



(1)

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

(I) **CRA-D-151-DB-2004 (O&M)**
Ajay Kumar ... Appellant
Versus
State of Punjab ... Respondent

(II) **CRA-D-183-DB-2004 (O&M)**
Jasbir Singh @ Mitha ... Appellant
Versus
State of Punjab ... Respondent

Date of Decision: 27.05.2025

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Jasraj Singh, Advocate, for
Mr. J.B.S.Gill, Advocate,
for the appellant in CRA-D-151-DB-2004.

Mr. Jasraj Singh, Advocate, as Amicus Curiae,
for the appellant in CRA-D-183-DB-2004.

Mr. Sidharth Attri, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of above-mentioned two appeals i.e. CRA-D-151-DB-2004 filed by Ajay Kumar and CRA-D-183-DB-2004 filed by Jasbir Singh @ Mitha, as both are directed against the same very judgment dated 10.12.2003 passed by learned Sessions Judge, Hoshiarpur, whereby both the accused/appellants namely Ajay Kumar and Jasbir Singh @ Mitha have been



(2)

held guilty of having committed offence under Section 302 read with Section 34 IPC and have been sentenced to undergo imprisonment for life and also to pay a fine amounting to Rs.10,000/- each.

2. The matter arises out of FIR No.1 dated 04.01.2003 registered at P.S. Garhshankar, District Hoshiarpur, under Sections 302 & 377 IPC lodged at the instance of Gurmit Singh. The translated gist of Gurmit Singh's statement (Ex.PA) reads as under:

“I am resident of Village Goppalpur, P.S. Rajpura, District Patiala. Since the last 4 years, I have been managing the property of Dera Sant Baba Santokh Singh, Shahpur, P.S. Garhshankar, Hoshiarpur. Today i.e. 04.01.2003 at about 3.00 PM, when I alongwith Jarnail Singh had gone to forest to reap and bring reeds, we came across dead body of an unknown boy aged about 12/13 years lying near the bushes. The dead body was naked and bore injuries on head and forehead and it appeared that some unknown person had committed unnatural offence with the said boy. Two blood stained stones and a blood stained handkerchief were lying near the dead body. I strongly believe that some unidentified person, after committing unnatural sex, had murdered the boy by inflicting injuries on his head with stones. I left Jarnail Singh near the dead body and was proceeding to the police station to lodge report when you met me on the way. I have got my statement recorded. Action be taken.”

3. Inspector Jasbir Singh (PW-17), after recording the aforesaid statement, sent the same to the Police Station for lodging FIR (Ex.PDD). Thereafter, Inspector Jasbir Singh accompanied by ASI Bhupinder Singh and other police officials proceeded to the place of occurrence where Jarnail Singh was present alongwith dead body. A rough site plan of the place of occurrence was prepared. Photographs of the place of occurrence were also taken. Two blood stained stones, a blood stained handkerchief, a pair of slippers, a



(3)

match-box, a wrapper of 'beeri' (cigarette) and a trouser etc. were taken into possession. Blood stained soil was also lifted from the spot. Inquest proceedings were conducted. The dead body was sent for post-mortem examination. Statements of the witnesses were recorded.

4. It is further the case of prosecution that pursuant to an announcement made through public audio system from Gurdwara of the village regarding identification of dead body of unknown boy aged about 12/13 years, lying in the Police Station, Garhshankar, Joga Ram, his younger brother Surjit, his son-in-law Pammi @ Paramjit and his daughter Rajni went to the Police Station Garhshankar and identified the dead body to be of Gurpreet Singh @ Gogi son of Joga Ram. As per prosecution, thereafter the Panchayat handed over a *panchayatnama* (Ex.PE) alongwith a letter written by Jasbir Singh @ Mitha (accused) to the police. As per the said *panchayatnama*, since Joga Ram (father of deceased Gurpreet @ Gopi) suspected that Jasbir Singh @ Mitha and Ajay Kumar were involved in disappearance of his son Gurpreet Singh @ Gogi, he convened a Panchayat on 01.01.2003 wherein Jasbir Singh @ Mitha and Ajay Kumar had been given 8 days' time to trace out Gurpreet @ Gopi.
5. Both the accused were arrested on 04.02.2003. During the course of interrogation on 06.02.2003, accused Ajay Kumar and Jasbir Singh @ Mitha suffered separate disclosure statements (Ex.PO & Ex.PQ respectively) to the effect that after enticing Gurpreet Singh @ Gogi on 25.12.2002, they confined him in a cycle *khokha* (kiosk) and later on they took him on a scooter to the forest and killed him by inflicting injuries with stones and *kirpan*. Pursuant to the said disclosure statements, both the accused led the



