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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-121-DB-2005 (O&M)
Date of Decision: 03.02.2025****YATENDER PAL****... Appellant****Versus****STATE OF HARYANA****...Respondent****CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present: Mr. Arav Gupta, Advocate
Amicus Curiae for the appellant****Mr. R.S. Arya, Addl. A.G., Haryana.************JASJIT SINGH BEDI, J.**

The present appeal has been filed against the judgment of conviction and order of sentence dated 28/30.09.2004 passed by the Addl. Sessions Judge, Rohtak.

2. The FIR was registered on 29.09.2001, the judgment of conviction and order of sentence passed by the Additional Session Judge, Rohtak is dated 28/30.09.2004, the appeal was filed on 07.02.2005 and the matter is being taken up for hearing now i.e. after a period of more than 23 years from the date of registration of the FIR.

3. The facts of the prosecution case are that on 29.09.2001, a telephonic message was received from the police post (P.P) situated at Post Graduate Institute of Medical Sciences (PGIMS /Medical College, Rohtak that a fight had taken place at PGIMS, Doctor's hostel. Thereafter Sub-

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Inspector(SI) Rajender Singh accompanied by Assistant Sub Inspector (ASI) Rajender Singh, Emergency Head Constable (EHC) Mahender Singh, constable Rajiv and constable Virender went to the Doctor's hotel. PW Mohit Singla, complainant met him and got his statement Ex.PH recorded to the effect that after doing M.B.B.S, from PGIMS, Rohtak, he was doing internship and was residing in room No.16. Dr. Harsh Soni, deceased who was also doing internship was residing in room No.03. Accused Yatender Pal was residing in room No. 167. On 28.09.2001 at about 08.00 p.m, he alongwith accused Yatender Pal went to Myna Restaurant in his car make Maruti bearing Registration No.CH-01Q-5966. They started consuming beer at the car parking. He suspected that something was mixed in the beer. Thereafter accused Yatender brought juice. As the taste of the juice was also bitter, he told this fact to accused Yatender Pal, but he replied that it was usual. Thereafter, he felt a little intoxicated and came out of the car and sat in the park. The accused went to PGIMS, doctor's hostel to bring Dr. Harsh Soni. After some time, they came back. Initially, the accused also served beer to him and thereafter juice. By that time, he (complainant) was intoxicated. Thereafter, he brought both of them (complainant and deceased) to the hostel in that very car. Dr. Harsh Soni was sitting on the front seat and was semi-conscious and was very much intoxicated at that time. The accused helped him (complainant) reach his room. Dr. Rohit Tomar also saw them at that time. At about 07.00 a.m. when he got up, he found that his room was locked from outside and the dead body of Dr. Harsh Soni was lying on the floor of his room. There were strangulation marks over his neck. He (complainant)

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came out of the room from the door and went to accused Yatender told him about the death of Dr. Harsh Soni. The accused replied that keys of the room and the car were with him. When he (complainant) took accused Yatender to one side, it was disclosed by him that he (accused) had strangled Dr. Harsh Soni with the help of a rope in the car and had dragged the deceased to his (complainant's) room because he (deceased) used to tease him (accused) by calling 'Lichar' (Mean) and Budha (Old).

4. SI Rajender Singh made an endorsement Ex.PH/2 on the statement Ex.PH and sent the same to the Police Station (PS) for registration of a case through constable Virender, on the basis of which, formal FIR Ex.PJ was registered by ASI Kartar Singh. He also sent requests for a photographer, Digital Clerk and Dog squad. Photographs of the dead body Ex.P11 to Ex.P14 and that of the car Ex.P15 and Ex.P16 were also taken. After inspecting the spot, he prepared a rough site plan Ex.PAA. Knife Ex.P10 was also found in room No.16, whose parcel was prepared and sealed with seal RS. The knife was taken into possession vide memo Ex. PBB attested by the witnesses. Inquest report Ex.PC was prepared. The dead body was sent for the purpose of autopsy alongwith request Ex.PA. The father of the deceased moved an application Ex.PD to get the post mortem examination done through a board of doctors. PW15-Giani Ram handed over the key Ex. P35 to SI Rajender Singh, which was taken into possession vide memo Ex.PU. The car alongwith the Registration Certificate (RC) Ex.P38 was taken into possession vide Ex. POC. A parcel containing clothes of the deceased, shoes, Viscera, soaked blood, forwarding letter and sample of seal were taken into possession vide

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memo Ex.PV attested by the witnesses. After conducting Post mortem examination, Post Mortem Report (PMR) Ex.PB was handed over to the police. A Video film was also prepared about the post mortem examination which was taken into possession vide memo Ex. PDD.

5. On 30.09.2001, the accused was arrested by Station House Officer (SHD)/Inspector Jai Prakash from Delhi bypass, Rohtak. On 01.10.2001, he made a disclosure statement Ex.PY to the effect that the piece of rope, with which he murdered Dr. Harsh Soni in the aforesaid car, was concealed in the bushes near the doctor's hostel, of which none else was having the knowledge and he could get the same recovered. The said statement was signed by the accused and attested by witnesses. On 02.10.2001, when the police party was going to get the recovery effected alongwith the accused, firstly they went to Public Call Office (PCO) situated at PGIMS, Rohtak from where the accused made calls. The details of calls pertaining to the intervening night of 28/29.09.2001 from 02.00 am to 09.00 a.m. Ex.P28 were taken into possession vide memo Ex.PS. Thereafter, the accused got recovered the piece of rope Ex.P9 which was taken into possession vide memo Ex.PB. Rough site plan of the place of recovery Ex. PZ was also prepared. The accused also made a disclosure statement Ex.PO to the effect that the remaining portion of the rope was tied at his room No. 167. He led the police party to that place and got recovered the remaining piece of rope Ex. P24, which was taken into possession vide memo Ex.PP. Rough site plan of the place of recovery Ex.PZ/1 was prepared, On 03.10.2001 when the accused was again interrogated, he disclosed that he had taken out the purse

