

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

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1. CRA-D-1070-DB-2018 (O&M)

Deepak ... Appellant

Versus

State of Haryana ... Respondent

2. CRA-D-990-DB-2018 (O&M)

Joginder @ Dhola ... Appellant

Versus

State of Haryana ... Respondent

3. CRA-AD-414-2019

Shakuntla ... Appellant

Versus

State of Haryana and another ... Respondents

**Date of Decision: 15.12.2022
Reserved on: 05.12.2022**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Sumit Sharma, Legal Aid Counsel,
for the appellant in CRA-D-1070-DB-2018.

Mr. Keshar Pratap Singh, Advocate with
Mr. Sukhsandesh Singh Chahal, Advocate,
Mr. Deepinder Walia, Advocate and
Mr. Vishal Singh, Advocate,
for the appellant in CRA-D-990-DB-2018.

Mr. Krishan Daaria, Advocate,
for Mr. Sandeep Lather, Advocate,
for the appellant in CRA-AD-414-2019.

Mr. Pawan Girdhar, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

Mr. Ravinder Hooda, Advocate,
for respondent No.2 in CRA-AD-414-2019.

MANISHA BATRA, J.

1. This common order will dispose of the captioned CRA-D-1070-DB of 2018 (O&M) titled *Deepak v. State of Haryana*, CRA-D-990-DB-2018 (O&M) titled *Joginder @ Dhola v. State of Haryana* & CRA-AD-414-2019 titled *Shakuntla v. State of Haryana and another*.

2. The aforementioned appeals have been directed against the judgment dated 04.09.2018 and order dated 06.09.2018 passed by learned Sessions Judge, Rohtak whereby the appellants-accused Deepak and Joginder alias Dhola were held guilty and convicted under Section 302 read with Section 120-B IPC and Section 201 read with Section 34 of IPC whereas the co-accused Mahinder was acquitted of the charges as framed against him.

3. The prosecution story as unfolded in brief is that on 03.10.2016, Subha Chand, Sarpanch of Village Uoon, submitted a written complaint before SHO Police Station Bond Kalan alleging therein that on the same day at about 11.30 AM, he received information about the dead body of some unknown person floating in the minor/drain near field of co-villager Chhatar Singh. He had gone to the spot and then reported the matter to the police. On receipt of this information, a police party headed by SI Ajit Singh reached at the spot. The dead body could not be identified. A case under Section 302 and 201 of IPC was registered. The *tehrir* was sent to the Police Station for registration of FIR. The postmortem examination of the dead body of the deceased and inquest proceedings were conducted. The

dead body was cremated on 06.10.2016. Photos of the corpse and its clothing were preserved. On 05.10.2016, a written complaint was filed by Shakuntla w/o Mahinder, r/o village Bharan before SHO Police Station Meham (District Rohtak) alleging therein that her younger son Ajay used to reside separately in Rohtak along with his children. On 02.10.2016, she had called him in the village for getting the gas cylinder filled. Ajay and herself had returned back home after getting the cylinder filled at about 11 AM and thereafter Ajay had gone away on his motorcycle. She alleged that Sushila wife of Ajay informed her in the evening that Ajay had not reached home. They had made search for him but could not locate him. On 05.10.2016, the motorcycle of the victim bearing registration No.No.HR-15A/3010 was found lying abandoned in the village. Therefore, she lodged a missing report about Ajay on the basis of which a case bearing FIR No.582 dated 05.10.2016 was registered under Section 346 of IPC.

4. During investigation, statement of Vijay, brother of Ajay had been recorded by the police on 06.10.2016, who disclosed that on 02.10.2016, he had seen the accused Deepak and Joginder while sitting with his brother near a well existing at Village Bharan road and they were consuming liquor and were having a scuffle with each other. On 13.10.2016, on coming to know about dead body of some unidentified person being found at Village Uoon, the wife and brother of Ajay went to Police Station Bound Kalan where the photographs of the dead body which was recovered from the minor/drain and its clothing were shown to them and they identified the photographs of the corpse to be that of Ajay and also identified his clothing. The statements of Sushila and Vijay were recorded

who disclosed that the accused Deepak and Joginder @ Dhola had inflicted injuries to Ajay and after murdering him had thrown his dead body in the minor/drain. Offences under Sections 302 and 201 read with Section 34 of IPC were added in case, bearing FIR No.582 registered at Police Station Meham.

