

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

(I) CRA-D-54-DB-2008
Date of Decision: 02.05.2023

STATE OF HARYANA -Appellant

Versus

VINOD -Respondent

(II) CRA-D-909-DB-2007

RAMESH KUMAR AND ANOTHER -Appellants

Versus

STATE OF HARYANA -Respondent

(III) CRR-17-2008 (O&M)

BHIM SINGH AND ANOTHER -Appellants

Versus

STATE OF HARYANA AND ORS. -Respondents

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

Argued by: Ms. Aarushi Garg, Advocate for
Mr. R.S. Bains, Sr. Advocate (Amicus Curiae)
for the appellants (in CRA-D-909-DB-2007&CRR-17-2008).

Mr. P.P. Chahar, DAG, Haryana.

Mr. Sukesh Kumar Jindal, Advocates
for the respondent (in CRA-D-54-DB-2008).

KULDEEP TIWARI, J.

1. Since the facts and evidence, besides, the origination of all these cases is a common judgment, dated 06.07.2007, therefore they are

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being taken up together and disposed of accordingly.

2. Criminal appeal bearing No.CRA-D-909-DB-2007, has been preferred by the appellants/accused, namely, Ramesh and Krishan, against the verdict of conviction dated 06.07.2007, and, also against the order of sentence dated 07.07.2007, as became drawn by the Additional Sessions Judge, Panipat, in case FIR No.372 dated 12.11.2004, registered under Sections 302/201/34 of the Indian Penal Code (hereinafter referred to as the 'IPC' for short), at Police Station Model Town, Panipat, whereby the following sentence became imposed upon them:-

Offence under Section	Period	Fine	In Default
302 of IPC	R.I. for life	Rs.50,000/-	Imprisonment for 1 year
201 of IPC	R.I. for 3 years	Rs.10,000/-	Imprisonment for 3 months

Both these sentences were ordered to run concurrently.

On the other hand, criminal appeal bearing No.CRA-D-54-DB-2008, and, criminal revision petition bearing No.CRR-17-2008, have been directed respectively at the instance of the State of Haryana, and, the complainant, thereby throwing a challenge to the verdict of acquittal, as made through verdict (supra), qua respondent/accused Vinod, from the charges, as became framed against him, vide the judgment (supra).

FACTUAL MATRIX

3. The prosecution story is rooted in the statement of Bhim Singh (hereinafter referred to as the 'complainant'), father of the deceased Tirlok Chand, which was recorded, on 12.11.2004, by S.I. Rohtash Singh. For ready reference, the relevant extract of the statement

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(supra) is reproduced as under:-

“Stated that I am resident of aforementioned address and I do work of goats and sheep. I have four daughters and three sons, out of whom, youngest is my son Tirlok Chand, aged about 14 years. On 11.11.04, at about 11 a.m., he went on bank of the river, with total 22 animals, i.e. 20 goats and 2 sheep, for grazing them. When he did not return home in evening, we searched him in the surroundings. While searching him, today on 12.11.04, at about 8 a.m., when we reached near Village Manana, we found the animals sitting under a tree in the fields. We left the animals at our house and thereafter, at about 6 o’clock, when I along with Ram Kumar s/o Mai Ram Balmiki, r/o Binjhol, and my son Ranbir, were going towards the western bank of the Delhi Parallel Western Yamuna Canal, in search of my son Tirlok Chand, then approx. two furlongs towards Siwah Bridge from Mehrana Bridge, we found blood on bank of the canal. When we searched in the nearby area, we found a plastic slipper of Tirlok Chand from the bushes nearby the bank of canal, a danda and blood. We also found a blood stained iron knife lying in the nearby bushes and there were dragging marks also on the bank of the canal. Some unknown accused have, with intention to snatch our animals, killed my son Tirlok Chand and have thrown his dead body into the canal, to destroy evidence. I left Ram Kumar and my son Ranbir at the spot, for guarding it, and have come to Police Station to report the matter. Action be taken.”

The above statement laid the foundation of the present FIR (Ex.PF), which consequently became registered under Sections 302/201 of IPC, against unknown person(s).

INVESTIGATION PROCEEDINGS

4. After registration of the FIR, police reached the spot, on 12.11.2004, and prepared the site plan (Ex.PG) of the place of occurrence. An iron knife (Chhura), a wooden stick (Danda), both coated with

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blood, a plastic slipper (Chappal) and some blood stained earth were recovered from the place of occurrence vide recovery memo (Ex.PJ). Also, on the demarcation of one Bhoop Singh (PW-14), one empty glass bottle of country-made liquor, and, two glasses, besides, POP casts of foot impressions from near the canal area, were recovered by the second Investigation Officer S.I. Rajesh Kumar (PW-16), vide recovery memo (Ex.PW). Thereafter, on 16.11.2004, the dead body of deceased Tirlok Chand was recovered from Western Yamuna Canal Delhi Branch, whereupon, the S.H.O. concerned moved an application (Ex.PD) to the Medical Officer, General Hospital, Panipat, for conducting the post mortem of the dead body. The inquest report (Ex.PD/1) was prepared and the post-mortem of the dead body was conducted on 16.11.2004 itself, whereupon, post mortem report (Ex.PC) was prepared. The site plan (Ex.PD/3) of recovery of the dead body was also prepared. Thereafter, four accused persons, namely, Ramesh, Krishan, Vinod and Sanjiv Kumar, were arrested on different dates, who subsequently suffered their separate disclosure statements (Ex.PQ, PY, PU, and, PV/1). The samples of foot and footwear impressions of the accused persons were taken and were sent for forensic examination, for comparison with the foot and footwear impressions, which were lifted from the crime spot. After completion of the investigation, the Final Report, under Section 173 Cr.P.C. was filed before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions, vide committal order dated 28.2.2005.

PROCEEDINGS OF TRIAL COURT

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5. During the course of trial, one of the accused, namely, Sanjiv Kumar was declared juvenile by the learned trial Court, vide order dated 02.06.2005. Finding a prima facie case against rest of the three accused persons, they were charge-sheeted for commission of offences punishable under Sections 302/201/34 of IPC, to which they pleaded not guilty and claimed trial. To substantiate its allegations against the accused persons, the prosecution examined as many as 16 witnesses. The statements of the accused persons, under Section 313 Cr.P.C., were recorded, wherein they pleaded innocence and alleged false implication, while denying all the allegations leveled against them.

6. The learned trial Court, after completion of the trial, recorded a verdict of conviction on 06.07.2007, and, an order of sentence on 07.07.2007, against the appellants/accused Ramesh and Krishan. However, vide the very same verdict, the learned trial Court acquitted the respondent/accused Vinod from the charges which were framed against him.

