

2024:PHHC:145939-DB



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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-954-2024

Date of Decision:-07.11.2024

State of Haryana

.....Applicant.

Vs.

Jai Kumar & Ors

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Ravish Kaushik, Additional Advocate General, Haryana
for the Applicant-State.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 20.02.2023 passed by Additional Sessions Judge, Karnal.

2. As per record, the offence was committed in the year 2018, the FIR came to be registered on 05.01.2018. The judgement of acquittal was recorded on 20.02.2023. The leave to appeal was filed in 2024 and has come up for hearing today.

3. The brief facts of the prosecution case are that on 5.1.2018, SI/SO of Police Station Sadar, Karnal received a telephonic message from Shiv Charan, Incharge, Police Post Ramba that a dead body was lying



underneath the soil in village Salaru at Taprana Road on the kacha rasta which lead to village Darar. On receipt of this information, the SI/SHO alongwith HC Manjeet Singh, HC Constable Vijay Kumar and driver HC Sat Narayan reached at the spot. Shri Darpan Kamboj, Tehsildar, Nilokheri was appointed as Duty Magistrate for the exhumation proceedings. The scene of crime team was also informed. Raj Kumar, Photographer, Police Lines, Karnal was also directed to reach at the spot. Thereafter, Shri Darpan Kamboj, Dr. Krishan Kumar, SSO, Kurukshetra alongwith his staff, Raj Kumar and the Photographer reached at the spot. In the presence of the Duty Magistrate, the dead body was exhumed. The photography and videography was done at the spot. The scene of crime team investigated and found the dead body to be of a male. The right hand and right leg of dead body were tied with a separate cloth and left hand and left leg were tied with a separate cloth and the mouth was also found tied. Though efforts were made for identification of the dead body from the people present at the spot but they could not identify it. The Sarpanch Palvinder Singh of village Salaru got recorded his statement that he had received an information that in this village on the passage (kacha rasta) which leads to village Taprana near fields of Beer Singh son of Sangara, resident of village Saralru, a deadbody was lying underneath the soil. The dead body was of an unknown person whose hands, legs and mouth were tied and marks of injuries had been present on it. It seems that in order to destroy the evidence, after committing murder of the person, the dead body had been buried underneath the earth. It was thus prayed for taking legal action against the accused persons.



4. During investigation, SI Baksha Singh had conducted proceedings under section 174 Cr.P.C. and the post mortem examination of dead body was got conducted in KCGMCH, Karnal. After post mortem examination, the doctor had handed over to him one sealed parcel containing the viscera, another sealed parcel one vial containing two teeth, two sealed parcels containing clothes, a sealed parcel containing an envelope and one sample seal which were taken into possession vide recovery memo and the case property was deposited with the MHC. On 12.1.2018, SI Baksha Singh received secret information that Jai Kumar, Soni, Gurvinder and Vinod alias Harsh had committed murder of an unknown person. Thereafter, he conducted search of the said accused persons. On 17.1.2018, SI Baksha Singh received a telephonic call from the SHO of Police Station Sadar, Karnal that accused Jai Kumar had surrendered before the learned Illaqa Magistrate. Thereafter, SI Baksha Singh alongwith other police officials moved an application before the learned Illaqa Magistrate for joining accused Jai Kumar in the investigation of this case. The accused was arrested and on interrogation, he suffered a disclosure statement admitting the commission of the crime and disclosed that the tralla was driven by the deceased. On 17.1.2018, the clothes of the deceased Ram Mukat were identified by Raj Pal and Vicky and SI Baksha Singh recorded their statements. On 18.1.2018, SI Baksha Singh received information from SHO, Police Station Sadar, Karnal that one deadbody was lying in the canal in the area of Police Station Safidon, District Jind. On 19.1.2018, SI Baksha Singh alongwith other police officials reached Police Station Sadar, Karnal and sent ASI Shiv Charan and HC Balraj to PGI, Rohtak for conducting



proceedings on the dead body. Thereafter, SI Baksha Singh alongwith EASI Gurdyal Singh, SHO of Police Station Sadar, Karnal, accused Jai Kumar and other police officials reached at the place of occurrence i.e. meat shop where Dr.Krishan alongwith team members of FSL, ASI Raj Kumar and Photographer were called. ASI Raj Kumar, Photographer clicked the photographs of the place of occurrence, the FSL team collected blood stains, swab and other articles from the place of occurrence and converted the same into ten parcels. Accused Jai Kumar handed over his blood stained clothes which were converted into a parcel, sealed with the seal of DS and were taken into police possession vide recovery memo. Thereafter, a rough site plan of the place of occurrence was prepared and statements of witnesses were recorded. Accused Jai Kumar got demarcated the place of occurrence and the place where he had parked the tralla bearing registration No.HR63A-3469 after committing the murder and had thrown the dead bodies of the driver and cleaner of the tralla.

