

Before Jashir Singh & G.S.Sandhawalia, JJ.
SURINDER SINGH & OTHERS—Appellants

versus

STATE OF HARYANA—Respondent

CRA No.197-DB of 2002

July 22, 2013

Indian Penal Code, 1860 - S.302 read with S.34 - Indian Evidence Act, 1872 - Appellants tried for murder - Circumstantial evidence - No eye witness - Last seen - Extra judicial confession - Foot moulds taken from spot matched with foot wear of appellants - Hair sample taken from hands of deceased matched with hair of one appellant - Shirt and knife also recovered - Convicted by trial court - Appeal Allowed - Held - In case of last seen corroboration is required where there is time gap - Delay has to be examined with great care once case is based on circumstantial evidence - Comparison of hair was not got conducted through DNA procedure - Recovery of hair from hands of deceased doubted - Unsafe to record conviction - Photographs showed many people around - Ground was wet - No light at spot - Not possible to see whether there were foot prints which could have created foot moulds - Reports are a weak type of evidence - Extra judicial confession is a weak type of evidence - Person before whom it was made belonged to a different village - No reason for all three appellants to go to him - Medical evidence did not support prosecution's case - Recoveries not supported by any independent witness - Could easily have been planted - Appeal allowed and conviction set aside.

Held, that admittedly, the present case is based on circumstantial evidence as there is no eye-witness to the crime and the circumstances which have been held against the appellants are that the deceased having been last seen in the company of the appellants, the extra-judicial confession, alleged to have been given to Randhir Singh (PW12), the foot-moulds taken from the spot of the incident which matched with the foot-wear of the appellants, the hair samples taken from the hands of the deceased which matched with the hair samples taken from the head of one of the appellants and the recovery of bushirt and knife from two of the appellants.

(Para 2)

Further held, that the principle of last seen theory, for recording conviction on the basis of circumstantial evidence, provides that where there is time-gap between the point of time when the accused and the deceased were last seen together, then corroboration is required. It is only where the difference is so small that possibility of any other person, other than the accused being the author of the crime, becomes impossible and then only, Courts take this circumstantial evidence adversely against the accused.

(Para 10)

Further held, that the factum of delay, as noticed in lodging of the FIR, is one circumstance which has to be examined with great care once the case is based on circumstantial evidence. As discussed earlier, present is an apparent case where the FIR has not been recorded at the correct point of time, on the disclosure of the dead body. The delay in dispatching the report and receiving by the Magistrate is also apparent and thus, it is a concentrated effort made by the prosecution witness and the police to introduce the appellants as accused to solve a blind murder.

(Para 14)

Further held, that once the recovery of the hair from the hands of the deceased has been doubted, it would be unsafe to record a conviction on the basis of the said recovery on the ground that it matched with hair of appellant No.3.

(Para 18)

Further held, that a perusal of the statement of the photographer would show that there were already 30-40 people at the spot when he had gone there to take the photographs and if there were so many people around and the ground was wet, the taking of samples at the dark would have been very difficult since there was no light at the spot. Apparent contradiction has already arisen regarding as by what time the police party reached there and whether it was day time or not since as per case of the prosecution, when the police party reached the spot at around 6/6.30 p.m., it would be a dark winter evening and it would not have been possible to see whether there was any foot-prints which could have been created into moulds. Thus, these circumstances are not sufficient evidence against the appellants, apart from the fact that the said reports are a weak type of evidence and cannot be of conclusive nature.

(Para 19)

Further held, that similarly, the extra-judicial confession made by Randhir Singh necessarily has to be rejected as admittedly, Randhir Singh was resident of Village Dharodi and not resident of the same village. It has come in his cross examination that he was neither Panch nor Sarpanch or Lambardar and had claimed to be a Tholedar of the village to whom, no official credence can be given. He was a non-matriculate and was son-in-law of one Banwari who was related to Chajju. Dalbara Singh, complainant, in his cross-examination, admitted that one of his sons is married with daughter of Chajju and thus, it is apparent that there was a relationship with the complainant party and more so, there would have been no reason for the appellants to go and depose to make a extra-judicial confession before him on 17.01.2001. It is admitted proposition that extrajudicial confessions are a weak type of evidence and have to be carefully scrutinised and keeping in view the statement of PW12, Randhir Singh, the fact that he was not resident of the same village, there was no occasion for the appellants to go to him to make the extra-judicial confession. Further, it is hard to believe that the appellants had gone to him and made statements since one of them might have some relationship but why should all the three go to the same person to make extra-judicial confession, which is the case of the prosecution.