SUBMISSIONS BY COUNSELS FOR THE PARTIES

7. The learned counsel appearing for the appellants/accused Ramesh and Krishan submitted, that the learned trial Court has passed, the impugned verdict of conviction in a most perfunctory manner, as the evidence available before it has not been meticulously examined. Rather, the learned trial Court has convicted the appellants/accused merely on account of recovery of a knife from appellant/accused Krishan, and, recovery of a wallet from appellant/accused Ramesh, which contained a photograph of deceased and Rs.5/-, and, which allegedly belonged to the de-

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ceased. He further argued that besides the above, there is no cogent evidence to connect the appellants/accused with the present crime. A glance at the FSL report (Ex.PY), would pave the way for innocence of the appellants/accused, as the foot and footwear impressions which were lifted from the place of crime did not tally with the foot and footwear impressions of the appellants/accused, which were obtained by the investigation agency for comparison. Furthering his arguments, it was submitted that the learned trial Court has erroneously placed undue emphasis on the testimony of PW14 Bhoop Singh, who in fact has been introduced later on by the investigation agency just to complete the chain of circumstances. Consequently, the testimony of PW14 Bhoop Singh is tutored and untruthful. He further argued that the investigation agency adopted all methods to complete the chain of circumstances, however, the time of discovery of blood stained earth, slippers, and, other articles from the place of occurrence, rather differs in the FIR, and, in the testimony of different witnesses. Therefore, the alleged recoveries, in the absence of any conclusive evidence, are insignificant, especially when the forensic evidence supports the innocence of the appellants/accused.

8. The learned counsel appearing for the respondent/accused Vinod has defended his acquittal on the premise that the only piece of evidence available against him is his own confessional statement, which however, did not result in any recovery being made by the Investigation Officer concerned in pursuance thereof. Rather, he only got demarcated the crime site, which was already known to the Investigation Officer concerned. Therefore, it is argued that the above confessional statement, as

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made by the respondent/accused Vinod, is hit by provisions of Sections 25/26 of the Indian Evidence Act. He has also challenged the validity of the testimony of PW14 Bhoop Singh, on the ground of he being an introduced witness, whereas, his testimony is contradictory to the record and thus, required to be sidetracked. Lastly, he argued that the forensic evidence, as produced by prosecution, does not conclusively establish the guilt of respondent/accused Vinod, as the samples of his foot impressions were not obtained in the presence of the Magistrate concerned and even otherwise, there being many lacuna in the FSL report, which thus make it unworthy of any reliance being placed thereupon, to convert an order of acquittal into a verdict of conviction.

9. Per contra, the learned counsel for the complainant, and, the learned State counsel have vehemently supported the verdict of conviction (supra), inasmuch as, it pertains to conviction of the appellants/accused Ramesh and Krishan. However, they have challenged the finding of the learned trial Court, whereby, the respondent/accused Vinod has been acquitted of the charges framed against him. It was argued that the recovery of knife and wallet, as effected respectively from the appellants/accused Krishan and Ramesh, proves the case of the prosecution. The disclosure, as well as, recovery memos were duly signed by accused and were also proved on record, therefore, the defence cannot cast any doubt on such validly made recoveries. They have placed heavy reliance upon the statement of PW14 Bhoop Singh, who had, on 11.11.2004, seen the accused persons consuming liquor, and thereafter, at about 5:00/6:00 p.m., on the same day, he again witnessed all the accused

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persons going towards Naraina side along with the goats and sheep of the deceased. By referring to this witness, they submitted that there is enough evidence of last seen, which completes the chain of circumstances. Challenging the acquittal of respondent/ accused Vinod, it was argued that there is very clear forensic evidence to connect him with the present crime, as his foot impressions tally with the ones lifted from the crime spot. None of the appellants/accused had ever raised any objection at any stage or even in their statements recorded under Section 313 Cr.P.C., with regard to validity of the FSL report. More so, the appellants/accused did not lead any defence evidence to rebut the prosecution story. Concluding their arguments, a prayer has been made to reverse the acquittal of respondent/accused Vinod into a verdict of conviction, but on the premise, that the learned trial Court erroneously arrived at such a finding of acquittal, despite availability of enough evidence to support his conviction, and, they also prayed for maintaining the conviction of the appellants/accused Ramesh and Krishan.

ANALYSIS

10. We have thus threadbare examined, with the able assistance of the counsels for the parties, the entire record of the learned trial Court.

11. The present case is based upon circumstantial evidence, therefore, we have to examine all the links in the chain of circumstances, which have been strived to be proved by the prosecution, thus to conclusively bring home the guilt of the appellants/accused. The Supreme Court, in its judgment passed in ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116***, has laid down five cardinal principles,

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which are essential for recording a finding of conviction, in a case based upon circumstantial evidence, principles whereof are extracted hereunder:-

“153. xxx xxx xxx

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx xxx xxx

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

On the touchstone of above settled legal proposition, let us examine all the circumstantial evidence, oral as well as documentary, as led by the prosecution.

MEDICAL EVIDENCE

12. The post-mortem examination of the dead body of Tirlok Chand was conducted on 16.11.2004 by a board of doctors, comprising of Dr. Y.P. Singhmar, Medical Officer, Government Hospital, Hisar, who was examined as PW-4, and, one Dr. Jai Parkash. The post-mortem report has been proven by PW-4 Dr. Y.P. Singhmar, and, to which Ex.PC has

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been assigned. The ante-mortem injuries, as revealed therein(s), are extracted hereinafter:-

- “1. Incised wound 12 x 6 cm on front of neck more on left side than right present over thyroid cartilage level, horizontally placed. Tackia was cut and filled with mud, left common carotid artery was cut, thyroid cartilage and thyroid gland were missing. Left sterno cleidomastoid muscle and veins were cut, left vagus nerve was cut.
2. Incised wound 5 x 2.5 cm over left umbilical region 2.5 cm away from umbilicus. Portion of small intestine was coming out of wound.
3. Incised wound 8 x 8 cm in left flank of abdomen, portion of large gut was coming out of wound.”

A reading of the post-mortem report (Ex.PC), would reveal that the cause of death, as opined therein, is stated to be asphyxiated from “Asphyxia due to cutting of trachea”, and, the probable time of death to be “2-5 days before post-mortem examination”.

FORENSIC EVIDENCE

13. A wooden stick, blood stained earth, and, a knife (Chhura), were recovered from the place of occurrence, vide recovery memo (Ex.PJ). A knife (Chhura) was recovered in pursuance of the disclosure statement of appellant/accused Krishan, vide recovery memo (Ex.PM). All the above items along with certain clothes, were sent for their serological examination, at the FSL concerned. Apart from the above items, POP casts of foot and footwear impressions of accused Vinod, Sandeep and Ramesh, along with the foot and footwear impressions, as were found and lifted from the crime site, by the Investigation Officer concerned,

were also sent for their examinations to the FSL concerned, so as to enable him to make an opinion, whether there were inter se tallyings thereof.

