



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-D-58-DB-2014(O&M)  
Reserved on : 27.03.2026  
Pronounced on : 29.05.2026  
Judgment uploaded on : 29.05.2026

*Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced : Full*

PARDEEP ....Appellant

VERSUS

STATE OF HARYANA ....Respondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN  
HON’BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present : Mr. R.S. Mamli, Advocate for the appellant.  
  
Mr. Pradeep Prakash Chahar, Sr. DAG Haryana  
for the respondent.

**ALKA SARIN, J.**

1. The present appeal assails the judgment of conviction dated 03.12.2013 and the order of sentence dated 05.12.2013 rendered by the Court of Sessions Judge, Sonapat emanating from FIR No.158 dated 30.06.2011 under Sections 302, 303, 216, 178 and 120-B/34 Indian Penal Code, 1860 (hereinafter referred to as ‘IPC’) and Section 25 of the Arms Act, 1959 registered at Police Station Sadar, Sonapat. Vide order dated 05.12.2013 the appellant was sentenced as under :

| <i>Section</i> | <i>Sentence</i>                     | <i>Fine</i> | <i>Sentence in default of fine</i>   |
|----------------|-------------------------------------|-------------|--------------------------------------|
| 302 IPC        | Rigorous imprisonment for life      | ₹75,000     | Rigorous imprisonment for one year   |
| 25 Arms Act    | Rigorous imprisonment for two years | ₹2,000      | Rigorous imprisonment for six months |

2. The facts as culled from the final report of the prosecution under Section 173 Criminal Procedure Code, 1973 (hereinafter referred to as CrPC) are that on 30.06.2011, on receipt of information from General Hospital, Sonapat regarding the death of Pawan @ Pintu son of Rajinder resident of Village Barwasni due to a firearm injury, SI Balraj along with other police officials reached the spot and received a *ruqa* about the death of Pawan @ Pintu. There, Rajinder son of Deepa resident of Village Barwasni (father of the deceased-Pawan @ Pintu) met the police officials and got his statement recorded alleging therein that he was an agriculturist and that his son Pawan @ Pintu aged about 19 years was a milk vendor. On the said date at about 6:00 pm Pawan @ Pintu after supplying milk at Sonapat was returning to his Village Barwasni on his motorcycle bearing registration No.HR-10-F-1179. When he reached two kilometres ahead of Mahra turn towards Karnal, Pardeep son of Baljeet along with two other boys whose names he did not know came on a motorcycle and Pardeep, on account of a grudge, straightaway fired a shot at the chest of his son Pawan @ Pintu. On receipt of the said information, he along with his family members reached at the spot. Some persons of the village had got his son admitted in the General Hospital, Sonapat. On reaching General Hospital, Sonapat, the Doctor revealed that Pawan @ Pintu had died due to a bullet shot. It was further the case set up that some years ago Pardeep had committed the murder of his sister-in-law (Bhabhi), namely, Bhano Devi and he was a witness in that case, the accused Pardeep was sentenced to life imprisonment in the said case. After that

Pardeep came out on parole and he along with his two accomplices committed murder of his son Pawan @ Pintu on account of enmity.

3. On the basis of the statement made by the complainant-Rajinder, a formal FIR was registered under Sections 302 and 303 read with Section 34 IPC and Section 25 of the Arms Act. During investigation SI Balraj inspected the place of occurrence, prepared a rough site plan (Ex.PH), took in possession blood-stained earth, grass and one motorcycle from the spot. He also recorded the statement of Satpal son of Deep Chand stating therein that Pardeep had committed the murder of Pawan @ Pintu at the instance of Murti Devi wife of Baljeet and Sandeep son of Sukhbir. On the said basis, addition of offence under Section 120-B IPC was made. On 11.07.2011 supplementary statement of the complainant-Rajinder was recorded alleging therein that Pardeep along with Ankur son of Jai Kumar had committed the murder of Pawan @ Pintu and Bijender @ Makora son of Ram Kishan and Sandeep @ Mota son of Gulab Singh resident of Village Jasrana had given shelter to them and accordingly, addition of offence under Sections 216 and 178 IPC was also made.