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from the pant of Dr. Harsh Soni after throwing his dead body in the room. He had concealed that purse on the eastern bank of the Jawahar Lal Nehru (JLN) Canal under a 'Safeda' (Eucalyptus) tree of which none else was having the knowledge and could get the same recovered. Thereafter, he led the police party to that place and got recovered purse Ex. P25 pertaining to Dr. Harsh Soni, Rs.120/-, 3/4 photographs and a telephone diary which were all taken into possession vide memo Ex. PR. Rough site plan of the place of recovery Ex.PZ/3 was prepared. Application Ex.PF was moved before the doctor to opine whether the murder was possible with the help of the piece of rope Ex. P9. The doctor gave opinion Ex.PF/1 that strangulation was possible with that rope. Application Ex.PG was also moved to opine whether injuries on the person of Dr. Harsh Soni were possible with the knife Ex. P10 or not. The doctor gave opinion Ex.PG/1 that injuries No.04 and 05 as mentioned in PMR Ex.PB, were possible with that knife. Scaled site plan Ex.PN was got prepared. Statements of witnesses were recorded at several intervals. After completion of necessary investigation, report under section 173 of Code of Criminal Procedure, 1973 was prepared by Shri Jai Parkash, Inspector /SHO P.S. Civil Lines, Rohtak who sent the same to Court for trial of the accused.

6. On finding a prima facie case, the accused was charge-sheeted for the offences punishable under Sections 302, 342, 201 read with Section 511 of IPC. The contents of the charge-sheet were read over and explained to the accused to which, he did not plead guilty and claimed trial.

7. To substantiate it's allegations, the prosecution examined Dr. ViJay Pal Khanagwal, Lecturer, Department of Forensic Medicines, PGIMS,

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Rohtak as PW1, ASI Kartar Singh as PW2, HC Kulbir Singh as PW3, HC Jagram as PW4, constable Sanjay Kumar as PW5, constable Sumit Kumar as PW6, constable Vijay Pal as PW7, Vijender Kumar, Photographer as PW8, Dr. Nitiyanand, Professor of Medicines, Warden of Doctor's hostel, PGIMS, Rohtak as PW9, Shri Narain Dutt Verma, father of deceased as PW10, Ram Avtar recovery witness of disclosure statement of accused Ex.PO as PW11, Naresh witness about last scene as PW12, Satish, owner of PCO as PW13, Karambir, Counter Incharge, Myna Tourist Complex, Rohtak as PW14, Giani Ram Singla, father of complainant Mohit Singla as PW15, constable Virender Singh as PW16, Dr. Mohit Singla, complainant as PW17, Shri Ram Niwas, uncle of Giani Ram Singla as PW18, Smt. Sudesh d/o Fateh Singh as PW19, Manish Jain, Ahlmad in the Court of Shri Vinod Jain, Addl. Sessions Judge/Fast Track Court, Rohtak as PW20, Fateh Singh Deputy Superintendent of Police (DSP retired) as PW21, Inspector Chander Singh as PW22, Inspector/SHO Jai Prakash as PW23, Shri Rajpal, Superintendent of Police (SP) Madhuban as PW24, DSP Manbir Singh as PW25, and SI Rajender Singh as PW26. An application Ex.PX/2 was moved for polygraphic test of accused during the pendency of trial and accused filed reply Ex.PX/3. He also made a statement that he was not willing for the lie detector test.

8. PW1 stated that on 29.01.2001 at about 04.45 p.m, as per police request Ex.PA he alongwith Dr. B.L. Sirohiwal, conducted the autopsy on the dead body of Harsh Soni and observed as follows:-

“Length of the body was 170 cms. The body was of an average built male wearing one full sleeve golden thin checkdaar shirt with both cuff button



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and third to six front button closed and intact in situation. The collar button (first front button) was opened and second front button was missing. Blood stains were present over the shirt at places. Moreso, over the left upper arms and the front it showed a tailor mark Bhatia Panchkula.

2. One dark granish (mehandi/Tobacco colored) pant with zip and hooks closed in situ alongwith a black leather belt tied around the waist in loopss in situ.

3. One readymade dark brown V. Shape underwear with the elastic shown in trademark VIP.

4. A pair of brown socks with inbuilt flowery design.

5. A pair of black leather shoes with the laces intact and tied in situ. Both the shoes showed grinding effect on their upper aspect in the region covering the toes. Note; Corresponding cuts were not seen over the shirt in the region of injury described over the body.

Both the eyes were partly opened. Sub-conjunctival pacechaial Sub haemorrhages seen in both eyes. Mouth was also partly opened with the interior teeth visible. Blood tinged secretion present around lips which were dry and dark in colour. Syanosis was present. Cornea was hazy and opaque. Face was suffused. Post mortem staining was present over back (Posterior aspect of the body) rigor mortis was confined to whole of the body. Greenish discoloration of skin present over right iliac region. Semen was present and the external urinary meatus. Multiple antpites present on the front of abdomen and legs at places. We noticed the following injuries over the body;

1. Ligature marks; A reddish ligature mark was present over the front of neck in it's middle situated in transverse plane at a level 6.5 cm below the chin. It extended on both sides of neck to completely encircle it. So, as to lie 3 cm below right angles mandible and 5 cm below mastoid process on the right side whereas it was 3.5 below left angle of mandible and also 5 cm below mastoid process on the left side whereas on the back (hape of neck) it was faintly visible and lying 9cm below occipital protuperiance. The width of the ligature marks varied from 0.7cm to 1.0cm on the right side. There was another ligature mark, reddish in colour Starting at a level 5 cm away from midline on the right side of neck. It extended 9 cm. laterally. At its commencement it was 4.5cm



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below the main ligature mark and joined it (the main ligature mark) at a level 14 cm away from midline. On dissection; the underlying tissues including the muscles soft tissues and laryngeal structures and cartilages were deeply ecchymosed.