SI Baksha Singh prepared the rough site plan of the place where the tralla was parked. Thereafter, accused Jai Kumar led the police party to the place where he had buried the dead body of Ram Mukat and site plan of the said place was prepared. The accused Jai Kumar had also led the police party to Avaradhan canal where they had thrown the dead body of Ashok Kumar and demarcated it and rough site plan of that place was also prepared. Accused Jai Kumar, in pursuance of his disclosure statement also got recovered one polythene containing one knife (Chhura), shoes, purse containing photo, DL and ration card and cap of deceased Ram Mukat. SI Baksha Singh had prepared rough sketch of the knife (Chhura) and rough



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site plan of place of recovery. On 20.1.2018, juvenile Vinod @ Harsh was produced by Surat Singh, Sarpanch of village Darar in Police Post Ramba and on interrogation, he suffered a disclosure statement. The juvenile got demarcated the place of occurrence and thereafter, he was produced before Juvenile Justice Board, Karnal. On 21.1.2018, accused Soni and Gurvinder Singh were apprehended from Devi Lal Chowk, Karnal and on interrogation, they suffered disclosure statements. Accused Jai Kumar in pursuance of his disclosure statement got recovered Rs.36,000/- cash i.e. 18 currency notes of the denomination of Rs.2,000/- each which were converted into a parcel which was taken into police possession. Accused Soni in pursuance of his disclosure statement got recovered on knife (Chhuri) and one purse containing photo and Aadhar card of deceased Ashok Kumar. SI Baksha Singh prepared the rough sketch of knife and prepared the rough site plan of place of recovery. On 23.1.2018, accused Soni and Gurvinder got demarcated the place of occurrence. Both the accused led the police party where they had buried the dead body of Ram Mukat and got it demarcated vide demarcation memo. Accused Soni got demarcated the place i.e. Avardhan canal where they had thrown the dead body of Ashok vide demarcation memo. Accused Gurvinder led the police party to the place where they had parked the tralla bearing registration No.HR-63A-3469 after committing the murder of Ram Mukat and Ashok vide demarcation memo. On 24.1.2018, accused Gurvinder Singh in pursuance of his disclosure statement got recovered motorcycle bearing registration No.HR-05AL-5417 which was used in occurrence, his clothes and one currency note of Rs.2000/- which were taken into possession. Thereafter, accused Soni, in



pursuance of his disclosure statement got recovered his clothes and Rs.8000/- which were taken into police possession. On 27.1.2018, SI Baksha Singh alongwith EASI Veer Shakti Singh visited the place of occurrence and got prepared the scaled site plan. On 15.2.2018, SI Baksha Singh alongwith Rajender Patwari visited the place where the dead body of Ram Mukat was buried and the place i.e. Avardhan canal where the dead body of Ashok Kumar was thrown and got prepared the scaled site plans of those places. On 5.3.2018, the birth certificate of the juvenile was taken into possession. On 27.3.2018, call details, location and CAF form of the mobiles in question and certificates under section 65 of Indian Evidence Act alongwith covering letter from Nodal Officer of Vodafone were taken into police possession. On completion of the investigation, challan was submitted in the court against the accused persons in the court. The challan qua the juvenile was presented before the Juvenile Justice Board.

5. After presentation of challan, copies of challan were supplied to accused Jai Kumar, Soni alias Arman and Gurvinder Singh. Vide order dated 2.6.2018, charge under Sections 302, 397 read with section 34 and 201 of the Indian Penal Code and 25 of Arms Act against all the accused was framed, to which, they pleaded not guilty and claimed trial.

6. In order to prove its case against the accused, the prosecution examined total 41 witnesses viz Darpan Kamboj, Tehsildar as PW1, Palvinder Singh, Sarpanch as PW2, Krishan Kumar, SSO (Scene of Crime) as PW3, ASI Shiv Kumar as PW4, HC Vijay Kumar as PW5, ASI Narender Singh as PW6, HC Manjeet as PW7, Deepak as PW8, Gurbaj Singh as PW9, Vicky as PW10, EASI Vir Shakti Singh as PW11, Balram as PW12, HC



Balraj as PW13, SI Lakhwant Singh, MM as PW14, ASI Mukesh Kumar as PW15, Rajbir Patwari as PW16, Dr.Rajnish Garg as PW17, HC Krishan as PW18, Rajender Kumar as PW19, Baldev as PW20, Rakesh as PW21, Sanjay Kumar as PW22, Dr.Sandeep Kumar Giri as PW23, HC Jitender Kumar as PW24, Parveen Kumar as PW25, Mahender Singh as PW26, Munsish Bindra, Ex.Nodal Officer, Bharti Airtel Ltd. as PW27, ESI Raj Kumar as PW28, Rajbir, Halqa Patwari as PW29, retired SI Ram Mehar as PW30, Inspector Manoj Kumar as PW31, HC Sanjay as PW32, Rajesh Kumar, Statistician as PW33, Rakesh Kumar as PW34, Dr.Surjit, SSO, FSL Madhuban as PW35, Dr.Rajiv Kawatra, SSO DNA, FSL, Madhuban as PW36, Hussain M Zaidi, Nodal Officer, Vodafone Idea Ltd., Mohali (Punjab) as PW37, Devender Kumar Giri as PW38, Ram Niwas Nain, SSO (Chemistry), RFSL, Hissar as PW39, Rajender Singh, Patwari as PW40 and retired SI Baksha Singh, Investigating Officer as PW41.

