



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

SR. No.306

CRA-D-617-DB-2003 (O&M)**Date of decision:28.05.2024****Ranbir Singh and another****...Appellants****Versus****State of Haryana****...Respondent**

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Gaurav Sharma, Advocate for appellant No.1.
Mr. Rahul Rathore, Advocate for appellant No.2.
Mr. Munish Sharma, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. The appellants have preferred the present appeal against the impugned judgment of conviction dated 14.07.2003 and order of sentence dated 16.07.2023 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat, whereby the appellants have been convicted and sentenced as under:-

Convict(s) Name	Offence	Sentence
Ranbir Singh and Joginder Singh @ Chela	Section 302/34 IPC	To undergo imprisonment for life with fine of Rs.5000/- each and in default of payment of fine, to undergo rigorous imprisonment for three months each.
Joginder @ Chela	Section 25 of the Arms Act	To undergo rigorous imprisonment for a period of one year with fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

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2. As per the case of the prosecution, the FIR Ex.PA/1 was registered in the present case on the basis of the statement Ex.PA, which was made by Ved Prakash son of Pokar Dass and the same reads as under:-

“It is stated that I am resident of above said address. My mother Chameli Devi is the Sarpanch of the Village. On 2.11.2001 at about 6.30 p.m. Master Shanti Sarup s/o Sadhu Ram Goswami resident of above said address came to me at house. He told me that Bablu s/o Roshan Lal caste Jogi R/o Kheri Tagga aged 10 years was playing with the children near Guga Peer Meri. Bablu etc, and children saw from the hole of the wall that a Baba aged 65-66 years was lying dead on the cot who had been living there from 5-6 months. I, alongwith Shanti Sarup, Rajinder Singh Panch, Hukmi Chowkidar reached at Gugga Peer Meri. The room was found locked. After breaking the lock, it was found that baba was lying dead on the cot. The inflicted injuries were found on his chest, abdomen, right temple and on the palm of the right hand. In the night some unknown person has murdered the baba with the knife. After committing the murder, the door has been found bolted and locked from outside. I was going for lodging the report after leaving master Shanti Sarup etc. for the safeguard of the dead body....”

3. After recording the statement of the complainant Ex.PA, ASI Ram Avtar went to the place of occurrence situated at village Kheri Taga and found the dead body of an unknown monk (sanyasi). The initial investigation was conducted at the spot and the dead body was shifted to Civil Hospital, Sonapat for examination. On 03.11.2001, post-mortem examination was conducted by Dr. Arun Garg and Dr. Varsha. Since nobody claimed the dead body for two days, the dead body was handed over to Municipal Committee, Ganaur for cremation and the dead body was

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cremated. On 09.11.2001, the ration card Ex.P1 and the receipt Ex. P2, which were found in a bag lying in the room where the occurrence had taken place, were handed over by Ved Prakash to ASI Pritam Singh, which were taken into possession by the police. As per the ration card, it was issued to Ram Sanjivan and his family members and the receipt was issued by Co-operative Store, situated at Rai Bareilly. UGC Nafe Singh was sent to village Paithana, District Rai Bareilly to make inquiries there, so that the identity of deceased might be established. UGC Nafe Singh met Virender Tiwari son of Ram Sanjivan Tiwari at village Paithana and showed him the ration card Ex.P1 and receipt Ex P2. Virender Tiwari came to village Kheri Taga on 13.11.2001 and after seeing the photographs Ex.P3 to Ex.P5, he identified the deceased as his father i.e. Ram Sanjivan Tiwari. The statement of Virender Tiwari was also recorded by the police, who stated that his father Ram Sanjivan Dass Tiwari was living at village Bahalgarh in the year 2001. On the request of residents of village Kheri Taga, Ram Sanjivan Dass started performing the duties of a priest (Pujari) at village Medi Guga Peer and started residing there. Ram Sanivan Dass once told him that he was being harassed by Ranbir Singh and Joginder Singh, residents of Ghasoli and had threatened to kill him under the influence of liquor at night. Virender Tiwari stayed with his father for two days to find out as to why Ranbir Singh and Joginder Singh were harassing his father. However, they did not come to the temple premises on that night, when he was staying with his father. Virender Tiwari expressed suspicion that his father must have been killed by Ranbir Singh and Joginder Singh, accused.