2. A reddish contusion of size 2.5x1cm over the front of lobule of left ear. On dissection, the underlying tissues were ecchymosed.

3. A reddish abrasion of size 2x1cm over the front of left leg 6 cm below patella (in the midline) On dissection, the underlying showed effusion of blood.

4. An incised wound of size 1x0.5x0.8cm situated transversally on the anteriolateral aspect of left upper arm. 13cm below top of shoulder. No effusion was blood seen in the tissues underneath-Postmortem.

5. An incised wound of size 2x0.8x1.5cm situated transversally over the front of abdomen, on the left side 8cm above umbicus and 2cm away from midline. No effusion of blood was appreciated in the tissues underneath-(Post mortem).

The vertebrae spinal cord, thoracic walls, ribs, cartilages, pleura, lungs, pericardium, pharynx, oesophagus and the genitalia were healthy. Semegma was present. Brain and its meninges, lungs, liver, spleen and kidney were congested. Pin point haemorrhages seen under the surface of pericardium. Dark fluid blood was present in the right ventricle of heart. Other chambers were empty.

Stomach contained above 3 gram. Undigested food material. Mucosa was slightly congested. Sour smell was emitted by gastric contents. Small intestines contained digested food material and gases. Large intestine contained fecal material and gases urinary bladder was full of urine (Urine sample was preserved for chemical analysis). The stomach, loops of gut, liver spleen and kidneys were also preserved for chemical analysis. After conducting the post mortem examination, the opinion given by us is as under;

The cause of death in this case was strangulation as a result of ligature which was ante-mortem and sufficient to cause death. However, the viscera has been preserved for chemical examination as there was history of intake of some stupefying agent. All the injuries except injury No.4 and 5 were ante-mortem and recent in duration. Injuries Nos.04 and 5 were post mortem in nature.

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Probable time that elapsed between injury and death was immediate and between death and autopsy was between 12 to 24 hours."

He also stated that dead body, PMR, inquest report, sealed parcel containing clothes and belongings of the deceased, sealed parcel containing viscera and samples of blood and urine, parcel containing blood soaked gauge piece and sample seal etc. were handed over to the police. He proved PMR Ex.PB.

It was also stated by him that on 23.10.2001 police moved an application Ex.PF to opine about the possibility of strangulation with the piece of plastic rope Ex.P9 and he gave his opinion Ex.PF/1. Police also moved application Ex.PG about the injuries on the person of deceased and he gave his opinion Ex. PG/1, as already mentioned above.

9. PW9 stated that on 29.09.2001 at about 08.45 a.m. when he was present in his office, he was informed by the 'Chowkidar' (watchman) that a dead body was lying in room No.16 of Doctor's hostel. He gave a telephonic message to Dr. D.R.Yadav, Director of the Institution. He immediately went to the spot and found a dead body lying on the floor of room No.16, allotted to Mohit Singla. The door was closed from the front. There were ligature marks on the neck and stab marks on the abdomen of Dr. Harsh Soni. When asked Dr. Yatender Pal told him that on the previous night, he had gone to Myna Restaurant alongwith Dr. Harsh Soni and Mohit Singla. They returned to the doctor's hostel on the night of 28.09.2001. He had left Mohit Singla in his room and at that time Dr. Rohit Tomar saw them. He did not tell the place

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where the car was parked. The accused also stated that he had made telephonic calls to Deputy Commissioner (DC) and S.P. Rohtak, Police Control Room and to the parents of Mohit Singla at Gurgaon. He (accused) also disclosed that after putting a lock on the room of Mohit Singla, he had kept the key with him alongwith the keys of car in which he brought Dr. Harsh Soni and Mohit Singla.

10. PW11-Ram Avtar stated that on 02.10.2001, the accused was interrogated by the Police in his presence. He made a disclosure statement Ex. PO. He disclosed that he took the piece of rope from his room No.167. He could get recovered that piece of rope with which he strangled Dr. Harsh Soni and could also get the remaining rope recovered from his room No.167, which was to his exclusive knowledge. Thereafter, the accused got recovered the rope Ex. P9, whose parcel was prepared and sealed with seal J.P. The said parcel was taken into possession vide memo Ex. PB bearing his signature. After the recovery of the piece of rope, the accused led the police party to his room No.167 and got recovered the remaining part of the main rope Ex. P24, whose parcel was prepared and sealed with seal J.P. The said parcel was taken into possession vide memo Ex. PA bearing his signature. On 03.10.2001 the police party met him at Medical turn. The accused led the police party to the eastern bank of the J.L.N. Canal and after removing some earth from under an Eucalyptus tree, he got recovered a black coloured purse Ex. P25. When opened, the purse was found to contain telephone diary Ex. P6, photos Ex. P27 and cash to the tune of Rs.120/-. Parcel of these articles were prepared

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and sealed with seal RS. The parcel was taken into possession vide memo Ex. PR bearing his signature.

11. PW12-Naresh stated that on 28.9.2001 at about 10.00 p.m he came out of Myna Tourist Complex, Rohtak. He saw car bearing CH01Q-5966 being driven by accused Yatender Pal. Dr. Harsh Soni was occupying the front seat of the car. Accused Yatender Pal was known to him because he used to visit the room of Dr. Harsh Soni and he introduced accused Yatender Pal. He had a formal talk with accused who stated they had consumed liquor and had come to recreation. He was also asked to join them but he declined as he had taken dinner. In the morning, he went out of station in connection with his business of book binding.

