

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-759-DB-2014 (O&M)

Reserved on: 06.12.2022

Date of Decision: 12.12.2022

Ashok Kumar and others

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Vikram Singh, Advocate
for the appellants.

Mr. Arun Gupta, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 26.4.2014, upon Sessions Case No. 20 of 3.8.2010, by the learned Additional Sessions Judge, Ludhiana. Through the above said verdict, the learned trial Judge concerned, convicted all the accused, for the commission of offences punishable, under Section(s) 302 read with Section 34 of the IPC. Moreover, through a separate sentencing order, drawn on 28.4.2014, the learned trial Judge concerned, sentenced the convicts to undergo rigorous imprisonment for life, for an offence punishable under Section 302 read with Section 34 of the IPC, besides also imposed, upon the convicts sentence of fine, comprised in a sum of Rs. 2500/- each, and, in default of payment of fine amount, he sentenced the convicts to undergo simple imprisonment for a period of one year.

2. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PM/3 is assigned. The narrations carried in Ex. PM/3, are that on 28.12.2009, when the investigating officer of this case Inspector Gurpreet Singh alongwith SI Ajaib Singh, ASI Paramjit Singh, HC Jaspal Singh No.2873 and C-Jaspal Singh No.429, were present in Mohalla Sandhu Nagar, near I.P.S. School, then complainant Vijay Kumar came to him, and, got recorded his statement, that he is the resident of House No.245, Mohalla Sarup Nagar, Salem Tabri and deals in scrap. He had two daughters and a son. His eldest daughter Pinki was married to one of the accused Ashok Kumar about nine years ago. They had two daughters Divya and Pooja, aged eight and five years respectively. On 25-12-2009, he had gone to matrimonial home of his daughter Pinki situated in village Kurali, P.S.Sadar, Karnal (Haryana), and, then on the following day that is 26-12- 2009, his daughter told him, that since she has to extend invitation regarding forthcoming wedding of her brother-in-law, therefore, she alongwith both of her daughters, and, his son-in-law Ashok Kumar all came to his house at Ludhiana. Yesterday that is 27-12-2009 his daughter Pinki left his home alongwith both of her daughters at about 7.00 p.m. asking him

that she wants to buy some eatables for her daughters, but thereafter all three of them did not come back. Somehow or the other when his daughter, and, her children did not come back, then he (complainant) and his other family members got worried, and, even searched for them here and there. Next that day at about 8.30 am. when he (complainant) alongwith his son-in-law Ashok Kumar reached near railway track in Sandhu Nagar, then they found his daughter Pinki and both of her children lying, dead in a pool of blood. All three of them were found to have been murdered by some unknown persons by inflicting injuries with sharp edged weapons on their throats and other body parts.

Investigation proceedings

4. Since the allegations disclosed commission of an offence punishable U/s 302 of IPC, so Ruqa was sent through C-Jaspal Singh No.429, on the basis of which formal FIR was registered. Thereafter, said investigating officer of this case alongwith his fellow officials accompanied complainant Vijay Kumar and visited the place of recovery. In the meantime SI Ravinder Singh finger print expert alongwith his associates was also informed, who also happened to come present at the spot. Shortly thereafter said SI Ravinder Singh picked up some photographs of thumb impressions from glass tumblers and half filled liquor bottle lying near the above said place and produced all these articles before him which were taken into custody after converting the same into sealed parcels and affixing his seal bearing letters GS. HC Jatinder Kumar No.1636, official photographer was also called at the spot, who clicked pictures of deadbodies lying at the spot. Thereafter, inquest forms 25-35(1) were prepared separately. During further investigations, some hair were found to be lying in the closed right hand fist