5. The accused Joginder @ Dhola and Deepak were arrested on 13.10.2016. They were interrogated and suffered disclosure statements admitting their involvement in the murder of the victim Ajay and demarcated the place of occurrence. The accused Deepak and Joginder also demarcated the place, where after committing murder of the victim, they had left his motorcycle. The accused Joginder @ Dhola suffered another disclosure statement on 20.10.2016 and in pursuance thereof, he got recovered an axe used by him for committing murder of the victim and also the Aadhar Card belonging to the deceased Ajay from an iron box kept in the guest room of his house. The accused Deepak also suffered another disclosure statement and got recovered two bricks which were used by him for causing injuries to the victim, driving licence of the deceased and registration certificate of motorcycle of the deceased. In their respective disclosure statements, they also disclosed that the accused Mahinder s/o Hukam Chand had asked them to kill the victim. Offence under Section 120-B of IPC was added. The accused Mahinder was apprehended and arrested on 26.10.2016. He too was interrogated and suffered disclosure statement to the effect that on his asking, the accused Deepak and Joginder had made the victim consume liquor and then had inflicted injuries upon him and after killing him had thrown his corpse in the water.

6. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused Joginder, Deepak and Mahinder for commission of offences punishable under Sections 302 read with Section 120-B and 201 of IPC. The concerned Magistrate had committed the case for trial to the Court of Sessions. The accused Mahinder was charge-sheeted for commission of offence punishable under Section 120-B of IPC whereas accused Joginder and Deepak were charge-sheeted under Section 302 read with Section 120-B and 201 of IPC. They pleaded not guilty to the charges and claimed trial.

7. To prove its case, the prosecution examined 15 witnesses in all besides placing reliance on certain documents and thereafter prosecution evidence was closed.

8. The appellant and co-accused were examined under Section 313 of Cr.P.C. They claimed themselves to be innocent and pleaded false implication. They were given opportunity to produce evidence in defence but did not adduce any .

9. On appreciating the evidence produced on record and considering the contentions raised by both the sides, the learned Sessions Judge, Rohtak acquitted the accused Mahinder of the charges as framed against him by extending benefit of doubt to him whereas the accused Joginder and Deepak were held guilty and convicted for commission of offences punishable under Section 302 read with Section 120-B and Section 201 read with Section 34 of IPC. They were sentenced to undergo imprisonment for life and to pay a fine of Rs.15,000/- each under Section 302 read with Section 120-B of IPC and in default of payment of fine, they

were further sentenced to undergo rigorous imprisonment for a period of two years. They were also sentenced to undergo imprisonment for two years and to pay a fine of Rs.5,000/- each under Section 201 read with Section 34 of IPC. In default of payment of fine, they were to further undergo rigorous imprisonment for a period of six months. Both the sentences were ordered to run concurrently. Fine had not been paid.

10. Feeling aggrieved against acquittal of accused Mahinder, Smt. Shakuntla, complainant filed CRA-AD-414-2019 whereas the appellant-accused Deepak preferred CRA-D-1070-DB-2018 and appellant -accused Joginder @ Dhola filed CRA-D-990-DB-2018 challenging their conviction.

11. For the sake of convenience, the appellant Shakuntla shall be hereinafter referred to as complainant, the appellants Joginder @ Dhola and Deepak shall be referred to as accused and accused Mahinder shall be referred to as respondent No.2.

12. The learned State counsel and learned counsel for the complainant argued that there was cogent and convincing evidence on record to prove that respondent No.2 i.e. accused Mahinder had hatched conspiracy with the co-accused Joginder and Deepak to eliminate the victim and in pursuance thereof, the accused Deepak and Joginder had called the victim on the fateful day, had made him consume liquor with them and then had opened an attack upon him with the help of axe and bricks thereby causing him serious injuries and killing him and then had thrown the dead body of the victim in canal to cause disappearance of the offence of murder. The medical evidence proved that the death was homicidal in nature. The chain of circumstances was complete and those circumstances unerringly

pointed towards the involvement of the accused and respondent No.2 in the commission of offence of murder and causing disappearance of dead body of the victim. Therefore, it was argued that the learned trial Court is justified in convicting the accused-Joginder and Deepak. However, it was urged that findings as given by learned trial Court qua acquittal of respondent No.2 were liable to be reversed as a grave error was committed by learned trial Court in acquitting him.

13. Learned counsel for the accused Deepak and Joginder argued that the findings as given by the learned trial Court were suffering from several material infirmities and were not sustainable in the eyes of law. The learned trial Court did not apply its judicious mind. The findings given by it were based upon conjectures and surmises. There was no eye-witness to the factum of murder of the victim. The case was based upon circumstantial evidence. The chain of circumstances was not at all complete and was totally broken. PW-8 Vijay who was none other than the real brother of the deceased and a material witness of the case had not supported the prosecution version and had turned hostile. The disclosure statements of accused were not admissible in evidence. The place of occurrence was already within the knowledge of the police and the alleged demarcation of the same at the instance of the accused did not serve any purpose. A false recovery was planted upon the accused. The recovery evidence was highly improbable, unnatural and doubtful. The bricks allegedly recovered at the instance of accused Deepak and axe allegedly recovered at the instance of accused Joginder were easily available.