12. PW15-Giani Ram Singla stated that on 29.09.2001 at about 06.00 am, he received a telephonic message from accused Yatender Pal, who happened to be a close friend of his son, that a dead body was lying in the room of his son and he (Mohit Singla) was unconscious though out of danger. He also disclosed that the room of Mohit Singla was locked from outside and keys were with him. He immediately hired a taxi and came to Rohtak. He gave information to his uncle at Julana. He reached Rohtak at about 08.00 a.m. His uncle Ram Niwas also met him outside the doctor's hostel. Accused Yatender Pal came to them and asked to go to some other place. He took them near Ashthal Bohar canal and disclosed that the dead body in the room of Mohit Singla could be disposed of, if they part with Rs.2 lacs. As he disagreed, accused Yatender Pal started crying and stated that he was the only son of his parents and was having two sisters. He requested for help. He also

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confessed before them that Dr. Harsh Soni was killed by him in the night of 28.09.2001. He also disclosed that he alongwith Mohit Singla had gone to Myna Bar in Mohit's car and consumed beer and thereafter juice wherein two sleeping tablets were mixed. He also stated that Mohit Singla remained in the Bar and he brought deceased Dr. Harsh Soni from the hostel in that very car. Dr. Harsh Soni was also served beer and juice by him wherein 5/6 tablets were mixed. Thereafter, he brought them both to the Doctor's hostel. He had helped Mohit Singla to come to his room and put a lock on the main door. In the late night, he strangled Dr. Harsh Soni in the car itself with the help of a rope. He dumped the dead body of Dr. Harsh Soni in the room of Mohit Singla and locked the room from outside. Keys of the room were with him. Initially, the accused did not hand over the keys and tried to put off the matter, but ultimately handed over the keys of the room and fled away. When they came to the room, the police was already there. He handed over the keys to the police which were taken into possession vide memo Ex. PU bearing his signatures.

13. PW17-Mohit Singla (complainant) stated that he (complainant), deceased Dr. Harsh Soni and accused Yatender Pal were doing internship. They were residing in rooms Nos. 16, 03 and 167 respectively. On 28.09.2001, Dr. Yatender Pal came to his room at about 08.00 p.m and asked (complainant) to accompany him (accused) to Myna Bar. They went in his car bearing No.CH01Q-5966. The accused ordered two beers. One of them was consumed by him and the other by the accused. The accused then brought two glasses of juice from outside of Myna Complex. One of the glass was

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consumed by him, whose taste was bitter. He felt a little intoxicated. Thereafter, the accused took the keys of his car from him and brought Dr. Harsh Soni from the Hostel. He also gave beer and juice to Dr. Harsh Soni. Thereafter, they started back in the car. Dr. Harsh Soni was sitting on the front seat whereas he was sitting on the back seat. After parking the car near the gate of the Hostel, the accused helped him up to his room because he was intoxicated. Dr. Rohit Tomar saw them. When he got up in the morning in between 7.00 AM and 8.00 AM the dead body of Dr. Harsh Soni was found lying in his room. There were ligature marks on the necks. As the front door of his room was locked from outside, he came out from back side door. 2/3 doctors came there and he asked them to check what happened to Dr. Harsh Soni. After about 30-40 minutes, the accused came to him and told him that Dr. Harsh Soni was finished by him because he used to call him "mean" and "old". He also stated that the dead body was put in his room by him (accused) and that the room was locked from outside. He also disclosed that the keys of the car were in his possession. After about 40 minutes the police arrived at the place of occurrence and recorded his statement Ex.PH. Later on, he was called by Crime Branch and he disclosed these facts to them.

14. PW18-Ram Niwas stated that on 29.09.2001, at about 06.00 AM he received a telephonic message from his nephew Giani Ram to reach the Doctor's Hostel, Rohtak. He reached the Doctor's Hostel at about 07.45 a.m. Giani Ram also arrived there. In the meantime accused Yatender Pal came to them and told Giani Ram that he had made telephonic calls to him. He took them near Ashthal Bohar canal and disclosed that the dead body of Dr. Harsh

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Soni was lying in the room of Mohit Singla. He demanded Rs.2 lacs for the disposal of dead body. When they replied that it was a police case, he started weeping and confessed about committing murder of Harsh Soni. He requested for help as he was having two sisters. He also disclosed that after locking the room of Mohit Singla, he retained the key. He further disclosed that on the previous night, he had consumed beer alongwith Mohit Singla at Myna Bar. He served a glass of juice to him containing sleeping pills. He also brought Dr. Harsh Soni in the car of Mohit Singla. He was also served a glass of beer and a glass of juice containing sleeping pills. Thereafter, he brought them to PGIMS. Firstly, he took Mohit Singla to the room and thereafter strangulated Dr. Harsh Soni with a rope. He also disclosed that dead of Harsh Soni was dragged and dumped by him in the room of Mohit Singla and he retained the key of the room with him. The accused disclosed that the room was locked by him. Ultimately he handed over the key to them. When they came to the room of Mohit Singla, the police was already there. The key was taken into possession vide memo Ex. PU bearing his signature.

15. PW19-Sudesh stated that initially she was married to one Dharambir but later on their marriage was dissolved because he was drunkard and used to beat her. Thereafter she started residing at Gohana Adda, Rohtak. As she was to pay rent and was in need of money, one Surender took her to the area of Medical College. Three boys met her. As she refused to put his male organ in her mouth, an altercation took place with the accused present in the court. The accused could not have sexual intercourse with her and left in between.