of deceased Pinki, which were also retrieved carefully, and, were put into a plastic box which was also later on taken into custody vide separate recovery memo. All these documents which were prepared at the spot, were witnessed by SI Ajaib Singh and ASI Paramjit Singh. Thereafter, mortal remains of Pinki, Divya and Pooja were handed over to HC Judge Singh No.2444 and SPO Tirath Singh for getting their postmortem conducted from civil hospital. Thereafter, said investigating officer also prepared rough site plan of the place of occurrence. Blood soaked earth recovered from the place where all these deceased were lying dead, was picked up separately and same were also converted into parcels sealed bearing letters GS and taken into custody vide separate recovery memos also attested by SI Ajaib Singh and ASI Paramjit Singh. Thereafter, dagger smeared with blood lying nearby was picked up with blade about twelve fingers long. Likewise another dagger which of course was not fitted with its handle was also recovered having the same length. Its handle was also lying nearby separately which also measured six fingers in length. Rough sketch of both these blood stained daggers were prepared and the same were also taken into custody vide separate recovery memos after converting into sealed parcels. Two foot impressions were also noticed at the place of right and left sides which were also converted into separate moulds and were taken into custody vide separate recovery memos. Thereafter, statements of various official witnesses were also recorded U/s 161 Cr.P.C. On following day that is 29-12-2009 when again this investigating officer was present in chowk Rajpura alongwith his fellow officials in connection with investigation of this case then HC Judge Singh and SPO Tirath Singh met him, and, handed over all those belongings, which were given to these officials by the doctors

during postmortem examination alleged to have been worn by the deceased. Swabs taken by the doctors from the dead bodies of deceased Pinki, Divya & Pooja were also handed over to investigating officer duly sealed with seal bearing letters LMCH which were also taken into custody vide separate recovery memos duly attested by ASI Paramjit Singh and HC Judge Singh. Shortly thereafter one Darshan Singh and Raj Kumar also met the above said police party who were joined into investigation. Both these persons got recorded their separate statements as per whom all these persons Pinki, Divya and Pooja were murdered by the accused Ashok Kumar, his brother Jyoti Kumar and their friend Naval Kishore. Thereafter, on 30-12-2009 when this investigating officer was present near chowk Hargobind Nagar in connection with investigation of this case, then mohalla Pardhan also came to him and got recorded his statement, and, also produced accused Ashok Kumar before him following which this accused Ashok Kumar was formally arrested. Thereafter, during interrogation accused Ashok Kumar suffered a disclosure statement to the effect that he has kept concealed another blood stained dagger, and, a jacket smeared with blood at a deserted and vacant plot situated in Mohalla Sarup Nagar which he can get recovered if so desired. Thereafter, this accused also led the police party to the disclosed place and got recovered both the above said things which were also taken into custody vide separate recovery memos duly attested by SI Ajaib Singh and HC Davinder Kumar. On 31-12-2009 SI Jagdish Singh also arrested other suspects of this case namely Jyoti Kumar and Naval Kishore from railway station, and, then on the basis of disclosure statements suffered by both of these accused got recovered ear rings belonging to deceased Pinki.

During remaining investigation both these accused Jyoti Kumar and Naval

Kishore also got recovered their jackets smeared with blood from underneath the bushes growing near railway line Hargobind Nagar which were also taken into custody vide separate recovery memos attested by private individual Raj Kumar and HC Davinder Kumar. During remaining investigation S1 Jagdish Singh moved an application before Magistrate alongwith all the three accused so that accused may be asked whether they were willing to give their hair samples. When all these accused did not resist this application, same was allowed following which sample of hair of all the three accused were taken in the court. Likewise when accused did not object, their shoes were also taken into custody vide separate recovery memos and converted the same into parcels. Remaining investigation of this case was also completed during which scaled site plan of the place of occurrence was got prepared. Statements of various persons who were supposed to know about this occurrence were also recorded, and, finally finding sufficient material on record, all the accused were challaned, and, sent to the court to stand this trial.

5. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through committal order made on 20.7.2010, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for

trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for an offence punishable under Section 302 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and led six defence witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Submissions of the learned counsel for the appellants

10. (i) The learned counsel for the appellants, has argued with much force, before this Court, that the statement of PW-4 one Dharshan Singh, who propagated in his testification, the theory of his last seeing the accused, and, the deceased together, is not reliable. In making the above submission, he rests the same, upon PW-4 admitting in his cross-examination, that when on the date subsequent to the recovery of the bodies of the deceased, who are respectively the wife and the children of convict Ashok Kumar, he made a visit to the house of deceased Pinki, qua then his finding convict Ashok

Kumar to be present there. Therefore, he argues, that the above presence of convict Ashok Kumar in his house, on the date, subsequent to the body of the deceased concerned, being recovered, is an act consistent with the innocence of convict Ashok Kumar. Consequently, he argues, that the theory of last seen, as propagated by PW-4, cannot become assigned any creditworthiness.