7. The evidence of relevant prosecution witnesses are reproduced as under:-

PW8 Deepak deposed that on 27.12.2017, at about 9/9.15 P.M., he was present at his house. In the meantime, Harsh (JCL), resident of village Darar made a phone call to him and told him that Jai Kumar calling him at the village stand, upon which, he reached at the village stand where he found Harsh, Jai Kumar and Deepi present there. There Jai Kumar asked him to drive a tralla and he told Jai Kumar that he only drives light vehicle and not a heavy vehicle. However, Jai Kumar made a request to him persistently to drive the tralla which was parked on the road. He again told Jai Kumar that he cannot drive the tralla, however, he kept on requesting



him and asked him to drive the tralla in first or second gear. At last, he acceded to the request of Jai Kumar and drove the tralla to Preet Paradise Hotel. At Preet Paradise Hotel, Jai Kumar gave him Rs.1,000/- for taking the tralla to Preet Paradise Hotel. He could not tell the number of the tralla as he has not seen the number of said tralla. As per PW8, while he was driving the tralla to Preet Paradise Hotel, Harsh (JCL) was with him in the tralla and Jai Kumar and Deepi on motorcycle were moving ahead of the tralla. After dropping the tralla at Preet Paradise Hotel, Deepi, Harsh and he came at the village stand on Deepi's motorcycle. As per PW8, at the village stand, he had parked his vehicle Mahindra Pick Up which he took from there and reached his village Darar. Harsh also came with him in his vehicle Mahindra Pick Up. Harsh had alighted at a place before his village. Harsh is also known as Vinod. No one had told him the number of said tralla. He was declared hostile at the request of the PP.

PW19 Rajender Kumar stated that in the year 2018, he was working as a driver on truck No. HR-69-C-7106 and Rakesh son of Rajender Singh was his cleaner at that time He knew deceased Ram Mukat son of Sardara Singh and Ashok alias Ballu being his co-villagers and both were working as a driver and cleaner on truck No. HR-63-A-3469. On 27.12.2017, he alongwith his cleaner (conductor) proceeded for Hyderabad from Yamuna Nagar after loading their truck No. HR-69-C-7106 at about 6.00 p.m. When at about 7.30/8.00 p.m. they reached at the bus stand of village Darar, they saw that truck No. HR-63-A-3469 was parked at bus stand Darar. He stopped his truck and they saw that at the time Ram Mukat driver and Ashok alias Ballu cleaner were eating meat at the meat shop.



Then they talked with Ram Mukat and Ashok alias Ballu and they disclosed to them that their truck was not loaded on that date, because they got washed their truck. They offered meat to them, but he refused. Thereafter they again offered Charas/Sulpha to him and Ram Mukat handed over Rs.200/- cash to the owner of the meat shop for Charas/Sulpha. The owner of the meat shop sent his son for getting Charas/Sulpha from the village. After 15 minutes, they left the meat shop because they were in hurry at that time. As per PW19, when they returned after 20-22 days from Hyderabad, then they came to know that Ram Mukat and Ashok alias Ballu were murdered on the same meat shop on that day when they had met them. As per PW19, on the next day, he alongwith Rakesh, Balram and 3-4 other persons reached at P.S. Sadar, Karnal and he identified the boys who were present at meat shop on 27.12.2017 and they were serving meat to Ram Mukat and Ashok on that date. Accused Jai Kumar, Soni and Gurvinder present in the court, were the same persons, who were present on 27.12.2017 at the meat shop at Darar bus stand and they were serving meat to Ashok. He produced the bulity of his truck No.HR-69-C-7106 before the Investigating Officer and same was Mark "A". His statement was recorded by the I.O. under section 161 Cr. P.C.

PW10 Vicky deposed that he was doing private job. His maternal uncle (Mama) Ram Mukat son of Sardar Singh was doing job of driver under Sanjay Kumar son of Ram Niwas and driving tralla No. HR-63-A-3469 and Ashok alias Balu son of Zile Singh was the Conductor with him in the tralla. On 27.12.2017, they both, went to Shamli (U.P.) in tralla for unloading the coal and after unloading the coal from the tralla, they got