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16. PW2-ASI Kartar Singh, PW3-HC Kulbir Singh, PW4-HC Jagram, PW5-constable Sanjay Kumar, PW6- constable Sumit Kumar, PW7- constable Vijay Pal, PW8- Vijender Kumar, PW10- Shri Narain Dutt Verma, PW13- Satish, PW14-Karambir, PW16- constable Virender Singh, PW20- Manish Jain, Ahlmad, PW21-Fateh Singh, PW22-Inspector Chander Singh, PW23-Inspector Jai Prakash, PW24-SP Rajpal, PW25-DSP Manbir Singh and PW26-SI Rajender Singh are witnesses of different aspects of the investigation identification of the dead body etc.

17. The statement of the accused was recorded under Section 313 of Cr.P.C. wherein all the incriminating circumstances were put to him but, he denied the prosecution allegations and pleaded false implication.

18. In defence, accused examined Dr. Amit Yadav as DW1, Dr. Vikash Saini as DW2, Dr. Bir Singh as DW3, Inder Jeet Gulia from Telephone Department, Rohtak as DW4, Prem Chand Gupta, Incharge, Telegraph Office, Rohtak, as DW5, Shri Jai Bhagwan, SSO, Telephone Deptt. as DW6 and Dr. Pardeep Goel, as DW7.

19. DW1-Amit Yadav stated on 29.09.2001, he was residing in room No.07 of doctor's hostel. Room No.16 was at the distance of about 15 feet from his room. On the aforesaid date, due to some noise, he got up at 06.00 a.m. He found that the police and residents of the Hostel were present there. The dead body of Dr. Harsh Soni was lying in room No.16 and articles were lying scattered in the room. Complainant/Mohit Singla and accused Yatender Pal were also present at that time. Later on, Dr. Ravi Rajan, Vikas Saini came

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there. At about 7.00/7.15 a.m. the police took accused Yatender Pal and Mohit Singla with them. The police also came later on to the hostel.

20. DW2-Dr. Vikash Saini stated that on 29.09.2001, he was doing internship and was residing in room No.301 of doctor's hostel. There were eight wings in the Hostel. Accused Yatender Pal was residing in a different wing/block. Around 250/300 students were residing in the hostel. There was only one entry to the hostel which was manned by a Chowkidar. He used to make entries in the register. There were mercury lights in the hostel. Doctors would keep on going and coming throughout the day and night as per their duties. On 28.09.2001, he had gone to Dighal alongwith Dr. Vishal Dogra and they came back on 29.09.2001 at 06.30/7.00 a.m. They saw a crowd in the block. Dead body of Dr. Harsh Soni was lying in room No.16. Dr. Salaria, Rahul and Amit Yadav were present. Police also came there. Accused Yatender Pal and complainant-Mohit Singla were taken away by the police. The distance between the main gate and place of occurrence was about 250/300 ft. Father and grand-father of Mohit Singla were also there. Articles in the room were lying scattered. Later on, he was called for interrogation by the police at Rest house and Tilyar.

21. DW3-Dr. Bir Singh stated that on 29.09.2001, he was residing in room No.303 of the Doctor's hostel. He was doing internship. Complainant/Mohit Singla was residing in room No.16. On 29.09.2001 he went to room No.16 of Dr. Mohit Singla at about 7.00 a.m. Dead body of Dr. Harsh Soni was lying in his room. Articles were also lying scattered. Around 60/70 doctors were also present at that time. The police people were also

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doing their job. After 05/07 minutes, the police took accused Yatender Pal and complainant Mohit Singla with them. Dr. Salaria, Dr. Amit Yadav and Vikas Saini also came there. He was called later on by S.P. CID for the purpose of investigation.

22. DW4-Inder Jeet Gulia brought the directory, copy of which is Ex.D1 and Ex.D2 showing telephone number of D.C. and S.P. Rohtak.

23. DW5-Prem Chand Gupta produced the certified copies of telegrams Ex.D3 and Ex.D4 sent by father of accused. He also proved receipts Ex.D5 and Ex. D6 regarding payment of fee.

24. DW6-Shri Jai Bhagwan brought the record pertaining to Manav Sewa Sangh, PCO situated at PGIMS, Rohtak. It was stated by him that department did not keep the record of calls made after dialing 95.

25. DW7-Dr. Pardeep Goel stated that he used to run the aforesaid P.C.O. on 29.09.2001. It was stated by him that the details of each call were not available. He could not bring the details as being old one.

26. Based on the evidence led, the accused/appellant came to be convicted and sentenced by the Court of Addl. Sessions Judge, Rohtak vide judgment and order of sentence dated 28/30.09.2004 as under:-

Offence Section	under	Sentence RI/SI	Fine	RI/SI in default of payment of fine
201 IPC		RI for 5 years	Rs.5000/-	RI for 01 Year
302 IPC		Imprisonment for life	Rs.10,000/-	RI for 02 years

Both the sentences were ordered to run concurrently.



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27. It is the aforementioned judgment, which is under challenge, in the present appeal.

28. The learned Amicus Curiae for the appellant contends that the case is based on circumstantial evidence and the chain of circumstances do not conclusively point to the guilt of the accused. He contends that the extra-judicial confession was purportedly made before PW17-Dr. Mohit Singla (complainant) which is the basis of the FIR as also PW15- Giani Ram Singla, father of Mohit Singla and PW18-Ram Niwas Singla uncle of Giani Ram Singla to the effect that the accused had committed the offence. The body itself was found in the room of Mohit Singla who was to explain the presence of the same in his room. It does not stand to reason that the offence would be committed in secrecy and only a few hours thereafter, the accused would make an extra-judicial confession to three closely related witnesses. Interestingly, in the purported extra-judicial confessions, the knife blows on the person of the deceased have not been explained by the accused. Reliance is placed on the judgment in *The State of Punjab Vs. Bhajan Singh & others, 1975 AIR Supreme Court 258* wherein, it has been held that where an offence committed in secrecy, it is doubtful that the accused would confess to the same. Reliance is also placed on the judgment in *Kalinga @ Kushal Vs. State of Karnataka By Police Inspector Hubli, 2024 INSC 124* wherein Hon'ble Supreme Court has held that an extra-judicial confession in the absence of any other evidence is insufficient to convict an accused.