14. The result of the inter se comparisons, respectively of POP casts of foot and footwear impressions of accused (Vinod, Sandeep and Ramesh) with the foot and footwear impressions lifted from the crime site, is carried in the FSL Report (Ex.PY). The relevant extract of the FSL report (supra) is reproduced as under:-

“Description of article(s) contained in parcel(s)

Parcel No.	No. & seal impression	Description of parcel(s)
CRIME EXHIBITS (RC dated 18.11.04)		
Ia.	(4-R.N.)	a) Sealed cloth parcel containing one POP cast of foot impression, stated to be lifted from the place of crime and marked as exhibit-C/1R.
Ib.	(4-R.N.)	b) Sealed cloth parcel containing one POP cast of foot impression stated to be lifted from the place of crime and marked as exhibit-C/2R.
II.	(4-R.N.)	Sealed cloth parcel containing one POP cast of chappal impression stated to be lifted from the place of crime and marked as exhibit-C/3R.
III.	(4-R.N.)	Sealed cloth parcel containing one POP cast of footwear impression stated to be lifted from the place of crime and marked as exhibit-C/4L.
SPECIMEN EXHIBITS (RC date 24.11.04)		
Ia.	(4-RNP)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Vinod Kumar and marked as exhibit-S/1R.
Ib.	(4-RNP)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Vinod Kumar and marked as exhibit-S/ 2L.
IIa.	(4-RNP)	Sealed cloth parcel containing one

		POP cast of chappal impression, stated to be of Vinod Kumar and marked as exhibit-S/3R.
IIb.	(4-RNP)	Sealed cloth parcel containing one POP cast of chappal impression, stated to be of Vinod Kumar and marked as exhibit-S/4L.
IIIa.	(4-RNP)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Sandeep and marked as exhibit-S/5R.
IIIb.	(4-RNP)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Sandeep and marked as exhibit-S/6L.
IVa.	(4-RNP)	Sealed cloth parcel containing one POP cast of footwear impression, stated to be of Sandeep @ Sanjeev and marked as exhibit-S/7R.
IVb.	(4-RNP)	Sealed cloth parcel containing one POP cast of footwear impression, stated to be of Sandeep @ Sanjeev and marked as exhibit-S/8L.
V.	(4-RNP)	Sealed cloth parcel containing one pair of chappal, stated to be of Vinod Kumar and one pair of shoes, stated to be of Sandeep and marked as exhibits-S/9R, S/10L, S/11R & S/12L respectively.
VI.	(4-RNP)	Internally forwarded to Serology Division on dated 12.01.05.
SPECIMEN EXHIBITS (RC date 25.01.05)		
VIIa.	(3-GD)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Ramesh and marked as exhibit-S/13R.
VIIb.	(3-GD)	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Ramesh and marked as exhibit-S/14L.

OPINION

1. The crime and specimen impressions of exhibits C/1R with S/5R, C/2R with S/1R, C/3R with S/3R & S/9R, C/4L with S/8L & S/12L were in agreement.
2. The crime and specimen impressions of exhibits-C/1R &

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- C/2R as compared with S/13R were not in agreement.
3. The specimen impressions of exhibits-S/2L, S/4L, S/6L, S/7R, S/10L, S/11R & S/14L could not be compared with the available crime exhibits.”

The above extracted report though reveals matchings inter se the POP casts of foot and footwear impressions of respondent/accused Vinod (acquitted by trial Court) and accused Sandeep (declared juvenile) with the POP casts of foot and footwear impressions, as were lifted from the crime site, however, the report (supra) also unfolds, that the POP casts of foot and footwear impressions of appellant/accused Ramesh did not match with the ones lifted from the crime site.

15. Likewise, POP casts of foot and footwear impressions of accused Krishan, along with the foot and footwear impressions, as were found and lifted from the crime site, by the Investigation Officer concerned, were also sent for their examinations to the FSL concerned, for the very afore purpose. The result of the comparison qua the aforesaid POP casts of foot and footwear impressions, is carried in the FSL Report (Ex.PY/5). The relevant extract of the FSL report (supra) is reproduced as under:-

“Description of article(s) contained in parcel(s)

Parcel No.	No. & seal impression	Description of parcel(s)
CRIME EXHIBITS (Received earlier vide RC No. 617 dt. 18.11.04)		
Ia.	4-RN	a) Sealed cloth parcel containing one POP cast of foot impression, stated to be lifted from the place of crime and marked as exhibit-C/1R.
Ib.	4-RN	b) Sealed cloth parcel containing one POP cast of foot impression, stated

		to be lifted from the place of crime and marked as exhibit-C/2R.
II.	4-RN	Sealed cloth parcel containing one POP cast of chappal impression, stated to be lifted from the place of crime and marked as exhibit-C/3R.
III.	4-RN	Sealed cloth parcel containing one POP cast of footwear impression, stated to be lifted from the place of crime and marked as exhibit-C/4L.
SPECIMEN EXHIBITS (Received later vide RC No. 639 dt. 16.12.04)		
VI.	4-RN	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Krishan and marked as exhibit-S/VI R.
VII.	4-RN	Sealed cloth parcel containing one POP cast of foot impression, stated to be of Krishan and marked as exhibit-S/VII L.
VIII.	4-RN	Sealed cloth parcel containing one POP cast of chappal impression, stated to be of Krishan and marked as exhibit-S/VIII L.
IX.	4-RN	Sealed cloth parcel containing one POP cast of chappal impression, stated to be of Krishan and marked as exhibit-S/IX R.

OPINION

The impressions of crime and specimen exhibits do not match.”

The above extracted report speaks in unambiguous terms qua non tallyings of the POP casts of foot and footwear impressions of accused Krishan with the ones lifted from the crime site.

16. However, for the reasons to be assigned hereinafter, this Court does not, even in respect of affirmative opinion, as made on affirmative matchings being made by the FSL concerned, of the POP casts of foot and footwear impressions collected from the crime site by the Inves-

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tigation Officer concerned, who was examined as PW-16, with the foot and footwear impressions of accused Vinod (acquitted by trial Court) and accused Sandeep (declared juvenile), lay any reliance upon the FSL report (supra).

The principal reason for drawing the above inference generates from the factum, that the crime site was initially visited by PW-6 S.I. Rohtash Singh, however, a reading of his examination-in-chief discloses, that he visited the crime site, on his receiving an information in respect of a crime event, and thereupon, he inspected the crime site and prepared site plan thereof (Ex.PG). Moreover, he has also revealed his lifting the blood stained earth, one iron knife, one stick and one slipper from the crime site. Consequently, if, at the stage, when the police officer who first visited the crime site, made only the above investigations and collections therefrom, but apparently did not notice any foot or footwear impressions existing thereon, resultantly the existence at the crime site, of foot or footwear impressions of any of the accused, thus appears to be sheer concoction and invention. Therefore, if subsequent to PW-6 S.I. Rohtash Singh, any police officer visited the crime site and made collection of the foot and footwear impressions existing thereons, such impressions are to be construed to be manipulated or engineered. It has come in prosecution evidence, that the footprint impressions were lifted from the crime site, by S.I. Rajesh Kumar (PW-16), and, not by S.I. Rohtash Singh (PW-6), who was initially investigating the case. Therefore, such lifting of the foot and footwear impressions existing at the crime site by a subsequent Investigation Officer, is also to be construed to be an engineered

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mechanism deployed by the Investigation agency, besides, also the inter se matchings or comparisons made therewith along with the foot and footwear impressions, as supplied by the accused, during the course of rather holding investigations, is extremely frail or weak piece of evidence.