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washed the tralla from Satyam Transport, and as per the directions of the owner Sanjay Kumar, his maternal uncle (Mama) along-with his conductor Ashok alias Balu went to Indri road at Bansal rice Mill for loading the rice in the tralla, but due to the wet condition of the tralla, the rice could not be loaded. The rice owner asked his uncle to load the same on the next day i.e. 28.12.2017. As per PW10, on 28.12.2017, tralla owner Sanjay Kumar inquired from Satyam Transporter, Kambopura, Karnal and he came to know that tralla was standing near bypass Karnal and there were no whereabouts of his maternal uncle (Mama) and Ashok alias Balu. On this, the tralla owner Sanjay Kumar came to their house in the village and narrated the whole incident and disclosed that his maternal uncle (Mama) and Ashok alias Balu, had gone somewhere and had also taken Rs. 92,000/- freight along-with them. PW10 deposed that on 28.12.2017, he alongwith Balwan Sarpanch, his Mama Rampal and other persons of the village reached at Police Post Ramba, Police Station Sadar, Karnal. Again said that on 17.01.2018, he alongwith Balwan Sarpanch, his Mama Rampal and other persons of the village reached at Police Post Ramba, Police Station Sadar, Karnal. The Investigating Officer showed him the photographs and he alongwith his mama Rampal identified the photograph of his deceased maternal uncle (Mama) i.e. Ram Mukat son of Sardar Singh. Thereafter, the police officer showed him and his Mama Rampal the pulanda containing clothes, which were given to the police after the post-mortem of the dead body of Ram Mukat.

Firstly, one pulanda i.e. case property was opened by breaking the seal and one T-shirt, one underwear, one lower, one baniyan of white



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colour having black strips which as per PW10 were identified by him and his Mama Rampal to be the clothes of his maternal uncle (Mama) deceased Ram Mukat. As per PW10, the clothes were having blood stains as well as stains of mud. That second pulanda was also opened by the police officer by breaking the seal in which police officer showed them a torn half sleeve shirt, torn towel and the same were also having blood stains as well as stains of mud, but they could not identify the same. The police officer again put the clothes in the pulanda and resealed the same with three seal impression of BS on each pulanda and after using the seal, police officer Baksha Singh kept the seal with him. The police officer prepared identification memo Ex.P-14 of clothes of deceased Ram Mukat which was witnessed by him and his Mama Rampal. His statement was recorded by the police officer in this regard on 17.01.2018. As per PW10, on 19.01.2018, he along-with his maternal uncle, namely, Brahmdass reached at Police Post Ramba, where they joined the investigation of the present case with the investigating Officer Baksha Singh. Accused Jai Kumar who was already in police custody was interrogated by the Investigating Officer in their presence, who suffered disclosure statement Ex.P15, which was witnessed by him and his maternal uncle Brahmdass, signed by accused Jai Kumar and attested by Investigating Officer. In pursuance of disclosure statement, the accused got recovered one iron chhura (dagger), one pair shoes, purse containing one passport size photo of his maternal uncle, deceased Ram Mukat and photocopy of DL and Ration Card of deceased Ram Mukat and a cap (toppa). All the recovered articles were having stains of blood and same were identified by him and his maternal uncle Brahmdass. The sketch of iron



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chhura (dagger) was prepared by the Investigating officer, which was Ex.P16 and the same was witnessed by him and his maternal uncle Brahmdass, signed by accused Jai Kumar and attested by Investigating Officer. Thereafter, all the articles recovered from accused Jai Kumar were converted into three sealed parcels and were taken into police possession vide recovery memo Ex.P17 which was witnessed by him and his maternal uncle Brahmdass, signed by accused Jai Kumar and attested by Investigating Officer. The investigating officer put seal of BS on the sealed parcel and kept the same with him after the use. PW10 identified the iron chhura (dagger) as Ex.MO3 and one pair of shoes, purse of deceased Ram Mukat Ex. MO4, cap (toppa) as Ex. MO5, one T-shirt, one underwear, one lower, one baniyan of white colour having black strips) and one steel Kada as Ex.MO6. As per PW10, all the accused were present in the court and they were the same persons who had murdered his maternal uncle Ram Mukat.

PW12 Balram deposed that he was the Ex-Sarpanch and resident of village Thana Kala, P.S. Kharkhoda, District Sonapat. Ram Mukat (since deceased) son of Sardar Singh of their village was driving tralla No. HR-63-A-3469 and Ashok Kumar alias Balu son of Zile Singh was the conductor at that tralla. As per PW12, on 27.12.2017, they both, went to Shamli (UP) in the tralla for unloading the coal. The tralla owner Sanjay Kumar got registered a case regarding missing of the driver Ram Mukat and conductor Ashok Kumar in police station, Sadar, Karnal. Thereafter, owner Sanjay Kumar came to their village, who disclosed that the driver and conductor of the tralla were missing, who were having one lac rupees alongwith them. Thereafter, their family members also tried to trace