14. It was further argued that the prosecution had miserably failed

to attribute any motive to the accused to kill the victim. The evidence as to hatching of conspiracy was not at all inspiring. There were material improvements in the statements of PW-2 Shakuntla and PW-3 Sushila which were not taken into consideration. There was no independent evidence to the factum of recovery of driving licence, aadhar card etc. belonging to the victim. No explanation had come forward as to why the accused would keep belongings of the victim with them. With these broad arguments, it was submitted that the guilt of the accused Deepak and Joginder had not been proved beyond doubt and hence it was urged that the appeals filed by them deserved to be accepted and they deserved to be given benefit of doubt and were entitled to be acquitted. To fortify their arguments, learned counsel for the accused have relied upon the authorities cited as **Shri Satish Kumar & another v. State of Himachal Pradesh and another**, AIR 2020 SC 1766; **Sanjiv Kumar @ Sanjy v. State of Haryana**, 2019 (1) R.C.R. (Criminal) 969; **Ravi Kumar v. State of Haryana**, 2019 (1) R.C.R. (Criminal) 463; **Jatinder Singh @ Tota v. State of Punjab**, 2016 (2) R.C.R. (Criminal) 179; **Accharjit Singh @ Chhinda v. State of Punjab**, 2012 (1) R.C.R. (Criminal) 418; **Rajesh v. State of Haryana**, 2012 (6) R.C.R. (Criminal) 2666; **Chet Ram v. State**, 2007 (12) R.C.R. (Criminal) 828; **Muthiah v. State**, 2017 (170) AIC 788; **Panjali alias Savaridoss vs. The State**, 2012 (6) R.C.R. (Criminal) 1388; **Kalu Ram Gurjar and others v. State of Rajasthan**, 2017 CriLJ 2109; **Kiran Pal and others v. State of U.P.**, 2009 (19) R.C.R. (Criminal) 9; **Bhugdomal Gangaram and others v. State of Gujarat**, AIR 1983 SC 906; **Kalyan Kumar Gogoi v. Ashutosh Agnihotri and another**, AIR

2011 SC 760; **Surender v. State**, 2009 (6) ILR (Delhi) 549; **Ravi Kumar v. State of Himachal Pradesh**, 2015 (35) R.C.R. (Criminal) 239 & **Kirtan Prasad v. State of M.P.**, 2005 CriLJ 69.

15. Learned counsel for respondent No.2-Mahinder argued that the findings as given by learned trial Court qua him were well reasoned. The prosecution had miserably failed to connect him with the subject crime. The allegations as to his hatching a conspiracy with the co-accused were very weak and prosecution had failed to prove so by producing any convincing evidence. No direct incriminating evidence had been produced against him on record. While stressing that the learned trial Court had passed a well reasoned order of his acquittal, it was urged that the appeal filed against him was liable to be dismissed.

16. We have given due deliberations to the contentions put forth by learned counsel for the accused, respondent No.2 as well as learned State counsel and have minutely scrutinized the entire record.

17. The version of the prosecution which is not in dispute is that on 02.10.2016, the victim Ajay visited his native village Bharan to get filled up gas cylinder for his mother PW-2 Smt. Shakuntla and after getting the needful done, he had left her house at about 11 AM and thereafter he had gone missing. His motorcycle was found lying parked in an abandoned condition in the village on 05.10.2016 and thereafter his mother reported the matter to the police on which a case under Section 346 of IPC was registered. It has also come on record that the dead body of the victim Ajay was found floating in a minor/drain within the jurisdiction of Police Station Bond Kalan, District Bhiwani on 03.10.2016 and as the same could not be

identified at that time, therefore, after getting the postmortem examination of the same done and conducting inquest proceedings, it was cremated on 06.10.2016. As per the postmortem report Ex.PAE, the cause of death was head injuries and their complications which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. PW-14 Dr. Avinash who was one of the members of the Board who had conducted postmortem examination, proved this report. His statement has remained uncontroverted. He was a disinterested witness and a public servant and, there is no reason to disbelieve his statement. The evidence produced on record by PW-14 coupled with the postmortem report proves that the victim had died a homicidal death.

18. The prosecution was required to prove that the victim had been killed by the accused and respondent No.2 in pursuance of some criminal conspiracy hatched by them. There is no direct evidence as to commission of offence of murder of the victim and the prosecution sought to prove the guilt of the accused on the basis of circumstantial evidence. The well settled principle of law is that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of the guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete so as not to leave any substantial doubt in the mind of the Court. Irresistibly the evidence should lead to the conclusion inconsistent with the innocence of the accused and the only possibility that the accused had committed the

crime. The circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person [See: **Sharad Birdi Chand Sarda v. State of Maharashtra**, AIR 1984 Supreme Court 1622; **Brajendrasingh v. State of M.P.**, 2012 (4) SCC 289; **Shivaji Sahebrao Bobade and another v. State of Maharashtra**, (1973) 2 SCC 793; **Padala Veera Reddy v. State of Andhra Pradesh**, 1990(2) Recent Criminal Reports 26 (SC); **Vijay Shankar v. State of Haryana**, (2015) 12 SCC 644; **Arvind @ Pappu v. State (Delhi Administration)**, 1999 (2) RCR (Criminal) 810 and **State of Rajasthan v. Rajaram**, 2003 (47) ACC 635 (SC)].