(ii) He further submits, that though the foot print moulds of each of the convicts, became collected, from the crime site, but since after their matchings, being made with the recovered slippers of the accused concerned, rather did lead to an opinion, being made by the expert concerned, that excepting the recovered slippers of convict Ashok Kumar, the recovered slippers of co-accused concerned, hence matching with the foot print moulds, as became collected from the crime site. Therefore, he argues, that the conviction, as made upon convict Ashok Kumar is required to be interfered with.

(iii) Moreover, he also argues, that even the other foot track moulds, as collected by the investigating officer concerned, from the crime site, also cannot be assigned any credence, nor does any affirmative matching(s) thereof, as made with the recovered slippers of the accused concerned, by the expert(s) concerned, rather comprises the best incriminatory evidence.

(iv) He, in support of the above argument further submits, that in case the convicts, were present together, at the crime site, then the foot track moulds, purportedly existing at the crime site, and, which became collected by the investigating officer concerned, rather were required to be existing there in numbers to equal to the feet of each of the accused, rather than the singular foot track moulds, of each existing there and theirs, being collected,

and, thereafter theirs being sent for comparisons, to the expert concerned. Thus, the above non-existences at the crime site, besides non collections thereof, does make make open an inference, that all the accused were not available together at the crime site. Moreover, he submits, that there was rather a possibility of the person(s), other than the accused, with foot tracks equal to the foot size of the accused, being present at the crime site. Therefore, benefit of doubt was assignable to the accused.

Circumstantial evidence based case rested on the deposition of PW-4.

11. PW-4, in his examination in chief, has made an echoing, that he was known to deceased Pinki, and, was also known to Ashok Kumar, both of whom, are stated by him, to enter into a wedlock, about 9-10 years, prior to his stepping into the witness box. Furthermore, he also echoes, that out of their wedlock, two children were born. He states, that there occurring marital discord inter se the deceased, and, convict Ashok Kumar, but he also further states, that he used to patch up their inter se differences. It was on 27.12.2009, at about 7.00 P.M., i.e. the date prior to the body of all the deceased, being recovered from the site, mentioned in site plan Ex. PW8/O, that he states qua then, when he was going to his office, and, on his reaching near the railway lines, then he witnessed that accused Jyoti, and, Naval Kishore, were sitting, and, taking liquor, leading him to ask them not to take liquor there, and, rather go to their respective home(s). However, he states that they told him that they were enjoying there. He further speaks, that he proceeded from the relevant site, and, enroute his office, he met Pinki, and, both her children, besides he states, that he saw that Ashok Kumar was following them, and, after saying hello to him, Ashok Kumar walked ahead.

All the accused were identified in Court, by PW-4.

12. Even though, in his cross-examination, he has made an echoing, that on the day, subsequent to, the dead bodies of the deceased becoming recovered, he had visited the house of Ashok Kumar, and, that then he found Ashok Kumar to be present there. Therefore, the learned counsel for the convicts, has made a submission before this Court, that the above presence of Ashok Kumar at the latter's house, on the day subsequent to PW-4, purportedly seeing him, not only belies PW-4 last seeing convict Ashok Kumar, but also is suggestive of his conduct consistent with his innocence. However, this Court does not agree with the above submission. The reason for discarding the above made submission, is rooted, in the factum, that though convict Ashok Kumar, after being last seen by PW-4, in the company of the deceased, in proximity to the crime site, besides in proximity to the body of the deceased concerned, being recovered, did rather take to visit his house. Nonetheless, yet the visit of convict Ashok Kumar to his abode, subsequent to his being last seen, by PW-4, in the company of the deceased, and, in proximity to the crime place, besides in proximity to the bodies of the deceased becoming discovered, rather cannot be said to be consistent with his innocence, as he was naturally expected to, or otherwise also in the normal course, to proceed to his abode. The naturalness of the above conduct cannot at all convey that the same is consistent with his innocence nor on its anvil the other tangible incriminatory evidence can be put to a quietus.

