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

CRA-D-95-DB-2005 (O&M)

Date of Decision: 13.02.2025

HARPREET SINGH & ANOTHER

... Appellants

Versus

STATE OF UT CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. T.P. Singh, Advocate for
Mr. S.S. Narula, Advocate
for the appellants.

Mr. Manish Bansal, P.P., U.T., Chandigarh with
Mr. Vijay K.V., Advocate and
Ms. Diksha Sharma, Advocate
for the respondent-U.T., Chandigarh.

JASJIT SINGH BEDI, J.

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

2. The FIR was registered on 09.11.2001, the judgment of conviction and order of sentence passed by the Additional Session Judge, Chandigarh is dated 30.09.2004, the appeal was filed on 17.12.2004 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 case of the prosecution is that one Bhag Singh a resident of Sector 37-C, Chandigarh informed the police of having received a telephone

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call at about 07.30 AM on 09.11.2001 from Shakuntla wife of Dalip Singh requesting Bhag Singh to visit Dalip Singh and see as to what he was doing. Bhag Singh went to the house of Dalip Singh to find the door of his house open whereafter he reported and informed Shakuntla that Dalip Singh was sleeping on which Shakuntla asked him to visit Dalip Singh again to ensure that Dalip Singh was really sleeping as she was feeling nervous, apprehending something wrong having happened with Dalip Singh. Bhag Singh went inside the house of Dalip Singh again to find him lying on a double bed face down and his head was soaked with blood and he did not respond on being shaken by Bhag Singh and appeared to be dead. Bhag Singh informed Shakuntla telephonically asking her to reach there forthwith and Bhag Singh informed the police as well telephonically from his public call office booth. On receiving this information, the police lodged FIR No. 550 of 09.11.2001 at Police Station, Sector 39, Chandigarh and launched an investigation. During the course of investigation it transpired that accused Harpreet Singh and Kaka Singh had visited Dalip Singh in his hut on the night of 08.11.2001 and had taken liquor with him whereafter an altercation erupted amongst them over the alleged illicit relations of Shakuntla wife of Dalip Singh with Kaka Singh. Infuriated during the altercation, both the accused assaulted Dalip Singh with a danda many a times as a result where of he succumbed to his injuries. The investigating agency was also informed by Jarnail Singh that both of the accused had suffered an extra-judicial confession before him admitting to

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have murdered Dalip Singh. On completion of the investigation, challan was presented against accused.

4. On commitment, charges were framed under Section 302 read with Section 34 IPC against the accused.

5. PW1-Jarnail Singh claiming acquaintance with Dalip Singh and the accused claimed himself to be a resident of colony No. 5, Chandigarh and of having come to know on 09.11.2001 that Dalip Singh had been murdered whereupon he went to the hut of Dalip Singh. Jarnail Singh (PW1) stated that he was a resident of Vishvakarma colony and on 09.11.2001 itself at about 03.00 PM both the accused came to his house confess to have committed the murder of Dalip Singh on the night of 08.11.2001 at about 8.00 PM and requested him to produce them before the police adding that they had no intention to murder Dalip Singh and the incident occurred inadvertently. PW1-Jarnail Singh also stated that both the accused had told him that when they were taking liquor with Dalip Singh in his hut at 8/9 PM on 08.11.2001 deceased Dalip Singh protested with accused Pardeep Singh (As accused Harpreet Singh was referred to by the witness) of having illicit relation with Shakuntla wife of Dalip Singh following which an altercation ensued amongst them. The witness then turned hostile to the case of the prosecution but in response to the questions put to him by the Public Prosecutor, he admitted to having been told by the accused that after taking liquor Dalip Singh started calling bad names and also that Dalip Singh had given a fist blow upon Kaka

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Singh. The witness admitted of having been told by the accused that they caught hold of Dalip Singh and Harpreet Singh gave a blow with a piece of wood on the head of Dalip Singh and thereafter they left the place and went to colony no.5. He however stated that the version as narrated by him was told to him by accused Kaka Singh alone.

6. PW2-Raj Rani deposed about being aware of the fact that following the death of his son, Dalip Singh had started taking liquor and quarreling with his wife Shakuntla Devi. She also deposed that Kaka Singh brother of Dalip Singh and Harpreet Singh nephew of Dalip Singh used to visit Dalip Singh. On 08.11.2001 at about 8/8.30 PM both the accused Harpreet Singh and Kaka Singh were present in the house of Dalip Singh and took liquor with him. The witness claims that at the time she was standing outside waiting for her husband, the accused came into the street and Kaka Singh was weeping. Upon being asked by her the reason for weeping he told her of having taken excessive liquor and having quarrelled with Dalip Singh. She added that in the morning of 09.11.2001 she came to know that Dalip Singh had died.