(Para 20)

Further held, that the medical evidence is also not conclusive to that extent to show that the deceased was done to death by using the shirt, which is the case of the prosecution. Thus the said recoveries which are not supported by any independent witness, could have easily been planted by police and confessional statement taken, as is apparent in the present case.

(Para 21)

Deepender Singh, Advocate, *for the appellants*.

G.S.Chahal, Addl. A.G., Haryana, *for the respondent*.

G.S. SANDHAWALIA, J.

(1) Present appeal, filed by three appellants, namely, Surinder Singh, Jagpal and Rajbir Singh, is directed against the conviction recorded by the Sessions Judge, Jind vide judgment dated 11.02.2002 and order of

sentence dated 13.02.2002 in FIR No.17 dated 13.01.2001, recorded at Police Station Sadar, Narwana under Section 302 read with Section 34 IPC. Vide the said judgment, the trial Court came to the conclusion that prosecution has been able to bring home the guilt of the three appellants beyond the shadow of reasonable doubt and they were held guilty of murdering Vakil Chand on the basis of circumstantial evidence and accordingly, sentenced to rigorous imprisonment for life and to pay a fine of '5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 2 years.

(2) Admittedly, the present case is based on circumstantial evidence as there is no eye-witness to the crime and the circumstances which have been held against the appellants are that the deceased having been last seen in the company of the appellants, the extra-judicial confession, alleged to have been given to Randhir Singh (PW12), the foot-moulds taken from the spot of the incident which matched with the foot-wear of the appellants, the hair samples taken from the hands of the deceased which matched with the hair samples taken from the head of one of the appellants and the recovery of bushirt and knife from two of the appellants.

(3) The case was set into motion on the statement of father of the deceased, Dalbara Singh (Exhibit PE) given at 6 p.m. on 13.01.2001 which was recorded at 6.30 p.m. by Raghbir Singh, SI (PW15). On the receipt of the said information, same was converted into an FIR (Exhibit PE/2) at 6.30 p.m. As per the FIR, the deceased, Vakil Chand was running a electric shop in Village Ratta Khera and had gone alongwith his uncle Balwant Singh to Gohana in a political rally on 12.01.2001 but did not return back by night. On enquiry in the morning, Balwant Singh, brother of the complainant had informed him that Vakil Chand, alongwith the three appellants, who were residents of the same village, had got down at Narwana bus stop. A search was, accordingly, made for the deceased in the relations and it was found that a dead body of a person was lying in the wheat fields of Prithi Singh of Dharodi on Dharodi-Narwana road which was identified to be of Vakil Chand. Accordingly, appellants were then named as accused of killing Vakil Chand by pressing his neck and causing other injuries on account of the fact that appellant No.3 had tried to outrage the modesty

of daughter of Vedu of the same village and the deceased had seen him doing so, which was the alleged motive. The said FIR reads as under:

“Statement of Dalbara son of Sunda Singh, jat by caste resident of Ratta-Khera, aged about 40 years, P.S. Sadar Tohana:-

Stated that I am resident of above address and at present am living outside the village by preparing ‘Dhani’. I have two sons, out of them eldest was Vakil Chand, aged about 21/22 years and younger to him is Krishan Singh. About two years ago, my son Vakil Chand was married in village Deban. He had no issue so far. My son Vakil Chand was running a shop of electric goods in the village in the house of Dlip Singh s/o Ramji Lal, jat by caste resident of Ratta Khera, yesterday, on 12.01.2001, in the morning, my son Vakil Chand along with my brother Balwant had gone to Gohana in the ‘Raili’ of BJP with the villagers, who did not returned back in the night. Today, on 13.01.2001 in the morning, I asked my brother Balwant Singh that you and Vakil Chand had gone in the ‘Raili’ but Vakil Chand has not returned to the house till now, who told that Vakil Chand and Surinder son of Hawa Singh, Papu son of Hoshiar Singh and Jagpal son of Lilu, all jat by caste residents of the village, all these four came with us upto Narwana and all these four persons left the bus at Narwana bus adda. I, my brother Balwant and Relu were going to search Vakil Chand in our relations to Neel, Lambardar son of Mohinder Singh, jat by caste resident of Dharodi and Deban, in-laws of Vakil Chand. When we reached in village Dharodi at the house of my relative Neel then Neel Nambardar told that the dead body of a person is lying near the road in the wheat field of Pirthi Singh, Ex-Sarpanch of village Dharodi on Dharodi- Narwana road. Then I, my brother Balwant and Relu taking along my relative Neel reached the field of Pirthi Singh and saw that the dead body is of my son Vakil Chand. Injuries have been caused on the right eye and below the penis of Vakil Chand from which blood is coming out and there is swelling on the neck and also bluish marks on his neck. Intervening the night of 12/13.1.2001, Surinder son of Hawa Singh, Pappu son of Hoshiar and Jagpal son of Lilu have killed my son Vakil Chand by pressing his neck and by causing injuries. The cause of grudge is that about four months ago, Pappu son of Hoshiar Singh