13. Since, apart from the above echoing, occurring in the cross-examination of PW-4, neither any suggestions, became put to him during the latter's cross-examination, suggestive that his speakings qua his last seeing the accused concerned, and/or in the proximate company of the

deceased, rather at the apposite site, hence proximate to the crime site, hence are uncreditworthy, nor when any answers favourable to the accused, emanated from PW-4. Therefore, when even the most significant suggestions, which were required to be meted to PW-4, by the learned defence counsel, as appertaining to falsification being endeavoured qua the the factum, spoken by PW-4, qua his having found accused Jyoti Kumar, and, Naval Kishore, consuming drinks at the railway tracks, and, also for falsifying his further speaking, that he had also in proximity to the crime site, seen the deceased Pinki along with her children, besides to also falsify his voicings, qua enroute his office, his having a brief interaction with Ashok Kumar, who was also then seen by him to be following deceased Pinki, when evidently did never became attempted to be put/meted to PW-4. Thus, the effect of no suggestions, being meted to PW-4, during the latter's cross-examination, hence to bely the efficacy of the above candidly spoken facts, is that, it leads to an inference that the defence concedes to the theory of PW-4, last seeing the accused, in proximity to the crime site. Conspicuously, also a further inference becomes garnered qua the defence also conceding to PW-4 last seeing the deceased and the accused proximately together in the vicinity of the crime site.

14. Significantly, PW-4 also during his examination-in-chief, identified the accused in Court. However, even the identification in Court of the accused, did not become endeavoured to be contested by the learned defence counsel. Resultantly, it has to be inevitably concluded, that PW-4, was in fact, aware of the identity of the convicts. Therefore, when there was hence no dire necessity on the part of the investigating officer concerned, to during the course of investigations, carry a valid identification parade to

enable PW-4, to then identify convicts Naval Kishore, and Jyoti Kumar. Naturally, then the identification, in Court, of the convicts (supra), and, of convict Ashok Kumar, by PW-4, does carry immense credible strength, as he has stated, that he was known for about 9-10 years to convict Ashok Kumar, factum whereof, has also remained completely unbelied. The effect thereof is, but natural qua the apposite last seeing theory espoused by PW-4, acquiring the firmest evidentiary vigour.

Signatures disclosure statement of convict Ashok Kumar Ex. PW8/U

15. During the course of investigations, being made into the appeal FIR, convict Ashok Kumar made a signed disclosure statement, to which Ex. PW8/U is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of following witnesses, above said accused Ashok Kumar disclosed in the police custody during investigation that he had murdered Pinki, Divya and Pooja with sharp weapon. After that he hid that knife like weapon with blood stained jacket at the nook plot at Mohalla Sarup Nagar near railway line. About which only he knows and after demarcation he could get it recovered. Statement of Ashok Kumar has been written u/s 27 EV.”

16. Pursuant to the above signed disclosure statement, convict Ashok Kumar got recovered his jacket, which was taken into police possession through recovery memo Ex. PW8/V. Moreover, pursuant to his above signed disclosure statement, convict Ashok Kumar also got recovered the weapon of offence, which was taken into police possession through recovery memo Ex. PW8/X.

17. The disclosure statement (supra), carries the signature, in Hindi, of convict Ashok Kumar. In his signed disclosure statement (supra), convict Ashok Kumar confessed his guilt in committing the murder of the deceased concerned, by inflicting injuries on their persons, hence

with a sharp edged weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory knife like weapon, and, the blood stained jacket, in a plot at Mohalla Sarup Nagar, near railway lines. Moreover, it also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory item(s) to the investigating officer concerned, from the place of his hiding, and, keeping the same.

18. The above disclosure statement, does acquire utmost evidentiary solemnity, as thereons exist the sginatures, in Hindi, of convict Ashok Kumar, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through a proven recovery memo, convict Ashok Kumar caused recovery of the incriminatory weapon of offence, to the investigating officer concerned.

19. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. PW8/X, has not been proven to be a false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same

incriminatory weapon, which did become used by convict Ashok Kumar, in causing the murder of all the three deceased.

Disclosure statements of convict Jyoti Kumar

20. During the course of investigations, being made into the appeal FIR, convict Jyoti Kumar made a signed disclosure statement, to which Ex. PW-14/E is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“Before the following witnesses abovesaid accused Jyoti Kumar has disclosed during the police investigation that I, kept concealed a ear ring (bali) in bedshed of bed i.e. lying in the room of my house at village Kurali which I removed from the ear of Pinki sister-in-law after committing murder of Pinki, Divya and Pooja. About which I know only and I can get recover it after demarcation.”