7. PW10-Bhag Singh, the first informant did not support the case of the prosecution. He admitted to running a STD PCO Booth in Vishavkarma colony, Palsora and also that Dalip Singh was residing in his house 2-3 houses from his STD booth. He denied to have received any telephonic message from Shakuntala and also feigned ignorance about the manner in which Dalip Singh died. The witness was declared hostile at the request of the Public

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Prosecutor and in response to the questions put by the Public Prosecutor, he admitted his signatures on Ex.P34 but denied its contents stating that he was not read over its contents by the police before obtaining his signatures thereupon. He identified his signature on Ex.P25, a recovery memo whereby a bloodstained blood sheet was recovered but the witness denied that any recovery had been effected in his presence.

8. The prosecution examined Shakuntla Devi wife of the deceased as PW-12 who testified that accused Harpreet Singh was a nephew of Dalip Singh while accused Kaka Singh was the real brother of Dalip Singh. Following the death of Deepak son of Dalip Singh, he had started taking excessive liquor and had become quarrelsome and was frequently quarrelling with Shakuntala as well as with his mother as a result of which his mother Bhagwant Kaur had taken Shakuntala to her house situated at colony No. 5 on 06.11.2001 but was brought back by Dalip Singh in the evening of 08.11.2001. She further testified that in the evening of 08.11.2001, Dalip Singh and the accused started taking liquor. On hearing a noise coming from the place where the accused and Dalip Singh was taking liquor, Shakuntla went there to find both the accused grappling with Dalip Singh. Frightened of a likely brawl she brought her son out of the house. She informed Raj Rani resident of the Vishavkarma colony about the incident. After some time, Kaka Singh and Harpreet Singh came out of the house of Dalip Singh. On being advised by Raj Rani she went to her mother in law in colony no.5 lest Dalip Singh quarrel with her too. In the morning of 09.11.2001 she asked Bhag

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Singh, owner of a Public Call Office to visit Dalip Singh, who informed sometime thereafter that Dalip Singh was lying dead in his house on which she along with her other relations reached the house of Dalip Singh where the police had also reached. The witness did not reveal the motive of assault upon Dalip Singh.

9. PW13-SI Baldev Singh was the Investigating Officer of the case, who testified that on 09.11.2001 while posted as a Sub-Inspector at Police Station, Sector 39, Chandigarh he received information at about 7.45 AM about a dead body lying in Hut No.3812, Vishvakarma Colony, Palsora whereupon he reached there along with police officials. One Bhag Singh met him outside the hut who got his statement Ex.P.34 recorded with him which was endorsed by him vide Ex.P34/A to Police Station, Sector 39, Chandigarh where it led to the registration of the formal FIR. Ex-P34/B by SI Mewa Singh. He called the police photographer PW3-Constable Mohinder Singh and got the spot photographs from him. PW3- Constable Mohinder Singh proved seven photographs taken by him as Ex.P.1 to Ex.P.7 and their corresponding negatives as Ex.P.8 to Ex.P.14. He also prepared the rough site plan of the place of recovery Ex.P 36 and lifted blood from the bed which was put in a plastic container, then into a cloth parcel which was sealed by him with seal bearing impression 'BS' and taken into possession vide recovery memo Ex.P.37. The mattress Ex.P.25 and bed sheet Ex.P.25 from the bed were also taken into possession after sealing its covering cloth parcel with seal impression 'BS' vide memo Ex.P.37. Inquest report Ex.P.40 was prepared.

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After arrival of Shakuntla wife of Dalip Singh, the dead body of Dalip Singh was sent to General Hospital, Sector 16, Chandigarh for post mortem vide request Ex.P.24. Meanwhile, Jarnail Singh (PW1) produced both Harpreet Singh and Kaka Singh before him and who formerly arrested.

