head with comb and they also pulled the hairs and took the same into possession. The police had taken the hairs of his head which were cut. Unknown persons had attacked them at a distance of 1.5 km from his village. In the attack, he and his wife received serious injuries. He had become unconscious at the spot after receiving injuries. He did not know who had taken him from the spot to the PGI, Chandigarh. He had received injuries on his head

with sharp edged weapon and some piece of cloth was tied on his neck. His wife had received injuries at the hands of un-known persons and at PGI, he came to know that his wife had succumbed to her injuries. He never gave any injury to his wife. The story made by the prosecution was false.

28 Further, in his testimony dated 14.08.2014 the appellant had stated that the prosecution had intentionally not produced the case property and the clothes as they had planted the same in this case. The clothes did not belong to him. Further, he stated that he was coming from Chandigarh on the day of occurrence on 18.07.2011. He had started from Chandigarh at 7/7.30 PM on 18.07.2011 in the Car. On the way at Atawa Chowk, Chandigarh his wife purchased books and he made the payment. He also purchased some books for himself for general knowledge for his Army examination. His wife had purchased books for Post Graduation in Public Administration. The police had cooked up a false story. The police had not traced the actual killers of his wife and the persons who attacked upon them. The case had been falsely planted upon him. He never made any extra-judicial confession before Gurcharan Singh or any other witness. He was getting proper treatment of the child who was in the womb of his wife. The treatment was taken from the Civil Hospital, Ropar. There was a regular card prepared for the proper care of the child in the womb. He never raised any suspicion regarding the legitimacy of the child. The story of coming of the appellant his in-laws on 14.07.2011 was totally false. It had been fabricated by the PWs in connivance with the police.

29 **DW-4 Gurdial Singh** in his testimony dated 12.08.2014 stated that on 19.07.2011 he along with one Subedar Major Kulwant Singh, C.Bhupinder Singh had reached PGI at about 6.00 AM. The appellant remained in their custody from 6.00 AM to 6.00 PM. During that time nobody had visited the appellant. Nothing regarding this case had been done on that day. On that day after 6.00 PM they took appellant/Navdeep Singh to Command Hospital, Chandimandir. Nobody came to PGI on that day from 6.00 AM to 6.00 PM.

30 **DW-5 Sukhjit Singh**, Medical Record Technician, PGIMER, Chandigarh in his testimony dated 21.10.2014 stated that the appellant Navdeep Singh was admitted on 19.07.2011 at 4.26 AM. He was treated in Neurosurgery Department.

31 As mentioned above, the Trial Court held that the recovery of datar at the instance of the appellant coupled with the extra-judicial confession he made before Gurcharan Singh (PW-4) and the matching of the tuft of hair in the hands of the deceased coupled with Section 106 of the Act, established the guilt of the appellant.

32 Learned counsel for the appellant has argued that the reliance on the extra-judicial confession made before Gurcharan Singh (PW-4) was completely misplaced because in his testimony Gurcharan Singh (PW-4) had denied that he had any relation with the girl but when Sukhminder Singh (PW-1) the father of the girl appeared to give his testimony, he accepted that Gurcharan Singh (PW-4) was his first cousin. As per learned counsel for the appellant, Gurcharan Singh's falsehood in denying his relationship with the girl's family completely erodes his

credibility. Even otherwise, the appellant well knew that Gurcharan Singh (PW-4) was his wife's uncle and, therefore, would have loathe to make any confession before him. His second argument is that Dr.Guriqbal Singh (PW-7) had categorically opined that the wounds inflicted on the deceased were with more than one weapon and in view of this testimony the whole edifice of the case of the prosecution (as it now stands) would be demolished. As regards the tuft of hair recovered from the hands of the deceased, it is his submission that HC Parminder Singh (PW-11), who deposed about the custody of the tuft of hair, never turned up for cross-examination and therefore, his testimony can not be read. He has further argued that on more than one occasion, the defence had requested (and the Court had allowed the request) that the clothes allegedly of the appellant should be produced in Court because it was the case of the appellant that those clothes and especially, the pant was not his. However, despite the Court's direction, those clothes were never produced before the Court. He has further argued that the injuries sustained by the appellant have not been explained by the prosecution and the Court had merely glossed over them by treating them to have been suffered by friendly hand. It is his submission that in this case where there is no direct testimony the circumstances appearing against the appellant have been demolished as above and moreover the circumstance; that of the injuries inflicted on the appellant, is one link which points towards the innocence of the appellant and in this vacuum the invocation of Section 106 of the Act to convict the accused is un-sustainable.