DISCLOSURE STATEMENTS AND RECOVERIES EFFECTED
PURSUANT THERETO

17. During the course of interrogation, all the accused persons, namely, Ramesh, Krishan, and, Vinod, suffered their separate disclosure statements, which were reduced into writing, and, were proved on record respectively as Ex. PQ, PY, and, PU.

18. A collective reading of all the disclosure statements (supra) reveals that they all contain almost very identical narratives and the essence whereof becomes summarized as under:-

On 10.11.2004, upon information supplied by accused Vinod, all the accused persons hatched a plan to murder Tirlok Chand (deceased) and thereafter, to take his goats and sheep, for selling their meat in Delhi. In pursuance of their conspiracy, they all gathered near the bridge area on 11.11.2004, and, accused Vinod had brought two iron knives (Chhura) with him from his house. Thereafter, they all consumed liquor there, which was brought by accused Sandeep, and, when they saw Tirlok Chand (deceased) coming along with his goats and sheep for grazing them, they caught hold of him. Accused Vinod caught hold the hands of Tirlok Chand, while accused Sandeep caught hold his legs, and, then accused Ramesh gave two blows of knife on his stomach and armpit,

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while accused Krishan slit his neck. Thereafter, they threw the body of Tirlok Chand in the canal. Accused Ramesh threw his knife at the spot, but, accused Krishan kept his knife with him after wiping off the blood from it. When the accused were taking the stolen goats and sheep of Tirlok Chand, i.e. 20 goats and 2 sheep, they were seen by one Bhoop Singh, who was passing from there on his motorcycle. Thereafter, accused Ramesh and Krishan went to Samalkha to bring a canter for transportation of the goats and sheep, however, the driver of the canter refused to transport the goats and sheep, since the animals were stolen ones. Consequently, due to fear of them being apprehended, all the accused left the goats and sheep there and went to Delhi from Samalkha, by train. Thereafter, accused Vinod and Sandeep returned to village Mehrana, while accused Ramesh and Krishan went to Mumbai. After the murder of Tirlok Chand, accused Ramesh had kept his wallet with him, which contained a photograph of Tirlok Chand, some documents and money.

19. In pursuance of his disclosure statement (Ex. PQ), appellant/accused Ramesh led the police party and got demarcated the place where he allegedly consumed liquor along with his co-accused, the place of occurrence, the place where he threw his knife (Chhura), and, the place from where the dead body was allegedly thrown after committing murder. However, apart from the demarcations (supra), no recovery was effected in pursuance of the disclosure statement of appellant/accused Ramesh. The only recovery shown to be effected from him is during his personal search, and, which is of a wallet allegedly belonging to the deceased, which contained a photograph of deceased and Rs.5/-.

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20. On the other hand, in pursuance of his disclosure statement (Ex.PY), appellant/accused Krishan led the police party and got recovered an iron knife (Chhura) from a room of his rented premises, which was seized vide recovery memo (Ex.PM). He also, purportedly, got demarcated the place where he allegedly consumed liquor along with his co-accused, the place of occurrence, and, the place from where the dead body was allegedly thrown after committing murder.

21. Similarly, no recovery was effected in pursuance of the disclosure statement (Ex.PU) of respondent/accused Vinod, except, demarcation of certain places, viz., the place where he along with his co-accused consumed liquor and left the empty bottle and two glass, the place of occurrence, the place from where the dead body was thrown into canal, and, the place where they had left the goats and sheep.

22. However, this Court does not assign any probative sanctity to the disclosure statements, as made by accused Ramesh and Vinod, wherein, they confessed about their guilt in the penal occurrence. The reason is founded upon the premise, that since the above disclosure statements did not result in any valid recovery being effected by the Investigation Officer concerned in pursuance thereto, therefore, the confession of guilt, as comprised in the respective disclosure statements made by accused (supra), is hit by the bar engrafted in Section 25 of the Indian Evidence Act. Moreover, as far as recovery of the knife from the crime site is concerned, unless the crime site was an unaccessed, precluded or remote place which remained unvisited by any person(s), or, even by the Investigation Officer concerned, the recovery of the said knife, from the crime

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site, which otherwise was evidently a busy place, would cast serious doubt on such recovery. PW-7 A.S.I. Ram Niwas, in his cross-examination, admits that the place of occurrence is a busy place, and, that many persons do visit the said crime site. Therefore, no evidentiary worth is amenable to become assigned to even the recovery being made of the weapon of crime, but from the crime site.

LAST SEEN EVIDENCE

23. Last seen evidence is one of the facets of circumstantial evidence. For proving this evidence of last seen, it is imperative for the prosecution, to prove that the deceased was last seen alive in the company of the accused persons.

24. The sole and most important witness to fulfill the ingredients of 'last seen evidence', as examined by the prosecution, is PW-14 Bhoop Singh. Let us examine the veracity and probative value of the statement of this witness. According to the prosecution, and, as also surfaces from the examination-in-chief of PW-14 Bhoop Singh, it was he, who had, on 11.11.2004, firstly witnessed the respondent/accused Vinod, accused Sandeep and two other accused consuming liquor near the bridge area and also heard them conspiring to commit some crime. Thereafter, on the same day, at about 05/06:00 p.m., when he was returning from Village Naraina, he again saw all the accused persons, along with some goats and sheep, who were going towards Naraina bridge. On the basis of statement of this witness, the police had arrested the accused persons in the present case. The relevant extract of examination-in-chief of this witness is extracted hereunder:-

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“On 11.11.2004, I was going to Village Naraina on my motorcycle. When I reached ahead to the bridge of the canal towards Siwah, accused Vinod, Sandeep and two other accused, present in court, were consuming liquor and they were talking for committing any crime. When at about 5/6.00 p.m., I was coming back from Village Naraina, the accused present in court along with Sandeep, who is not present in Court, were coming along with goats and sheep and were going towards Naraina bridge. I asked them that from where they had brought the goats and they told me that they have brought goats from Village Mehrana and were going to Village Jaurisi. Thereafter, I came to my house. I told Bhim Singh that four boys were taking their goats towards Village Naraina side. On the next day, i.e. 12.11.2004, I along with police officials was present at the spot and police had taken mould of feet from the spot.....”