He contends that the evidence of PW12-Naresh that he had seen the deceased and the accused at the Myna Complex at 10.00 PM on the night

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of 28.09.2001 cannot be believed as Naresh is a chance witness and closely related to Ram Avtar (PW11) who is the maternal uncle of the deceased. In fact, his statement during the course of investigation was recorded on 16.10.2001 i.e. more than 15 days of the occurrence. In addition, he contends that even if this version was taken to be correct, this evidence itself was insufficient to establish the guilt of the accused because the purported 'last seen' evidence pertains to 10.00 PM whereas the body was discovered only in the morning at about 08.00 AM and it cannot be said that no other person could have committed this offence in this time gap of approximately 10 hours. Reliance is placed on the judgments of the Hon'ble Supreme in cases of *State of U.P. Versus Satish, 2005(3) SCC 114* and *State of Goa Versus Sanjay Thakran & another, 2007(2) RCR (Criminal) 458*.

He further contends that there is absolutely no evidence of motive on the part of the accused for having committed the offence in question and the motive if any is emanating from the purported extra-judicial confession which is to the effect that the deceased used to taunt the accused and call him 'Budha' and 'Lichar'. The statement of PW19-Sudesh has little relevance. In a case of circumstantial evidence, motive assumes importance and in the absence of the same, the question of the culpability of the accused does not arise.

He further contends that the recovery of the pieces of rope allegedly used in the commission of offence and the purse of the deceased containing his personal effects is nothing but a crude padding by the prosecution. It does not stand to reason that the accused would retain a piece

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of a rope purportedly used in the occurrence. Similarly, it is highly unlikely that he would retain the purse of the deceased. Interestingly, the knife allegedly used to stab the deceased was found from the spot which for some inexplicable reason has not been taken away. The witnesses of recovery of the pieces of rope are PW11-Ram Avtar, who is the maternal uncle of the deceased. PW26- SI Rajender Singh and PW23-Inspector/SHO Jai Prakash. Both PW26-SI Rajender Singh and PW23-Inspector/SHO Jai Prakash have admitted that the investigation had been faulty because of which an inquiry had been initiated against them on an application moved by N.D. Verma, father of the deceased according to which the accused had wrongly been arrested. He thus, contends that the recovery does not further the case of the prosecution.

He next contends that as per the case of the prosecution, the complainant had gone with the accused to the Myna Restaurant for drinks and dinner. The complainant was fed some stupefying substances after which the accused went back to the hostel and brought the deceased to the restaurant. Thereafter, all three went back to the hostel where the accused allegedly helped the complainant to go to his room which fact had been seen by Dr. R. Tomar, went back to the car, strangled the deceased and placed his body in the room of the complainant. Dr. R. Tomar who had seen the accused bringing back the complainant to his room was not examined as a prosecution witness. Despite a guard on duty, presence of doctors day and night in and around the hostel as well as the presence of students studying at all odd hours, no one saw the deceased being brought to the room of the complainant by the

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accused. PW26-SI Rajender Singh has admitted that there was a gate to enter the hostel and a guard room with 24 hours Chowkidar. The distance between the place where the car was parked and the hostel room in which the body was found was approximately 200 yards as per PW26-Rajender Singh. In the absence of any evidence regarding how and when the deceased was brought to the room of the complainant by the accused, the prosecution case becomes doubtful.

He further contends that though the complainant's version was that he had given some stupefying substances, the complainant did not get himself medically examined so as to establish the said fact. PW26-SI Rajender Singh has admitted that blood/ urine samples of the complainant were not taken. In the absence of the said evidence, the version of the complainant that both he and the deceased were fed stupefying substances cannot be accepted.

He then contends that PW26-SI Rajender Singh admitted that fingerprints of the car had been taken but the report was not exhibited. On examination of Zimmies, this witness stated that fingerprints traces were found in the car. In fact, PW23-Inspector/SHO Jai Prakash and PW26-SI Rajinder Singh both admitted that on a complaint of N.D. Verma, father of the deceased the investigation for the allegedly faulty investigation, an inquiry had been ordered against the police officials though they had been exonerated in the same. However, this fact itself establishes that the investigation had not been conducted in a fair manner.



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He lastly contends that though the accused had refused to undergo a lie detector test however, that fact was not sufficient to convict the accused.

He thus contends that the judgment of conviction be set aside and the accused be acquitted of the charges framed against him.

29. The learned counsel for the State, on the other hand, contends that the extra-judicial confession made by the accused before PW15-Giani Ram Singla, PW17- Dr. Mohit Singla and PW18- Giani Ram Singla establishes the fact that the accused alone had committed the offence in question. The motive stood established beyond reasonable doubt. PW19- Smt. Sudesh had been examined as per which the accused was unable to perform sex with her and on her refusal to give oral sex had gone away from the spot because of which the deceased had been calling the accused 'mean' and 'old'. He further contends that the recovery of the piece of rope used to strangle the deceased along with the wallet containing the purse, cash and photos of the deceased were sufficient to establish the commission of the offence and the chain of circumstantial evidence clearly points towards the guilt of the accused. He thus contends that the instant appeal was liable to be dismissed.