4. Further case of the prosecution is that during investigation, the appellant and his co-accused were arrested. On interrogation, appellant Pardeep in the presence of witnesses suffered a disclosure statement (Ex.PQ) wherein he allegedly confessed the commission of murder of Pawan @ Pintu by firing at him from a .315 bore pistol and the motive behind the same. Based on the disclosure statement made by the appellant, recovery of a pistol along with empty and live cartridges were made from the disclosed place. The pistol and the cartridges were concealed by him in the fields of his maternal uncle

Ishwar near the tubewell room after wrapping the same in a polythene. The .315 bore pistol, empty and live cartridges were taken into police possession vide recovery memo (Ex.PT). Rough sketch (Ex.PT/1) of the pistol was also prepared. The motorcycle used for commission of the offence was also taken into possession vide separate recovery memo (Ex.PU). Similarly, disclosure statements of the co-accused were also recorded. The disclosure statements and other documents were signed by the appellant and his co-accused and attested by witnesses. Statement of witnesses were recorded and sanction (Ex.PK) for prosecution of the appellant herein under Section 25 of the Act was also obtained. On completion of the investigation and other formalities, challan/report under Section 173 CrPC was presented against the appellant and the co-accused before the learned *Illaq*a Magistrate/Judicial Magistrate 1<sup>st</sup> Class concerned. Copies of the documents, as envisaged under Section 207 CrPC, were supplied to the appellant and the co-accused free of cost. Vide order dated 08.11.2011 the learned *Illaq*a Magistrate/Judicial Magistrate 1<sup>st</sup> Class concerned declared co-accused, namely, Ankur as juvenile. Thereafter, finding the case to be exclusively triable by the Court of Sessions, the learned *Illaq*a Magistrate/Judicial Magistrate 1<sup>st</sup> Class concerned committed the case to the Court of learned Sessions Judge, Sonapat.

5. Learned Sessions Judge, Sonapat vide order dated 05.01.2012 framed charges against the appellant and the co-accused under Sections 302 read with Sections 34 and 120-B, 216 IPC and Section 25 of the Arms Arms Act, to which the appellant and the co-accused pleaded not guilty and claimed trial. During the trial the prosecution examined 19 witnesses and thereafter

closed its evidence. Statements of the appellant and the co-accused under Section 313 CrPC were recorded wherein they denied the evidence of the prosecution and pleaded their false implication. In the said statement the appellant stated that he had falsely been implicated by the police at the instance of the complainant who was already inimical to him and his family. He further stated that he never suffered any disclosure statement nor got anything recovered and that a false recovery had been planted upon him. However, no evidence was led in defence.

6. After hearing the Public Prosecutor and the defence counsel, learned Sessions Judge, Sonapat vide the impugned judgment of conviction, and the order of sentence convicted the appellant Pardeep under Section 302 read with 34 IPC and under Section 25 of the Arms Act and sentenced him as noted above. The appellant and the co-accused Sandeep and Murti Devi were acquitted of the charge under Section 302 read with 120-B IPC and co-accused Bijender and Sandeep also were acquitted of the charge under Section 216 IPC by giving them the benefit of doubt.

7. Learned counsel for the appellant would contend that the judgment of conviction and the order of sentence passed by the Trial Court has been assailed on the ground that no cogent evidence was led by the prosecution to connect the appellant with the offence. It was further the contention that the entire case was based on circumstantial evidence, and the prosecution has not been able to establish the chain of circumstantial evidence. Learned counsel for the appellant further contended that there were discrepancies in the statement of Rajinder complainant (father of the deceased), who stepped into the witness box as PW2, and Ravinder who was

examined as PW3. It was further the contention that even the motive, which was stated to have been that the sister-in-law (Bhabhi) of Rajinder had been murdered by the appellant in which case he had been sentenced to undergo life imprisonment, was not proved.

8. *Per contra*, the learned counsel for the respondent has contended that the motive stood proved by the statements of PW2 Rajinder and PW3 Ravinder. It was further the contention that the deceased, while he was being taken to the hospital in a car, had informed Ravinder (PW3) that he had been shot at by the appellant herein. Learned counsel for the respondent has further contended that there had been a recovery of the pistol along with empty and live cartridges used for commission of the offence on the basis of disclosure statement of the appellant which was duly proved on record and further that the accused did not lead any evidence in his defence.