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4. During the course of investigation, Ranbir Singh, appellant No.1/accused was arrested on 30.11.2001 and he suffered a disclosure statement Ex.PN to the police and stated that he alongwith Joginder had killed a monk (sanyasi), who was sleeping in the room of Medi Guga Peer. He gagged the mouth of monk (baba) and Joginder Singh gave knife blows to him with an intention to kill him, because the baba had refused to permit them to sleep in the room of Guga Peer Medi several times. He further stated that they had left the dead body on the cot and after coming out of the room, they had locked the room from outside. He further got recovered the keys of the rom from the grass, behind the tubewell of Anand Tyagi. Later on, Inspector Randhir Singh arrested Joginder Singh @ Chela, appellant No.2/accused on 06.12.2001 and Joginder Singh also suffered similar disclosure statement in police custody and got recovered one knife, which was used in the commission of crime by him.

5. After conclusion of the investigation in the present case, a report under Section 173 Cr.P.C. was prepared by Inspector Randhir Singh and the same was presented before the Area Magistrate. Since the offence was triable by the court of sessions, it was committed to the court of Sessions Judge, Sonapat.

6. After taking into consideration the report under Section 173 Cr.P.C. and the documents appended therewith, the trial Court found that the charge under Sections 302/34 IPC was made out against the appellants in the present case. Additionally, charge under Section 25 of the Arms Act was also framed against Joginder Singh @ Chela, appellant No.2/accused in the

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present case. Both the accused pleaded that they were innocent and claimed to be tried by the trial Court.

7. During the course of trial, the prosecution examined 17 witnesses to bring home the guilt of both the appellants/accused in the present case. The prosecution examined Ved Prakash, complainant as PW-1, who stated that at about 06:30 pm on 02.11.2001, Shanti Sarup came to their house and told that monk (baba) had been murdered. He accompanied with other persons reached at the spot and found that the monk was lying dead. He went to inform the police and got his statement Ex.PA recorded. As per him, the police came to the spot and opened the lock of the room. He was declared hostile and was cross-examined by the Public Prosecutor. In his cross-examination, he stated that he had not given the copy of the ration card Ex. P1 and receipt Ex.P2 to the police, rather these were found in the bag searched on the day when he lodged a report. Initially, they were not aware about the name of monk (sanyasi/baba), but when these were traced out, they came to know about his name. He admitted that he had handed over the copy of ration card Ex.P1 and the receipt Ex.P2 to the police on 09.11.2001 and those were taken into possession by the police on 09.11.2001. The prosecution further examined PW-2 Ravinder, photographer, who had clicked the photographs of the dead body (Ex. P3 to Exp5). PW-3 C. Satish Kumar stated that on 09.11.2001, Ved Prakash brought the ration card Ex.P1 and the receipt Ex. P2 to him, which were taken into possession vide memo Ex.PD. In his cross-examination, he stated that no witness from the public was called from the nearby shops at that time. Head Constable Mahavir Singh was examined as PW-4, in whose presence the recoveries