30. We have heard the learned counsel for the parties and gone through the record.

31. The present case is based on circumstantial evidence and the Hon'ble Supreme Court in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622** held as under:-



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“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:-

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :-

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence. ”

(emphasis supplied)

32. With respect to the evidentiary value of an extra-judicial confession, Hon’ble Supreme Court held as under:-

In **The State of Punjab** (supra), it was held as under:-



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“15. Coming to the evidence of extra judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh P Ws, the confessing accused came to them and blurted out confessions. They also requested those two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused who had not been arrested till the morning of May 9, 1972 should be seized almost at the same time by a mood to make confession. It is significant that Surjit Singh, Charan Kaur and Jito accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh P Ws. These two witnesses were also not in such a position that the above mentioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jito wanted to surrender themselves before the police, we fail to understand as to why they should not themselves surrender before the police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect in the present case lacks plausibility and, as observed by the High Court, it does not inspire confidence.”

(emphasis supplied)

In **Kalinga @ Kushal** (supra), it was held as under:-

“14. The conviction of the appellant is largely based on the extra judicial confession allegedly made by him before PW-1. So far as an extra judicial confession is concerned, it is considered as a weak type of evidence and is generally used as a corroborative link to



lend credibility to the other evidence on record. In Chandrapal v. State of Chattisgarh⁶, this Court reiterated the evidentiary value of an extra judicial confession in the following words:

“11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI v. Paltan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused.”

15. It is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and

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these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.”

(emphasis supplied)

33. A perusal of the aforementioned judgments would establish that where a murder has been committed in secrecy, it is unlikely that the accused would become garrulous after the commission of the offence and confess to having committed the offence to another person. Further, it is settled law that an extra-judicial confession is a somewhat weak piece of evidence and is generally used as a corroborative link to lend credibility to the other evidence on record.

34. In the present case, the extra-judicial confessions in question have been made to the complainant/Mohit Singla (PW17) in whose room the body was found, his father Giani Ram Singla (PW15) and the uncle of Giani Ram Singla namely Ram Niwas Singla (PW18). The said extra-judicial confessions are to be taken with a pinch of salt. The statement of PW17- Dr. Mohit Singla appears to be a self-serving one as he would have to explain how the body of the deceased was found in his room. Therefore, it is very much possible that he has set up a version of the accused having made a confession before him. As shall be discussed later, other than the extra-judicial confessions made to PW17-Mohit Singla on the one hand and PW15-Giani Ram Singla and PW18-Ram Niwas Singla on the other, there is no other evidence inculcating the accused.



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35. As regards the evidence of 'last seen', the Hon'ble Supreme Court held as under:-

In **State of U.P.** (supra), it was held as under:-

23. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

(emphasis supplied)

In **State of Goa** (supra), it was held as under:-

"32. We shall now weigh the last seen doctrine with respect to D-2-Priya Nanda. According to P.W.-11, after about 30 to 45 minutes when he saw A-1 and D-1 walking towards the beach, he had seen A-1 alone while A-2 was sitting with D-2 in the hotel. After some time, he saw the accused persons and D-2 walking away from Iguana Miraj Hotel. We can safely assume that P.W.-11 saw both the accused persons along with D-2 latest by around 10.30 - 11.00 p.m. P.W.-6 Amit Banerjee had only a momentary glance of the lady sitting in the Maruti car who, according to the prosecution, came to Hotel Seema on 27.02.1999 with D-2 with a male person allegedly A-1. P.W.-6 has mentioned that the guard of the hotel had an opportunity to see the persons who came along with D-2. However, the prosecution chose not to examine the guard to identify either A-1 or A-2. It is difficult to believe P.W.-6 that he had seen A-



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2 sitting in the car when he had got an opportunity to look at her for merely one to two minutes. In his statement, he has described her as a lady with short hair. He has not given any description indicating that he had seen somebody sitting in the car whose face was visible from one side. Even when he was examined by the police, he had not described the features of A-2. In the absence of any other supporting material on record, it will not be possible to believe the statement of P.W.-6 that he had seen A-2 sitting in the car on the night of 27.02.1999 to establish the fact that when D-2 left the hotel she accompanied A-2. Similarly, with respect to A-1, P.W.-6 who had an opportunity to see A-1 for the first time for a very short duration to recognise him to be a person who accompanied D-2 to Hotel Seema on the night of 27.2.1999, he had only a fleeting glance of male person who came with D-2 as he was busy in settling the account with her. That apart, the dead body of D-2 was found at around 7.30 a.m. on 28.02.1999 at Vagator Beach, around 60 kms. from the beach where the dead body of D-1 was recovered and quite a long distance from Hotel Seema. Hence, there has been a considerable time gap of approximately 8½ hours when D-2 was last seen alive with the accused couple. There being a considerable time gap between the persons seen together and the proximate time of crime, the circumstance of last seen together, even if proved, cannot clinchingly fasten the guilt on the accused.

35. In the light of the factors that evidence regarding the recovery of the incriminating materials from the accused persons has been discarded; that there has been sufficient time gap between the instances when the accused persons were last seen together with the deceased persons; and in the absence of any other corroborative piece of evidence to complete the chain of circumstances to fasten the guilt on the accused couple, we are of the opinion that the accused have been rightly given the benefit of doubt by the courts below. We have found that the finding of the

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High Court that the chain of circumstances is not complete to conclusively establish that either A-1 or A-2 alone or with the common intention of each other have committed the dreadful crime of murder of newly married couple, is correct and merely suspicion, however grave, cannot replace the weight attached to the evidence. Accordingly, we order for dismissal of the appeals.

Appeals dismissed."

(emphasis supplied)

36. PW12-Naresh is the chance witness who purportedly saw the deceased in the company of the accused at the Myna Complex at 10.00 PM on the night intervening 28/29.09.2001. This witness is admittedly a close relative of Ram Avtar (PW11), the maternal uncle of the deceased who is also a recovery witness. As per the material on record, his statement during the course of investigation was recorded on 16.10.2001 and the explanation for the delay is that he had gone out of station for work. This explanation is farcical. However, even if his evidence is to be considered to be true, he saw the accused in the company of the deceased at 10.00 PM and the body of the deceased was discovered between 7-8 AM in the morning. There is a substantial gap of 9/10 hours between the 'last seen' evidence of this witness and the discovery of the body. Therefore, by no stretch of imagination can it be said that it is the accused alone who could have committed the offence in question.