9. We have heard the learned counsel for the parties and with their able assistance have perused the record.

10. The case of the prosecution, in the present case, is solely based on circumstantial evidence as there is no eye-witness count. Even the last seen theory has not been expounded in the present case. The appellant herein has been convicted and sentenced under Section 302 read with Section 34 IPC and Section 25 of the Act only on the basis of circumstantial evidence and on the basis of the fact that the deceased Pawan @ Pintu had informed Ravinder (PW3) that he was shot at by the appellant and his two accomplices which amounted to an oral dying declaration. Further, the Trial Court has convicted and sentenced the appellant on the ground that a strong motive to cause harm to Rajinder complainant and his family members had been proved. The third

factor which has been relied upon by the Trial Court for holding the appellant guilty is recovery of a weapon i.e. a .315 bore pistol (Ex.P28) and the cartridges (Ex.P29 and Ex.P30) pursuant to the disclosure statement (Ex.PQ) of the appellant.

11. The law as expounded by the Supreme Court in the case of **Neelam Kumari Vs. The State of Himachal Pradesh [2025 (4) RCR (Criminal) 266]** in regard to circumstantial evidence is as under :

*‘14. Beyond these alleged confessions, the case of the prosecution rests heavily on circumstantial evidence. In this regard, we find it pertinent to mention the five ‘golden principles’ for evaluating circumstantial evidence which originated in Hanumant V. The State of Madhya Pradesh, 1952 INSC 41 and crystallized in Sharad Birdhi Chand Sarda V. State of Maharashtra, 1984 INSC 121 namely:*

- (a) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances, concerned “must or should” and not “may be” established;*
- (b) 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;*
- (c) The circumstances should be of a conclusive nature and tendency;*

- (d) They should exclude every possible hypothesis except the one to be proved; and*
- (e) 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.'*

12. The FIR in the present case was registered on the statement (Ex.PA) of PW2 Rajinder (father of the deceased). In his statement (EX.PA) Rajinder (PW2) had stated that at about 6:00 pm, after supplying milk in Sonapat, Pawan @ Pintu was returning back to Village Barwasni on his motorcycle bearing registration No.HR-10F-1179. When he reached towards the canal from Mahra crossing at about a distance of two acres, Pardeep son of Baljeet resident of Barwasni came on his motorcycle along with two other boys whose names he did not know. Pardeep (appellant herein) fired a shot straight on the chest of his son Pawan @ Pintu due to a grudge. On receiving the said information, he came to the place of occurrence along with his family members and other persons of the village and took his son to General Hospital, Sonapat. He further stated in his statement (Ex.PA) that Pardeep (appellant herein) had committed the murder of his sister-in-law (Bhabhi), namely, Bhano Devi many years ago in which he was a witness and the appellant herein was sentenced to life imprisonment. At the relevant time, Pardeep (appellant herein) was on parole and he committed the murder of his son and as such legal action be taken against him.

12.1 While deposing before the Court, the complainant PW2 Rajinder stated that on 30.06.2011, Pawan @ Pintu was returning home on his motorcycle, the registration number of which was not known to him. When Pawan @ Pintu reached Mahra crossing, Rajinder himself was harvesting the Jawar crop in the Killa situated near the place of occurrence and he saw accused Pardeep son of Baljeet (appellant herein) along with two other persons at Mahra crossing. When he reached home, he came to know that Pawan @ Pintu had suffered a bullet injury. He further stated that Ravinder (PW3) his nephew was following Pawan @ Pintu and he found Pawan @ Pintu with a bullet injury. Upon enquiry, Pawan @ Pintu told Ravinder that the accused Pardeep son of Baljeet (appellant herein) along with his two companions had fired a shot at him. It was further stated that he had been informed of the occurrence through a telephonic message. He further stated that Pawan @ Pintu was shifted to General Hospital by them in a car.