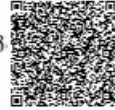
(4)

police to the said nominated places i.e. *khokha* (kiosk) where they had confined Gurpreet Singh and the forest where they had killed him by pointing out the same. One Bajaj Chetak Scooter bearing registration No.PB-20-4480 was also taken into possession vide recovery memo Ex.PT from the residential house of Jasbir Singh @ Mitha. Pursuant to his disclosure statement, accused Jasbir Singh @ Mitha also got recovered a *kirpan*, which was also taken into possession vide recovery memo Ex.PU.

6. Upon conclusion of investigation, challan was presented against both the accused i.e. Jasbir Singh @ Mitha and Ajay Kumar on 22.04.2003 in the Court of SDJM, Garhshankar, who committed the case to the Court of Sessions vide order dated 24.04.2003. Learned Sessions Judge, Hoshiarpur, framed charges against both the accused for offences punishable under Sections 302 and 377 IPC on 20.05.2003 to which both the accused pleaded not guilty and claimed trial.
7. The prosecution in order to establish its case examined as many as 17 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Gurmit Singh stated that on 04.01.2003, he had gone to cut the reeds and when he was on his way, he saw a dead body of a boy of the age of 12/13 years, which was naked and bore injuries on the head and forehead. He further stated that some blood stained stones were also lying near the dead body and that he went back to the Dera Sant Baba Santokh Singh. Thereafter, while he was on his way to police station, he met the police on the way before whom he got his statement (Ex.PA) recorded. He stated that the inquest proceedings were conducted in his presence.

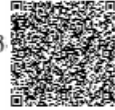
PW-2 Jarnail Singh stated that on 04.01.2003, he was accompanying Gurmit Singh when they came across dead body of a boy, which bore



(5)

marks of injuries on his face and that thereafter Gurmit Singh went to the police station for furnishing information while he remained near the dead body. He also stated with regard to the blood stained stones lying near the dead body apart from the slippers etc.

PW-3 Rajni @ Ghuggu, sister of deceased Gurpreet, stated that she has two sisters, who are already married and that her brother Gurpreet Singh @ Gopi has died. She stated that on 25.12.2002, while her mother was away to attend a Bhog ceremony, she alongwith her brother Gurpreet Singh was present in the house and that Gurpreet Singh went out to fly kite in the afternoon, but did not return back. Later when her father returned back home, they started searching for Gurpreet Singh and also put up the matter before the Panchayat and that they had suspicion against both the accused. She further stated that on 01.01.2003, the Panchayat called both the accused namely Jasbir Singh @ Mitha and Ajay Kumar, wherein they undertook to trace out Gurpreet Singh, but they failed to produce him. She further stated that Jasbir Singh @ Mitha was working as a tailor near her house and had a love affair with her and he had written a love letter (Ex.PC) addressed to her which he passed on to her through Ajay Kumar. She further stated that even on earlier occasions, Jasbir Singh used to write love letters to her and that she could identify his hand-writing and that the love letter (Ex.PC) is in the hands of Jasbir Singh. PW-3 stated that about 15/20 days prior to the occurrence, when she was talking to Jasbir Singh accused, her brother Gurpreet Singh had seen them and had started hurling abuses to Jasbir Singh upon which Jasbir Singh threatened Gurpreet Singh that in case he disclosed anything to anyone, he will be done to death. She stated that Jasbir Singh used to give beatings to Gurpreet Singh (deceased). She further stated that police had visited their village and a Panchayat had also been convened during the course of which she had handed over letter Ex.PC to the police in the presence of Panchayat.



(6)

PW-4 Nirmal Singh stated that he worked in the Army for about 6 years and upon being discharged, he became President of Guru Singh Sabha Gurdwara in his village and that he knew both the accused namely Jasbir Singh and Ajay Kumar and also knows Rajni and that the deceased was brother of Rajni. He further stated that he had seen the letter Ex.PC written in hindi and that Joga Singh (father of the deceased) had told him that said letter had been written by Jasbir Singh to his daughter Rajni. He further stated that the *panchayatnama* was handed over by him to the police.