19. The primary question in these appeals is whether the circumstantial evidence produced by the prosecution to prove the guilt of the accused satisfies the above referred legal parameters or not? We would firstly restrict ourselves with the question regarding involvement of the accused **Joginder** and **Deepak** in the subject offences. To prove their complicity in the crime, the prosecution had pressed into service the following circumstances:-

- i) Evidence of last seen of the accused with the victim on 02.10.2016 by PW-8 Vijay.
- ii) Evidence led by PW-2 Shakuntla as to receiving information qua hatching of conspiracy by the accused and respondent No.2 to eliminate the victim.

iii) Disclosure statements dated 16.10.2016 Ex.PK and PL of accused Joginder and Deepak respectively leading to demarcation of place of occurrence and the place where the motorcycle of the victim was left by them after the crime.

iv) Disclosure statements dated 20.10.2016 (Ex.PV) suffered by accused Joginder leading to recovery of axe Ex.MO/1 & Aadhar Card and of accused Deepak (Ex.PW) leading to recovery of two bricks Exs.MO/2 & MO/3 and driving licence of the victim as well as registration certificate of his motorcycle.

v) Motive.

20. The first and the foremost circumstance relied upon by the prosecution was last seen evidence. So far as this circumstance is concerned, though it was not mentioned in the complaint Ex.PB filed by the complainant Shakuntla on 05.10.2016 but the prosecution case is that on 06.10.2016 PW-8 Vijay had recorded his statement Ex.PH under Section 161 of Cr.P.C. intimating the police that on 02.10.2016, he had also gone to Village Bharan and had seen the victim Ajay while sitting with accused Joginder and Deepak near a well of Village Bharan, consuming liquor and having scuffle with each other. He had advised the victim to go home and then he himself had left that place. However, in his sworn deposition, PW-8 Vijay did not support the version of the prosecution to this effect at all and while resiling from the contents of statement Ex.PH, he asserted that as on 02.10.2016, he was in Rajasthan and had come back only on 05.10.2016. By examining this witness, the prosecution, therefore, failed to establish the

story that the victim was lastly seen with the accused. No other evidence of last seen was produced by the prosecution. The learned trial Court had also held that the circumstance of last seen was not proved by the prosecution. In view of the discussion as made above, no ground has been made out for arriving at some different conclusion and hence it is held that the prosecution had failed to prove this circumstance.

21. The second circumstance as pointed out by the prosecution was the evidence led by PW-2 Shakuntla that some female co-villager informed her on 21.10.2016 about some conversation taking place between the accused and respondent No.2 thereby hatching conspiracy to eliminate the victim. The learned trial Court heavily relied upon her testimony and observed that non-examination of the female who had given information about hatching conspiracy by the accused to PW-2 was not of any significance. However, on reading the evidence of PW-2 in between the lines, it suggests that the entire story as narrated by her was cooked up. PW-2 had come to know about the murder of the victim on 13.10.2016. If she had actually received some information about the complicity of the accused in the crime then in due course and as a natural human conduct, she would have disclosed about the same to her family members or police on the same day and that would have been her natural reaction to the whole situation. However, her conduct is proved to be wholly unnatural. She neither disclosed about the identity of the female who had divulged information about the accused nor she made any statement to the police in this regard and it was only for the first time that while appearing in the Court she had deposed so. No explanation whatsoever was given by her for

not bringing this fact to the notice of her family members or to the police at the earliest possible opportunity and this fact renders her statement to be highly unreliable. Moreover, she was not the person who herself had heard any conversation between the accused and respondent No.2. As per Section 60 of the Indian Evidence Act, 1872 (for short "Act"), oral evidence must be direct and if oral evidence refers to a fact which could be heard, it must be evidence of a witness who says that he/she heard it. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. This witness could not even tell as to on which particular date, month and year the female co-villager had heard conversation of hatching conspiracy between the co-accused and respondent No.2 and, therefore credence of her evidence has gotten demolished and the same cannot be considered to be an admissible evidence. As such, we are inclined to hold that the findings given by learned trial Court as to guilt of the accused while relying upon testimony of PW-2 cannot be said to be sustainable and are liable to be set aside.