25. For ready reference, the relevant extract of cross-examination of this witness is also reproduced as under:-

“.....The accused met us near the bridge of village Dodhpur. I enquired from the accused without stopping my vehicle. My motorcycle was moving at the speed of 10 kilometers per hour. Sandeep and Vinod were going forward from the sheep and goats. I did not tell this fact to the family members of deceased Tirlok Chand on 11.11.2004. I came to know the fact that Tirlok deceased was missing since 11.11.2004 at about 1.00 p.m. Bhim and his son namely Kala met me on 12.11.2004 near the Primary School of Village Binjhol. The school is adjoins to the river. I told them that Sandeep and Vinod were taking their goats and sheep on 11.11.2004 towards Village Naraina. After that I went to my house. On 12.11.2004, they met me at 5/6.00 p.m. They told me that they are going to lodge a complaint to the police. I did not accompany with Bhim

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Singh and his son namely Kala. Bhim Singh and Kala met me again on 12.11.2004 at about 7/7.30 p.m. Police party was also with them and they met me on the Binjhol Jhal. I reached near the place of occurrence after 2/3 minutes.....”

A reading of the complete statement of this witness, would make it evident that PW-14 Bhoop Singh is not a witness of last seen, as he had not seen Tirlok Chand (deceased) on the day of alleged occurrence, either alive or dead, in association of the accused persons. Rather, as per the prosecution, and, as evident from the statement (supra), he had only spotted accused Vinod and Sandeep consuming liquor with two other accused, near the alleged place of occurrence, and thereafter, he spotted them taking the looted goats and sheep, allegedly belonging to the deceased. Furthermore, it has also come on record that this witness is a resident of the same village as is the complainant, and, that he could only recognize accused Vinod and Sandeep at the spot. What further transpires from the statement (supra) is that, on 12.11.2004, near Primary School Village Binjhol, this witness had disclosed to the complainant the factum of his witnessing the accused- Sandeep and Vinod, on 11.11.2004, at about 5:00/6:00 p.m., going towards Naraina side along with the goats and sheep of complainant. Thereafter, the complainant again met him on 12.11.2004, at about 05/06:00 p.m., while going to lodge a complaint qua murder of his son. Therefore, if the above revelations are taken to be true, it emerges that the prior to lodging the FIR on 12.11.2004 at about 08:40 p.m., the complainant had already gained knowledge about the names of at least two accused persons, yet,

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such a crucial information, vis-à-vis, witnessing of the goats and sheep of complainant by PW-14 Bhoop Singh in the company of accused persons and the names of accused persons, is completely missing in the FIR, because the complainant did not even make a whisper about any of the above events, rather, he chose to allege murder of his son at the hands of unknown person(s). Resultantly, the FIR stood registered against unknown person(s), and, not against any accused by name. Therefore, non disclosure of such vital information qua presence of accused with the looted goats and sheep of complainant and names of at least two accused persons purportedly revealed by PW-14 Bhoop Singh to the complainant, in the FIR, clearly establishes that PW14 Bhoop Singh is an introduced witness, who was examined just to complete the chain of circumstances. Had the complainant been aware of the above narrative, as put forward by PW-14 Bhoop Singh, before registration of FIR, there was no reason for him, who is a father who lost his son, to conceal such essential information.

26. In the above circumstances, the prosecution has clearly failed to discharge the burden of proof, as cast upon it. The story of last seen stands badly contradicted by the contents of FIR, as no fact with regard to last seen has been mentioned in the FIR. Therefore, the above theory of last seen, impel us to form an opinion that PW-14 Bhoop Singh was introduced later on as a witness of last seen, whereas, he actually was not the one. Even if we go by the theory of prosecution, then also PW-14 Bhoop Singh cannot be termed as a witness of last seen evidence, as he did not see the deceased, either alive or dead, in the company of accused.

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In fact, as per prosecution itself, this witness had only spotted the accused Vinod and Sandeep consuming liquor with two other accused persons, and heard them hatching a conspiracy to commit some crime, and thereafter, in the evening of the same day, he again spotted the accused along with the goats and sheep of the deceased.

MOTIVE

27. The sole motive, as attributed by the prosecution, behind the commission of murder of Tirlok Chand (deceased) by the accused persons, was their intention to loot the goats and sheep of the deceased. However, there is not even an iota of any incriminatory evidence available on record, through which the prosecution can succeed to establish the purported motive. First of all, the goats and sheep of the deceased were not recovered at the instance of any of the accused persons, rather, they were found in an abandoned condition by the complainant himself. Secondly, as per the prosecution story, the appellant/accused Ramesh and Krishan went to Samalkha to bring a canter for transportation of the allegedly stolen animals, and, when the canter driver suspected the animals to be stolen ones, he refused to transport them in his canter, and thereafter, being apprehensive of them being caught, all the accused persons left the animals at that place itself. However, what restrains this Court to accept the above version of the prosecution is the lackluster approach of the investigating agency, because there appears no conspicuous effort on the part of the Investigation Officer concerned to even trace out the said canter driver for recording his statement. Therefore, absence of such a material witness leaves the chain of circumstances incomplete, rather,

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completely demolishes the theory of motive, as purported by the prosecution.

RECOVERIES EFFECTED FROM THE PLACE OF OCCURRENCE

AND NON-COLLECTION OF FINGER PRINTS THEREFROM

28. As per the prosecution story, and, as also emanates from the FIR, on 12.11.2004, at about 06:00 p.m., the complainant along with son Ranbir, and, one Ram Kumar, while searching for his son Tirlok Chand (deceased), found blood on the pavement of Western Yamuna Canal, besides, a plastic slipper (Chappal) of his son Tirlok Chand, a blood stained wooden stick (Danda), and, a blood stained knife (Chhura) in the bushes near the said pavement. Thereafter, all these above items were seized by the police vide recovery memo (Ex.PJ), and, were sent for forensic examination.

29. Also, on the demarcation of Bhoop Singh (PW-14), the Investigation Officer concerned, vide recovery memo (Ex.PW), had recovered one empty glass bottle of country-made liquor, and, two glasses, besides, POP casts of foot impressions from near the canal area.

30. Though the FSL Report (Ex.PY/2), reveals that human blood was detected on the stick, and, knife (Chhura), however, the report is inconclusive qua 'Human Blood Group'. Apart from such inconclusive forensic evidence qua the recoveries (supra), the prosecution holds nothing in its hands, to establish any link between the items, as recovered from the place of occurrence, and the deceased or the accused persons. Contrarily, there are certain suspicious circumstances surrounding the recoveries (supra), besides, the contradictions in the testimonies of the ma-

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terial witnesses of this recovery, which blemish the core of the recoveries (supra).

Firstly, it was imperative for the Investigation Officer concerned to have made efforts to collect the finger print impressions from the recovered stick, knife (Chhura), liquor bottle, and, the two glasses, and thereafter, to get them compared with the finger print impressions of the accused persons. However, the Investigation Officer concerned has evidently not carried out any such exercise of collection of finger print impressions from the recovered articles (supra). Had the recoveries been effected validly, it was obvious for the Investigation Officer concerned to have collected finger prints, at least, from the recovered knife (Chhura), which was purportedly used by appellant/accused Ramesh in committing murder of the deceased, and, from the liquor bottle, and, two glasses, through which the accused persons had purportedly consumed liquor before committing the crime. The omission of the prosecution, inter alia, to have the finger prints found or collected from the alleged murder weapon proves fatal to the prosecution story.