tried to out-rage the modesty of the daughter of Vedu son of Ran Singh, jat by caste resident of the village and Vakil Chand had seen Pappu to doing so but Vedu did not disclosed the same being the matter relating to the girl. I and my brother Balwant after leaving my brother Relu and Neel near the dead body of Vakil Chand, were going to the police station for giving the information, that you met us. Legal action be taken against all the above three persons. You have written my statement, which has been heard and is correct. Sd/- Dalbara Complainant. Attested Sd/- Raghbir Singh, SI/SHO P.S. Sadar Narwana, 13.01.2001”

(4) On the basis of the FIR, Raghbir Singh (PW15), the Investigating Officer, went to the spot where the dead body was lying and called the photographer to take the photographs of the dead body and prepared the inquest report (Exhibit PC). The blood stained earth was taken into possession vide memo (Exhibit PO) in the presence of Satyawar (PW11) and his brother Balwan Singh alongwith the hair which was in the hands of the deceased (Exhibit PQ). The three different foot-prints at the spot were prepared into moulds and taken into possession (Exhibit PR) and dead body was sent for post-mortem. The rough site plan (Exhibit PZ) alongwith the marginal notes was prepared. On 17.01.2001, the appellants were arrested, having been produced by Randhir Singh-PW12, before whom the extra-judicial confession had been made which was also recorded by the investigating officer (Exhibits PS, PT & PU) and the foot-wear were also taken into possession comprising of chappals and shoes. On 19.01.2001, they were taken to spot and they identified the place of occurrence vide memo (Exhibit PK, PK/1 & PK/2), pertaining to all the three appellants and thereafter, Rajbir, appellant No.3 got recovered the bushirt which was taken into possession (Exhibit PL) and Surinder Singh, appellant No.1 got recovered the knife which was taken into possession (Exhibit PN) and the rough site plans were also prepared from where the bushirt was recovered (Exhibit PL) and from where the knife was recovered (Exhibit PEE). Thereafter, on final report being prepared, the challan was presented and charge being framed which led to the conviction, as noticed above.

(5) The Sessions Judge, Jind, after taking into account the fact that it was a case of circumstantial evidence and there was no eye-witness, did not agree with the plea of the appellants that there was any delay in the

lodging of the FIR and in the special report which was received by the Magistrate on 14.01.2001 at 10.30 p.m. Regarding the contradiction in the statements of the prosecution witnesses, it was held that parrot-like versions cannot be expected and that Balwant Singh PW5, had categorically stated that the deceased had gone to attend the political rally at Gohana and had got off alongwith the three appellants at Narwana and there was no reason to disbelieve the statement. Accordingly, it was held that the deceased was last seen in their company. The extra-judicial confession made before Randhir Singh on 17.01.2001 was also taken into consideration and it was held that he was an independent witness and there was no enmity or ill-will and there was no reason to disbelieve his statement. The fact that no independent witness was present when recoveries were made was also brushed aside. It was held that the recoveries of the bushirt with which the deceased was strangulated and the knife which had been used to cut the testicles were also one of the circumstances which went against the appellants. That the mould of the foot-prints taken from the spot which was compared and matched with the foot-wear worn by Surinder and Jagpal, was taken against the appellants. Then, the fact that the hair which was recovered from the fist and nails of the left hand of the deceased tallied with the hair of the appellant, Rajbir Singh, was another circumstance held against the appellants. In spite of the fact that there was no apparent motive which was proved, the trial Court came to the conclusion that since no evidence had been led in defence, Balwant Singh's statement had to be taken into consideration. Accordingly, it was noticed that there was some struggle between the deceased and the appellants and the deceased pulled the hairs from the heads of the appellants which was recovered from his nails and fists and there were as many as 8 injuries caused to the deceased and even though he was suffering from polio, he had put up the struggle before being done to death.

(6) Counsel for the appellants has submitted that the place of occurrence is at Village Dharodi in the fields of Pirthi Singh whereas the appellants were last seen at Narwana where they had allegedly got off from the vehicle on coming back from the political rally and therefore, the said circumstance could not be held against the appellants. It was vehemently argued that the dead body had been discovered on 13.01.2001 in the

morning and FIR was only lodged at 6.30 p.m. and there was a delay which was used to implicate and involve the appellants and they were named in the FIR on account of suspicion and the benefit should go to the appellants. The photographs of the deceased showed that they had been taken during day time and the alleged extra-judicial confession was another circumstance which was a weak piece of evidence and liable to be discarded. Similarly, the foot-moulds and the hair samples on the basis of which the conviction had been recorded were not conclusive evidence which could be used against the appellants which had wrongly been done by the trial Court. Accordingly, it was submitted that it was a case of blind murder and on the basis of mere suspicion, the appellants had been involved.