12.2 It is to be noticed that since there were improvements and contradictions in the statement of PW2 Rajinder he, on the request of the Public Prosecutor, was declared hostile by the Trial Court and was allowed to be cross-examined by the Public Prosecutor. In his cross-examination he even denied having made his supplementary statement (Ex.PC) to the police. Therefore, the Trial Court held that no credence could be attached to the deposition of the said witness.

13. PW3 Ravinder in his deposition before the Court for the first time stated that when he was returning home after taking a stroll, he heard the sound of a fire shot from the direction of Mahra crossing, however, he did not see any person firing the shot. He further testified that he did not see any of

the accused present near the place of occurrence. It was further stated by PW3 that Pawan @ Pintu was shifted to Government Hospital, Sonapat, in a car. On the way the deceased Pawan @ Pintu informed him that he was shot at by Pardeep son of Baljeet (appellant herein) along with his two companions who were unknown to the deceased. Pawan @ Pintu was brought dead to the hospital as recorded by the doctor in the *Ruqa* (Ex PM/2).

14. The Supreme Court in the case of **The State of Madhya Pradesh Versus Ramjan Khan and Others, [2024 SCC Online SC 3070]** while dealing with oral dying declaration has held as under:-

*‘17. Through the evidence of PW8, the mother of the deceased, who is also the informant, the prosecution has attempted to establish the existence of an oral dying declaration. It is to be noted that dying declaration itself is not a strong piece of evidence and therefore, when it is verbal and that too, allegedly made to a close relative (in this case allegedly to the mother), evidence of mother about the oral dying declaration was to be treated with care and caution. To show that the trial Court dealt with the same without due care and caution self-evident from paragraph 32 of the judgment of the Trial Court, which reads thus: -*

*“32. During the arguments, ld. Counsel for the accused argued that complainant Sitara Bi has stated in her court statement that when she reached at well, at that time, her son Naseem Khan told her*

*that all the three accused Ramjan Khan, Musab Khan and Habib Khan have caused his murder after beating him with sickle, axe and lathi. Though, this fact is not written in the police statement Exh. D-3 of Sitara Bi that when he reached, at that time, accused Naseem had told her to be beaten by accused persons, even thereafter, I don't find it proper to give it's benefit to the accused persons because I don't find any reason to disbelieve the statement, which has been given by her before the court.*

*XXXXX XXXXX XXXXX*

*20. The undisputed and indisputable position obtained from the evidence on record is that the defence had brought out that neither in Ext. P12 FIR nor in Ext. D3 statement of PW8 recorded under Section 161, Cr.P.C., PW8 stated about the oral dying declaration made to her by the deceased. That apart, the prosecution had failed to establish that when PW8 reached the place of occurrence the deceased was in a fit state of mind to speak or talk relevantly. Except the statement of PW8 in the Court there is no scrap of evidence in that regard in the case on hand. As a matter of fact, on this aspect nothing was brought out from PW5 and PW9 or from any other witnesses. There can be no doubt that oral dying declaration should be of*

*such a nature as to inspire full confidence of the court in its correctness. In the contextual situation revealed as above, we have no hesitation to hold that the High Court was perfectly justified in considering the oral testimony of PW8 and taking serious note of the serious omission brought out from her, on being confronted with Ext. P12 FIR and Ext. D3, which is her previous statement made to police, that she had not stated anything about such an oral dying declaration made by her deceased son. The High Court also took note of the fact that neither PW5 nor PW9 had spoken about any such oral dying declaration made by the deceased brother to their mother-PW8. Add to it, the oral testimony of PW8 would reveal that while being examined-in-chief she deposed what Haseen Khan (PW5) and Fareed Khan (PW9) divulged to her. She would depose:*

*“When my sons Fareed Khan and Haseen Khan told me at home that accused persons have killed Naseem Khan then I reached the place of incident.”*

*XXXXX XXXXX XXXXX*

*23. A scanning of the oral testimony of PW-8 would show that on many other materials points the defence could brought out, upon confronting her with Ext.P12- FIR, Ext.D3-previous statement, various serious omissions. About her statement in Court that PW-5 and PW-9 went*