Secondly, in the FIR, the blood stained earth, plastic slipper (Chappal), stick (Danda) and iron knife (Chhura) have been shown discovered by the complainant, his son Ranbir, and, one Ram Kumar, at 06:00 p.m. on 12.11.2004, which fact is also supported by the complainant (PW-11) in his examination-in-chief, however, a perusal of his cross-examination reveals that he went to Police Station at 06:00 p.m., where he stayed for about 1-1½ hour, and, at about 08:00 p.m. he along with police party reached at the place of occurrence, from where the

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above said articles were recovered. Similar is the case of Ranbir (son of complainant), who was examined as PW-13. In his examination-in-chief, he stated the discovery of articles (supra) at about 04:00 p.m. on 12.11.2004, whereas, in his cross-examination, he extended the time of such discovery to 10:00 p.m. on 12.11.2004.

31. Therefore, these circumstances, taken collectively, cast suspicion on the validity of the recoveries (supra). **The prosecution also stands defeated in its attempt to set up any link between the allegedly recovered incriminating items and the accused persons.** In fact, the above circumstances were required to be proved, beyond reasonable doubt, by the prosecution, wherefrom a conclusion of guilt could be drawn. However, unfortunately the prosecution has miserably failed to establish any link between the commission of murder by the accused and the alleged recovery(ies).

**CONCLUSION QUA ROLE OF APPELLANTS/ACCUSED RAMESH
AND KRISHAN**

32. At the very outset, it would be significant to note that though, the science of identification of foot prints has not yet reached the stage of an exact science and lacks vigor to base a conviction based thereupon, yet, the forensic evidence in the present case has given a clean chit to the appellants/accused Ramesh and Krishan, as is clear from the FSL Report (Ex.PY), which reveals that the POP casts of foot and footwear impressions of the appellants/accused Ramesh and Krishan, did not match with the foot and footwear impressions, which were lifted from the crime scene.

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33. The learned trial Court has evidently recorded a finding of guilt against the appellants/accused Ramesh and Krishan, primarily based upon the recovery of a wallet, during personal search of appellant/accused Ramesh, which contained a photograph of deceased and Rs.5/-, and, which allegedly belonged to the deceased, and, also upon recovery of a knife from appellant/accused Krishan, in pursuance of his disclosure statement (Ex.PY).

34. Insofar as the role of appellant/accused Ramesh is concerned, he is alleged to have given two blows of knife to the deceased, however, it is abundantly clear that nothing has been recovered from appellant/accused Ramesh, in pursuance of his disclosure statement (Ex.PQ), except demarcation of certain places, vis-à-vis, the place where liquor was consumed by accused persons, the place of occurrence, the place from where the dead body was thrown into canal, and, the place where accused persons had left the looted goats and sheep. In such circumstances, the disclosure of all the above places is of no consequence and help to the case of the prosecution, as all these places, according to the complainant, were already identified and informed to the Investigation Officer concerned well before the arrest of the accused persons. Therefore, such a disclosure statement does not establish the guilt of the appellant/accused Ramesh, as the disclosures made therein were already in the knowledge of the Investigation Officer concerned.

35. Normally, presumption of falsity is attached to the confession made under circumstances, as provided in Sections 24 and 25 of the Act. Sections 24 and 25 of the Act prescribe the circumstances, which

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make a confession inadmissible. However, exception to these provisions is prescribed in Section 26 of the Act, according to which, a confession made by any person whilst being in custody of a Police Officer can be proved against such person, if such confession is made in the immediate presence of a Magistrate. Section 27 of the Act appears to be a proviso to Sections, 24, 25 and 26 of the Act and makes admissible so much part of the statement of accused made whilst being in police custody, which leads to discovery of facts, as deposed by him, and, link the same with the crime. Such statements are generally termed as disclosure statements leading to discovery of facts, which are presumably in the exclusive knowledge of the maker. However, the places, as disclosed by accused were already in the knowledge of the investigation officer concerned, as gets transpired from the cross-examination of the investigation officer, who stepped in the witness box as PW6.

36. Now, let us examine the mode of recovery of the wallet, which has purportedly been effected on 16.01.2005, during personal search of appellant/accused Ramesh, subsequent to his arrest. The memo of personal search (Ex.PT), reveals that a Maroon coloured leather wallet (Ex.P1), containing a currency note of Rs.5/-, and, a photograph, was recovered from appellant/accused Ramesh. The photograph was identified by the complainant to be of his son Tirlok Chand (deceased). It is necessary to appreciate such a vital piece of evidence in its right perspective, and therefore, the memo of personal search (Ex.PT) is extracted hereunder:-

“Memo of Personal Search

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In the presence of the following witnesses, the personal search of accused Ramesh son of Manglu above named was conducted at the time of his arrest, out of which, a leather purse of dark red colour, which was having a currency of Rs.5/- and a photo were recovered. The photo was identified by Bhim Singh complainant to be of deceased Tirlok Chand, which was taken into police possession vide memo as token of proof. The memo was got signed from accused and the witnesses.”

37. Upon a careful scrutiny of the above extracted memo, two aspects emerge for consideration. Firstly, it was never the case of the prosecution that the deceased was carrying a wallet with him, before he disappeared and was subsequently murdered. Moreover, the memo (supra) makes revelation that the complainant had only identified the photograph, as found in the wallet (Ex.P1), to be of his son Tirlok Chand (deceased), but, there is nothing suggestive contained therein with regard to identification or ownership of the recovered leather wallet, wherefrom the photograph was recovered. However, subsequently, when the complainant was examined before the Court as PW-11, he improved his earlier version qua identification of the wallet, and, claimed the recovered wallet (Ex.P1) to be of his son Tirlok Chand (deceased). The relevant extract of his examination-in-chief is reproduced as under:-

“A photograph of my deceased son Tirlok Chand and a currency note of Rs.5/- were recovered from the pocket of Ramesh, which were taken in possession vide memo Ex.PT. This memo bears my signatures. Wallet Ex.P1 is of my son, from which, the photograph Ex.P2 of my son, and, a currency note of Rs.5/- Ex.P3 were also recovered in my presence, from the possession of accused Ramesh.”

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A perusal of the above extracted statement makes it clear that the complainant has made material improvements therein, qua identification of the recovered wallet to be of his son, whereas, the memo of personal search (Ex.PT) is completely silent qua identification of the recovered wallet.

Secondly, the recovery (supra) was effected on 16.01.2005, i.e. after about 2 months of the occurrence, specifically when other co-accused were already arrested, but, as per prosecution, this accused was absconding. It is highly improbable that a person, who is a murder suspect and who is absconding, would retain with him a wallet of the deceased, especially with a photograph of the deceased in it, knowing it reasonably well that the same would turn the suspicion of murder into proof of his committing the murder of the deceased, and thus, would constitute a substantial piece of evidence against him.