21. During the course of investigations, being made into the appeal FIR, convict Jyoti Kumar also made a signed disclosure statement, to which Ex. PW-14/G is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“Before the mentioned witnesses, the accused above said Jyoti Kumar disclosed during investigation in police custody that he had concealed his blood stained jacket in the bushes near the bridge Buddha nallah, Railway crossing bridge after committing the murder of Pinki, Divya and Pooja. About which only he knows and after demarcation he could get it recovered.”

Disclosure statements of convict Naval Kishore

22. During the course of investigations, being made into the appeal FIR, convict Naval Kishore also made a signed disclosure statement, to which Ex. PW-14/F is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“Before the following witnesses abovesaid accused Naval Kumar has disclosed during the police investigation that I, kept concealed a ear ring (bali) in bedshed of bed i.e. lying in the room of my house at village Kurali which I removed from

the ear of Pinki sister-in-law after committing murder of Pinki, Divya and Pooja. About which I know only and I can get recover it after demarcation.”

23. During the course of investigations, being made into the appeal FIR, convict Naval Kishore also made a signed disclosure statement, to which Ex. PW-14/H is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“Before the mentioned witnesses, the accused above said Naval Kishore disclosed during investigation in police custody that I kept concealed my blood stained jacket in the bushes near the bridge Buddha nallah after the murder of Pinki, Divya and Pooja. About which I know only and I can get recovered it after demarcation.”

Recoveries pursuant to the disclosure statements of convicts Jyoti Kumar and Naval Kishore

24. Pursuant to the signed disclosure statements, as carried respectively in Ex. PW-14/E, and, Ex. PW-14/F, both convicts i.e. Jyoti Kumar, and, Naval Kishore, did respectively get recovered the aforesaid earring(s) from the places, mentioned in their respective signed disclosure statements, and, which were identified by complainant Vijay Kumar, and, the same were taken into police possession, through respectively drawn recovery memo(s) bearing Ex. PQ, and, Ex. PR.

25. Pursuant to the above signed disclosure statements, as carried respectively in Ex. PW-14/G, and, Ex. PW-14/H, convicts Jyoti Kumar, and, Naval Kishore, got recovered the incriminatory jackets from the places mentioned in their signed disclosure statements, and, which were taken into police possession, respectively through recovery memos Ex. PT, and, Ex. PW-14/J.

26. All the above made memos are to be construed to be validly drawn, as thereons the signatures of the convicts concerned exist, but yet

with the convicts neither ably denying the existence thereons of their respective signatures, nor theirs proving the said denial. Moreover, with the consequent therewith recoveries, being made through the apposite validly drawn recovery memos, thereupon they rather do carry immense creditworthiness, as no evidence has been adduced to prove, that the said recovery(ies), were either planted or were a sequel to any concoction or ingenuity becoming deployed by the investigating officer concerned.

Report of the Finger Print Bureau

27. The investigating officer concerned, during the course of his making investigations into the appeal FIR, had collected the specimen thumb impressions of the convicts Jyoti Kumar, Ashok Kumar, and, Naval Kishore hence respectively through memos Ex. PW-14/W, Ex. PW-14/X, and, Ex. PW-14/Y. Moreover, during the course of investigations, the investigating officer concerned, had collected through Ex. PW-8/L, hence the glass tumbler(s), from the crime site, and, whereons some finger prints were found existing. The sample finger impression of the convicts, as also the tumblers, whereons some finger impressions, did exist, became sent to the Finger Print Bureau. The expert at the Finger Print Bureau, on making the apposite matching(s), came to a conclusion, that the finger prints existing on the glass tumbler(s) Ex. PW-8/L, did completely match, with the finger impressions of the convicts Naval Kishore, and, Jyoti Kumar, as became purveyed by them, before the Executive Magistrate concerned. The above affirmative opinion of the finger prints expert concerned, after his making the apposite matching(s), is the best scientific evidence, in respect of convicts Naval Kishore, and, Jyoti Kumar, being available at the crime site. What completely assigns the completest evidentiary vigour to the

report of the finger prints expert concerned, is garnered from the factum, that the convicts concerned, have not suggested to the investigating officer concerned, that the glass tumblers concerned, despite becoming recovered from the abode of the convicts concerned, but yet theirs thereafter becoming surreptitiously planted, at the crime site. The lack of making the above suggestions, by the learned defence counsel, to the investigating officer concerned, does foster an inference, that the said glass tumblers, with evident finger impressions thereons, of the convicts concerned, were as a matter of fact, existing at the crime site. As but a natural corollary thereof, the deposition of PW-4, that he had last seen the convicts concerned together at the crime site, and, that then they were noticed by him, to be consuming alcohol there, does also gather immense fortification, from the report of the finger print expert concerned.