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were made. The evidence of HC Balbir Singh (PW-5) and Constable Mukesh Kumar (PW-6) were formal in nature. The prosecution further examined Shiv Kumar as PW-7, who stated that on 03.11.2001, he had joined investigation in this case. The police had broken open the lock of the room, in which the dead body of a baba was lying. The lock in question was taken into possession, which was sealed and seized vide memo Ex. PF. PW-8 Hari Ram, Patwari had prepared the scaled site plan Ex. PG on the identification of Ved Prakash. PW-9 HC Ramesh Chander was a formal witness of the prosecution. The prosecution examined EHC Jai Pal as PW-10, who stated that on 01.12.2001, Ranbir Singh, accused had got recovered one key from underneath the bricks behind the house of one Anand Tyagi. The key in question was sealed and seized vide recovery memo Ex. PJ. On 02.12.2001, the accused had got the place of occurrence identified vide memo Exhibit PJ/1. In his cross-examination, he admitted that many passersby were seen on the way of recovery. They were asked to join the investigation, but they expressed their inability. Many persons were met them on the way, but no one was ready to join the investigation. People were called from the village, but they had shown their helplessness. The prosecution further examined SI Sant Kumar as PW-11, who had recorded the formal FIR Ex. PA/1. The prosecution further examined Dr. Arun Garg as PW-12, who alongwith Dr. Varsha had conducted the post-mortem examination on the dead body of an unknown person on 03.11.2001 and found the following injuries:-

- “1. A stab wound with clean cut margins, horizontally placed on the front of neck just below the thyroid cartilage measuring 2 x 0.5 cm. On exploration, the stab wound



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was doing directly into trachea which had opened up and contained blood.

2. Three stab wounds on the right side of chest on its upper part each measuring 3 x 0.5 cm, having clean cut margin with clotted blood in the wounds. On exploration all the three wounds were going into the right lung which were cut and had blood in it and in the right pleural cavity.
 3. Four stab wounds on the upper part of the left side of chest with clean cut margins measuring 2 x 0.5 cms to 3 x 1.5 cms, with clotted blood in them.
 4. Four stab wounds on the front of chest in the middle each measuring 2 x 1 cms with clean cut margins and clotted blood in the wound.
 5. Three stab wounds on the right side of chest 4 cms below the nipple, parallel to each other, 2 cms apart with clean cut margins.
 6. Six stab wounds on the left side of chest placed medially and above the left nipple measuring 2 x 1 cms, to 3 x 1.5 cm with clotted blood in them. On dissection of chest, the sternal and left third, fourth, fifth and sixth ribs were cut with clotted blood all over. The injury no.4 was going directly into the heart cutting it with lot of blood in the pericardial cavity. The left lung was cut at many places with lot of blood in the left pleural cavity. All the injuries mentioned at serial no.3 and 6 are going into the left lung. The lower part of the right lung was adherent with blood in the pleural cavity.
 7. Two incised wounds present in the epigastric region measuring 2.5 x 1 cms which were muscle deep and had clotted blood in them.
 8. An incised wound 1 x 0.3 cm on the left coastal margin near the left hypochondrium which was muscle deep and had clear cut margins.
 9. An incised wound 2 x 1 cms present in the left hypochondrium with clean cut margins and was muscle deep.
 10. Two incised wounds on the medial side of right knee, superficial, each measuring 3x1.5 cms with clean cut margins.”
8. In their opinion, the cause of death was due to shock and hemorrhage as a result of multiple stab wounds involving the vital organs

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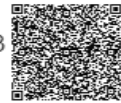


i.e. trachea, heart and lungs. All the injuries had been caused by sharp edged weapon, which were ante mortem in nature and were sufficient to cause death in ordinary course of nature. When the knife was shown to him, he stated that the injuries on the person of the deceased were possible with the weapon shown to him in the court. In his cross-examination, he stated that the injuries found on the deceased could have been caused by some other sharp edged weapon like the knife shown to him in the court.

9. The prosecution further examined Virender Tiwari as PW-13 son of Ram Sanjivan Dass Tiwari (since deceased). As per him, in the year 2000, he was living at village Bahalgarh, District Sonapat. His father Ram Sanjivan Tiwari started living with him at Bahalgarh in the year 2001. On the request of villagers, his father started performing the duties of priest (Pujari) in the temple at village Kheri Taga, District Sonapat and his father used to reside in the temple premises. He used to pay visits to his father in the temple and his father also used to come to his house at Bahalgarh. He went to village Kheri Taga for seeing his father and his father told him that Ranbir Singh and Joginder Singh, residents of village Ghasoli, had been harassing him by coming to the temple and they also used to give him threats to kill under the influence of liquor at night. When his father told this to him, he stayed with his father in the temple for two days to find out as to why Ranbir Singh and Joginder Singh were harassing his father. But neither Ranbir nor Joginder Singh came to the temple premises on the night, when he stayed with his father. After seeing his father and staying with him for two days, he went to village Paithana, District Rai Bareilly. On 13.11.2001, the police showed him the photographs and he identified his father's