38. Therefore, the recovery of the wallet, that too after about 2 months of the occurrence, is surrounded with clouds of suspicion and such a frail piece of evidence cannot be made the basis for recording a verdict of conviction.

39. Now, let us examine the role of appellant/accused Krishan and the recovery effected from him. Appellant/accused Krishan is alleged to have slit the neck of the deceased with a knife, which he retained with himself, and, which is alleged to have been recovered later at the instance of appellant/accused Krishan, in pursuance of his disclosure statement (Ex.PY). However, there is not enough, or, to be precise, any clinching evidence whatsoever, available on record, to establish that the recovered

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knife was used in murder of the deceased. As per the prosecution, a similar kind of knife was already recovered from around the place of occurrence, which was allegedly thrown there by appellant/accused Ramesh after murder of the deceased, but, the prosecution has failed to establish the use thereof in the present crime. Moreover, when both the recovered iron knives (Chhuras) were shown to the doctor, who conducted the post-mortem examination of the dead body, and, who stepped in the witness box as PW4, he opined in his examination-in-chief that the possibility of injuries No.1 to 3 on the body of deceased, being caused by these knives, cannot be ruled out. Subsequently, during his cross-examination, this witness went on to admit that infliction of all these three injuries, by the same weapon, cannot be ruled out. The relevant extract of the examination-in-chief and the cross-examination of this witness is reproduced as under:-

“.....I have also seen another Chhura Ex.P2. Possibility of injuries No.1 to 3 on the body of deceased Tirlok Chand being caused by these Churras Ex.P2 and Ex.P27 cannot be ruled out.

XXXXX Shri Subhash Mann, Shri Ramesh Gupta and Shri V.S. Kundu, Advocates for the accused.

..... Possibility of causing all the three injuries by the same weapon cannot be ruled out.....”

Also, the recovery (supra) is not supported or corroborated by any other cogent evidence. Even the prosecution has not come clear as to which of the weapon(s) was used in commission of the crime, more so, the serological report (Ex.PY/2), in respect of recovered weapon of

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crime, remains inconclusive, so as to connect it with the commission of crime.

40. Insofar as the recovery of alleged weapon of crime, in pursuance of disclosure statement of accused Krishan is concerned, the same is also a concocted recovery. The reason for drawing the above inference is two fold. Firstly, despite the place of recovery being a developed and residential area, as admitted by PW-7 A.S.I. Ram Niwas in his cross-examination, no independent witness of the locality was joined at the relevant time. Secondly, PW-7 A.S.I. Ram Niwas states in his cross-examination, that the premise wherefrom the recovery was effected, was locked and the accused had opened the lock after his bringing the keys from the upper surface of the gate. However, if so, both the lock which was opened, and, the key which was used by the accused to open it, were required to be adduced into evidence. Only when the above items became adduced into evidence, would a formidable conclusion become aroused, that as a matter of fact, the accused had, in pursuance of his disclosure statement, visited the premises and had opened the lock with its key, and thereafter, enabled the Investigation Officer concerned to, at his instance, cause recovery of the alleged weapon of crime. In the absence of the collection of the above lock and key of the premises concerned, besides, for lack of both becoming adduced into evidence, an inference becomes aroused that the above recovery is concocted.

41. The case in hand is entirely based on circumstantial evidence, as there was no eye witness to the occurrence, however, none of the alleged pieces of circumstantial evidence could be proved by the

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prosecution. The prosecution has miserably failed to bring home the guilt of the appellants/accused, as it stands defeated at every stage, whether it be medical evidence, forensic evidence, the testimony of alleged last seen witness, or, the alleged motive. Therefore, in view of the foregoing discussions, especially in the absence of any cogent and convincing evidence, we find absolutely no evidence to connect the appellants/accused (Ramesh and Krishan) with the commission of murder of the deceased.

CONCLUSION QUA ROLE OF RESPONDENT/ACCUSED VINOD

42. The acquittal of respondent/accused Vinod has been challenged by the State as well as the complainant, inter alia, on the ground of his being identified by PW-14 Bhoop Singh on the day of occurrence and also on account of match of the POP casts of his foot and footwear impressions with the ones lifted from the crime scene. As per the prosecution, on the day of alleged occurrence, PW-14 Bhoop Singh first sighted the respondent/accused Vinod consuming liquor with his other co-accused and hatching some conspiracy and thereafter, he witnessed the respondent/accused Vinod along with his other co-accused while they were taking the goats and sheep of the complainant.

43. The Learned State counsel and the learned counsel for the complainant have referred to the disclosure statement (Ex.PU) of respondent/accused Vinod, in pursuance whereof, he got demarcated the place where he along with his co-accused consumed liquor and left the empty bottle and two glass, the place of occurrence, the place from where the dead body was thrown into canal, and, the place where they had left the goats and sheep. However, as is clear from the record, nothing except the

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demarcation of above places has been recovered from the respondent/accused Vinod in pursuance of his disclosure statement (supra). Therefore, as repeatedly discussed in the foregoing paragraphs, the disclosure of all the above places is insignificant and does not lend any support to the case of the prosecution, as all these places were already identified and informed to the Investigation Officer concerned by the complainant, well before the arrest of the accused persons. Therefore, such a disclosure statement does not carry any vigor to prove the culpability of the respondent/accused Vinod.

44. As far as the alleged identification of respondent/accused Vinod, by PW-14 Bhoop Singh is concerned, the evidence of PW-14 Bhoop Singh has been elaborately discussed in the foregoing paragraphs, whereupon, it has surfaced that PW-14 Bhoop Singh was introduced later on as a witness of last seen just to complete the chain of circumstances, whereas, he actually was not the one. Therefore, his testimony cannot be relied upon for any useful purpose. Even this witness has not witnessed the occurrence, and therefore, any identification in Court, at his instance, is insignificant.

45. Now, insofar as the second limb of the argument is concerned, though it is correct that the FSL Report (Ex.PY) unveils matching of the POP casts of foot and footwear impressions of respondent/accused Vinod with the ones lifted from the crime scene, however, the moot question for consideration before us is whether the acquittal of respondent/accused Vinod can be converted into conviction, solely on the basis of the FSL report (supra). We believe the answer of this query is certainly in

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negative. This issue has already been examined by the Hon'ble Apex Court in case titled "**Mohd. Aman Vs. State of Rajasthan**", 1997(3) **R.C.R. (Criminal) 243**, wherein, it has been categorically held that the science of identification of foot prints is not a fully developed science and therefore, it is not safe to base a conviction solely on the basis of matching of foot prints, especially when the samples of foot prints were not taken in the presence of a Magistrate. The relevant paragraph of the judgment (supra) is extracted hereunder:-