Collection of shoe moulds

28. During the course of investigations into the appeal FIR, the investigating officer concerned, through memo Ex. PW-8/N, hence collected from the crime site, the foot track moulds of the right and left foot. The investigating officer also collected the respective foot track moulds of accused Ashok Kumar, accused Jyoti Kumar, and, of accused Naval Kishore, hence respectively through Ex. PW-14/T, Ex. PW-14-U, and, Ex. PW-14/V. Subsequently, the investigating officer concerned, moved an application Ex. PW-9/A, before the learned Magistrate concerned, qua the accused concerned, being directed to purvey their respective footwears for matching(s) thereof being done, with the moulds of the foot tracks, as became collected from the crime site, through memo Ex. PW-8/N. Subsequently, the slippers of the accused concerned, became taken into

possession through memo Ex. PW-9/D. The above recovered foot track moulds, as became collected from the crime site, through memo Ex. PW-8/N, did become, along with the slippers of the convicts, as became purveyed by them, in pursuance to a direction made by the learned Magistrate concerned, hence sent to the FSL concerned. On an inter se comparison thereof, the expert concerned, at the FSL concerned, in his report, as embodied in Ex. PZ, made an opinion, that all the foot track moulds' matching with the footwear of convicts Naval Kishore, and, Jyoti Kumar, as became supplied by them before the learned Magistrate concerned. However, he did not made any apposite opinion, that the foot track moulds matching with the footwear of the convict Ashok Kumar.

29. Though, on the basis of the above opinion, the learned counsel for the appellants has argued, that convict Ashok Kumar was not present at the crime site. However, merely on the above basis, he cannot do so. The reason for making the above inference ensues from the factum, that there is no firm evidence, existing on record suggestive, about the nature of the strata existing at the crime site. The relevance of adduction of cogent evidence qua the nature of the strata, existing at the crime site, was of the extremest importance, inasmuch as, if there was evident dampness at the crime site, thereupon there was every possibility qua the foot tracks of each of the accused rather being required to be present there. Contrarily if, the strata at the crime site was evidently of sand, then there was every possibility of disappearance(s) therefrom of some of the foot tracks of each of the accused. The effect of lack of existence the above evidence on record, is that, it breeds an inference, that the strata, existing at the crime site, may not be damp, resultantly, it did lead to disappearance of some of the foot

tracks of each of the accused. Therefore, even if the foot tracks of the feet of all the accused, were not existing there, rather the foot tracks of, only one foot of some of the accused existed there, yet it cannot at all lead to any further inference, that the existence of singular foot tracks, at the crime site, of the accused concerned, is also suggestive, that each of the accused were not present there. The above inference becomes further strengthened, from the factum, qua for the reasons (supra), the defence not been able to rip the efficacy of the theory, as propagated by PW-4 Darshan Singh, qua his, in proximity to the crime site, besides in proximity to the discovery, from at the site crime of the dead bodies of the deceased concerned, rather his last seeing the accused concerned in the company of the deceased. In addition, when the affirmative opinion of the finger prints expert, as made on the finger impressions, existing on the glass tumblers, as were recovered from crime site, through Ex. PW8/L, hence after theirs being affirmatively matched with the finger impressions of the convicts concerned, is rather conspicuously suggestive, qua all the said finger prints belonging to the convicts concerned. Thus, also the above apposite affirmative opinion, does fortifyingly, prove the presence of all the accused concerned, at the crime site.

30. In consequence, the above evidence, does completely efface, the effect, if any of (a) the foot tracks of each of the accused not being found at the crime site; (b) the expert concerned, not pronouncing, that all the foot track moulds concerned, rather not matching with the footwear of convict Ashok Kumar.

**Matchings of hair recovered from the hand of deceased concerned,
with the hair of convicts concerned**

investigating officer concerned, collected hair, from the fist of deceased Pinki. The same were taken into police possession through memo Ex. PW8/M. Moreover, the investigating officer concerned, after moving an application Ex. PW-14/N, for making the recovery of hair of all the convicts, had secured an affirmative order from the learned Magistrate concerned, leading to all the convicts, rather purveying to the investigating officer concerned, their respective hair. The same became taken into police possession, through memo Ex. PW-14/S.