In pursuance to the disclosure statement so suffered by accused Harpreet Singh, he led the police party to a tube-well in Vishvakarma colony and got recovered a wooden piece, Ex.P.23, from heap of Parali. The wooden piece was stained with blood and had few hair sticking to it. After drawing sketch of the wooden piece, Ex.P41, it was put in a parcel which was sealed by him with seal bearing impression 'BS' and was taken into possession vide recovery memo Ex.P30. Thereafter, accused Harpreet Singh led the police party to hut No. 1622, above said, and got recovered a T-shirt Ex.P31/A from an iron box from the hut which was taken into possession vide recovery memo Ex.P.31. A rough site plan of the place of recovery of the wooden piece Ex. P30/A was also prepared.

Accused Kaka Singh, immediately after his arrest, was also interrogated by him and he suffered a disclosure statement, Ex.P.29, to the effect of having kept concealed a shirt worn by him at the time of commission of offence in hut No. 1622 colony no.5 which was in his exclusive knowledge and offered to get the same recovered. Kaka Singh led the police party to hut No. 1622 from where he got recovered and produced his shirt Ex. P32/B which was taken into possession vide memo Ex. P. 32. The case property was deposited by him with MMHC of Police Station, Sector 39, Chandigarh on

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the same day. PW12-Shakuntla was produced by SI Baldev Singh before Judicial Magistrate First Class, Chandigarh where her statement under Section 164 of the Code of Criminal Procedure (hereinafter referred to as the Code) was got recorded. On 15.11.2001, he took the wooden piece Ex. P23 from MMHC Police Station, Sector 39, Chandigarh and took it to a doctor at GMCH, Sector 32, Chandigarh and obtained his opinion on 16.11.2001. The doctor separated hair from the wooden piece Ex.P.23 and took them into a separate container which was taken into possession by him vide memo Ex.P42. Constable Raj Kumar producing a copy of the post mortem report, sealed parcel of hair Ex.P44/B and a bowl containing blood sample and another parcel containing viscera impressions all sealed with seals bearing impressions GMCH, those articles were taken into possession by him vide memo Ex.P 34.

10. PW8-Dr. Dasari Harish of the Department of Forensic Medicine, GMCH. Sector 32, Chandigarh testified to have conducted post-mortem examination (Ex.P18) the dead body of Dalip Singh on 10.11.2001 at about 12.45 PM to find as many as 18 injures on his person, 12 of which were lacerated wounds all placed on the head and face, three abrasions placed upon the elbow, left thumb and left wrist and two bruises placed upon the left fore arm, neck and shoulder. On dissection fractures were observed on the left parietal and occipital bones having been fragmented. Fractures were also detected at the base of the skull extending upto the foremen Magnum sub dural haemotoma on right parietal prominence extending to the whole of the

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right and left hemisphere of brain was found. This witness gave his opinion that the cause of death of Dalip Singh was a result of combined effect of craniocerebral damage and haemorrhage and shock as a result of blunt force impact to the head and face vide injuries No. 1 to 12. opining further that all these injuries were anti-mortem in nature caused by blunt force impact and injuries no.1 to 12 were sufficient collectively in the ordinary course of nature to cause death. Probable time having elapsed between the injuries and death was stated to be recent and probable and time elapsing in between death and post mortem was opined to be one to two days. Dr. Rishi Tandon also assisted PW Dr. Dasari Harish during the post mortem and the latter identified the signature of the former on Ex.P 18. After receipt of the report of the Chemical Examiner Ex.P 20, the witness and other members of the post mortem team reiterated their opinions about the cause of death vide Ex.P19.

On 15.11.2001, the Investigating Officer of this case came to him along with sealed parcels, carrying three seals bearing impression 'BS'. After opening these parcels a curved wooden log, 91 cm in length, whose one end was almost pointed showing break at a distance of 10 cm, was taken out. The log showed bloodstains and hair struck to it. The witness gave his opinion that the weapon shown to him could have possibly caused injuries described in the post-mortem report vide report Ex.P21. Outline sketch of the wooden log so examined was adduced into evidence as Ex.P22. During the course of statement of PW Dr. Dasari Harish, a parcel lac sealed with the seal of CFSL, Chandigarh was opened and a broken piece of wood was taken out there from

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on which the witness added that it was the same piece of wood which was seen by him on 15.11.2001 and on seeing Ex. P.23 the witness reiterated his opinion that injuries on the person of Dalip Singh could have been possibly caused with it.