"9. To prove the role of Mohd. Yusuf (the other appellant in Criminal Appeal No. 1749 of 1996) the prosecution relied upon the find of his finger print on a glass tumbler and his foot prints in the house of the appellant, recoveries of four silver rings belonging to the wife of the deceased and knife pursuant to his statement. It is rather surprising that even though the investigating agency claimed to have made a searching examination of the house of the deceased on April 14, 1983 and, to have seized on that day sixteen articles, four of which contained finger prints, the glass tumbler containing the finger prints was seized and the foot prints were noticed on April 24, 1983. When considered in the context of the fact that he was in custody of the police at that time the possibility of fabrication of evidence to implicate him as contended by him, cannot be altogether ruled out. This apart, some of the reasons which weighed with us for not accepting the evidence regarding the find of finger prints, namely that there is a missing link between the identity of the articles seized and identity of the articles examined by the Finger Print Bureau and non-production of the glass tumbler during trial also persuade us not to accept the evidence adduced in proof of the above circumstance. So far as the foot prints are concerned, another reason for which we feel it unsafe to accept the evidence led in this regard is that the sample foot prints were not taken before a Magistrate. This apart the science of identification of foot prints is not a fully developed science and therefore if in a given case - unlike the present one - evidence relating to the same is found satisfactory it may be used

only to reinforce the conclusions as to the identity of a culprit already arrived at on the basis of other evidence. That brings us to the evidence relating to the recovery of the four silver rings (Ext. P.5 to P.8) belonging to the wife of the deceased pursuant to the statement made by Mohd. Yusuf. To persuade the Court to hold that the above circumstance stood established the first and the foremost fact which the prosecution was required to prove was that those articles belonged to the wife of the deceased and that they were stolen at the time of the commission of the murder. Having gone through the evidence on record we are constrained to say that the prosecution has not been able to establish those two facts and, therefore, we need not go into the question whether the evidence led by the prosecution relating to their recovery from Mohd. Yusuf is reliable pr not. The First Information Report, that was lodged by Sabir Hussain (P.W. 10), did not give any list of articles that were stolen. He however claimed to have later on given a written statement containing such a list to the Investigating Officer and this statement was exhibited. In our considered view the trial Court was not justified in entertaining the statement as an exhibit because it was hit by Section 162 Cr.P.c. Be that as it may, P.W. 10 and Bano (P.W. 2), another relation of the deceased, testified that within a day or two of the murder they could ascertain what articles were missing from the house. The evidence of these two witnesses on this aspect of the matter cannot be safely relied upon for they admitted that they did not have access to the house till May 1, 1983 as it was in custody of the police and therefore they could not have occasion to know what articles were stolen. Even if we proceed on the assumption that the seized articles belonged to the wife of the deceased the prosecution has led no evidence, either direct or circumstantial, to prove that they were stolen at or about the time when the murder took place. In other words, unless the prosecution conclusively establishes that the articles recovered were stolen whom the murder was committed, and not on an earlier occasion, there would be a missing link in the chain so far as the specific accusation leveled against the accused is concerned. Once it is found that the evidence relating to find of foot prints and finger prints of the appellant and the recovery of the four silver rings cannot be safely relied upon, the proof of the other two cir-

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cumstance, namely that a blood stained knife was recovered after fifteen days of the incident pursuant to the statement of the accused and that few simple injuries were found on his person on April 20, 1983 when he was arrested would only raise a strong suspicion against him and not a conclusive inference of his guilt. The conviction of Mohd. Yusuf therefore cannot also be maintained.”

46. The case in hand also stands on an identical footing. The samples of foot prints of the accused persons were not taken in the presence of any Magistrate. Above all, except the FSL Report (Ex.PY), there is no other corroborative incriminating evidence available on record. As such, in the absence of any corroborative evidence, wherefrom the FSL Report (Ex.PY) may gain vigor, a finding of acquittal cannot be turned into a finding of guilt. This aspect has also been considered in detail by the Delhi High Court in case titled **“Parmeshwari Vs. State”, 2010(2) R.C.R. (Criminal) 827**, wherein, it has been observed that unlike fingerprints, where distinct characteristics get developed on the prints of the fingers, no such distinctive characteristic marks develop on the foot of a human being and therefore, expert opinion pertaining to foot prints has always been treated as a very weak evidence. The relevant paragraphs of the judgment (supra) read as under:-

“25. That apart, as held in the decision reported as 1997(3) RCR (Criminal) 243: 1997 (10) SCC 44 Mohd. Aman & Anr. v. State of Rajasthan, the science of footprint is not well developed. Unlike fingerprints where distinct characteristics get developed on the prints of the fingers, no such distinctive characteristic marks develop on the foot of a human being. Thus, expert opinion pertaining to foot-prints has always been treated as a very weak evidence.

26. That is why, in the instant case, the expert has not given a definite finding by writing in the report that footprints lifted

from the scene of the crime were those of Parmeshwari and Lokesh Kumar. The report has merely opined that the foot-prints lifted from the scene of the crime could be that of Parmeshwari and Lokesh Kumar.

27. Thus, the only incriminating evidence against Parmeshwari and Lokesh would be the exhibits got recovered by them, being ordinary articles which were found to be stained with human blood as that of the same group of the deceased and no more.

28. Assuming that evidence pertaining to foot-prints has also to be put in the scales against the two appellants, we still feel that with respect to the said two pieces of evidence which quality of evidence has been held by the Supreme Court to be very weak evidence, in a case of circumstantial evidence, it cannot be said that it would be sufficient to infer the guilt of the appellants.”

Moreover, in case titled ***Chandrappa vs. State of Karnataka, 2007(2) RCR (Crl.) 92***, wherein the Hon’ble Supreme Court has laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court, based on the evidence before it, may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than

to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

It has also been laid down by the Hon’ble Apex Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470***, that ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened.

47. Therefore, in view of the broad principles, as laid down in ***Chandrappa’s case*** (supra), we find that there is no corroborative evidence to support the FSL report (supra) pertaining to matching of foot prints, and thus, we find no ground to interfere with the finding of acquittal qua respondent/accused Vinod, as rightly recorded by the Id. Trial Court. Above all, presumption of innocence in favour of accused, gets reinforced and strengthened, upon passing of an order of acquittal, by the learned trial Court, and the prosecution has failed to discharge its onus to dislodge such presumption.

CRA-D-54-DB-2008 & connected cases

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CONCLUSION

48. As an outcome of the foregoing elaborately made discussions, the Criminal Appeal No. CRA-D-909-DB-2007, preferred by the appellants- Ramesh and Krishan, is **allowed** and they are acquitted of the charges framed against them, by giving them benefit of doubt. Also, the impugned verdict of conviction dated 06.07.2007 and the order of sentence dated 07.07.2007 are hereby set aside.

49. The criminal appeal bearing No. CRA-D-54-DB-2008, and, the criminal revision petition bearing No. CRR-17-2008, preferred respectively by the State of Haryana, and, the complainant are **dismissed**, being devoid of merits, and, the acquittal of respondent Vinod is maintained and upheld.

50. In case, the appellants/accused- Ramesh and Krishan are in custody, in the present case, they be forthwith set at liberty, if not required in any other case.

51. The case property, if any, be dealt with in accordance with law after expiry of the period of limitation for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

02.05.2023
devinder

(KULDEEP TIWARI)
JUDGE

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