37. As per the case of the prosecution as emanating from the FIR based on an extra-judicial confession, the deceased had been taunting the accused by calling him 'Budha' and 'Lichar'. One Sudesh was examined as

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PW19 to the effect that the petitioner had sought to have oral sex with her and as she declined and he was unable to perform sexual intercourse, he had left the place. As per the prosecution case, the accused was being called names on account of his inability to perform sexual intercourse. The motive as sought to be set out is far-fetched. In the FIR, all that has been said is that the deceased used to call the accused 'Budha' and 'Lichar' without any corresponding reason being given. The statement of PW19-Sudesh during the course of investigation was recorded after approximately one year of the occurrence in July, 2002 and 3 ½ years after the alleged incident of attempted sexual intercourse with the accused. And even in her deposition she has not disclosed as to when she had met the accused for the first time. In fact, she identifies the accused in Court for the first time and admits that no identification parade had been held. This identification of the accused for the first time in Court has little evidentiary value even though it is for the limited purpose for establishing motive. In a case of circumstantial evidence motive for the commission of a crime assumes importance. In the present case, the said evidence of motive is lacking.

38. As regards the recovery of two pieces of rope one of which was used for strangulation and the wallet containing the personal effects of the deceased are concerned, it is nothing but a crude padding by the prosecution. It does not stand to reason that the accused would retain a piece of rope used in the occurrence or that he would take away the wallet of the deceased and retain the same after leaving the dead body in the room of the complainant. Interestingly, the knife used to stab the deceased was found from the room. It

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may also be relevant to mention here that the independent witness of recovery is PW11-Ram Avtar who is the maternal uncle of the deceased and PW23-Inspector Jai Prakash and PW26-SI Rajinder Singh are the police officials against whom an inquiry had been initiated based on an application moved by N.D. Verma father of the deceased. Therefore, the purported recovery does not inspire confidence and further the case of the prosecution.

39. A most crucial aspect of the matter is that other than the extra-judicial confession there is absolutely no evidence as to where the accused strangled the deceased and how the accused was able to drag the deceased into the room of the complainant without it being noticed by anyone. While, it is the case of the prosecution that one Dr. R. Tomar had seen the accused bringing back the complainant to his room, the said witness was never examined as a prosecution witness. It is the admitted case of the prosecution that outside the hostel, there was a gate and guard room with a Chowkidar who was on duty 24 hours. There were doctors and students present at all hours of the day and night, PGIMS Rohtak being a College and Hospital. The distance between the place where the car was parked in which the deceased was strangled from the room of the complainant was approximately 200 to 250 yards. However, for certain inexplicable reasons, there is no evidence of the accused dragging the deceased from the car and into the hostel room of the complainant.

40. It may be relevant to mention here that PW26-SI Rajinder Singh after examining the case diaries admitted that fingerprints from the car had been taken but the report was not exhibited. This was the best evidence with



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the prosecution to establish that the accused and the deceased had been in the car where the deceased had been murdered but the same was not brought on record.

41. As per the case of the prosecution, the accused had first administered a stupefying substance to the complainant who felt intoxicated. Thereafter, he is stated to have gone back to the hostel, brought back the deceased and fed him beer and juice along with the stupefying substance after which they all came back to the hostel where the deceased was strangulated while in an intoxicated state. A perusal of the FSL would show that the Ligocaine, a stupefying substance was found in the body of the deceased. However, for reasons best known to the complainant and the Investigating Officer of this case i.e. SI Rajinder Singh (PW26) no attempt was made to take samples of the blood and urine of the complainant. Had the said samples been taken and Ligocaine found, then the case of the complainant as set out in the FIR of he along with the deceased being administered the stupefying substance by the accused would have been strengthened and would be a chain in the circumstantial evidence inculcating the accused. However, the same not having done, the prosecution case becomes doubtful. It is also relevant to note that no such stupefying substance was recovered at the instance of the accused pursuant to his arrest.

42. With respect to the accused not subjecting himself to a lie detector test, it may be relevant to note that a lie detector test can be administered only upon consent of an accused. Mere refusal would not provide a missing link in the chain of circumstantial evidence. Further,



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assuming the accused did submit himself to a lie detector test and stated something inculcating himself the said statement could not be categorized as material evidence against him. In fact, the conducting of lie a detector test is merely an aid in investigation in case the accused discloses any such relevant information. In the case of **Smt. Selvi & others Vs. State of Karnataka & others, 2010 AIR (Supreme Court) 1974**, Hon'ble Supreme Court held as under:-

“221. In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self-incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence.

222. We are also of the view that forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to



adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases, i.e. the Explanation to Sections 53, 53A and 54 of the Code of Criminal Procedure, 1973. Such an expansive interpretation is not feasible in light of the rule of 'ejusdem generis' and the considerations which govern the interpretation of statutes in relation to scientific advancements. We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the 'right to fair trial'. Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the 'right against self-incrimination'.

223. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntarily administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis



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technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below :

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.”

(emphasis supplied)

43. In view of the aforementioned discussion, we find that the chain of circumstantial evidence is certainly not complete so as to conclusively point towards the guilt of the accused. The appeal, as such, is accepted and the impugned judgment dated 28.09.2004 passed by the Addl. Sessions Judge,

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Rohtak is set aside and the accused is acquitted of all the charges framed against him.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

03.02.2025
JITESH

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