33 On the contrary, learned counsel for the complainant and the learned Deputy Advocate General have harped on the conduct of the appellant and his family. It is their contention that there is no explanation as to how the family of the appellant came to know about the incident which shows that they were in the know of the whole thing. Their subsequent conduct in abandoning the wife of the appellant (who was pregnant) and not taking her to the hospital also displays their guilty intention. They have emphasized that no money or jewellery was robbed. There was no evidence of any enmity with the appellant or his wife which the defence may have led to prove the version of the appellant that they were attacked by some persons. They have further stressed upon the very convenient memory lapse on the part of the appellant where he said that he remembered that some persons attacked him but had no other memory of the occurrence. As per them, it is very strange that he could not tell how his car was brought to a halt, because as per the photographs, it is seen that the car key was in the position where the ignition was off (Ex.PW10/41). It is further strange that though he recollected that they were attacked yet how many persons attacked them or any other details were very conveniently not given by him. They have pointed out that as per the photographs Ex.PW10/30, it is seen that there was spurt of blood which indicated that the deceased was killed inside the car and this would not be possible by a person who was standing outside the car. It is their assertion that the appellant had a motive because he suspected the paternity of the unborn fetus carried by the deceased.

34 They have also relied upon the provisions of Section 106 of the Act and argued that once it is admitted that the appellant and the

deceased were together in the car and there was no other person with them, it was for the appellant to have satisfactorily explained how and in what manner the deceased had died and he could not get any benefit by just expressing ignorance about the same.

35 Coming to the last point, first it may be noticed that there is a long line of judgments which lay down that the provisions of Section 106 of the Act do not have the effect of over-turning the basic requirement which rests upon the prosecution to prove its case and in the present case the medical record shows that the appellant was brought to the Civil Hospital, Ropar at 02.05 AM in an unconscious condition and at that time the Doctor had found, apart from other, one incised wound 6 cm x ½ cm x 1 ½ cm on the right occipital region of the skull which as per the medical opinion was caused by a sharp edged weapon.

36 In our considered opinion, the prosecution cannot explain away this injury by merely pointing out to the evidence of the Doctor that he could not deny that that injury could be caused by a friendly hand. It must be remembered that every injury (and indeed even a fatal injury) can be caused by a friendly hand but whether it was actually caused by a friendly hand is an issue of fact in each case. The dimensions of the injury and the fact that it had rendered the appellant unconscious coupled with the opinion that it was caused with a sharp edged weapon makes it hard to believe that it was indeed caused by a friendly hand. An injury of this nature could well have proved fatal and it is difficult to conceive that anybody would suffer such an injury voluntarily.

37 Learned counsel for the complainant has pointed out that there is an over-writing on the number “T” in the MLR and this renders it suspicious. That may be so, but in the absence of any question put in this behalf in the cross-examination of the doctor, the prosecution cannot derive any benefit therefrom.

38 Consequently this explanation has to be rejected and it has to be held that this injury has not been explained by the prosecution. Apart from that, another clinching evidence could have been the tuft of hair which was found in the hand of the deceased. Had it been satisfactorily proved that those hair belonged to the appellant, it would have lent a different colour to the whole case but as the matter stands, HC Parminder Singh (PW-11) who had deposed about the custody of the tuft of hair, had never turned up for cross examination and thus, his testimony cannot be read. Despite the orders of the Court, the blood stained pant which was recovered on the disclosure of the appellant was not produced in the Court. This gives credence to the stand of the appellant that infact that pant was not his and did not even fit him. The extra-judicial confession similarly has to be discarded because of the false stand of Gurcharan Singh (PW-4) that he was not related to the deceased, even though PW-1 Sukhminder Singh-father of the deceased admitted that Gurcharan Singh (PW-4) was his first cousin. The other recoveries made on the disclosure of the appellant and his father viz the mobile phone and gold chain belonging to the deceased are hardly material because they do not link the appellant with the murder.

39 Thus, what the Court left now is with the case of circumstantial evidence; but even if certain circumstances may point to

the guilt of the appellant, the one circumstance of his having received the serious injuries referred to above, points away from his guilt. Since there is no explanation for the same, the appellant is entitled to the benefit of doubt.

40 Resultantly, we allow the appeal and set aside his conviction. He is in jail and be released forthwith.

41 Since the main case has been decided, the pending Crl.Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

20.12.2019
pooja sharma-I

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