32. The hair recovered through memo Ex. PW-8/M from the fist of deceased Pinki, became sent, through Constable Pardeep Kumar, with the hair of the accused, as became collected through Memo Ex. PW-14/S, to the DNA specialist concerned. The DNA specialist, after making the DNA profiling of the above, came to a conclusion, that the hair recovered from the fist of deceased, through memo Ex. PW-8/M, hence completely matching with the hair of accused Jyoti Kumar. Therefore, the above report of the DNA specialist, as carried in Ex. PAA, does completely prove the charges drawn against the accused. In addition, it supports the prosecution's theory of last seeing of the concerned, in proximity to the crime site, and, in proximity to the discovery therefrom of the deceased dead bodies, hence as became propagated through PW-4. Moreover, corroborative succor thereto, is also acquired by the report of the finger print bureau.

Post-mortem report

33. The post-mortem reports of deceased Pinki @ Simran, deceased Divya, and, deceased Pooja, as respectively embodied in Ex. PA, Ex.PC, and, Ex.PE, have been proven by PW-3 Dr. Harpreet Singh.

34. The cause of demise of deceased Pinki @ Simran, has been

opined by PW-3 to ensue from hemorrhage, and, shock as a result of injury to visceral organ, and, great vessel. All the injuries are opined to be ante-mortem injuries, which are sufficient to cause death in the ordinary course of nature.

35. The cause of demise of deceased Divya, and, deceased Pooja, have been opined by PW-3 to ensue from hemorrhage, and, shock as a result of cut injury over the front of neck, and, injuries to the great vessels, and, wind pipe (cut through). All the injuries are opined to be ante-mortem injuries, which are sufficient to cause death in the ordinary course of nature.

Principles

36. (1) In a circumstantial evidence based case, the theory of last seeing of the accused, and, the deceased together, when is spoken by a credible witness, through his making an untainted, and, unblemished testification before the learned trial Judge. Consequently, the same acquires immense vigour. If the prosecution witness concerned, also identifies the convict in Court, and, when the said identification becomes not repelled through any efficacious cross-examination. Thereupon, there is no further need for the investigating officer concerned, to during the course of investigations, hold any valid test identification parade, to enable the witness concerned, to then identify the convict.

(2) The affirmative matchings by the expert concerned, of the foot track moulds collected from the crime site, with the footwear of the accused concerned, also reveal the

presence of the accused concerned, at the crime site. Even if the foot track moulds, do not match with any of the footwear of the accused concerned, yet the said would not be capable of assigning any benefit of doubt to the accused concerned, unless other incriminatory evidence, as, comprised in the report of the fingers print bureau, and, also comprised in the report of the DNA specialist, is also proven to be completely infirm.

- (3) Even if at the crime site, the foot track moulds of each of the feet of each of the accused concerned, do not exist, yet it would also not assign any exculpatory benefit to the accused, unless potent evidence emerges suggestive qua the strata of the soil, as existed there, was respectively damp, and/or was of sand, respectively resulting in necessity of the foot tracks of each of the accused existing there, and/or suggesting, that there was possibility of disappearances therefrom.
- (4) Consequently, the affirmative matchings of the foot track moulds, as collected from the crime site, with the matchings of the footwear of the accused concerned, does acquire, potent evidentiary vigour.
- (5) The report of the fingers print expert, on the relevant item impressions', does garner immense evidentiary value, unless the incriminatory items whereons the finger impressions of the accused concerned exist, rather are

proven to be collected in a surreptitious, and, ingenious manner, deployed by the investigating officer concerned, inasmuch as, his taking to plant them at the crime site only after his earlier thereto provenly recovering them from the respective abodes of the accused.

- (6) The report of the DNA specialist suggesting, that the DNA profilings of the relevant matchable DNA items of the deceased hence matching with the DNA items of the accused, is also the best scientific evidence, and, if so, it would enable the learned trial Judge concerned, to inevitably conclude, that the charge drawn against the accused, becomes formidably proven.

Final order

37. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

38. Records be sent down forthwith.

39. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

December 12, 2022
Gurpreet

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