22. It also needs to be mentioned that the learned trial Court had also relied upon statement of PW-3 Sushila and observed that this witness stood like a rock. In our opinion, the testimony of this witness was rather formal in nature. She deposed about the fact that her husband had gone to Village Bharan on 02.10.2016 and did not return and further about identifying the dead body of her deceased husband on 13.10.2016. Though she stated that her husband had been murdered by the accused present in the Court but there was no basis for her deposing so as neither she was an eye-witness to the occurrence nor she explained as to how she had come to

know that the accused were the persons who had killed her husband. As such, her statement did not serve any useful purpose and accordingly, it is held that the learned trial Court had wrongly relied upon her testimony to connect the accused with the murder of the victim.

23. The next circumstance as relied upon by the prosecution for connecting the accused with the offence of murder was suffering of disclosure statements dated 16.10.2016 by the accused Joginder vide memo Ex.PK and accused Deepak vide memo Ex.PL and consequent demarcation of place of occurrence by both of them vide memos Exs.PM & PN and place where they had left motorcycle of the victim vide memos Exs.PO & PP respectively in the presence of PW-8 Vijay, PW-10 HC Sultan Singh & PW-15 SI Jaivir i.e. investigating officer of this case. Before discussing the question of admissibility of evidence of these witnesses, it will be proper to refer to certain provisions of law. Section 25 of Act mandates that no confession made to a police officer, shall be proved as against a person accused of an offence. Similarly, Section 26 of Act provides that confession made by the accused persons while in custody of the police cannot be proved against him. However, to the aforesaid rule of Sections 25 & 26 of Act, there is an exception carved out by Section 27 of Act based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly, it was safely allowed to be given in evidence.

24. The scope and ambit of Section 27 of the Act were illuminatingly stated in **Pulukuri Kottayya and others v. Emperor**, AIR 1947 PC 67, which have become *locus classicus* wherein it was held that

Section 27 which is not artistically worded provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of Police Officer must be proved to and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. As observed in this case and other various judicial pronouncements of Hon'ble Apex Court and various High Courts, the well enunciated position of law is that for the applicability of Section 27 of Act, two conditions must be pre-requisite viz.:

- i)** Information must be such as has caused discovery of the fact.
- ii)** Information must relate 'distinctly' to the fact discovered.

25. Under Section 27 only so much of the information as distinctly relates to the fact revealing thereby discovery is admissible. While deciding applicability of Section 27 of Act, the Court has also to keep in mind, the nature of presumption under illustrations of Section 114 of the Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Keeping in view the above discussed position of law in mind, it is to be seen as to whether the accused are proved to have suffered disclosure statements and further to have demarcated the place of occurrence.

26. On perusal of testimonies of PW-8 Vijay and PW-10 HC Sultan Singh who were attesting witnesses to these disclosure statements and memos of demarcation and of PW-15 SI Jaivir, investigating officer, we are of the opinion that the same could not be acted and relied upon beyond doubt to prove that the accused had suffered such disclosure statements and had demarcated the place of occurrence. PW-10 and PW-15 deposed that the accused had suffered disclosure statements and had also demarcated the place of occurrence in the presence of PW-8 Vijay but PW-8 did not utter even a single word in this regard rather he had resiled from the prosecution version in toto. Strangely, neither the memos of disclosure statements nor memos of demarcation of place of occurrence and place of recovery of motorcycle i.e. Ex.PK to PQ were either shown to PW-8 or got confronted from him though they were shown to be bearing his signatures. The learned Public Prosecutor while cross-examining PW-8 did not ask a single question that the accused had suffered disclosure statements or had demarcated the place of occurrence in his presence. No doubt, it is a well settled proposition of law that prima facie, the public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground of their status and on the ground that they are interested in the success of the case. However, the fact that PW-2 who was the only independent witness to the factum of suffering disclosure statements by the accused and consequent demarcation had not supported the prosecution version corroborated by the fact that these witnesses themselves admitted that the place of occurrence was already within their knowledge, creates a reasonable doubt that the

investigating officer had tried to create evidence with regard to demarcation of place of occurrence and place of recovery of motorcycle by the accused. No new or distinct fact can either be proved to have been discovered in pursuance of the disclosure statements alleged to be suffered by the accused and as deposed to by these witnesses and their statements on this point could not be relied upon beyond doubt. As such, it is held that the prosecution had failed to prove that the circumstance as narrated above was an important link in the chain of circumstance.