11. PW11-Tithi Dei, a Junior Scientific Officer with CFSL, Chandigarh in 2001 deposed that on 21.11.2001, C. Raj Kumar had produced the following articles before her for their chemical examination:-

1. One sealed parcel sealed with one seal of 'BS' containing Exhibit 1: A plastic container (200 ml approx) containing stained swab.
2. One sealed parcel sealed with one seal of 'BS' containing Exhibit 12: A full sleeved shirt with red and black cross checks.
3. One sealed parcel sealed with one seal of 'BS' containing Exhibit 3: Full sleeved T-shirt with yellow and grey stripes.
- 4- A Exhibit 4a" an uneven piece of wood.
- 4- B One sealed parcel sealed with one seal of DH, GMC containing Exhibit 5: Hair samples.
5. One sealed parcel sealed with one seal of DH, GMC containing Exhibit: 5 Hair samples
6. One sealed parcel sealed with one seal of 'BS; containing.
Exhibit-6a: A bed sheet with red black print.
Exhibit-6b: A thick sheet of green colour.
7. One sealed parcel sealed with one seal of DH, GMC containing Exhibit 7-A: A torn banyan.

Exhibit : 7B: Brownish grey pant.

Exhibit: 7C: A white shirt with navy blue stripes.

Exhibit: 7d: An underwear having long strips of bluish grey and white.

Exhibit: 7e: An blackish grey pant.



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Results of the examination as per report Ex.P35 were as under:-

(i) Human hair was found on exhibits marked as 4b & 5. Microscopic examination revealed that the hair specimens had severely sheared ends. However, no conclusive opinion can be given regarding any correlation between these exhibits. Hair specimens found on exhibit marked as 4a were too few to form any concrete opinion.

(ii) Human blood was found on exhibits marked as 1, 2, 3, 4a, 5, 6a, 6b, 7a, 7c, 7d and 7e.

(iii) 'B' group substances were detected on exhibits marked as 1, 2, 3, 4a, 4b, 6a, 6b, 7a, 7b, 7c, 7d & 7e. Grouping tests were unconfirmatory for exhibit marked as 5.

12. PW3-C. Mohinder Singh, PW4-C. Yashpal, PW5-C. Raj Kumar, PW6-C. Vinod Kumar, PW7-HC Ram Karan and PW9-ASI Raj Pal have testified as to the different aspects of the investigation.

13. Statements of the accused in terms of Section 313 of the Code were recorded thereafter so as to appraise them of all the incriminating circumstances appearing against them in the evidence. The accused reiterated their innocence and claimed false implication. The version given by accused Kaka Singh in his statement under Section 313 of the Code is that Dalip Singh was a habitual drunkard against his advise and the advise of the other brother and parents. Dalip Singh had started beating and torturing his wife and children under the influence of liquor. He and his parents used to come to rescue Shakuntla and her children from Dalip Singh. Many a times, Shakuntla and her children had to live in the house of Kaka Singh and his mother due to

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bad habits of Dalip Singh, who had also started quarrelling with his mother Bhagwant Kaur and every body else who came across him. After the death of Deepak son of Dalip Singh, he started consuming liquor through out the day and night and used to quarrel with Shakuntla and other members of the family. Excess use of liquor had reduced Dalip Singh to a virtual skeleton. Shakuntla started living with her mother-in-law along with her children. On 08.11.2001, Dalip Singh had taken Shakuntla and children back to his residence, while he was under the influence of excess liquor. Kaka Singh was told about it by his weeping mother who requested him to rush to the house of Dalip Singh and bring back Shakuntla and children lest they be tortured and beaten by him. On 08.11.2001, he reached the house of Dalip Singh at about 09.00 PM along with Harpreet Singh where Dalip Singh was found beating Shakuntla under the influence of liquor and using filthy language. When Kaka Singh and Harpreet Singh tried to rescue Shakuntla, Dalip Singh caught hold of Shakuntla and gave blows on Kaka Singh. During this scuffle, Dalip Singh got unbalanced and fell twice or thrice on the bed or the floor. Shakuntla was crying loudly as a result whereof some persons of the locality including Raj Rani came there and Raj Rani advised Shakuntla to run away from the back door. Shakuntla alongwith her minor children left for the house of her mother-in-law. In the morning of 09.11.2001, Kaka Singh learnt about the death of Dalip Singh, whereupon he along with Shakuntla, Harpreet Singh, Bhagwant Kaur and other reached the house of Dalip Singh, where the police met then and entire incident was narrated to it. SI Baldev Singh, upon being told about



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the version of Kaka Singh and Shakuntla Devi noted something in Punjabi language and obtained thumb impression of Shakuntla without reading out its contents to her. Thumb impressions of Shakuntla were also obtained by SI Baldev Singh on blank papers and Harpreet Singh, Jarnail Singh, Kaka Singh and Shakuntla were directed to report at Police Station, Sector 39, Chandigarh in the evening. When they reached Police Station, Sector 39, at about 4.00 PM on 09.11.2002 Kaka Singh and Harpreet Singh were made to put their signatures on some blank papers and while Raj Rani, Jarnail Singh and Bhag Singh made free. Harpreet Singh and Kaka Singh were retained in Police Station and subsequently they were falsely implicated in this case on the basis of fabricated and manufactured evidence.