them, but were unable to trace them. As per PW12, thereafter, on 17.01.2018, they received a telephonic information from the police that one accused Jai Kumar had surrendered before the learned Illaqa Magistrate. He alongwith Rajbir, Parveen, Rampal, Vicky and Sanjay reached at P.S. Sadar, Karnal where police showed them two pulandas bearing the seal of doctor. One pulanda was containing clothes of deceased Ram Mukat and the other pulanda was containing one towel and one shirt used for tying the hands, legs and mouth of the Ram Mukat. Thereafter, the police showed them the photographs of one dead body, and the same was identified as Ram Mukat by them. As per PW12, on 22.01.2018, he alongwith Rajbir came to P.S. Sadar, Karnal where he and Rajbir joined the investigation with the Investigating Officer. He deposed about suffering of disclosure statements Ex.P19 and Ex.P20 by accused Gurvinder Singh alias Dippi and accused Sonu respectively, which were witnessed by him, Rajbir, HC Krishan Kumar and signed by the accused persons and attested by Baksha Singh, Investigating Officer. He also deposed about preparation of sketch of iron knife (churi) Ex.P21 and taking into police possession the iron knife stained with blood and all the articles vide recovery memo Ex.P22. He further deposed that accused Soni suffered another disclosure statement in addition to his previous disclosure statement Ex.P23 and proved the photograph and Aadhar card belonging to Ashok Kumar, conductor as Ex.P24 and Ex.P25, iron knife (churi) got recovered by accused Soni as Ex.MO7 and one red colour purse as Ex.MO8.

PW41 retired SI Baksha Singh who was the Investigating Officer of this case deposed that on 9.1.2018, he alongwith other police



officials had gone to KCGMC, Karnal and had conducted the proceedings under Section 174 Cr.P.C of the dead body of an unknown person. He prepared the inquest report Ex.P103. Thereafter, he moved an application Ex.P104 before SMO KCGMC Karnal for post mortem examination of the said unknown person. After post mortem examination, the doctor handed over him one seal parcel containing Viscera, another sealed parcel one vial containing two teeth, two sealed parcel containing cloths, other sealed parcel containing envelope and one sample seal, which were taken into possession vide recovery memo Ex.P6 and the same was attested by ASI Shiv Charan. He recorded the statement of ASI Shiv Charan. Thereafter, the dead body was handed over to Shamsher Singh Member Jan Sewa Dal Karnal. The Case property was deposited with the MHC. After that he along-with complainant visited the place of occurrence. As per PW41, on 12.1.2018, he had received a secret information that Jai Kumar Soni, Gurvinder and Vinod @ Harsh had committed the murder of the said unknown person. Thereafter, he conducted the search of the accused. On 17.1.2018, he received a telephonic call from SHO P.S. Sadar, Karnal that accused Jai Kumar had surrendered before the learned Illaqa Magistrate. Thereafter, he along-with other police officials went to court complex Karnal and moved an application Ex.P106 before Illaqa Magistrate for joining him in the investigation. After accused Jai Kumar was joined the investigation, he was arrested and interrogated in the presence of ASI Shiv Charan. On interrogation, he suffered a disclosure statement Ex.P7 about the commission of crime. Thereafter, medical examination of the accused was got conducted.



As per PW41, on 17.01.2018, clothes of deceased Ram Mukat were identified by Rajpal and Vicky vide memo Ex. P14 which was attested by both the witnesses. He recorded their statements. On 18.01.2018, accused Jai Kumar was taken out from the lockup and was interrogated. Search of other accused was conducted. As per PW41, he had received information from SHO PS Sadar Karnal that one dead body was lying in the canal in the area of P.S Safidon, District Jind at about 2:00 P.M.. Thereafter, he informed the legal heirs of deceased Ashok Kumar regarding the dead body which was lying in the area of P.S Safidon. After that, medical examination of accused Jai Kumar was got conducted. Statement of Deepak son of Lakhwinder was recorded u/s 161 Cr.P.C. On 19.1.2018, he alongwith police officials went to P.S Sadar, Karnal. He sent ASI Shiv Charan and HC Balraj to PGI Rohtak for conducting the proceedings on the dead body which was recovered by the police of P.S Safidon. He alongwith EASI Gurdayal Singh, SHO P.S Sadar Karnal, accused and other police officials went to the place of occurrence. Dr. Krishan Kumar alongwith team members of FSL and ASI Raj Kumar photographer were called at the place of occurrence. As per PW41, he opened the lock of the shop of meat where the occurrence took place. ASI Raj Kumar clicked the photographs of the place of occurrence. The FSL team collected the blood stains, swabs from the place of occurrence and converted the same into ten parcels. Accused Jai Kumar handed over blood stained clothes. He converted the same into parcels and sealed all the parcels with the seal of DS which were taken into possession vide recovery memo Ex.P12 and was attested by HC Manjeet Singh and signed by accused. The Seal after use, was handed over to HC



Manjeet Singh. PW41 prepared the rough site plan of place of occurrence Ex.P107 and recorded the statement of witnesses.