27. This takes us to next circumstance with regard to alleged recovery of incriminating articles. The prosecution relied upon disclosure statements of accused Joginder and Deepak stated to be suffered by memos Ex.PV and Ex.PW leading to recovery of axe vide Ex.MO/1, aadhar card Ex.MO/4, two bricks Exs.MO/2 & MO/3, driving licence of the victim vide Ex.MO/5 and registration certificate of the motorcycle vide Ex.MO/6 respectively. The learned trial Court had observed that recovery of aforementioned articles at the instance of the accused stood proved and the same connected them the offences with which they were charge-sheeted. As already discussed in preceding para No.24 the well settled principles to decide the relevance of disclosure statement and consequent recoveries are that the fact on which evidence is sought must be relevant to the issue and must have been discovered. The discovery must be in consonance of some information received from the accused and not by the own act of the accused. In **Dudh Nath Pandey v. State of U.P.**, AIR 1981 SC 911, the Hon'ble Supreme Court observed that if a case is dependent on circumstantial evidence, different considerations would prevail. It was

observed in that case that evidence of recovery of pistol at the instance of accused, did not, by itself prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was observed that pointing out the weapon might, at the best, proved the knowledge of the accused as to where the weapon was kept. In *Pulukuri Kottayya's* case (Supra) also, it was observed that it can seldom happen that information leading to discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof and the other links must be forged in the manner allowed by law. It, therefore, follows that unless it is shown by other evidence that the articles discovered were in some way connected with the offence charged and the accused, the recovery thereof loses relevancy. In other words, it may be emphasized that the articles discovered will be relevant only if they are proved by other evidence to have been used in the commission of the offence.

28. Applying the above discussed principles of law to the facts of the present case, it is revealed that the prosecution had rested its case on the testimonies of PW-13 ASI Jagdish and PW-15 SI Jaivir on this point. PW-Surjit who was admittedly a relative of the complainant and was cited as an attesting witness to the memos of disclosure statements Exs.PV & PW and memos of recovery Ex.PY, Ex.PAA, Ex.PAB & Ex.PAC respectively had been given up by learned public prosecutor by making a statement that he was won over by the accused. On assessing the testimonies of PW-13 & PW-15, it is revealed that they are inconsistent on some material points. PW-13 stated that on 20.10.2016, they had left the Police Station at about

8.30 AM but according to PW-15 they had left the Police Station at about 10 AM. According to PW-13, ASI Yash Pal driver, investigating officer, PW-Surjit, both the accused and himself had gone towards the place of recovery in a Tavera vehicle whereas PW-15 stated that he along with accused, ASI Jagdish, PW-Surjit and Constable Sultant had gone there. PW-13 stated that they had reached at the place from where the recovery of axe was effected at about 11.15 AM but according to PW-15 they had reached there at about 4/4.30 PM. PW-15 stated that the place from where the bricks were got recovered at the instance of accused Deepak was at the distance of 5-6 acres from where the axe was recovered but according to PW-13 the bricks as well as axe were got recovered from the same corner of the land/fields wherein paddy crop was growing. Neither of these witnesses deposed about the identity of the owner of the paddy fields from where the recoveries were effected. Neither the specific khasra and killa numbers of this land were mentioned in the scaled site plans nor by these witness. Then so far as the recovery of aadhar card of the deceased at the instance of accused Joginder and driving licence of the deceased and registration certificate of his vehicle at the instance of accused Deepak is concerned, no genuine or sincere efforts were made by the Investigating Officer for calling any respectable person from the village from where these recoveries were effected. These recoveries were allegedly effected from the houses of the accused. The places of recovery of aadhar card and driving licence etc. of the deceased were not proved to be in control or absolute occupation or ownership of the accused. The almirah and box from which the recoveries of aadhar card, driving licence and registration certificate were effected

were not lying locked. The inconsistencies as pointed out above in the statement of these witnesses cannot be brushed aside lightly especially in view of the fact that statements of PW-13 and PW-15 were not corroborated by any independent or disinterested evidence and further in view of the fact that the only independent witness to the recovery namely, PW-Surjit had been given up by the prosecution without examining him, doubt has reasonably been created that these recoveries were not effected in the manner as deposed to by these witnesses and were infact planted because if that would not have been so, then in such like inconsistencies would not have occurred. It was only after a gap of seven days that these articles were allegedly recovered at the instance of the accused. No other evidence has come on record to prove that at the time of committing the murder of the victim these weapons were used so as to provide a link between the accused in the commission of subject offences and this being the nature of evidence produced by the prosecution with regard to disclosure statements of the accused and consequent recovery/discovery of bricks and axe, in our opinion, this circumstance cannot be attributed to the accused so as to provide a nexus between the accused and subject offences and cannot be stated to be incriminating circumstance. That apart, the discovery evidence by itself is a subsidiary evidence and cannot sustain a conviction though it is valuable piece of corroborative evidence but it must be shown by other evidence that the articles discovered were connected with the offence. As the prosecution did not produce any other connecting evidence on record to prove that the accused participated in the occurrence and used Exs.MO/1 to MO/3 at the time of murdering the victim, therefore, it is not possible to

show that evidence against two accused which remained confined to recovery of Exs.MO/1 to MO/3 is sufficient to mulct them with the liability. Even assuming that the statements made by PW-10 and PW-15 and recovery effected at their instance became admissible under Section 27 of the Act, that can never be treated as substantive evidence and at best, could be stated to be corroborative in nature and it is hazardous to venture a finding based solely on this recovery evidence.