Harpreet Singh took a similar stand.

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

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302/34 IPC	Life imprisonment	Rs.500/- each	Imprisonment for 01 Year

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

16. The learned counsel for the appellants contends that the evidence of PW2-Raj Rani and PW12-Shakuntla wife of the deceased cannot be believed. They were discrepant in material particulars and contradictory to

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each other. The evidence of Jarnail Singh (PW1) with respect to the accused making an extra-judicial confession before him also cannot be accepted. As it was a case of circumstantial evidence and the motive has not been established, the chain of circumstantial evidence was not complete and therefore, the judgment of conviction ought to be set aside and the accused be acquitted of the charges framed against them.

17. On the other hand, the learned counsel for the respondent-U.T., Chandigarh contends that there was 'last seen' evidence of PW2-Raj Rani and PW12-Shakuntla. Shakuntla (PW12) had seen the deceased being assaulted by the accused. Raj Rani (PW2) had seen both the accused leaving the house of the deceased on the night of the occurrence. The extra-judicial confession was made by the accused in the presence of PW1-Jarnail Singh. The recovery of a wooden piece was effected which had been used in the occurrence. Bloodstained clothes had also been recovered. In their statements under Section 313 Cr.P.C., the accused had accepted that they were present in the house of the deceased where an altercation had taken place but on account of his drunken condition the deceased had fallen down a number of times, sustained injuries and died. Once the factum of the accused being in the company of the deceased was established from their respective statements under Section 313 Cr.P.C. the said fact itself provides a link in the chain of circumstantial evidence and therefore, the present appeal was liable to be dismissed.



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18. We have heard the learned counsel for the parties and gone through the records.

19. Apparently, the case is based on circumstantial evidence. With respect to the same, the Hon'ble Supreme Court in the case of **Sharad Biridhichand Sarda Vs. State of Maharashtra, 1984 AIR Supreme Court 1622** held as under:-

"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

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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)

20. Coming back to the facts of the instant case, there is the evidence of PW12-Shakuntla wife of the deceased Dalip Singh who has categorically stated that she last saw both the accused in her house at Vishvakarma Colony with her husband drinking together and thereafter grappling with him. Fearing that her son would be crushed, she left the house with him and went to the house of PW2-Raj Rani to inform her. Meanwhile, both the accused came out of her house and left. PW2-Raj Rani told her to go to her mother-in-law's house in Colony No.5. She left from there and in the morning, Bhag Singh (PW10) on her asking discovered the dead body of Dalip Singh in his house.

21. The accused have admitted during their statements u/s 313 Cr.P.C. that they had visited Dalip Singh in his hut on the evening of 08.11.2001 and had taken liquor with him during the course of which Dalip Singh started abusing them and also initiated physical assault with PW12-Shakuntla Devi, his wife as well. However, the accused did not own up to the injuries on the person of Dalip Singh stating that Dalip Singh himself fell on the bed or on the floor, unable to control himself on account of consumption of excess liquor, suffered injuries after which they along with PW12-Shakuntla Devi and her child left the house. The body was discovered the next day.



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22. As to the evidentiary value of a statement under Section 313 Cr.P.C., Hon'ble The Supreme Court has held as under:-

In *State of U.P. Versus Lakhmi, 1998(1) RCR (Criminal)*, it was held as under:-

“7. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value of utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicated persons has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminative circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstances appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

8. Sub-section (4) of Section 313 of the Code contains necessary support to the legal position that answers given by the accused during such examination are intended to be considered by the Court. The words "may be taken into consideration in such



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enquiry or trial" in sub-section (4) would amount to a legislative guideline for the Court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

9. Time and again, this Court has pointed out that such answers of the accused can well be taken into consideration in deciding whether the prosecution evidence can be relied on, and whether the accused is liable to be convicted of the offence charged against him; vide : Sampath Singh v. State of Rajasthan, (1969) 1 SCC 367 ; Jethamal Pithaji v. Assistant Collector of Customs, Bombay, (1974) 3 SCC 393 ; Rattan Singh v. State of Himachal Pradesh, 1997(1) RCR (Criminal) 550: (1997)[4 SCC 161](#).