PW-5 Joga Ram @ Jogi Ram @ Joga Singh, father of deceased Gurpreet Singh, stated that he has three daughters including Rajni and had a son i.e. Gurpreet Singh @ Gogi (deceased). He stated that he knew Jasbir Singh, who was working as a tailor in their village and that on 25.12.2002, when he returned home from his work at about 8.30 PM, his wife and daughter Rajni informed him that Gurpreet Singh was missing and although they searched for him, but he could not be found. He further stated that his wife had told him that Jasbir Singh accused had been taunting and threatening Rajni and had given beatings to his son Gurpreet Singh on 2-3 occasions as Gurpreet had been objecting to the taunts by Jasbir Singh. He further stated that Jasbir Singh had sent a letter to Rajni through co-accused Ajay Kumar, but he did not go through the contents although he knew about the same and that his daughter upon receipt of said '*ruqa*' had consigned the same to flames. He further stated that another letter Ex.PC had also been sent by Jasbir Singh accused. He stated that on 04.01.2003 upon getting information regarding the presence of dead body in the police station, he alongwith Surjit Singh (his younger brother), Pammi @ Paramjit (his younger son-in-law) and Rajni (daughter) went to the police station and although the dead body was beyond recognition, but they identified the same from the clothes of his son.



(7)

- PW-6** Dr. Gurpal Singh, Medical Officer, Civil Hospital, Garhshankar, who had conducted post-mortem examination on the dead body of Gurpreet Singh on 05.01.2003, proved the post-mortem report as Ex.PJ, wherein he described the injuries found on the dead body and opined that the cause of death in this case was injury to brain, which was sufficient to cause death in ordinary course of nature. Upon being shown a small *kirpan* (Ex.P10), he opined that injuries No.1, 2 & 3 could be caused by a small *kirpan*, whereas injury No.10 could be caused by stones.
- PW-7** Pawan Kumar stated that he knew Gurpreet Singh (deceased), as he was brother of his wife, who had been murdered on 04.01.2003 and who had been missing from his house since 25.12.2002. He stated that 2/3 days after Gurpreet went missing, he had received intimation regarding the same pursuant to which he went to the village of his in-laws. He further stated that later when information regarding the presence of a dead body in the police station was received, he alongwith Rajni went to the police station and identified the dead body. He further stated that he knew Ajay Kumar, but did not know the co-accused and that on 19.01.2003, when he was moving in the out-skirts of his village, both the accused met him and confessed their guilt to the effect that on 25.12.2002, they had kidnapped Gurpreet Singh and had detained him somewhere and had thereafter murdered him. He further stated that the accused requested him to get the matter compromised with his father-in-law.
- PW-8** Dildar Singh, Patwari, stated that he had prepared the scaled site plan Ex.PM of the place of occurrence.
- PW-9** ASI Bhupinder Singh, who had remained associated with Inspector Jasbir Singh during the course of investigation, stated with regard to the proceedings of investigation. He stated that it was in his presence that the complainant Gurmit Singh had met Inspector Jasbir Singh at bus stop Garhi Matton on 04.01.2003 and had got his statement Ex.PA recorded. He has stated that he had accompanied Inspector



(8)

Jasbir Singh to the place of occurrence where the dead body of Gurpreet Singh was found lying and by the side of dead body, blood stained stones, handkerchief, slippers, match box, trouser, underwear etc. were also found, which were taken into possession. He stated that blood stained soil was also taken into possession. He further stated that Ajay Kumar was interrogated on 06.02.2003 during the course of which he suffered a disclosure statement (Ex.PO) to the effect that they had confined the deceased in a *khokha* (kiosk) on Nangal road. He also stated with regard to the disclosure statement (Ex.PQ) made by accused Jasbir Singh to a similar effect. He further stated with regard to recovery of a scooter and a small *kirpan* at the instance of Jasbir Singh.

PW-10 HC Iqbal Singh, who is a formal witness, tendered into evidence his affidavit Ex.PV, wherein he deposed that on 04.01.2003, when he was posted as MHC in Police Station Garhshankar, Inspector Jasbir Singh had deposited with him one parcel containing two blood stained stones and that he sent the said parcel through Constable Joga Ram for depositing the same in the office of FSL, Punjab, Chandigarh on 21.04.2003, which was accordingly deposited on the same day and that as long as the parcel remained in his possession, the same was not tampered with.

PW-11 Constable Joga Ram, who is a formal witness, tendered into evidence his affidavit Ex.PX, wherein he deposed that on 21.04.2003, MHC Iqbal Singh had handed over to him the case property i.e. one parcel containing blood stained two stones, for depositing the same in the office of FSL, Chandigarh, which he accordingly deposited on the same day and that as long as the parcel remained in his possession, the same was not tampered with.