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photographs and he came to know that his father had been murdered. In his cross-examination, he stated that he used to reside in a room in the house of Ramphal in Bahalgarh, which was taken on rent by him. His father was a professional priest (Pujari). He did not remember the name of any other residents of village Kheri Taga including Ramesh. The temple was situated at a distance of about 50 meters from the populated area of village Kheri Taga. He had not taken the harassment of his father by Ranbir Singh and Joginder Singh very seriously, so he did not make any complaint to Sarpanch of Gram Panchayat or the police. His father told him the names of Ranbir and Joginder Singh, but he was not aware that they were residents of village Ghasoli. His father had informed him that Ranbir Singh and Joginder Singh, accused/appellants, had threatened him on a knife point. He had not reported the said matter to the police regarding the harassment of his father by Ranbir and Joginder Singh and threats given to him by them.

10. UGC Nafe Singh was examined as PW-14, who had delivered the parcel at FSL, Madhuban. ASI Pritam Singh was examined as PW-15. As per him, on 09.11.2001, Ved Parkash handed over to him ration card Ex.P1 and receipt Ex.P2, which were taken into possession vide seizure memo Ex.PB. On 13.11.2001, he recorded the statement of Virender Tiwari and Krishan Lal Tiwari, who identified the photographs of dead body of Ram Sanjivan Dass. On 30.11.2001, he arrested Ranbir Singh, accused, who was carrying a bicycle and a gunny bag, in which 54 pieces of lady suits were there. In pursuance to the disclosure statement suffered by him, Ranbir Singh, accused, led Inspector Randhir Singh and got a key recovered, which was kept by him under a brick near the wall of tubewell and the key was

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taken into possession vide seizure memo Ex. PJ. In his cross-examination, he stated that ration card Ex.P1 and the receipt Ex.P2 were sent to village Paithana through UGC Nafe Singh, because ration card Ex.P1 and the receipt Ex.P2 were found by Ved Prakash in temple premises and these contained some names, so that the identity of the deceased could be established. PW-14 UGC Nafe Singh returned to police station from Paithana on 13.11.2001. He did not record the statement of UGC Nafe Singh regarding his being sent to Paithana with ration card and receipt. Virender Tiwari expressed his suspicion that his father must have been killed by Ranbir Singh and Joginder Singh residents of village Ghasoli, who used to harass his father Ram Sanjivan Dass. He further stated that no public witness was joined at the time of recovery from Ranbir Singh or Joginder Singh. The prosecution further examined Ram Avtar as PW-16, who was posted as In charge, Police Post, G.T. Road Chowk, Ganaur at the relevant time. He was part of the initial investigation. He stated that it was a dead body of an unknown monk (sanyasi) and after examining the dead body, he had prepared the inquest report Ex.P3. He had recorded the statements of Om Parkash, Shanti Sarup, villagers. The dead body was found locked in the temple and the lock of the temple was broken after examining the dead body. He took into his possession the broken lock vide seizure memo Ex.PH. Ravinder, Photographer was called at the spot and he got the dead body of unknown person photographed. Thereafter, the post-mortem examination on the dead body was prepared. In his cross examination, he stated that the temple of Peer Baba consisted of two rooms. He did not lay hands on any document to establish the identity of the deceased during the search of two