*along with deceased Naseem Khan on 01.10.1996 for taking bath nothing was seen recorded in Ext.D3. As noted earlier, as to the alleged oral dying declaration made to her by the deceased from the place of occurrence after sustaining injuries nothing was recorded in Ext.P12-FIR as also in Ext.D3. Though she deposed that upon seeing her Ramjan, Musaf Khan and Habib Khan ran away from the place of occurrence this fact was not recorded in Ext.D3. So also, about the attack by the accused persons on deceased Naseem Khan though she deposed that PW-5 and PW-9 told her and in turn she told such facts to police they were not recorded in Ext.D3. She would depose that she got no enmity with the family of accused persons and got no dispute in respect of land. In view of the aforementioned aspects revealed from the testimony of PW-8 which were not given due weight by the trial Court while considering whether PW-8 is reliable or not, we are of the considered view that the High Court had rightly given due consideration to all such aspects and ultimately discredited her testimony’.*

14.1 In the present case as discussed above the story of the oral dying declaration is put forth for the first time in the statement of PW3 Ravinder made before the Court. The fact about the oral dying declaration does not find mention in the FIR (Ex.PA/2) or in the statement of PW2 Rajinder (Ex.PA). That apart as per the *Ruqa* (Ex.PM/2) the deceased was declared brought dead

at the hospital. As per Ex.PM/1 the postmortem report the 'probable time that elapsed between injury and death' is stated to be a few minutes. Hence the question which arises is whether the oral dying declaration is of such a nature as to inspire full confidence of the Court in its correctness.

14.2 In view of the fact that the deceased was declared brought dead at the hospital and the finding in the postmortem report that the probable time elapsed between the injury and death was a few minutes, the prosecution was required to establish that when PW3 Ravinder was shifting the deceased in the car the deceased was in a fit state of mind to speak. The prosecution in the present case failed to lead any such evidence to show that the deceased was in a fit state of mind to speak.

14.3 Rajinder Singh (PW2) admitted before the Court that the police had recorded his statement (Ex.PA) which was read over to him and admitted by him as being correct. SI Balraj Singh (PW7) also deposed that on 30.06.2011 the statement (Ex.PA) of Rajinder Singh (PW2) was recorded which was read over to him and admitted by him to be correct. The statement (Ex.PA) does not speak of any dying declaration made by the deceased before PW3 Ravinder while he was being taken in the car to the hospital. Rajinder (PW2) in his statement (Ex.PA) merely states that he had received information that Pardeep had fired a shot on the chest of his son due to a grudge. He, further, states that he came to the place of occurrence with his family members and other persons and took his son to the general hospital. On reaching the hospital when he inquired about the condition of his son, he was informed that Pawan had died due to the firearm injury. In his statement before the Court, while appearing as PW2, he stated that Ravinder was following his son,

namely, Pawan and when he found Pawan in an injured condition with the bullet injury, he inquired from Pawan who informed him that Pardeep along with his two companions had fired at him. He, further, states that he was informed by Ravinder (PW3) regarding the occurrence and when he reached the spot, he found Pawan (deceased) lying in an injured condition and he was shifted to the general hospital by them in a car. The story as put forth by Ravinder (PW3) is that Pawan, while he was being shifted to the general hospital in the car, informed him that Pardeep had shot him along with his two companions. If the statement of PW2 is to be seen, he clearly states that he had shifted the deceased in the car along with the others. Once the father of the deceased (PW2) was present in the car, the statement, if any, made by the deceased would have also been heard by him. However, he does not state so in his statement. The depositions of PW2 and PW3 are, therefore, improved versions which have been put forth before the Court *viz-a-viz* the contents of the statement (Ex.PA).

15. The Trial Court found the statement of PW4 Satpal, brother of the complainant, untrustworthy and not corroborated by Rajinder (PW2). In his statement (Ex.DB) before the police and in his statement as PW4 though he had stated that the accused Murti Devi had been heard telling the accused Sandeep and Pardeep that before returning to jail Pardeep should teach a lesson to Rajinder for having deposed against him in the case of murder of Bhano Devi and that he had disclosed this fact to Rajinder cautioning him to be vigilant. However, this statement of PW4 was not corroborated by Rajinder (PW2) hence the Trial Court also found his statement to be untrustworthy leading the Trial Court to acquit Pardeep son of Baljeet (appellant herein),

Sandeep and Murti Devi under Section 302 read with Section 120-B IPC by giving them benefit of doubt.