(7) State, on the other hand, defended the judgment and conviction and submitted that there was ample circumstantial evidence against the appellants on the basis of which the conviction was liable to be sustained. The investigating officer had inspected the site and prepared the foot-moulds and taken into possession the hairs which were present in the fists and nails of the deceased and on the arrest of the appellants, hair samples had been taken from them in the presence of a Doctor and sent to the forensic laboratory and the report had come against the appellants which is sufficient for convicting them. There was no reason to falsely implicate the appellants.

(8) After perusing the record and taking into account the evidence produced by the prosecution, we are of the opinion that the conviction recorded against the appellants by the Sessions Judge, Jind is not liable to be sustained as the circumstances are not as such which could point only towards the guilt of the appellants and the chain is not complete which could draw an inference of guilt and has not been cogently and fairly established.

(9) The first circumstance of last seen cannot be taken to be a adverse circumstance against the appellants as, admittedly, there is nothing on record apart from the statement of Balwant Singh (PW5) that the deceased had gone to Gohana to attend a political rally alongwith him. As per the case of the prosecution, on 12.01.2001, the deceased, alongwith Balwant Singh and the three appellants and other persons had gone to attend the rally at Gohana and had left in the morning from the village and

come back in the same vehicle. However, the three appellants and Vakil Chand got down at Narwana whereas the uncle of the deceased, Balwant had got down at the village. No independent person from the vehicle has been examined to show that this journey had taken place. Even otherwise, it has come on record that the deceased was handicapped and his right leg was affected by polio. Once that was so, the question of his getting down at Narwana alongwith the appellants would not arise, especially keeping in view the alleged bad blood already between them. Secondly, it would have been difficult for him, to come back from Narwana to the village in the absence of any transport due to his handicap also. The fact that the uncle of the deceased did not inform his father regarding his getting down on 12.01.2001 at Narwana is also very unnatural though it is sought to be explained that Balwant Singh was residing at the village whereas Vakil Chand, alongwith his father, Dalbara Singh, were residing in the fields. It was highly unnatural that the father would not have made enquiry at the night as to how come they had not returned from the rally at Gohana.

(10) Another factor of last seen would be that the body was found at Village Darodi which is at a distance from Narwana, as would be clear from the cross-examination of the investigating officer, Raghbir Singh that he had recorded the statement (Exhibit PE) of the complainant at the railway-crossing which was 4 kms. away from where the dead body was lying. It was a matter of mystery as to how the deceased, who was handicapped, travelled 4 kms. from Narwana and was found at the fields of Village Dharodi, 4 kms. away and there being no independent witness to state that he was seen in the company of the appellants going towards Dharodi and therefore, the circumstance of last seen is also doubtful and cannot be taken against the appellants. The principle of last seen theory, for recording conviction on the basis of circumstantial evidence, provides that where there is time-gap between the point of time when the accused and the deceased were last seen together, then corroboration is required. It is only where the difference is so small that possibility of any other person, other than the accused being the author of the crime, becomes impossible and then only, Courts take this circumstantial evidence adversely against the

accused. Reference can be made to the observations made in *Bodh Raj @ Bodha & others versus State of Jammu & Kashmir (1)*, *State of U.P. versus Satish Kumar (2)* and *Ramreddy Rajeshkhanna Reddy & another versus State of Andhra Pradesh (3)*. The observations made in *Ramreddy* (supra) read as under:

“23. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.”

(11) The second issue is the question of delay in the lodging of the FIR. Admittedly, the deceased went missing on 12.01.2001 on which date, he had gone to attend a political rally at Gohana. The case of the prosecution is that Balwant Singh, uncle of the deceased, had accompanied him and while coming back from the rally, the deceased had got down along with the three appellants at Narwana whereas Balwant Singh had come to the village in the same vehicle. It was only on the next day that the father of the deceased, Dalbara Singh, went to his brother's house, Balwant Singh to enquire about his son and thereafter, went in search for him to Village Kalwan then to Village Dhamtan and ultimately to Village Dharodi where the relative Neel @ Anil, Lambardar, was residing. It was there that they were told that there was a dead body lying in the fields of Pirthi Singh and they, alongwith Neel @ Anil had gone to the spot to see the dead body which had injuries in the right hand and on the testicles and there was swelling on the neck of the deceased. The complainant then, alongwith his brother, went to the police station to report the murder and recorded his statement at 6 p.m. and mentioned the names of the appellants and the motive was that Rajbir, appellant No.3, had teased the daughter of one Ved Prakash which was seen by the deceased about four months earlier due to which they said that the appellants had killed the deceased by strangulation. The complainant, in his cross-examination, has admitted that Satyawan and Balwan, who were brothers of his wife, had also reached the spot