10. We make it clear that answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence, be used for arriving at a finding that the accused had committed the offence.

(emphasis supplied)

In **Mohan Singh & another Versus Prem Singh & another,**

2002(4) RCR (Criminal) 842, it was held as under:-

“28. The statement made in defence by accused under [Section 313](#), Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 Cr.P.C. of the accused can either be relied in whole or in part. It may also be apposite to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See Nishi Kant Jha V. State of Bihar, [AIR 1969 SC 422].



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"In this case the exculpatory part of the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under S, 342 Cr.P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patro, the amount of bleeding and the washing of the blood-stains being so considerable as to attract the attention of Ram Kishore Pandey, PW17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the postmortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex, 6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

31. The statement of accused under Section 313 of Cr.P.C, is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the persecution. As held in the case of Nishi Kant (supra) by this Court, if the exculpatory part of his statement is found to be false and the evidence led by the



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prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 of Cr.P.C. cannot be made the sole basis of his conviction.

(emphasis supplied)

In **Ashok Debbarma @ Achak Debbarma Versus State of Tripura, 2014(3) RCR (Criminal) 261**, it was held as under:-

“22. This Court in Mohan Singh v. Prem Singh and another, 2002(4) RCR (Criminal) 842 : 2002(10) SCC 236 held that the statement made in defence by accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 Cr.P.C. cannot be made the sole basis of his conviction. In this connection, reference may also be made to the judgment of this Court in Devender Kumar Singla v. Baldev Krishan Singla, 2004(2) RCR (Criminal) 15 : 2004(9) SCC 15 and Bishnu Prasad Sinha and another v. State of Assam, 2007(1) RCR (Criminal) 724 : 2007(1) Recent Apex Judgments (R.A.J.) 187 : 2007(11) SCC 467. The above-mentioned decisions would indicate that the statement of the accused under Section 313 Cr.P.C. for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.”

(emphasis supplied)

23. Thus, apparently a statement under Section 313 Cr.P.C. can be relied upon to lend credence to the prosecution case but an admission or confession cannot be the sole basis for conviction.

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24. The 'last seen' evidence of PW12-Shakuntla Devi is substantiated by the statement of the accused under Section 313 Cr.P.C. admitting their presence in the house of deceased and of a scuffle ensuing due to alcohol consumption. Therefore, the evidence of 'last seen' stands duly established and the statement under Section 313 Cr.P.C. can provide a link in the chain of circumstantial evidence.

25. There is the evidence of PW-2 Raj Rani, a Mohalla Pardhan of Vishavkarma Colony who testified to having seen both the accused Harpreet Singh and Kaka Singh in the street at about 10.30 PM on the night of 08.11.2001. Kaka Singh was weeping and stated that they had taken excessive liquor and he had quarreled with the deceased. The accused in their statements u/s 313 Cr.P.C have admitted to have met Raj Rani when they came out of the hut of Dalip Singh. This further establishes the presence of both the accused with Dalip Singh on the night of 08.11.2001. Though there are certain minor discrepancies between the statements of PW2-Raj Rani and PW12-Shakuntla Devi the overwhelming evidence on record conclusively establishes that the accused were seen by these witnesses near the house of the deceased sometimes after the occurrence.

26. Further, the statement of PW2-Raj Rani would be in the nature of 'res gestae' evidence as envisaged under Section 6 of the Evidence Act inasmuch as she met and spoke with the accused immediately after the occurrence who disclosed about the drinking and quarreling. Reliance is placed on the judgment in **Rajput Jabbarsingh Malaji versus State of**



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Gujarat, 2011(4) RCR (Criminal) 254, where Hon'ble Supreme Court held as under:-

“13. PW-2, Viramji Paragji who lodged the FIR had given the reasons as to why initially in the complaint the name of Appellant could not be mentioned but which was stated expressly by him subsequently on getting necessary information from PW-5, Deepji Paragji and PW-6, Vaghji Paragji who in turn were informed by PW-3, Pepaben, Wife of the deceased. The star witness in the case is PW-3, Pepaben, who was sleeping next to her husband alongwith her small child aged 1½ years. She happened to know the Appellant as they all are related. According to her at about 2 a.m. midnight the Appellant had inflicted a heavy and hard blow on the face of her husband with an axe. On hearing the painful shriek of her husband, she woke up and saw the Appellant standing with the axe in his hand. Since the electric bulb was already lit, it was throwing sufficient light in which PW-3 could comfortably recognise Appellant. She has also said that soon, thereafter, she raised an alarm, on which several persons had gathered there.