PW-12 Karnail Singh stated that he knows Jasbir Singh accused and that about 1 year ago, he had borrowed his scooter bearing registration No.PB-20-4480 (make Bajaj Chetak) from him while representing



(9)

that he has to take his ailing mother to his maternal grand-parents and that the accused Jasbir returned the scooter after 3 days.

PW-13 HC Bakhshish Singh, who is a formal witness, tendered into evidence his affidavit Ex.PZ, wherein he deposed that on 04.01.2003, Inspector Jasbir Singh had handed over to him one unidentified dead body recovered from the forest of village Shahpur for getting the post-mortem examination conducted. He further stated that on 05.01.2003, Rajni came to the Civil Hospital, Garhshankar and on seeing the dead body, she identified the same to be of her brother Gurpreet Singh @ Gopi and that after getting conducted post-mortem examination, the dead body was entrusted to the legal heirs.

PW-14 Sukhdev Sharma, photographer, stated that he had taken photographs of the place of occurrence and proved the negatives as Ex.P14 to P16 and positive thereof as Ex.P17 to Ex.P19.

PW-15 Ram Chand, Clerk, office of SDM, Balachaur, stated that as per record, the vehicle bearing registration No.PB-20-4480 was registered in the name of Karnail Singh.

PW-16 ASI Ravi Dutt stated that on 04.01.2003, he was posted at Police Station Garhshankar and that upon receipt of statement of Gurmit Singh, formal FIR Ex.PDD had been lodged under his signatures.

PW-17 Inspector Jasbir Singh, who is the Investigating Officer in the present case, stated in detail with regard to the entire investigation conducted in the matter right from the lodging of FIR upto the filing of challan. He proved various documents/memos prepared during the course of investigation including the disclosure statements made by both the accused and the recoveries effected pursuant thereto.

8. Upon closure of the prosecution evidence, statements of both the accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the entire



(10)

case of prosecution and pleaded false implication. The accused, however, did not lead any evidence in his defence.

9. The learned trial Court, upon appreciating the evidence on record, held that while charges with respect to offence under Section 377 IPC could not be proved, but charges for offence under Section 302 read with Section 34 IPC stood duly proved and consequently, both the accused were held guilty for having committed offence under Section 302 read with Section 34 IPC vide impugned judgment.
10. Learned counsel representing the appellants, while assailing their conviction, submitted that they have falsely been implicated in the present case and that there is no evidence worth credence to connect them with the alleged occurrence in any manner. It has been submitted that it is a case based totally on circumstantial evidence and that the circumstantial evidence is in the shape of an alleged 'love letter', which cannot be attributed to any of the accused, as the hand-writing on the same was never examined and that the other piece of evidence is in the shape of alleged extra judicial confession before an interested witness i.e. son-in-law of Joga Ram (father of the deceased), which in any case would otherwise also be a weak type of evidence. Learned counsel submitted that other than the said evidence, the only evidence is of alleged recovery of a small *kirpan*, which too cannot be connected with the alleged crime and as such, both the accused/appellants deserve to be acquitted.
11. Opposing the appeals, learned State counsel submitted that even though the case is based on circumstantial evidence, but the evidence collected by the



(11)

investigating agency is cogent and convincing enough to form a complete chain leading to a definite conclusion as regards involvement of both the accused. Learned State counsel, thus, prayed for dismissal of both the appeals.

12. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.

13. Since the findings have been recorded by the trial Court as regards the case being a case of homicidal death, it is apposite to first of all refer to the medical evidence led by the prosecution with regard to the homicidal death. The prosecution has examined PW-6 Dr. Gurpal Singh, who had conducted the post mortem examination on the dead body of Gurpreet Singh on 05.01.2003. He proved the post-mortem report as Ex.PJ and described the injuries found on the dead body as under:

- “1. Incised wound 2.3 cm x 1 cm present on the left side of head, 7 cm above the left pinna, runs forward and medially.
2. Incised wound 3.6 cm x 1.2 cm present on the forehead in the middle vertically placed above the bridge of nose.
3. Incised wound 2.6 cm x 1.1 cm present on the left side of cheek 1.5 cm below the left eye, obliquely placed downwards laterally.
4. Incised wound 0.6 cm x 0.3 cm present on the bridge of nose.
5. Incised wound 1 x 0.5 cm present on the right side of cheek, 1 cm below the inner half lower eye lid.
6. Incised wound 1 cm x 0.6 cm present on the left side of face, 3.5 cm from the midline on the ramus lower jaw.
7. Incised wound 2.2 cm x 1.3 cm present on the right side of pubic area 1 cm outer to root of penis.
8. Reddish brown abrasion 1 cm x 0.5 cm present on the dorsum of penis near the root of penis.