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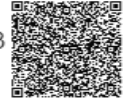


rooms. He did not find any ration card and the receipt in the temple. The identity of the deceased and the identity of the persons, who had committed this murder, was not known till the investigation of this case remained with him. PW-17 Inspector Randhir Singh was posted as SHO Police Station Ganaur on the said date. As per him, he had interrogated Ranbir, accused on 30.11.2001 and Ranbir, accused stated him that he himself and Joginder committed the murder of a monk (baba) in the temple and the dead body was lying on a cot and he had locked the room and the key of the lock was taken away by him. He had kept the key concealed under a brick, near the tubewell room of Anand Tyagi and got the same recovered from there on 01.12.2001 in the presence of HC Surinder Singh and EHC Jai Pal, vide seizure memo Ex.PJ. On 06.12.2001, on receipt of a secret information, he arrested Joginder Singh, accused and Joginder also confessed the commission of crime by him. Even disclosure statement was suffered by Joginder and in pursuance of the disclosure statement, he produced a knife, which was kept concealed by him in the heap of chaff. The knife was also taken into possession by the police. After completion of the investigation, he had prepared the final report under Section 173 Cr.P.C. In his cross-examination, he admitted that while effecting the recovery of the key as well as the recovery of knife from Joginder, no private witness was associated by him.

11. After the prosecution evidence was concluded, the police recorded the statement of both the accused under Section 313 Cr.P.C. and they had pleaded false implication. The appellants/accused opted not to lead any evidence in their effects.

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12. During the pendency of the present appeal, learned counsel for appellant No.1 had informed that appellant No.1 had already died. Learned State counsel had also verified the fact that the appellant No.1 has already expired. Consequently, the appeal qua appellant No.1 was ordered to be abated.

13. Learned counsel appearing on behalf of appellant No.2 vehemently argued that the entire case was based on circumstantial evidence and the chain of circumstances, which the prosecution sought to establish against him, was broken and there was no evidence to suggest the involvement of the appellant No.2 in the crime. He further submitted that as per the prosecution UGC Nafe Singh was sent to Village Paithana, District Rai Bareilly. However, Nafe Singh UGC was examined as PW-14 and he never stated that he had gone to village Paithana, District Rai Barali. Thus, it is apparent that the prosecution had introduced a false witness PW-13 Virender Tiwari and even his statement was highly unreliable. A perusal of his statement would reveal that he had levelled general and unfounded allegations against the appellants of the present case and the judgment of conviction has been wrongly based on the testimony of such unreliable witness. He further contended that in the present case, appellant No.1 Ranbir Singh had no reason to conceal the key of the room, where the crime was allegedly committed. Even otherwise, the FSL report was highly unbelievable. He has further contended that even the knife which was allegedly recovered from appellant No.2 was not blood stained and the said recovery was planted on appellant No.2.



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14. On the other hand, learned State counsel vehemently argued that the prosecution had proved the case against the appellants beyond the shadow of reasonable doubt. In fact, the prosecution evidence clearly proved that only the present appellants had committed the crime and the evidence clearly ruled out the involvement of any other person in the crime. He further stated that PW-13 Virender Tiwari, son of the deceased, had clearly stated that the appellants wanted to kill his father Ram Sanjiwan Dass as he did not permit both the appellants to stay in the temple. Apart from that, the defence could not lead any evidence to show that the police was either inimical towards them or the police had some reason to falsely involved both of them. He prayed for upholding the impugned judgment of conviction passed by the trial Court.

15. We have heard the elaborate arguments made by learned counsel for the parties and with their assistance, we have carefully scrutinized the evidence led by the prosecution.

16. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has been laid down by the Hon'ble Supreme Court in the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** (1984) 4 SCC 116, wherein it has been observed as under:-

*"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*



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*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."

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***



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v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made:

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

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

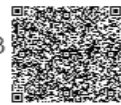
(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

17. Even after the above judgment, the Hon'ble Supreme Court has passed umpteen number of judgements, whereby it has been held that the prosecution must lead evidence relating to the circumstances from which the conclusion of the guilt is to be drawn should be fully established. It is the basic principle that the accused "must be" and not merely "may be" proved guilty before a Court can convict the accused. It has been held on numerous occasions that there is a legal distinction between "may be proved" and "must be proved". It has 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 that the accused is guilty. The

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circumstances should be such that they exclude every possible hypothesis except 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.