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- (1) AIR 2002 SC 3164
 - (2) 2005 (3) SCC 114
 - (3) 2006 (2) R.C.R. (Cri.) 462

at 6.30 p.m. on the same day and the dead body was taken from the spot to the hospital at 6 p.m. PW4, Neel @Anil, the relative of the complainant and resident of Village Dharodi, in his statement, testified that at 3/3.15 p.m., the complainant-Dalbara Singh and his brother had come along with Relu to his house, looking for Vakil Chand and on identifying the dead body which was lying at the fields of Prithi Singh, had gone to report the murder to the police who had come at the spot at about 4/4.20 p.m. and photographs of the dead body were also taken. Similar is the deposition of Balwant Singh, who stated that he, alongwith his brother, had gone to the police, who met them on the way.

(12) Perusal of statement of Satyawar (PW11), son of Jugpal, resident of Dhakal, who was witness to the recovery of the blood-stained earth from the spot alongwith Balwan and also to the hair recovered from the fists of the deceased along with the recovery memo of the three moulds of the foot-prints, lifted from the spot, would show that he had received a telephonic message from Neel @Anil that dead body of his sister's son was found in the wheat field of Pirthi Singh. On getting this message, he, alongwith his brother, Balwan Singh, had gone to the spot where the police party were present and blood stained earth had been taken from the spot alongwith some broken wheat plants and the hair from the nails and fists of the dead body of Vakil Chand alongwith the foot-prints. As per his cross-examination, the message was received at 6 p.m. and he had reached the spot at 6.30 p.m. and the dead body was taken to Civil Hospital on the same day by 6.15 to 6.30 p.m. and the foot-moulds, hairs and blood stained earth were taken into possession after he had reached the spot and 45 minutes had been spent in these proceedings. Whereas, on the other hand, from the statement of Shashi Bhushan, PW13, the photographer who took three snaps of the dead body (Exts.P13 to P15) and their negatives (Exts. P16 to P18), it would be clear that the investigating officer had come to take the photographer and they had reached the spot 10-15 minutes after the police and he had taken 5-7 minutes to complete his work and returned in some private vehicle and had gone to the spot at 7.30 p.m. and it was dark. He then clarified that the photographs were taken at 6.30 p.m. when it was not dark and there was no arrangement for light. He stated that he had taken the photographs in evening time and when there was not complete sunshine and in the cross-examination, he had admitted that he was not

directed to take photographs of the foot-prints at the spot nor he saw any such foot-prints. There were around 30-40 people of the public when they reached there. As per the deposition of the investigating officer, Raghbir Singh, SI (PW15), he had started from the Police Station at 11.30 a.m. for patrolling and he had called the photographer after recording the statement (Exhibit P1) at 6.30 p.m. who had accompanied him to the spot where he had reached at 6.15 p.m. As per his version, he called the photographer by flashing V.T. message to the police station and it was slightly dark when they reached the spot and the proceedings were recorded from the light of the vehicle at the spot and no other arrangement was made for the light except the headlight of the jeep. The photographs were taken, firstly, when it was slightly dark and he had seen the foot-prints at the spot himself. The moulds were taken at 10.30-10.45 p.m., after sending the dead body from the spot and the material for taking the moulds was with him in his investigating bag and he had arranged the material for packing from Narwana. Similar is the statement of IIC Manphool Singh, PW8 wherein, he deposed as per record that as per entry at Serial No.5 dated 13.01.2001, Raghbir Singh had left at 11 a.m., in connection with the detection of crime along with other police officials. Though he denied the fact that the information had been received regarding the dead body lying in the area in Dharodi.

(13) The first fact which is to be taken into account is that admittedly, in North-India, on 13th January 2001 at 6 p.m., when the statement was first recorded, the sun had already gone down at about 5.15 p.m. and it was dark. The investigating officer has contradicted himself by stating that there was light at that point of time when he was coming from his jeep at Narwana at around 6.30 p.m. and it was not dark. The investigating officer, himself, has also admitted the fact that the proceedings had been recorded in the light of the vehicle at spot and it was slightly dark when he had reached the spot at 6.15 p.m. A perusal of the photographs (Exhibits P13 to P15) which have been placed on record and their negatives (Exhibits P16 to P18) would clearly show that the photographs had been taken during day time and have not been taken with the help of a flash. This fact would, thus, go on to show that police already had information and had discovered the dead body much prior to 6.15 p.m., as wrongly stated by the investigating officer and that he had already summoned the photographer who had taken the photographs during the day time. If the police had been summoned by