As per PW41, thereafter, accused Jai Kumar demarcated the place of occurrence vide memo Ex.P30 which was attested by HC Mukesh and signed by accused. After that, the accused led them to the place where he had parked the truck bearing registration no.HR63A-3469 after committing the murder and had thrown the dead bodies of driver and cleaner of tralla and demarcated it vide memo Ex.P31 which was attested by HC Mukesh and accused Jai Kumar. As per PW41, he prepared the rough site plan of place where the tralla was parked as Ex.P108. Thereafter, the accused led them to the place where he had buried the dead body of Ram Mukat in the earth and demarcated it vide memo Ex.P32 which was attested by HC Mukesh and signed by accused. He prepared the site plan of the said place. Thereafter, accused Jai Kumar led them to the place i.e. Avardhan canal where they thrown the dead body of Ashok Kumar and demarcated it vide memo Ex.P33 which was attested by HC Mukesh and signed by accused. He prepared the rough site plan of that place as Ex.P109. He also recorded the statement of Mukesh u/s 161 Cr.P.C. Thereafter, they returned to Police Post Ramba. Accused Jai Kumar was again interrogated in the presence of witnesses Bharam Dass and Vicky. On interrogation, he suffered a disclosure statement Ex.P15 which was attested by both the witnesses and signed by accused. He also recorded their statements. Thereafter, in pursuance of the disclosure statement, accused Jai Kumar got recovered one polythene containing one knife (Chhura), shoes, purse and cap of deceased Ram Mukat. The purse was containing photo, DL and ration card of



deceased. The witnesses Bharam Dass and Vicky identified the shoes, cap and purse belonging to deceased Ram Mukat. Rough sketch of knife (Chhura) Ex.P16 was prepared. He converted all the articles in three separate parcels and sealed the parcel with the seal of BS and were taken into possession vide recovery memo Ex.P17. PW41 prepared the sample seal with the impression of BS. Seal after use was handed over to Vicky. As per PW41, he had recorded the statement of witnesses and prepared the rough site plan of recovery Ex.P110. Thereafter, case property was deposited with MM. As per PW41, on 20.1.2018, the juvenile was produced before him by Surat Singh, Sarpanch of Village Darar. On enquiry, he suffered statement Ex.P26 which was attested HC Balraj Singh and juvenile Vinod @ Harsh. Thereafter, juvenile Vinod @ Harsh demarcated the places of occurrence vide memos Ex.P27 and Ex.P28 which were attested HC Balraj Singh and Juvenile. On 21.01.2018, accused Soni and Gurvinder Singh were apprehended from Devi Lal Chowk, Karnal on secret information. On 22.01.2018, accused firstly, accused Gurvinder was interrogated in the presence of Balram Sarpanch, Rajbir and HC Krishan Kumar. On interrogation, he suffered a disclosure statement Ex.P19 about the commission of crime. Thereafter, accused Soni was interrogated in the presence of Balram Sarpanch, Rajbir and HC Krishan Kumar and on interrogation, he suffered a disclosure statement Ex.P20 about the commission of crime. Both the disclosure statements were attested by Balram Sarpanch, Rajbir and HC Krishan Kumar and PW41 recorded their statements.



As per PW41, thereafter, they went to Police Station Sadar, Karnal. Accused Jai Kumar was taken out from lock-up. Rajinder, Sanjay and Rakesh came in police station Sadar, Karnal. He recorded their statements u/s 161 Cr.P.C. Thereafter, accused Jai Kumar was interrogated in the presence of HC Krishan Kumar. On interrogation, he suffered a disclosure statement Ex.P35 which was attested by HC Krishan Kumar and signed by accused. Thereafter, in pursuance of the disclosure statement, accused Jai Kumar got recovered Rs. 36,000/- cash in the denomination of 18 currency notes of 2000/- each. Currency notes were converted into the parcel, sealed with the seal of BS and was taken into possession vide memo Ex.P36, which was attested by HC Krishan Kumar and signed by accused. He prepared the rough site plan of place of recovery Ex.P111. Thereafter, accused Soni in pursuance of disclosure statement, got recovered one knife (Churri) and one purse containing photo and Aadhar card of deceased Ashok. Balram Sarpanch and Rajbir identified the photo and Aadhar card of deceased Ashok Kumar. He prepared the rough sketch of knife Ex.P21 and converted the knife and purse into separate parcels and sealed the parcels with the seal of BS and were taken into possession vide memo Ex.P17 which was attested by Balram Sarpanch and Rajbir. PW41 has deposed that he had prepared the rough sketch of place of recovery Ex.P112 and he recorded the statement of witnesses. Thereafter, the case property was deposited with the MHC. On 3.01.2018, accused Soni and Guvinder suffered disclosure statements Ex.P41 and Ex.P42 respectively which were attested by HC Krishan Kumar and signed by accused persons. Thereafter, both the accused demarcated the place of occurrence vide memo Ex.P37 which was attested