16. The Supreme Court in the case of **Gautam Satnami Vs. State of Chhattisgarh [2026 SCC OnLine SC 536]** has held as under :

*‘That leaves only the circumstance of motive. Though not expressly considered by Trial Court, it is possible accused No.2’s (Dwarika Jangde) family relationship with the deceased weighed in his favour. In contrast, with respect to the appellant, there is some material on the record that points to a specific dispute with the deceased. However, first, the evidence does not establish the immediacy or gravity of animosity; if anything, it seems the appellant and the deceased continued to be friends and visit one another and may even have been consuming liquor together the evening before the deceased died. Second, motive is a supporting factor which strengthens an otherwise complete chain of evidence. It cannot replace such a chain where other circumstances are missing or weak.’*

In the wake of the discussion above and in view of the law laid down by the Supreme Court in the case of **Gautam Satnami** (supra), even the motive cannot be held to have been proved as the statement of PW4 was held to be untrustworthy.

17. Dealing with the issue of recovery of the weapon i.e. a .315 bore pistol and cartridges on the basis of the disclosure statement of the appellant,

in order to prove the recovery of the said .315 bore pistol and cartridges, the prosecution examined the Investigating Officer/SI Subhash Chander as PW19. The said witness testified about the disclosure statement by the appellant during the course of investigation and proved the same on the record as Ex.PQ. He further testified that the disclosure statement of the appellant led to the recovery of the .315 bore pistol along with empty and one live cartridge, which were taken into police possession vide recovery memo Ex.PT. He also proved on the record the FSL Report as Ex.PX.

18. A perusal of the disclosure statement (Ex.PQ) reveals that the appellant had disclosed that the pistol used in the commission of the offence along with empty and live cartridges was concealed by him in the fields of his maternal uncle, namely, Ishwar near the Tubewell room after wrapping the same in a polythene and qua which no one but him had any knowledge. He got the same recovered after demarcation. The recovery memo (Ex.PT) reveals that the pistol and the cartridges were got recovered in the presence of police officials. Both the documents were signed by the appellant and attested by the Investigating Officer and other police officials of the CIA Staff, Sonapat. The recovery from an open field was shown without joining any independent witness. The Investigating Officer/SI Subhash Chander, while testifying as PW19, did not state that any independent witness was associated at the time of the recovery. The Supreme Court in **Govind Vs. State of Haryana [2026 (1) RCR (Criminal) 28]** has held as under :

*‘15. As per Section 25 of the Evidence Act, the confession given in the Police custody, cannot be proved against a person accused of an offence unless it is given in the*

*immediate presence of the Magistrate. However, Section 27 deals with how much of the information received from the accused, in Police custody may be proved. The said Section is relevant, therefore, reproduced below:*

*27. How much information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

*On a glance of the language of the said section, which starts with the expression “provided that”, it is apparent that this Section is an exception to the preceding Sections 25 and 26. The language further indicates that when any fact is deposed to as discovered in consequence of information received from a person who is in custody of the Police in connection of an offence, it must relate distinctly to the fact so discovered. For relevancy, the “facts thereby discovered” is preceded with the words “so much of such information, whether it amounts to confession or not as relates distinctly”. Special emphasis must be given to the word ‘distinctly’. The word “distinctly” has its own importance which is a derivative*

*of the word 'distinct'. As per Concise Oxford English Dictionary it means recognizable, different in nature, individual or separate, readily distinguishable by the senses. As per Advance Law Lexicon, "distinctly" means clearly, explicitly, definitely, precisely, unmistakably, in a distinct manner. Therefore, "distinctly", as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate to that information. The said word "distinctly" indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information. Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase 'facts discovered'.*