14. The statement of Pepaben stands fully proved and corroborated from the evidence of PW-5 and PW-6, who were informed soon after the incident as to how, the injury was inflicted by the Appellant on her husband. Their statements also reveal that they were in the vicinity of the scene of crime and were among the many members of the victim's family who had rushed to the spot as soon as they heard the PW-3's wails and shrieks. Thus under Section 6 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"), PW-5 and PW-6 were to be treated as Res Gestae witnesses. Their evidence lends full support to the case of prosecution and corroborates the evidence of P.W.3 Pepaben. She had first disclosed the full description of the incident including the name of Appellant to them, thus they would be Res Gestae witnesses. In the light of aforesaid evidence of PW-2, Viramji Paragji (complainant), PW-3,

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Pepaben, PW-5, Deepji Paragji and PW-6, Vaghji Paragji, it fully stands proved and established that the Appellant had caused the fatal blow on the person of the deceased causing his death. Single blow was so hard and powerful that it caused his death instantaneously.

15. However, at this stage it is also pertinent to point out that another crucial link with commission of the said offence by the Appellant stands proved from the FSL report. As mentioned hereinabove, during the course of investigation Appellant's blood stained scarf, blood-stained axe, used in the commission of the offence were recovered from the place of discovery. Same were sent for serological report alongwith mattress, sand, shirt, big scarf, waistcoat, turban, watch, belt etc. belonging to the deceased. Human blood of group 'O' which was also the blood group of the deceased was found in all the articles including Appellant's scarf and the axe. These findings could not be satisfactorily refuted by the Appellant. Thus from the FSL report it is conclusively established that it was Appellant and only Appellant who had caused the fatal blow on the deceased. There could not have been any other better link connecting the Appellant with the commission of the said offence."

(emphasis supplied)

27. The recovery of the weapon of offence and their bloodstained shirts Ex.P32-A and Ex.P32-B at the instance of the accused in pursuance of their disclosure statements suffered by them is another strong circumstance in the chain of circumstantial evidence. Non-joining of independent prosecution witnesses at the time of recovery cannot falsify the prosecution case.

28. The medical evidence in the shape of the postmortem report of Dalip Singh and the opinion of PW-11 Tithi Dei with regard to presence of blood and hair on the wooden log Ex.P23 and on the shirts of both the

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accused do corroborate the version of the prosecution. The deceased had as many as 18 injuries on his head and face. The number of fractures on the head and face of Dalip Singh and the extent of subdural haematoma observed in the brain of Dalip Singh during post-mortem examination completely negates the version of the accused under Section 313 Cr.P.C. that Dalip Singh having fallen once or twice on his bed or on the floor received those injuries. The opinion of Dr. Dasari Harish (PW8) rules out the possibility of these injuries on the person of Dalip Singh having been caused in the manner suggested by the accused. He has opined of the strong possibility of those injuries having been caused with the wooden log Ex.P23. The number of injuries on the person of Dalip Singh and the extent of those injuries clearly suggests that the deceased (Dalip Singh) was belaboured repeatedly with the wooden log Ex.P23.

29. As regards the evidentiary value of the statement of PW1-Jarnail Singh before whom the accused, purportedly suffered an extra-judicial confession, it may be relevant to note that while deposing in Court, he only stated that the accused had told him that they had taken liquor with the deceased and that during that time, Dalip Singh (deceased) had stated that Pardeep (actually Harpreet Singh) had illicit relations with his wife Shakuntla Devi. They further told him that they had an altercation with Dalip Singh and nothing more. He was declared hostile and when cross-examined by the P.P. admitted that the accused had confessed before him that Harpreet Singh had given a blow with a piece of wooden on the head of the deceased. While

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being cross-examined by the counsel for accused Kaka Singh, he stated that the extra-judicial confession made before him was narrated only by Kaka Singh. The conflicting versions of Jarnail Singh (PW1) and his vacillating stand do not inspire much confidence and therefore, we have no hesitation in holding that the statement of this prosecution witness to the effect that the accused had made an extra-judicial confession before him cannot be relied upon.