by HC Krishan Kumar and signed by accused persons. After that, both the accused led them to the place where they had buried the dead body of Ram Mukat into the earth and demarcated it vide memo Ex.P38 which was attested by HC Krishan Kumar and signed by accused persons. Thereafter, accused Soni demarcated the place i.e. Avardhan canal where they had thrown the dead body of Ashok vide memo Ex.P39 which was signed by him. After that, accused Gurvinder Singh led them to the place where they had parked the truck bearing registration no. HR63A-3479 after committing the murder of Ram Mukat and Ashok vide memo Ex.P40 which was attested by HC Krishan Kumar and signed by accused. He recorded the statement of witnesses. On 24.1.2018, accused Gurvinder Singh in pursuance of his disclosure statement got recovered the motorcycle bearing registration No.HR05AL-5417 which was used in occurrence, his clothes and one currency note of 2000/-. He converted the clothes and currency note in separate parcels and sealed the parcels with the seal of BS which were taken into possession alongwith motor-cycle vide recovery memo Ex.P43 which was attested by HC Krishan Kumar and signed by accused. He prepared the rough site plan of place of recovery Ex.P113. Thereafter, accused Soni in pursuance of his disclosure statement got recovered his clothes and Rs.8000/- in the denomination of four currency notes of 2000/- each. He converted the clothes and currency notes in separate parcels and sealed the parcels with the seal of BS and were taken into possession alongwith motorcycle vide recovery memo Ex.P44 which was attested by HC Krishan Kumar and signed by accused. He prepared the rough site plan of place of recovery Ex.P114. The case property was deposited with the MHC and he



recorded the statement of witnesses. On 27.1.2018, he alongwith EASI Vir Shakti Singh visited the place of occurrence and got prepared the scale site plan Ex.P18. On 29.1.2018, he moved two applications Ex.P115 and Ex. P116 to Tehsildar, Karnal for preparation of scale site plan of the place where the dead body of Ram Mukat was buried and the place where the dead body of Ashok was thrown which were marked to Halqa Patwari on 30.1.2018. On 7.2.2018, he recorded the statement of Gurbaj Singh, Baldev, Devender Kumar and Rakesh. On 15.2.2018, he alongwith Rajender, Patwari visited the place where the dead body of Ram Mukat was buried and got prepared the scale site plan Ex.P102. He recorded the statement of Patwari. On 23.2.2018, he alongwith Rajbir, Patwari visited the place i.e. Avardhan canal where the dead body of Ashok Kumar was thrown and got prepared the scale site plan Ex.P30. He recorded the statement of Patwari. On 03.3.2018, Devender, brother of accused Gurvinder handed over to him RC of motorcycle bearing registration no. HR05AL-5417 and the same was taken into possession vide recovery memo Ex.P50 which was attested by constable Jitender Singh. On 05.3.2018, the birth certificate of juvenile Harsh was taken into possession. On 14.3.2018, he deposited the parcels of case property in FSL Madhuban after taking from Malkhana Mohrar. On 19.3.2018, call detail, location, CAF form of mobile number 967111-11248, 99964-85417 and 99963-55064 and certificate u/s 65-B of Indian Evidence Act alongwith covering letter were taken into possession from Munish Bindra, Nodal Officer Bhartia Airtel vide recovery memo Ex.P67. On 27.3.2018 call detail, location, CAF form of mobile number 80536-27517, 8930351098 and 83968-21027 and certificate u/s 65-B of Indian Evidence



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Act alongwith covering letter were taken into possession from Nodal Officer of Vodafone. On 04.4.2018, photographs of the place of occurrence were taken from EASI Raj Kumar photographer. On 13.4.2018, he moved an application Ex.P33 alongwith one knife (Chhura) and another knife (Chhuri) before MO for seeking opinion regarding causing of injuries on the bodies of deceased Ram Mukat and Ashok and got prepared report ExP34. After completion of investigation, he prepared the report u/s 173 Cr.P.C. PW41 also proved/identified the case property i.e. one black shirt Ex. MO/1, one brown pant Ex.MO/2, one knife (chhura) Ex. MO/3, one pair of shoes Ex.MO/4, one cap (topa) Ex.MO/5, one steel kada Ex.MO/6, one t-shirt, one underwear, one lower, one baniyan, one knife (chhuri) Ex.MO/7, clothes of deceased Ashok Kumar Ex. MO/8 to Ex. MO/15, two purse Ex.MO/16 and Ex. MO/17, clothes of accused as Ex.P18 and Ex.P19,one sealed parcel containing Rs.36,000/- in the denomination of 18 currency notes of Rs.2000/- each, one sealed parcel containing Rs 8000/- in the denomination of four currency notes Rs.2000/- each and another sealed parcel containing one currency note of 2000/- recovered from accused Jai Kumar, Soni and accused Gurvinder as Ex.P20 and Ex.P21.

Other police officials also testified as to the different aspects of investigation including the recoveries etc.

8. Based on the evidence led the respondents/accused were acquitted by the Court of Additional Session Judge, Karnal vide judgment dated 20.02.2023.