XXXX XXXX XXXX

*17. In the present case, the alleged recovery was made from a place accessible to other family members, hence, the extent to which such recovery can be relied upon to establish the appellant's guilt requires careful scrutiny in light of judicial precedents. In this regard, we can profitably refer the judgment of this Court in the case of Jaikam Khan v. State of U.P. (2021) 13 SCC 716, wherein the conviction was based on recovery of knives from the*

*accused, one from room and two from an open field, which were later found not relevant to connect the accused in commission of offence when such recoveries were from a place accessible to others and also from place of public use. The relevant portion of the said judgment is reproduced as under:*

*58. As already discussed hereinabove, since no public witness has been examined to support the said memo, the statement made therein will have to be scrutinized with greater caution and circumspection. All the statements made therein with regard to the confession of committing the crime would not be admissible in evidence. Only such information, which distinctly relates to the discovery of facts will be admissible under Section 27 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”). The evidence of PW9 Brahmesh Kumar Yadav (IO) would reveal that immediately after the FIR was lodged, he had come to the spot of incident for further investigation. According to him, Accused 1, 3 and 4 were arrested at around 2.00 a.m. on 24-1-2014. Even according to him, the police party was very much there at the spot. One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two*

*recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries.*

*18. In Manjunath & Ors. v. State of Karnataka (supra), this Court while dealing with the recovery from the place accessible to public or areas accessible to others observed that such recovery alone is not sufficient and it becomes suspicious. In the said case, eucalyptus sticks found from eucalyptus plantation and iron chains recovered from houses shared with other occupants were not found sufficient to prove the guilt and to bring home the charge of murder. The court in para 28 held as thus:*

*“28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places.*

*An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons.”*

19. The Report of the FSL (Ex.PX) relied upon by the Trial Court does not state that the bullet which was fired at Pawan @ Pintu was fired from the said .315 bore pistol. No bullet was recovered from the body of the deceased or from the place of occurrence. The FSL Report (Ex.PX) does not confirm that the lacerated wounds on the body of the deceased were infact caused by the usage of the said .315 bore pistol and cartridges. Thus, in our considered opinion the reliance of the Trial Court on the said FSL Report is wholly misplaced. The Supreme Court in the case of **Govind Versus State of Haryana** (supra) has held as under :

*‘23. After the recovery, the pistol and cartridges were kept in the Malkhana, but the record does not indicate on which date these were handed over to PW-6 Baljeet Singh for deposit to the Forensic Science Laboratory (FSL) and the same article was sent for forensic examination. The chain of recovery linking the seizure, storage, and deposit*

*of the material exhibits thus remains incomplete and was not duly proved. Though the FSL report indicates that the pistol and cartridges recovered correlate with the bullets found in the body of the deceased, such evidence by itself is not sufficient to establish the appellant's guilt in the absence of any proof that the recovered pistol was indeed used in the commission of the offence. Furthermore, the alleged motive, as projected by the prosecution, primarily pertains to the co-accused persons, who have either not been charge-sheeted or have been acquitted by the Trial Court. The purported motive attributed to the appellant is founded merely on a speculative quid pro quo arrangement with the acquitted co-accused and lacks support from any credible evidence.'*

20. On a detailed analysis of the evidence on the record, it cannot be said that the conclusion of guilt is fully established in the present case. It further cannot be held, in view of the discussion above, that the circumstances are of conclusive nature so as to hold the appellant herein guilty. In order to bring home the guilt of an accused, the chain of evidence has to be so complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show in all human probability the act must have been done by the accused. The said conclusion cannot be drawn in the present case. We are of the opinion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The circumstantial

evidence does not form a complete chain conclusively pointing towards the guilt of the appellant.

21. In the light of the findings above, the appeal is allowed. The impugned judgment of conviction and the order of sentence of the appellant are accordingly set aside. Consequently, extending the benefit of doubt the appellant stands acquitted of the charges for which he was tried. The appellant shall be released from jail, unless wanted in some other crime.

22. Pending applications, if any, also stand disposed off.

**(ALKA SARIN)**  
**JUDGE**

**29.05.2026**  
*Aman Jain*

**(RAMESH CHANDER DIMRI)**  
**JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking*  
*Whether reportable: YES/NO*