Dalbara Singh and Balwant Singh, as stated in the FIR, then there was no occasion for the recovery memo of blood stained earth being witnessed by Satyawan (PW11) and Balwan Singh, sons of Juglal, who were the sons of the real sister of the complainant. Similar is the position regarding recovery of the hair (Exhibit PS) and foot-moulds (Exhibit PR) being witnessed by them. It would have been unnatural for the investigating officer to have effected recovery of the said items in the presence of Satyawan and Balwan once Dalbara Singh, the complainant was present at the spot, who had gone to summon the police. These facts go on to show that Dalbara Singh and Balwant Singh reached the spot later on, after being informed by the relative, Satyawan and Balwan, who had already identified the dead body. Another unnatural factor is that Neel @ Anil, the Lambardar, who is related to the deceased and who had summoned Satyawan and Balwan, knew that there was a dead body lying in the fields of Pirthi Singh but had not told Dalbara Singh and Balwant Singh that it was the body of Vakil Chand when they had visited his house at 3/3.15 p.m., looking for the deceased. He had, then, accompanied them to the fields and identified that body. As per his statement, the police reached the spot at 4/4.30 p.m., which was in contradiction to the prosecution case since the statement of the complainant is recorded at 6 p.m. The special report was sent and received by the Magistrate only on 14.01.2001 the next day at 10.30 p.m., for which, there is no explanation also. All these cumulative factors would, thus, go on to show that the body of the deceased was got recovered from the fields much before 6 p.m. and the FIR was not lodged promptly and the delay has been used to name the appellants on an alleged motive that appellant No.3, Rajbir Singh had outraged the modesty of one girl and the deceased had been a witness to the said incident. This fact has also not been proved on record since nobody has been examined by the prosecution to prove this fact regarding the alleged motive of the incident which also was against appellant No.3 only and there was no reason for the other two appellants.

(14) The factum of delay, as noticed in lodging of the FIR, is one circumstance which has to be examined with great care once the case is based on circumstantial evidence. As discussed earlier, present is an apparent case where the FIR has not been recorded at the correct point of time, on the disclosure of the dead body. The delay in dispatching the report and

receiving by the Magistrate is also apparent and thus, it is a concentrated effort made by the prosecution witness and the police to introduce the appellants as accused to solve a blind murder. The Hon'ble Apex Court in *Meharaj Singh (Lans Naik) versus State of U.P. (4)*, on the issue of delay, held as under:

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-dated to give

it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.'

(15) On the issue of the samples of hair which were allegedly recovered from the hands of the deceased, a doubt has crept into the minds of the Court in view of the fact that from the statement of the prosecution witnesses, namely, Dalbara Singh, Balwant Singh and Anil, it would be clear that they have never deposed that there was any presence of hair in the fists of the deceased. Rather Anil (@ Neel (PW4), has specifically stated that he had not noticed anything around the dead body and there was swelling in the neck and the injuries on the testicles, but was silent to the presence of hair in the fists. Similar is the statement of Balwant Singh (PW5). Even the photographer, Shashi Bhushan (PW13) has only taken 3 photographs which are at a distance from the dead body and never took any photograph of the hands to show that there was anything in the hands of the deceased. A categorical question was also directed in the statement of the photographer as he had taken snaps of the deceased as directed and he had not seen the position of the hands of the deceased. It also has come in his cross that he was not directed to take the photographs of any foot-prints at the spot nor he saw any such foot-prints. Thus, the only evidence of recovery of hair from the hands of the deceased is from the statement of Satyawar who is related to the deceased and who was witness to the alleged recovery of the hair and the investigating officer, Raghbir Singh (PW15) who was entrusted with the investigation. Normally, the investigating officer is not to be doubted but where there are apparent contradictions in his statements which are not reliable, trustworthy and preferably, corroborated with the records, which in the present case, is not so and the Court feels that he is introducing the appellants to solve a blind murder, then his investigation is to be taken with a pinch of salt.