(12)

9. Reddish brown abrasion 3 cm x 1 cm present on the front of medial side of upper 1/3rd right thigh.
 10. Blackish brown bruise in an area 10 cm x 8 cm present on the forehead, face, extending around the bridge of nose. Left eye was disfigured.”
14. PW-6 Dr. Gurpal Singh was shown a *kirpan*, which had been recovered during the course of investigation allegedly at the instance of accused and upon seen the *kirpan*, the doctor opined that the injuries No.1, 2 & 3 could have been caused with *kirpan*. He further stated that injury No.10 could have been caused by a stone. Upon perusal of all the 10 injuries, 7 of which are incised wounds, and upon perusal of the testimony of PW-6 and his opinion, which has remained unshattered despite cross-examination, we have no hesitation to affirm the findings of the trial Court to the effect that it is a case of homicidal death, wherein the deceased had been inflicted multiple injuries with sharp edged/blunt weapon leading to his death.
15. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of Hanumant v. State of Madhya Pradesh, AIR 1952 Supreme Court 343, wherein it was held as follows:
- "10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the



(13)

innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

16. The aforesaid principles have consistently been followed and have been affirmed in catena of authorities. Recently, a three Judges Bench of Hon'ble Apex Court reiterated the aforesaid position of law in 2025(1) RCR(Criminal) 12, Vishwajeet Kerba Masalkar v. State of Maharashtra, while stating as under:

"20. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalised in the judgment of this Court in the case of *Sharad Birdhichand Sharda v. State of Maharashtra* (1984) 4 SCC 116 : 1984 INSC 121, wherein this Court held thus:

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and *Ramgopal v. State of Maharashtra* [(1972) 4 SCC 625 : AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."



(14)

153. 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 Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783]* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"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.

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

21. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has



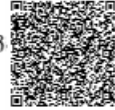
(15)

been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except the one where the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that 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 probabilities, the act must have been done by the accused.”

17. Admittedly, the instant is a case of blind murder not witnessed by anybody and the prosecution seeks to establish its case on the following pieces of circumstantial evidence:

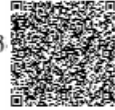
- (i) Extra judicial confession before PW-7 Pawan Kumar;
- (ii) Motive i.e. the deceased objecting to the love affair of the accused Jasbir Singh @ Mitha with his sister Rajni in respect of which a love letter has been brought on record; &
- (iii) Recovery of *kirpan* at the instance of Jasbir Singh @ Mitha.

18. Extra judicial confession: The first circumstance on which the prosecution banks upon is the alleged extra judicial confession stated to have been made by the accused before one Pawan Kumar. Pawan Kumar, while appearing in the witness-box as PW-7, stated that on 19.01.2003 when he was moving on the out-skirts of his village (village Noorpur Bedi), both the accused out of whom he knew Ajay Kumar previously came to him and confessed their guilt to the effect that on 25.12.2002, they had kidnapped Gurpreet Singh (deceased) and had detained him somewhere for a couple of days and had thereafter murdered him. PW-7 Pawan Kumar further stated that the accused requested him to get the matter compromised with his father-in-law i.e. Joga Ram (father of the deceased) and to help them.



(16)

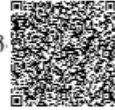
19. An extra judicial confession, as repeatedly held by Hon'ble the Apex Court, is a weak type of evidence and at best can be used for corroborative purposes. In order to examine the reliability of the said extra judicial confession, the relationship/status of the person before whom accused had confessed his guilt and the circumstances under which such is made also need to be examined. In the present case, PW-7 Pawan Kumar is none else, but son-in-law of Joga Ram (father of deceased). He is brother-in-law (*Jija*) of PW-3 Rajni with whom the accused Jasbir Singh had some kind of affair, as claimed by PW-3 Rajni herself. Under these circumstances, it becomes highly suspect as to whether the accused would have really chosen to confess before this witness. Rather the close relationship of the said witness being son-in-law of Joga Ram (father of the deceased) would also make him an interested witness. He has nowhere stated that he had produced the accused before police or had informed anybody else about the alleged extra judicial confession. Under these circumstances, apart from the fact that an extra judicial confession is a weak type of evidence, the alleged extra judicial confession in the instant case made by the accused before an interested witness would otherwise also become suspect and it is certainly not safe to rely upon on such extra judicial confession.
20. Motive: In a case based on circumstantial evidence, motive also plays an important role though of course it is not *sine qua non* to prove a case based on circumstantial evidence. In the present case, the motive alleged is that Rajni (sister of the deceased) was having a love affair with accused Jasbir Singh @ Mitha and since Rajni's brother i.e. the deceased, had come to know about the same and was raising objection, the accused had threatened him of