29. Further, even if the version of prosecution as to recovery of aadhar card, driving licence and registration certificate belonging to the deceased at the instance of accused is accepted, still the prosecution was required not merely to prove recovery of abovesaid articles but also the fact that the deceased was carrying these articles at the time when he was killed. In the absence of any evidence forthcoming on record to this effect, recovery of the articles belonging to the deceased from the houses of the accused seven days after their arrest falls short of incriminating the accused for the commission of murder of the deceased. It is also not believable that the person who commits murder and throws dead body of the victim in floating water would keep his aadhar card, driving licence or registration certificate with him. It defies imagination to accept that this was what the accused had done. Rather they would have also thrown these articles in the minor/drain to let the same disappear along with the dead body. The driving licence and aadhar card of the deceased as well as registration certificate of his motorcycle were not pieces of value to the accused, which could be of any use to them later on rather they were incriminating material against them which could lead them to trouble at any time. It is not believable that

the accused would preserve these articles. We cannot accept the evidence of recovery of driving licence and aadhar card of deceased as well as registration certificate of his vehicle as a piece of substantive circumstantial evidence against the accused. It is also important to note that the prosecution failed to carry out any scientific investigation on the axe and bricks and did not produce any FSL report and in the absence of such evidence, it cannot be conclusively held that these bricks and axe were the weapons of offence in the present case. Though PW-14 Dr. Avinash reported that injuries on the person of the victim could be caused by such like weapons as Ex.MO/1 to Ex.MO/3 but since the link evidence to establish that the recovered weapons were used in the crime is missing and since no report from FSL had been called for, therefore, it is not possible to connect these weapons with the offence and, therefore, the findings given by learned trial Court as to guilt of the accused while relying upon this piece of evidence cannot be stated to be sustainable and are liable to be reversed.

30. Another important circumstance as set up by the prosecution to prove the complicity of the accused in the crime was motive part. The prosecution story is that in the past, the deceased used to hurl abuses to the accused and respondent No.2 and feeling offended, they had hatched conspiracy to kill him. The well settled proposition of law is that in cases of direct evidence where eye-witnesses are available, motive loses all importance but in cases of circumstantial evidence, proof of motive is considered as an important circumstance relevant for assessing the evidence. Absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In such a case,

motive assumes pertinent significance as existence of the motive is an enlightening factor in the process of presumptive reasoning in such a case. The absence of motive, however, puts the Court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. Reference in this regard can be had to **Surinder Pal Jain v. Delhi Administration**, 1993 SCR (2) 226; **Gosu Jairami Reddy and another v. State of Andhra Pradesh**, AIR 2011 SC 3147; **State of Uttar Pradesh vs. Kishan Pal and others**, (2008) 16 SCC 73 & **Pannayar v. State of Tamil Nadu by Inspector of Police**, (2009) 9 SCC 152. In these cases, it was observed that existence or otherwise of a motive plays a significant role in cases based on circumstantial evidence and plays pivotal role in determining the guilt of the accused. On perusal of record, we find that the prosecution had failed to adduce any evidence whatsoever on record to prove that the accused had motive to kill the victim. Neither PW-2 nor PW-8 and PW-3 made any deposition in this regard nor any other evidence had been produced by the prosecution to prove so. Hence, there is no hesitation to hold that the prosecution had failed to bring any evidence whatsoever on record to attribute motive to the accused and respondent No.1. The learned trial Court did not appreciate the evidence produced on record on this point in proper perspective and also ignored the well settled proposition of law. Hence, the findings as given by learned trial Court on this point cannot be stated to be sustainable and are liable to be set aside.

31. Let us now deal with the legal position on the point of conspiracy as the allegations against the accused and respondent No.2

(whose acquittal has been challenged) were that of their hatching a conspiracy with each other to kill the victim. Section 120-A of IPC is relevant for the purpose. As per this Section, offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or act which is not legal by illegal means. Section 120-B provides punishment for criminal conspiracy. Like most crimes, conspiracy requires an act (*actus reus*) and accompanying mental state (*mens rea*). The crime constitutes that act, and the intention to achieve an unlawful objective of that crime, constitutes the required mental state. The law punishes conduct that threatens to produce harm as well as the conduct that has actually produced it. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. The rationale of conspiracy is that the required objective manifestation of disposition leading to criminality is provided by act of agreement. The well settled proposition of law is that the conspiracy is not only a substantive crime but it also serves as a basis for holding one person liable for crimes of others in case, where application of usual doctrines of complicity would render that person liable. In this regard, reference can be made to **State of Tamil Nadu v. S. Nalini and others**, (1999) Criminal Law Journal 3124 (known as Rajiv Gandhi Murder case) wherein broad principles governing the law of conspiracy were laid down by Hon'ble Apex Court and it was observed that both the existence of conspiracy and its objects have to be inferred from the circumstances and the act and conduct of the accused. The conspiracy is hatched in private or in secrecy. It is merely impossible to establish a