18. Now we have to analyse the evidence of the prosecution in the light of the above stated guided principles. As per the case set up by the prosecution, in the evening on 02.11.2001, an unknown monk (baba) was murdered by certain unknown persons. Even the door of the room, where the dead body was lying, was bolted and locked. Consequently, after breaking open the lock, the dead body was taken into possession by the police and the post-mortem was got conducted. Initially, the police was unaware of the identity of the deceased as well as of the murderers. The initial investigation was conducted by PW-16 Ram Avtar, SI, who stated that he had taken into possession the dead body after breaking the lock of room of the temple and also took into possession the broken lock vide seizure memo Ex.PF. He also admitted that the identity of the deceased and the identity of the persons, who had committed the murder, were not known to him till the investigation of the case remained with him. As per the prosecution, on 09.11.2001, the ration card of Ram Sanjivan and receipt, Ex.P-1 and Ex.P-2, respectively, were found in the room of the monk and UGC Nafe Singh was sent to village Paithana, District Rai Bareilly to find out the family of Ram Sanjivan. The entire prosecution case started with the discovery of ration card and receipt in the room of the deceased. Even the broken lock and the key, which were allegedly recovered from Ranbir Singh, appellant No.1

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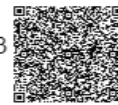
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were sent to the FSL and as per the FSL report Ex.PL/1, the key could operate the lock properly. First of all, we have no hesitation to hold that the said evidence, which is stated to be primarily evidence against the appellants, is highly unbelievable and liable to be rejected by this Court. In fact, it is an admitted case that the room, where the dead body was found, was locked and after breaking the lock, the dead body was recovered. Even as per the statement of PW-7 Shiv Avtar, the lock in question was taken into possession and seized vide memo Ex.PF. The memo Ex.PF also shows that the lock was found broken and was taken into possession. However, the FSL report Ex.PL/1 clearly shows that the padlock, which was sent to the FSL, was in proper condition and it was not a broken lock. Rather the key, which was allegedly recovered from Ranbir Singh, accused/appellant No.1 could easily operate the lock properly. Still further, as per PW-16 SI Ram Avtar, the place, where the dead body was found, consisted of two rooms. Obviously, the police might have searched the room of the deceased. Even PW-16 SI Ram Avtar, who conducted the initial investigation, stated that he did not lay his hands on any document to establish the identity of the deceased during the search of two rooms. He did not find any ration card and receipt in the temple. Surprisingly, after seven days, Ved Parkash, PW-1 had handed over the ration card Ex.P1 and receipt Ex.P2 to the police and it is not comprehensible as to how he came into possession of the ration card and receipt of the deceased. Still further, in case, ration card and receipt of the deceased were found on 02.11.2001, nothing prevented the police from taking the said documents in possession on 02.11.2001 itself. Still further, it has been stated that UGC Nafe Singh was sent to Village Paithana, District

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Rai Bareilly to meet the family of Ram Sanjiwan (since deceased). UGC Nafe Singh was examined as PW-14 in the present case. While appearing as PW-14, UGC Nafe Singh, nowhere stated that he had gone to village Paithana, District Rai Bareilly to meet the family of the deceased. Thus, the prosecution in the present case could not prove the very basis, on which the entire prosecution rests and the chain of circumstances is broken at the very inception.

19. Still further, the prosecution tried to set up a case that UGC Nafe Singh, PW-14 was sent to village Paithana, District Rai Bareilly and in pursuance of his information, Virender Tiwari, son of the deceased appeared before the police on 13.11.2001. At the cost of repetition, it is again observed that in his testimony, UGC Nafe Singh nowhere stated that he had gone to inform the family of the deceased or Varinder Tiwari, son of the deceased.