(16) A perusal of the recovery memo shows that it was recovered from both the hands of the deceased and got deposited only on 14.01.2001, as per the affidavit of Constable Manphool Singh (Exhibit P11) along with the blood stained earth and moulds of foot-prints, lifted from the spot and were sent on 16.01.2001 for being deposited with the FSI, Madhuban,

as per affidavit of Constable Krishan Chand (Exhibit PG). The accused were arrested on 17.01.2001 at 3.15 p.m. and their hair samples were taken between 6/6.20 p.m. in the presence of Dr.H.C.Mittal, PW16, who was posted in the General Hospital, Narwana. The said samples were, thereafter, got deposited on 17.01.2001 and then sent on 30.01.2001 to the FSI., Madhuban, as per affidavit of Constable Balbir Singh (Exhibit PF). As per report of FSI., Madhuban dated 10.08.2001 (Exhibit PFF) which pertains to the hairs in the fists and the nails in the left hand of the deceased matched with Exhibit PCC, which was the hair taken from the head of Rajbir whereas the other samples did not match and no opinion could be given regarding the matching of the other hair. Even otherwise, the said samples taken from the appellants on 17.01.2001 were without taking any permission from the Magistrate and the appellants were not informed of their right of denying the samples.

(17) The science of comparison of hair were not got conducted through the DNA procedure and the report showed similarities with each other in respect of their morphological and microscopical characteristics. The report reads as under:

“LABORATORY EXAMINATION

Laboratory examination were carried out to detect the presence of blood on the exhibits. Blood thus detected was subjected to serological tests to determine its species of origin. Hairs recovered from exhibit-2, 3, 8, 9 and 10 were examined and compared microscopically and morphologically. Based upon these examinations, the results obtained are given below:-

1. Blood was detected on exhibit-1 (Blood stained Earth), Exhibit-7a (Pant), exhibit-7b (Jersy) and exhibit-14 (knife). However, blood could not be detected on exhibit-2 (Hair), exhibit-3 (Hair), exhibit-7c (Socks), exhibit-8 (Hair), exhibit-9 (Hair) and exhibit-10 (Hair).

2. Hair recovered from exhibit-2, 3, 8, 9 and 10 were identified as human hair. Hair in exhibit-2 and hair in exhibit-9 showed similarities with each other in respect of their morphological and microscopical characteristics. Opinion regarding matching

of hair in exhibit-3 with hair in exhibit-8, 9 and 10 could not be given as the hair in exhibit-3 were insufficient for making out the peculiar feature worth comparison.

- Note: 1. Results of Serological analysis of blood are attached herewith.
2. After examinations, the exhibit(s) alongwith its/their original wrapper(s) has/have been sealed with the seal of AD/Biol FSL (II).
3. Report of General Section regarding parcel No. IV, V, VI, XI, XII and XIII is attached herewith in original.

Sd/- 17.8.2001
(Dr.M.K.Goyal)
Asstt. Director (Biology)
Forensic Sc. Laboratory (II)
Madhuban (Karnal)"

(18) The said report cannot be taken to be the conclusive proof of fact that the hair in one of the fist of the deceased was matching with the hair of appellant No.3 in view of the discussion earlier that there is a doubt as to whether the hair was present in the hands of the deceased. In *Himangshu Pahari versus The State (5)*, it has been held that the said science is not a perfect science and cannot, thus, be the basis of conviction and it would be unsafe to rely upon the report. Once the recovery of the hair from the hands of the deceased has been doubted, it would be unsafe to record a conviction on the basis of the said recovery on the ground that it matched with hair of appellant No.3.

(19) Similar would be the position regarding the foot-moulds. As noticed above, as per the statement of the investigating officer himself that he had reached the site at night and the field was wet and the proceedings had been recorded with the light of the vehicle at the spot and the moulds were prepared at 10/10.30 p.m. on a winter evening, without any arrangement of light. A perusal of the statement of the photographer would show that there were already 30-40 people at the spot when he had gone there to take the photographs and if there were so many people around and the ground was wet, the taking of samples at the dark would have been very difficult since there was no light at the spot. Apparent contradiction has already arisen regarding as by what time the police party reached there and whether it was day time or not since as per case of the prosecution, when

the police party reached the spot at around 6/6.30 p.m., it would be a dark winter evening and it would not have been possible to see whether there was any foot-prints which could have been created into moulds. Thus, these circumstances are not sufficient evidence against the appellants, apart from the fact that the said reports are a weak type of evidence and cannot be of conclusive nature as has been held in *Niranjan Lal versus State of Haryana (6)*.