conspiracy by direct evidence. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no steps are taken by any such person to carry out their common purpose, a crime is committed by each and everyone who joins in the agreement. No overt act is needed to be done in furtherance of the conspiracy. However, it is required to establish that there was meeting of mind of partners to undertake some illegal act. On applying the aforesaid proposition of law to the facts of the present case, on a scrutiny of the evidence produced on record and at the cost of repetition, it may be stated that as already discussed, the testimony of PW-2 Shakuntla has not been considered to be worthy of any credence and admissible in evidence for the purpose of holding that the respondent No.2 had hatched any conspiracy with the co-accused for committing murder of her son. The prosecution, to connect the respondent No.2 with the offence of criminal conspiracy also relied upon evidence as to suffering of disclosure statement vide memo Ex.PAJ by him. The inculpatory part of this disclosure statement being suffered in the custody of police and being confessional in nature cannot be considered to be admissible in evidence. The same did not fall in the exception of Section 27 of Act as no new or distinct fact whatsoever was proved to have discovered in pursuance thereof. As already discussed, the evidence produced on record by prosecution as to suffering disclosure statements by the co-accused is not considered to be reliable. Therefore, the same can also not be taken into consideration for the purpose of connecting the respondent No.2 with them. Hence, on the basis of the evidence produced on record, the respondent No.2 could certainly not be held guilty

and convicted for commission of offence punishable under Section 120-B of IPC. No direct or circumstantial evidence of incriminating nature could be produced on record by the prosecution to prove that respondent No.2 who was admittedly not present at the spot of occurrence at the time of murder of the victim, was a party to any criminal conspiracy to eliminate the victim, with the accused and in the absence of any such evidence, it is observed that the learned trial Court had rightly acquitted him of charge under Section 120-B of IPC and the findings given by the learned trial Court on this point are not liable to be interfered with.

32. It is further observed that though a separate charge has been framed against the accused Joginder and Deepak under Section 120-B of IPC but the learned trial Court had not held these accused guilty under this section independently and had held them guilty for commission of offence punishable under Section 302 of IPC read with the aid of Section 120-B of IPC. As per the discussion as made above, it is held that the trial Court failed to appreciate the evidence produced on record which did not prove that the accused had hatched any conspiracy with each other or with respondent No.2. Therefore, it is held that since the prosecution failed to prove and establish the various circumstances from which the inference of guilt of the accused was sought to be drawn and the circumstances as pointed out by the prosecution are not proved to be forming a complete chain leading to the conclusion that murder of the victim was committed by the accused and respondent No.2 by hatching a conspiracy and none else, therefore, the conviction of the accused under Section 302 read with Section 120-B of IPC cannot be stated to be sustainable in the eyes of law.

33. So far as the charge under Section 201 of IPC is concerned, the learned trial Court had held the accused guilty thereunder by observing that they were proved to have thrown the dead body of the victim in the minor with the intention to screen themselves from legal punishment. However, since no direct or circumstantial evidence of incriminating nature could be produced by the prosecution on that point and the chain of circumstantial evidence as produced on record can also not be considered to be sufficient for this purpose, hence we hold that the charge under Section 201 of IPC also did not stand established against the accused beyond doubt and accordingly, they are entitled to be acquitted of that charge.

34. Thus, no other point had been urged or survived for consideration.

35. Thus, it would be seen that if the fact of probable and natural prosecution story, production of reliable and trustworthy evidence brought on record by the prosecution coupled with the other facts and circumstances emanating from the evidence on record, as discussed hereinabove are put together, then no irresistible and inescapable conclusion can be drawn as to complicity of the accused and respondent No.2 in the commission of offences for which they had been charged with. Having said that and for the reasons as discussed above, the judgment of conviction and order of sentence as passed by the learned trial Court as against the accused Deepak and Joginder are set aside. The appellants accused Deepak and Joginder are acquitted of the charges levelled against them by giving them benefit of doubt and are directed to be released forthwith if not required in any other case. The appeals filed by them deserve to be allowed accordingly. Further,

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the findings as to acquittal of respondent No.2-Mahinder warrant no interference and deserve to be upheld. Accordingly, the appeal filed by complainant-Shakuntla has become liable to be dismissed and it is ordered accordingly. All pending applications also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

15.12.2022
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No