9. It is the aforementioned judgment which is under challenge in the present case.



10. The Counsel for the applicant/State contends that the impugned judgment of acquittal has been passed on conjectures and surmises. The chain of circumstantial evidence was complete so as to establish the guilt of the accused. There was sufficient evidence including the deposition of PW-19, who lastly saw the accused in the company of the deceased as also PW-8 Deepak who had driven the tralla in question on the asking of the accused. Similarly various recoveries had been effected from the accused including the blood stained clothes and the weapon of offence. This evidence established the guilt of the accused beyond reasonable doubt. Therefore, leave be granted to file an appeal against the acquittal of the respondents/accused.

11. We have heard the counsel for the applicant/State and have gone through the lower Court record.

12. The accused persons faced trial in this case for allegedly committing the murder of Ram Mukat and Ashok Kumar who were driver and conductor of truck/tralla No. HR-63-A-3469. The case was registered on the statement of PW2 Palvinder Singh, Sarpanch of village Salaru after he had informed the police on 5.1.2018 about a dead body being found buried in the field of Bir Singh. PW2 Palvinder Singh in his testimony only proved his statement Ex.P1 regarding discovery of an unidentified dead body whose hands feet and mouth were tied and it was having injury marks. Similar facts had come on record in the testimony of PW1 Darpan Kamboj, Tehsildar in whose presence the dead body was exhumed by the police. As there is no eye-witness or direct evidence regarding the murder of Ram



Mukat and Ashok Kumar, the prosecution case is based on circumstantial evidence only.

13. In **Padala Veera Reddy Versus State of A.P. And others (AIR 1990 SC 79)**, it was held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- “(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion within all human probability the crime was committed by the accused and one else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

14. The most material witness relating to the crime in this case examined by the prosecution was PW8 Deepak who was a resident of village Darar where the dead body of Ram Mukat had been found buried. PW8 testified that on 27.12.2017 at about 9 to 9.30 p.m. on the asking of accused Jai Kumar in the presence of accused Gurvinder alias Deepi, he had driven the tralla which was parked on the road side and left it near Preet Paradise Hotel and that accused Jai Kumar and Gurvinder alias Deepi who were on



motorcycle were moving ahead of the tralla. However, PW8 failed to disclose about the number of tralla nor did he state anything about the driver of the said tralla and therefore, he had been declared hostile. PW8 had also failed to tell whether the tralla was loaded or empty or whether it was covered by any sheet or not. As such, the testimony of PW8 cannot be said to connect the accused persons with the murder of Ram Mukat and Ashok.

15. As regards the last seen evidence of PW19 Rajender Kumar on 27.12.2017, PW19 had seen and heard both the deceased persons alive. PW19 testified that he alongwith the cleaner Rakesh had met both the deceased persons in the meat shop being run by accused Jai Kumar. PW19 while identifying accused Jai Kumar, Soni and Gurvinder deposed that they were the same persons who were present on 27.12.2017 at the meat shop at Darar bus stand and they were serving meat to Ashok. In view of the judgment in **Vithal Eknath Adling Vs. State of Maharashtra, 2009(3) RCR (Criminal) 161** this statement does not in any manner further the case of the prosecution as the last seen evidence is of 27.12.2017 and the dead body of Ram Mukat was discovered on 05.01.2008 and that of Ashok on 18.01.2018.

16. The prosecution has relied upon the testimonies of Investigating Officer PW41, PW10 Vicky and PW12 Balram respectively regarding recovery of blood stained clothes and other articles of deceased persons as well as weapons of offence i.e. knives but in the testimony of PW10 in cross examination, it has come that the recovery of knife and other articles belonging to Ram Mukat had been effected from under the Shisham tree in the bushes in the area of Salaru. Further, PW12 in cross-examination deposed that the recovery of blood stained clothes had been effected from



the backside of the shop. As both the said recoveries had been effected from open places, the said recoveries cannot be held to be trust-worthy in the absence of any corroboration. It is also relevant to mention here that as per the FSL report Ex.P90, though human blood had been detected on various articles i.e. clothes, towels, swabs and gauze piece etc. but the prosecution did not place on record serological report regarding blood group of the deceased present on the said articles is nor there any evidence on record as to what was the blood group of the deceased. In **Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra 2008(1) Criminal Court Cases 881(S.C)**, the Hon'ble Apex Court has observed that where human blood found on weapon of offence is not linked with the blood of deceased, then it is not sufficient to link the accused with murder where the prosecution case was based on circumstantial evidence.

17. In **State of U.P. Versus Ashok Kumar Srivastava (1992 Cr.L.J.1104)**, it has been held that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. In **Ram Niwas Versus State of Haryana(Supra)** it has been held by the Hon'ble Apex Court that suspicion however strong it may be, cannot take place of proof beyond reasonable doubt. It has been further held that accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

18. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power



exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

19. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Additional Sessions Judge, Karnal. Therefore, the present application is hereby dismissed and leave to appeal is declined.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

November 07, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>