(20) Similarly, the extra-judicial confession made by Randhir Singh necessarily has to be rejected as admittedly, Randhir Singh was resident of Village Dharodi and not resident of the same village. It has come in his cross-examination that he was neither Panch nor Sarpanch or Lambardar and had claimed to be a Tholedar of the village to whom, no official credence can be given. He was a non-matriculate and was son-in-law of one Banwari who was related to Chajju. Dalbara Singh, complainant, in his cross-examination, admitted that one of his sons is married with daughter of Chajju and thus, it is apparent that there was a relationship with the complainant party and more so, there would have been no reason for the appellants to go and depose to make an extra-judicial confession before him on 17.01.2001. It is admitted proposition that extrajudicial confessions are a weak type of evidence and have to be carefully scrutinised and keeping in view the statement of PW12, Randhir Singh, the fact that he was not resident of the same village, there was no occasion for the appellants to go to him to make the extra-judicial confession. Further, it is hard to believe that the appellants had gone to him and made statements since one of them might have some relationship but why should all the three go to the same person to make an extra-judicial confession, which is the case of the prosecution. As per his statement, the appellants were taken to the police station in a jeep whereas, as per the investigating officer, the accused were produced before him at Kanchi Mor near canal at 3.15 p.m. in the revenue estate of Village Dumerkhan Kalan and he had spent about three hours at Kanchi Mor recording proceedings and he had left the said place at 6.15/6.50 p.m. It is also matter on record that the hair samples were taken between 6/6.20 p.m., which shows that there is a contradiction in the statement of the investigating officer himself as to where and when he was present with the appellants. In *Pancho versus State of Haryana (7)*, it has been laid down

(6) 1994 (2) RCR (Cl.) 620

(7) 2004 (4) R.C.R. 645

by the Hon'ble Apex Court that extrajudicial confession have to be examined cautiously and after looking for corroboration from other evidence and are weak type of evidence and only when it inspires confidence and other circumstances on record, they have to be taken into consideration. Relevant observation read as under:

“10. Extra-judicial confession made by A1-Pratham is the main plank of the prosecution case. It is true that an extrajudicial confession can be used against its maker, but as a matter of caution, courts look for corroboration to the same from other evidence on record. In *Gopal Sah v. State of Bihar*, this court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the courts are reluctant, in the absence of chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether extra-judicial confession of A1-Pratham inspires confidence and then find out whether there are other cogent circumstances on record, to support it.”

Similar observations have also been made in *Sahadevan versus State of Tamil Nadu (8)*.

(21) The last circumstance of recoveries against the appellants is also of no consequence as it is interesting to note that though the appellants were arrested on 17.01.2001 at 3.15 p.m., as noticed above, but no effort was made to get the recoveries done till 19.01.2001 and it was only on 19.01.2001 that the site of the incident was inspected and recovery was got effected of the bushirt from Rajbir Singh in the presence of the police officials and no independent public person was got associated though the police had sufficient time. Similarly, recovery of the knife, on the statement of Surinder Singh, was also got effected on 19.01.2001, without associating any person from the general public and therefore, said recoveries cannot be taken into consideration against the appellants. The categorical case of the prosecution is that the appellants had used the bushirt for strangulating the deceased whereas, as per the statement of Dr. R.K. Singla (PW1), only a contusion of 3 cm x 1.5 cm on anterior part centre of the neck was present and there was no ligature mark on the neck of the deceased. Though, he has further stated that the said injury could be caused by using a shirt but

the cause of death was due to throttling which was ante-mortem in nature. The medical evidence is also not conclusive to that extent to show that the deceased was done to death by using the shirt, which is the case of the prosecution. Thus the said recoveries which are not supported by any independent witness, could have easily been planted by police and confessional statement taken, as is apparent in the present case. In *Madhu versus State of Kerala (9)*, the recoveries effected in the form of gold ornaments were held to have been planted by the appellants and accordingly, the judgment of conviction was reversed. In the present case, the articles which are recovered, like the shirt and knife, are such which could have easily been planted by the police and thus, no benefit can arise to the prosecution from the said recoveries.

(22) Thus, a cumulative reading of the evidence would go on to show that it was a case of blind murder and the appellants were falsely implicated and there was no conclusive evidence by which they could be held guilty of committing the murder of Vakil Chand. It is settled that mere suspicion, however grave, cannot be a ground to sentence the appellants as it is the duty of the prosecution to prove its case beyond reasonable doubt and in the present case, it is apparently on the basis of suspicion that the conviction was recorded. This Court is not satisfied that such circumstances were consistent which would lead to the guilt of the appellants and that the chain of evidence was complete and that there was no reasonable ground to lead to any other conclusion, consistent with the guilt of the appellants. It is settled law that when there are two possibilities; one for conviction and the other, in favour of the accused; the accused is to be given the benefit of doubt and the conviction cannot be on the basis of presumption. Court has to see the inference of the circumstances are so complete and only when they are collectively considered and must lead to only one irresistible conclusion that the appellants alone are the perpetrators of the crime only then, conviction can be recorded. In the present case, we have no hesitation in holding that the prosecution has failed to prove its case against the appellants. Accordingly, the appeal succeeds and is allowed and the judgment of conviction imposed upon the appellants is set aside. The bail bonds of the appellants who are on bail be, accordingly, discharged.

J.S. Mehndiratta