30. As regards motive, the prosecution case is that Dalip Singh (deceased) suspected that his wife Shakuntla Devi was having illicit relations with accused Harpreet Singh because of which an altercation took place and the deceased was done to death. However, during the course of the trial no evidence has come forth regarding motive especially when we have disbelieved the statement of PW1-Jarnail Singh regarding the accused making an extra-judicial confession before him. Be that as it may, Hon'ble Supreme Court has time and again held that if the offence stand established from the other evidence on record, mere absence of motive would not make a significant impact to the case of the prosecution case.

As regards this principle, in **Anwar Ali & another Versus State of Himachal Pradesh, 2021(1) SCC (Cri) 395**, it was held as under:-

“9. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in the case of Suresh Chandra Bahri v. State of Bihar

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1995 Supp (1) SCC 80 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in the case of Babu (supra), absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paragraphs 25 and 26, it is observed and held as under:-

"25. In State of U.P. v. Kishanpal (2008) 16 SCC 73, this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp. 87-88, paras 38-39)

"38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N (2009) 9 SCC 152)."

(emphasis supplied)



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In *Prem Singh Versus State of NCT of Delhi, 2023 AIR**Supreme Court 193*, it was held as under:-

"15. As regards the relevancy of motive in a case based on circumstantial evidence, the weight of authorities is on principles that if motive is proved, that would supply another link in the chain of circumstantial evidence but, absence of motive cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused. In Anwar Ali and Anr. v. State of Himachal Pradesh: (2020) 10 SCC 166, this Court has referred to and relied upon the principles enunciated in previous decisions and has laid down as under: -

"24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar 1995 Supp (1) SCC 80: 1995 SCC (Cri) 60 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu (2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under:-

"25. In State of U.P. v. Kishanpal (2008) 16 SCC 73: (2010) 4 SCC (Cri) 182, this Court examined the importance of motive in cases of circumstantial evidence and observed:



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'38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one.....'

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. (2009) 9 SCC 152; (2009) 3 SCC (Civ) 638; (2010) 2 SCC (Cri) 1480).''

Application of the relevant principles to the facts of this case."
(emphasis supplied)

17.1. As noticed, motive, when proved, supplies additional link in the chain of circumstantial evidence but, absence thereof cannot, by itself, be a ground to reject the prosecution case; although absence of motive in a case based on circumstantial evidence is a factor that weighs in favour of the accused.

17.3. We are clearly of the view that when the evidence on record unambiguously proves the guilt of the accused-appellant, the factor relating to motive cannot displace or weaken the conclusions naturally flowing from the evidence. Moreover, the present case cannot be said to be of want of motive altogether. Differently put, in our view, when all the facts and circumstances are taken together, the present one is not a case where there had been any missing link in the chain of circumstances, leading only to the conclusion of the guilt of the appellant."

(emphasis supplied)

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31. Further, the case of the prosecution cannot be said to have weakened from the hostility of PW10-Bhag Singh. Though, it was Bhag Singh who had set the law into motion by informing the police of having seen the body of Dalip Singh in his hut on being asked to go there by Shakuntala Devi but apart from having discovered the body he not a witness of the commission of the crime and therefore, his refusal to support the version of the prosecution qua the role attributed to him does not make any significant impact on the prosecution case.

32. The above discussion would show that firstly, there is the evidence of 'last seen' of PW12-Shakuntla Devi who is the wife of the deceased. Secondly, there is the evidence of PW2-Raj Rani who is the witness of 'res gestae' inasmuch she saw the accused in the area immediately after the occurrence who admitted to have consumed liquor with the deceased and quarreled with him. Thirdly, there is the recovery of the bloodstained, weapon of offence i.e a danda and their bloodstained clothes from the accused. Fourthly, the doctor has categorically opined that the injuries on the person of the deceased could have been caused with the said wooden piece. Fifthly, there is the admission by the accused under Section 313 Cr.P.C. that they were drinking with the deceased who on account of his drunken condition fell down and suffered injuries. The statements under Section 313 Cr.P.C. would provide the missing link, if any, in the chain of circumstantial evidence to inculcate the accused.



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33. In view of the aforementioned facts and circumstances and the evidence available on record, the offence stands established beyond reasonable doubt and therefore, finding no merit in the present appeal, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

13.02.2025

JITESH

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