(17)

dire consequences. PW-3 Rajni has specifically stated in this regard. She has also stated that accused Jasbir Singh @ Mitha had been sending love letters to her and one of such letters (Ex.PC) was sent to her through co-accused Ajay Kumar. PW-3 Rajni while in the witness-box stated that she identified the hand-writing of Jasbir Singh on the said letter, which was also produced before the police alongwith one *panchayatnama*. It is the case of prosecution that the accused while in the Panchayat had undertaken to produce the deceased within eight days. PW-4 Nirmal Singh also stated about the said *panchayatnama* and also about the letter (Ex.PC).

21. As far as letter (Ex.PC) in question is concerned, the prosecution has not chosen to get the hand-writing examined from any expert so as to lend authenticity to the said letter. It is only the statement of PW-3 Rajni, who claims to have identified the hand-writing to be that of Jasbir Singh @ Mitha, on which the prosecution relies to prove the said letter. PW-3 Rajni can neither be said to be an expert of hand writing nor it can be said that she had seen the accused Jasbir Singh writing and signing the documents inasmuch as no other document written by Jasbir Singh has been produced on record. Under these circumstances, the letter (Ex.PC) in question cannot be said to be written by accused Jasbir Singh. Shorn of the said letter, we are left with the statement of PW-3 Rajni who has stated that her brother i.e. the deceased, having come to know about her affair with Jasbir Singh, the said accused had issued threats to her brother and warned him of dire consequences. Even if the said motive is held to be lying with the accused Jasbir Singh, still the prosecution faces an uphill task to establish its case.



(18)

22. Recovery of kirpan: Another piece of evidence on which the prosecution relies upon is recovery of *kirpan* at the instance of accused Jasbir Singh @ Mitha. As per the case of prosecution, the accused upon his arrest had been interrogated by Inspector Jasbir Singh during the course of which he suffered a disclosure statement as regards having concealed a *kirpan* and pursuant to the said statement, he had got the said *kirpan* recovered. While it is correct that the dead body was found to be bearing several incised wounds and the doctor has also opined that injuries No.1, 2 & 3 could have been caused with the said *kirpan*, but the factum of recovery of a *kirpan* at the instance of accused Jasbir Singh can be used only to such a limited extent only i.e. recovery of *kirpan* and nothing beyond that. It is not the case of prosecution that the said *kirpan* was blood stained or was got examined from any chemical examiner. In the absence of any evidence regarding its use, as it is not the case that human blood was found on the same, the factum of said recovery would itself not be sufficient to connect the accused with the said crime.

23. The net result is that at best it can be said that one of the accused i.e. Jasbir Singh @ Mitha would have some motive to murder the deceased, but the same at best could only lead to a suspicion as there is no other strong connecting evidence to link him with the murder of the deceased. It is well settled that suspicion howsoever strong cannot take the place of evidence. Hon'ble the Supreme Court in AIR 2022 SC 5110, Subramanya Vs. State of Karnataka, while reiterating the aforesaid legal position, held as under:

“92. Thus, even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case



(19)

based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt. The trial court rightly disbelieved motive to commit the crime as the evidence in this regard is absolutely hearsay in nature.”

- 24. Consequently, we find that the prosecution has miserably failed to lead evidence to establish all the links in the chain of circumstantial evidence from which it can be said with certainty that it is the accused, who had committed the murder of deceased. Resultantly, the findings as recorded by the trial Court as regards guilt of the accused are unsustainable and deserve to be set aside.
- 25. Both the appeals, as such, are allowed and impugned judgment and order of sentence dated 10.12.2003 passed by learned Sessions Judge, Hoshiarpur are hereby set aside. The appellants are acquitted of all the charges framed against them. Their bail bonds/surety bonds shall stand discharged.
- 26. A copy of this judgment be sent to the quarters concerned. Case property be dealt with under rules upon expiry of limitation for filing appeal appeal/revision, as the case may be.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

27.05.2025
Vimal

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