20. Another blow to the prosecution case has been caused by PW-13 Virender Tiwari, star witness of the prosecution in the present case. His statement is too vague to be relied upon by this Court. He stated that in the year 2001, his father Ram Sanjiwan, (since deceased) also started living with him. On the request of the villagers, his father started performing the duties of a priest (pujari) in the temple at village Kheri Taga, District Sonapat (a place where he was murdered). His father used to reside in the temple premises. He had gone to village Kheri Taga for seeing his father and his father told that Ranbir Singh and Joginder Singh, accused/appellants had been harassing him and were extending threats to kill him under the influence of liquor at night. He stayed in the temple for two days to find out

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as to why Ranbir Singh and Joginder Singh were harassing his father. Neither the accused came to the temple premises nor he was threatened in his presence. The said witness had raised suspicion that Ranbir Singh and Joginder Singh have killed his father. First of all, the statement made by PW-13 Virender Tiwari was bereft of any details, date of his visit to village Kheri Taga and was completely unreliable. He stated that Ranbir Singh and Joginder Singh had threatened to kill his father. However, surprisingly, he neither reported the said incident to the Sarpanch of the village nor to any other police officer. Even he had not made any application to any other authority in this regard, till the date of occurrence. Still further, he stated that his father Ram Sanjivan had shifted to village Kheri Taga on the request of the villagers and he was performing the duties of a priest in the temple of the village. However, surprisingly, till 09.11.2001, no one in the village was aware of the identity of Ram Sanjivan, who was found murdered in the temple of the village. Rather, it is apparent that no villager knew the deceased and there was no question of his performing the duties of a priest in the temple of the village. In fact, it is a matter of common knowledge that priest in the temple of a village is generally known to several villagers.

21. Still further, it has been stated that in pursuance of the disclosure statement suffered by Joginder Singh @ Chela, appellant No.2/accused, a knife was recovered from him. However from the FSL report Ex.PL, the blood could not be detected on the knife which was recovered from appellant No.2. Further, it is an admitted case of the prosecution that at the time of the alleged recovery of knife from appellant No.2, no private witness was allowed to join the police team, even though the police had ample

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opportunity to do so. Still further, no doubt, the recovery of a material object at the disclosure of the accused is important in view of section 27 of the Evidence Act, but such disclosure alone would not automatically lead to the conclusion that the offence was committed by the accused. In fact, the burden lies on the prosecution to establish a close link between the discovery of material objects and its use in commission of the offence. What is admissible under Section 27 of the Evidence Act is the information leading to discovery and not any opinion formed on it by the prosecution. In the present case, the knife, which was allegedly recovered from appellant No.2, was not blood stained and the recovery memos were prepared only in the presence of police and no independent witness was joined by the police. Thus, the recovery of knife from the appellant No.2 was doubtful in the instant case.

22. Still further, the motive attributed to the present appellants for commission of the crime is that they were not permitted by Ram Sanjivan, deceased, to stay in the room, where he was living. In fact, it is highly unbelievable that the appellants had committed the murder of Ram Sanjivan, over such a trivial issue. In fact, the prosecution tried to set up a case that both the appellants were inimical towards Ram Sanjivan since long and they were annoyed with the deceased. However, as observed above, the testimony of PW-13 Virender Tiwari, itself has been found to be unreliable by this court. Thus, the evidence led by the prosecution with regard to the motive against the present appellant also seems to be sketchy and not so believable. Apart from that, even this Court, on due appreciation of evidence, has found that the chain of circumstances, which were set up

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against the appellants, was broken and the conviction would not be tenable. It was the duty of the prosecution to prove its case beyond all reasonable doubt that it was the accused and the accused alone, who had committed the crime. However, we find that the prosecution had utterly failed to prove the said case.

23. We are conscious that a grave and heinous crime was committed but when there was no satisfactory proof of the guilt, we had no other option but to extend the benefit of doubt to the accused and we are constrained to do so in the present case. Accordingly, the appeal is allowed and the judgment of conviction dated 14.07.2003 and order of sentence dated 16.07.2023 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat are set aside and appellant No.2 is acquitted of the charges levelled against him. Trial Court record be sent back.

24. Pending application(s), if any, shall also stand disposed off.

(GURVINDER SINGH GILL)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

28.05.2024

mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO