

Before Rajesh Bindal & Gurvinder Singh Gill, JJ.

HARMINDER SINGH AND ANOTHER —Appellants

versus

STATE OF PUNJAB—Respondent

CRA-D No.299-DB of 2013

October 11, 2017

A) Evidence Act, 1872 — Section 25 —Disclosure Statement— If no recovery was effective in pursuance of the alleged disclosure statement, the same would be hit by section 25 of Evidence Act and no reliance can be placed upon the same.

Held that since no recovery was effected in pursuance of the aforesaid disclosure statement, therefore no reliance can be placed upon the same as the same would be hit by Section 25 of the Indian Evidence Act being in the nature of confessional statement recorded by the police. The remaining five accused namely Bhajan Kaur, Gurdip Kaur, Harminder Singh, Lakhwinder Singh and Satwant Kaur @ Sukhwant Kaur, in any case, have not made any disclosure statements. As such there is absolutely lack of circumstantial evidence against them to connect them with the occurrence and they cannot be held guilty solely on the basis of statement of complainant Jagir Singh and his son Hardeep Singh (PW-14) who in any case have not witnessed the occurrence. The aforesaid six accused are entitled to be acquitted.

(Para 38)

B) Code of Criminal Procedure, 1973 —S. 157 —Investigation of murder case Police lifted 3 footprint moulds from the street adjoining the house where murder took place —Street was a thorough fare — Many persons assembled in front of the house on hearing of murders— No explanation as to why only 3 footprints lifted, that is also of bare footed persons— It cannot be believed that persons will come out in the street bare footed— Evidence of footprints in itself is a weak type of evidence—Alleged accused otherwise residents of the house using that street — No reliance can placed on such evidence of footprints.

Held that evidence of footprints is not as conclusive in nature as the science of finger prints and is a weak evidence.

(Para 34)

C) Code of Criminal Procedure, 1973— S. 157— Investigation —Evidence of blood group matching —Mere presence of human blood on the allegedly recovered articles carries no value especially when dead bodies were thrown in a canal to dispose them off and the same were recovered days after the date of murder — However, merely because matching of blood group was not got done, unless the doubt is of a reasonable dimension, no benefit can be claimed by the accused on that basis — Once the recovery is made in pursuance to the disclosure statement made by the accused, matching or non-matching of blood group loses significance.

Held that once the recovery is made in pursuance to disclosure statement made by the accused, the matching or non-matching of blood group loses significance.

(Para 41)

D) Evidence Act, 1872 — S. 106 — Murder— When four murders are taking place at the same time in a house by causing multiple injuries with blunt and sharp weapons, the occupants of the house are deemed to have knowledge of the occurrence unless a very cogent acceptable explanation is given Section 106 is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

Held that the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused.

(Para 49)

E) Indian Penal Code, 1860 —S. 120B —Conspiracy — It is well settled that direct evidence of conspiracy is rarely available and the same has to be gathered from the circumstances 2014(3) SCC 401 followed .

Held that direct evidence of conspiracy is rarely available and the same has to be gathered from the circumstances.

(Para 54)

Arun Singla, Advocate.

for the appellants in CRA-D- No.299-DB of 2013
and CRA-D No.311-DB of 2013.

C.S.Jattana, Advocate
for the appellantsin CRA-D No.402-DB of 2013.

Satnam Singh Gill, Advocate
for the appellantsin CRA-D No.343-DB of 2013.

Anju Arora, Additional Advocate General, Punjab.

GURVINDER SINGH GILL, J.

(1) This judgment shall dispose of the above mentioned appeals filed on behalf ofthe following accused:

S. No	Particulars of Appeal	Name of Appellant(s)
1.	Appeal No.D-299-DB of 2013	1. Bhajan Kaur @ Harbhajan Kaur 2. Satwant Kaur @ Sukhwant Kaur
2.	Appeal No.D-311-DB of 2013	1. Veer Singh 2. Balbir Singh 3. Daljodh Singh 4. Guru Singh
3.	Appeal No.D-343-DB of 2013	1. Lakhvinder Singh 2. Gurdip Kaur
4.	Appeal No.D-402-DB of 2013	1. Harminder Singh 2. Pritam Kaur

(2) The aforesaid appellants have challenged judgment dated 13.3.2013 passed by learned Additional Sessions Judge, Hoshiarpur whereby they have been held guilty for committing offences punishable under Section 302 and 120-B read with Section 302 of Indian Penal Code, 1860 (for short, 'IPC') and have been sentenced as under :

S. No	Name of convict	Convicted u/s	Sentence Imposed	In default of fine
1.	Balbir Singh	302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1year.
2.	Daljodh Singh	302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1year.

3.	Guru Singh	302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1year.
----	------------	------------	---	-------------------------

S. No	Name of convict	Convicted u/s	Sentence Imposed	In default of payment of fine
1.	Veer Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
2.	Balbir Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
3.	Daljodh Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
4.	Guru Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
5.	Satwant Kaur	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1year.
6.	Harminder Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
7.	Pritam Kaur	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
8.	Lakhwinder Singh	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.

9.	Gurdeep Kaur	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.
10.	Bhajan Kaur	120-B read With Section 302 of IPC	R.I. for life and fine of Rs. 10,000/-.	Further R.I. for 1 year.

(3) The case relates to murder of Jaswinder Kaur along with her three minor children namely Kamalpreet Kaur, Simranjit Singh and Antar. The translated gist of statement of Jagir Singh, father of deceased Jaswinder Kaur, leading to registration of FIR reads as follows:

“I have four daughters and two sons. My daughter Jaswinder Kaur was married to Veer Singh resident of village Bhagran, Police Station Mukerian about 13 years back. She gave birth to three children namely Kamalpreet Kaur aged 9 years, Simranjit Singh aged 7 years and daughter Antar aged 1 ½ years. Ever since her marriage, her husband Veer Singh, mother-in-law Mohinder Kaur, brother-in-law Daljot Singh (deor), sisters of her husband namely Bhajan Kaur, Sukhwant Kaur and Pritam Kaur had been taunting and harassing her and compelled her to live separately in one room because my son-in-law is not living with my daughter now. Since she was living separately, therefore, I had been giving maintenance to my daughter and children. We had also convened Panchayats in this regard. My son-in-law is in Army and due to his marital dispute, the Army authorities had granted maintenance to my daughter out of his salary. However, my son-in-law by misrepresenting, got her signatures on a document to the effect that she had divorced her husband and married her 'deor' (younger brother-in-law) Daljot Singh. Veer Singh has filed a petition for divorce. Today I received telephonic information from husband of Sarpanch of village Bhagran that four dead bodies have been found from canal and he asked me to check up as to whether my daughter and children are at home. Upon receipt of said information I along with respectables went to Civil Hospital, Mukerian where I identified the dead bodies to be that of my daughter Jaswinder Kaur and her three children. My daughter and

her children have been murdered last night by her husband Veer Singh, her brothers-in-law Daljot Singh and Balbir Singh, mother-in-law Mohinder Kaur, sisters of her husband namely Sukhwant Kaur, Bhajan Kaur and Pritam Kaur in connivance with each other by causing injuries and had thrown their dead bodies in '*Shah Nehar*' (canal) near village in order to destroy the dead bodies. The motive is that my son-in-law and his family wanted to solemnize second marriage of my son-in-law Veer Singh and grab property/land falling to the share of my daughter and her children.”

(4) Pursuant to recording of aforesaid statement of complainant Jagir Singh, father of deceased Jaswinder Kaur, FIR No. 139 dated 8.10.2006 (Ex.PW-21/A) was recorded at Police Station Mukerian, District Hoshiarpur. Inquest proceedings were conducted. Post mortem examination was got conducted on the recovered dead bodies. Investigating Officer PW-21 Inspector Ravinder Singhalong with other police officials went to the residence of Jaswinder Kaur in village Bhagran. He called SI Gurdeep Singh, Finger Print Expert who lifted foot print moulds from the spot. Tyre print moulds were also lifted from the spot. Blood stained earth was lifted and packed into a parcel and duly sealed. A blood stained bed-sheet, blood stained pillows and blood stained '*darri*' were taken into possession from room of Jaswinder Kaur. Since cot lying in the room was also found to be blood stained, therefore, one '*pahi*' (wooden leg of cot) and plastic '*baan*' (rope used for knitting cot) was also taken into possession. A rough site plan (Ex.PW-21/E) of place of occurrence was prepared. The police also found blood stained pebbles on way to canal which were also collected and taken into possession. During investigation, statements of witnesses were recorded under Section 161 Cr.P.C.

(5) Accused Balbir Singh, Guru Singh, Harminder Singh, Pritam Kaur, Satwant Kaur @ Sukhwant Kaur were arrested on 11.10.2006. Accused Daljodh Singh and Bhajan Kaur @ Harbhajan Kaur were arrested on 14.10.2006. Accused Veer Singh was arrested on 9.11.2006.

(6) After conclusion of investigation the police presented challan against the accused in the Court of learned Judicial Magistrate 1st Class, Dasuya on 3.1.2007 who committed the case to the Court of Sessions on the same day i.e. on 3.1.2007. Subsequently, a supplementary challan was filed against the accused Sukhwant Kaur in

the Court of learned Judicial Magistrate 1st Class, Dasuya on 2.4.2007 and the same was committed to the Court of Sessions vide order dated 25.5.2007. The case was assigned to the Court of learned Additional Sessions Judge, Hoshiarpur who upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 302 and 120-B read with Section 302 of IPC framed charges against the accused vide order dated 5.9.2007.

(7) The prosecution in order to establish its case examined as many as 24 witnesses. PW-1 Dr. Amarjit Singh who had conducted post-mortem examination on the dead bodies of Jaswinder Kaur, Antar, Simranjit Singh, Kamalpreet Kaur proved the post-mortem reports as Ex.PB, Ex.PD, Ex.PF & Ex. PH, respectively. PW-2 Head Constable Satvinder Singh stated that in the year 2006 he was posted as MHC at Police Station Mukerian and had handled the case property and that as long as the case property remained in his possession, the same was not tampered with. PW-3 Constable Jaswinder Singh tendered his affidavit Ex.PL in evidence wherein he deposed that the MHC handed over the articles for depositing the same in the office of FSL and that he accordingly deposited the same and that as long as the same remained in his possession, none of the articles was tampered with. PW-4 Constable Parveen Singh is an formal official witness who tendered his affidavit Ex.PM in evidence. PW-5 Ashok Kumar, Sarpanch of Village Dugri, Tehsil Dasuya District Hoshiarpur stated that he knows Jagir Singh who is resident of his village and that his daughter Jaswinder Kaur was married in village Bhadrant to Veer Singh. He deposed that after some time of the marriage, their relations became strained and that her husband, her sisters-in-law and brother-in-law started maltreating her.

(8) PW-6 Baljinder Singh stated that he remained Panch of village Bhagran for five years and Kailash Kaur was the Sarpanch. He deposed that in December, 2003, he was called by Kailash Kaur, Sarpanch and he had signed on a paper which was in English. He further stated that he is illiterate. The witness was, however, declared hostile and with the permission of the Court was permitted to be cross-examined by Public Prosecutor. PW-7 Bal Kishan stated that he is husband of Kailash Kaur and sometimes he used to attend the meetings of the Panchayat. He deposed that about four years back Jaswinder Kaur disclosed to him that her father-in-law and Daljodh Singh had been picking up quarrel with her but she did not state anything about her relations with Veer Singh or with her sister-in-laws. The witness

was, however, declared hostile and with the permission of the Court was permitted to be cross-examined by Public Prosecutor. PW-8 Sukhwinder Kaur stated that house of Jaswinder Kaur is across the road where her house is situated and that she was not having cordial relations with Jaswinder Kaur and others and that Jaswinder Kaur never told her about the behaviour of Veer Singh. The witness was, however, declared hostile and with the permission of the Court was permitted to be cross-examined by Public Prosecutor.

(9) PW-9 Charanjit Kaur stated that about 4 ½ years back, she went to the house of Kailash Kaur, Sarpanch and she had affixed her signature on affidavits of Jaswinder Kaur and Daljodh Singh. She, however, stated that she does not know English and had signed on the affidavits at the instance of Sarpanch. The witness was, however, declared hostile and with the permission of the Court was permitted to be cross-examined by Public Prosecutor. PW-10 ASI Bhupinder Singh stated that on 11.10.2006, he was entrusted with the investigation of the case and on the said day Harminder Singh, Pritam Kaur and Sukhwinder Kaur were arrested by the police and their arrest memos and personal search memos were prepared. He further stated that Pritam Kaur suffered a disclosure statement Ex.PS. PW-11 ASI Baldev Singh deposed that on 8.10.2006, he was duty officer at Police Station Mukerian and that a telephonic message was received at about 8 A.M. that dead body of a lady and of one child were found in canal and he informed SHO Ravinder Singh and he along with SHO Ravinder Singh and other police officials went to the spot where the dead bodies had been entangled in the gates of canal. He further stated that two more dead bodies were also recovered. He stated that the dead bodies were taken to Civil Hospital, Mukerian where Jagir Singh complainant identified the same to be that of his daughter and her children. He further deposed that the investigation conducted by him in the matter, including visit to the house of Jaswinder Kaur, where various blood stained articles were taken into possession. He has also deposed about the disclosure statements made by the accused and the recoveries made in pursuance thereof.

(10) PW-12 Inspector Gurdeep Singh, Finger Print Expert deposed that on 8.10.2006, upon receipt of telephonic message from Police Control Room, Hoshiarpur, he proceeded to the scene of crime in Village Bhagran and lifted foot print moulds. PW-13 Jagir Singh complainant stated in tune with his statement Ex. PW-13/A on the basis of which FIR was lodged. PW-14 Hardeep Singh son of

complainant deposed that on 20.9.2006, he went to his sister's house in village Bhagran. While he was repairing the dish installed on the roof of her house, he overheard the brothers and sisters of Veer Singh asking Veer Singh to eliminate Jaswinder Kaur and her children.

(11) PW-15 Kailash Kaur stated that she was earlier Sarpanch of Village Bhagran and she knew Veer Singh who was married to Jaswinder Kaur and that there was dispute between them. She deposed that Veer Singh had come to her personally with an affidavit and she had affixed her signatures upon the same. PW-16 HC Raj Kumar, Photographer proved the photographs of the place of occurrence. PW-17 HC Prem Singh deposed that on 2.11.2006, he was posted as MHC in police Station Mukerian and on the said day ex-MHC Satvinder Singh handed over case property to him and that as long as the case property remained in his possession, the same was not tampered with. PW-18 Arvinder Pal Singh, Tehsildar deposed that on 18.10.2006, ASI Baldev Singh produced accused Balbir Singh, Daljodh Singh and Guru Singh before him for taking their foot print moulds and that he passed order on the application moved by Investigating Officer and thereafter the footprint moulds were taken. PW-19 Nasib Chand, Civil Ahlmad stated that he is attached to the Court of Shri Balbir Singh, Additional District & Sessions Judge, Hoshiarpur as Ahlmad and that Veer Singh had filed a petition under Section 13 of the Hindu Marriage Act. He proved certified copy of the same as Ex.PW19/A.

(12) PW-20 Subhash Kumar, Draftsman proved the scaled site plan of the house of Jaswinder Kaur as Ex.PW20/A. PW-21 Inspector Ravinder Singh, who is the Investigating Officer of the present case stated in detail in respect of the entire investigation conducted in the present case. PW-22 Surat Singh stated that he was posted as Ahlmad in the Court of Additional Civil Judge (Senior Division) Dasuya in the year 2006. He proved copy of Civil Suit as Ex.PW22/A and has also proved the written statement and affidavit and order passed in the said Civil Suit. PW-23 Ashok Bhalla, retired Ahlmad deposed that in the year 2005-2006, he was posted as Ahlmad in the Court of Mandeep Kaur, JMIC, Dasuya. He proved the certified copy of petition filed by Jaswinder Kaur under Section 125 Cr.P.C. as Ex.PW-23/A. PW-24 Lakhvir Singh, Subedar, 13 Sikh Regiment, Assam stated that on 9.11.2006, he along with other officials of his unit had produced Veer Singh in the Court of Smt. Mandeep Kaur, JMIC Dasuya on the direction of Major of his unit. He also proved various documents which he had produced. During cross-examination he specifically stated about

the presence of Veer Singh at Indo-Pak border on 7.10.2006 and 8.10.2006.

(13) It may be added here that accused Mohinder Kaur died during the pendency of the trial and as such the proceedings qua Mohinder Kaur stood abated.

(14) Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to them to enable them to explain the same but the accused denied the prosecution case in toto and pleaded innocence. Veer Singh stated therein that the relations between him and his wife were strained and Jaswinder Kaur had started living as wife with his younger brother Daljodh Singh and he had filed a divorce petition on the said ground. He further stated that on the day of occurrence, he was posted at Rajauri Punchh Sector (J&K) which is at a distance of 500 kms from his village. Daljodh Singh while pleading innocence has also taken a similar plea that he has been falsely implicated because he is brother of Veer Singh. He specifically stated therein that Jaswinder Kaur started living with him as his wife and he had sworn an affidavit on 10.12.2004 regarding the said fact and that Antarpreet Kaur was born out of the said wedlock. Guru Singh has taken a plea that he has been implicated falsely by the police, being servant of Veer Singh. Balbir Singh, Satwant Kaur, Harminder Singh and Pritam Kaur have taken a plea that they have been falsely implicated, being related to Veer Singh.

(15) The accused in their defence examined DW-1 Bawa Singh, Naib Tehsildar, Kartarpur, District Jalandhar who deposed that in the year 2003 he was posted as Naib Tehsildar (Executive Magistrate) at Mukerian. He had attested affidavits Ex.D-1 and Ex.PW-22/D of Jaswinder Kaur and Daljodh Singh upon attestation made by Kailash Kaur, Sarpanch of Village Bhagran and that both the deponents had signed their affidavits in his presence. DW-2 Deepak Joshi, Stamp Vendor, Tehsil Complex Mukerian, Distt. Hoshiarpur, produced the summoned record pertaining to sale of stamp papers for the year 2003 and proved the relevant entries pertaining to sale of stamp papers to Jaswinder Kaur and Daljodh Singh on 6.11.2003.

(16) The learned trial court upon appreciation of the evidence on record found the accused Balbir Singh, Daljodh Singh and Guru Singh, guilty of having committed offence punishable under Section 302 of IPC and all accused namely Veer Singh, Balbir Singh, Daljodh Singh, Guru Singh, Satwant Kaur, Harminder Singh, Pritam Kaur,

Lakhwinder Singh, Gurdeep Kaur and Bhajan Kaur held guilty of having committed offence punishable under Section 120-B read with Section 302 of IPC and sentenced all the accused to undergo rigorous imprisonment for life in addition to imposition of fine vide judgment dated 13.3.2013. Aggrieved with their conviction, the accused have filed the present appeals.

(17) The learned counsel for the appellants while assailing the impugned judgment has submitted that the present case is a case of blind murder and that all the accused excepting Guru belong to family of in-laws family of deceased and have been implicated merely for the reason that the relations between the deceased-Jaswinder Kaur were strained with her husband Veer Singh. The learned counsel submitted that in fact Veer Singh who was serving in Army was deputed at the India-Pakistan Border on the day of occurrence, as per the record produced by the Army authorities. The learned counsel further submitted that the case is based solely on circumstantial evidence which is far from convincing and there are several chinks in the case of prosecution. The learned counsel thus prayed for acceptance of appeals and for setting aside the impugned judgment and consequently for acquittal of the accused.

(18) On the other hand, the learned counsel representing the State submitted that though there is no direct evidence in the present case but the circumstantial evidence led by the prosecution in the shape of disclosure statements of the accused leading to recovery of weapon used in commission of offence as well as blood stained clothes and also the foot prints moulds lifted from the place of occurrence which were found to be matching with the specimen footprints, leave no manner of doubt that it is the accused who had eliminated Jaswinder Kaur and her three children as relations between Jaswinder Kaur and her husband Veer Singh were strained and the family of Veer Singh wanted Veer Singh to contract second marriage. The learned State counsel has further submitted that apart from the said motive of paving way for second marriage of Veer Singh, the family also wanted to ensure that Jaswinder Kaur does not get any share from the property of the family. The learned State Counsel, thus submitted that the impugned judgment is well reasoned and does not suffer from any infirmity and has prayed for dismissal of the appeals.

(19) We have considered the rival submissions addressed before this Court and with able assistance of learned counsel have also perused the relevant referred record of the case.

(20) Since there is no eye witness to the occurrence, the prosecution sought to establish its case on the basis of circumstantial evidence. The circumstantial evidence is in the following shape:

- i. Disclosure statements Ex.PAB, Ex.PAC, Ex.PAD and Ex.PAH of Balbir Singh leading to recovery of cycle, kirpan, burnt clothes and blood stained clothes.
- ii. Disclosure statement Ex.PAJ of Guru Singh leading to recovery of blood stained shirts.
- iii. Foot print moulds lifted from the street abutting the house of the deceased shown at point E, F, G & H in the site plan Ex.PW-21/E.

(21) Before proceeding to evaluate the above referred circumstantial evidence, it is apposite to refer to the medical evidence led by the prosecution in the shape of post mortem examination reports. The prosecution has examined PW-1 Dr. Amarjit Singh who had conducted post mortem examination on the dead bodies of Jaswinder Kaur and of her three minor children namely Kamalpreet Kaur, Simranjit Singh and Antar. PW-1 Dr. Amarjit Singh, while proving the post mortem examination report Ex.PB in respect of Jaswinder Kaur described the injuries found on the dead body of Jaswinder Kaur as follows:

“1 12 x 3.5 cm incised wound with gaping in center (on apposition 12 x 1.5 cm) was present on right side of the neck obliquely placed at and below ear lobule the lower end of which was missing, margins were clean cut and sharpened, infiltration of blood was present. The injury was muscle deep.

2 13 x 3.5 cm incised chop wound with deep gaping in center was present on left side of root of neck and front of upper chest extending from suprasternal notch to 10 cm below ear lobule margins were clean cut and sharp underlying muscles vessels and nerves were showing and through cut infiltration of blood was present.

3 8 x 2 cm incised wound was present on left side of face 1.5 cm below ear lobule margins were clean cut and infiltration of blood was present.

4 4 x 1 cm pale lacerated wound with no infiltration of

blood was present on the side of chin, 2 cm below the injury No.3 margins were irregular.

5 7.5 x 1 cm pale lacerated wound was present on left side of forehead touching anterior hairline and left eye brow, noinfiltration blood was present.

6. 5 x 1.5 cm incised wound was horizontally placed on outer aspect of left upper arm, 9 cm below tip of shoulder margins were clean cut infiltration of blood was present, underlying bone was fractured.

7 Reddish brown abrasion with length and breadth varying from 10x 2 cm was present on front of left upper chest and shoulder.

8 9 x 1 cm incised wound was present on palmer aspect of right hand involving middle phalanx of index, proximal phalanx of middle finger and ring finger with middle phalanx of middle finger margins were clean cut, infiltration of blood was present.

9 9 x 2 cm incised wound was present on back of left shoulder with tailing of the wound of size, 8 x 0.2 cm running towards midline of spine margins were clean cut infiltration of blood was present.

10 10 x 2.5 cm incised wound was present on left side of head 4 cm above and back of ear pinna margins were clean cut beveled with fracture of underlying parietal bone. Extra cranial and extradural hemorrhage was present under injury no.10, infiltration was present.”

PW-1 opined the cause of death of Jaswinder Kaur to be haemorrhage and shock as a result of multiple injuries which were sufficient to cause death in ordinary course of nature.

(22) He also conducted the post mortem examination on the dead body of Antar d/o Veer Singh r/o village Bhagra and found following injuries:

1. “1.15.4 cm (on apposition 15.5 x 2 cm) incised wound with beveled appearance at lower and exposed tissue at upper end was present on left side of back of the head and neck, margins found clean cut and sharp infiltration of blood into tissue was present, cortex of bone under this injury of

size 2.8 x 2.5 cm was found chipped off with intact bone at lower part underlying bone was showing depressed fracture of parieto-occipital bone. Extra cranial infiltration was present, extradural and subdural hemorrhage was present under the injury, about 50 cc of fluid and clotted blood was present, at the base of brain. Brain matter was oedematous.

2. 11 x 0.3 cm reddish brown abrasion was present on the left side of face and neck extending to back of neck 2 cm below earlobe.

3. 2.8 x 0.8 cm pale coloured lacerated wound with no infiltration of blood was present on right side of forehead above eyebrow margins found irregular and crushed.”

PW-1 opined the cause of death of Antar to be compression of brain as a result of injury No.1 which was sufficient to cause death in ordinary course of nature.

(23) PW-1 also conducted the post mortem on the dead body of Simranjit Singh son of Veer Singh r/o village Bhagra and found following injuries:

“1 10 x 3 cm chopped and incised wound with deep gapping in center spindle shape was present on front of neck at and above the level of thyroid, margins of the wound were clear cut, sharp and inverted, infiltration of blood was present into tissue underlying muscles vessels nerves and trachea was found cut through and through. Trachea, both bronchia were found full of fluid, blood and froth, thyroid was fractured, infiltration of blood was present.

2 7 x 2 cm incised wound with exposed tissue at upper part was present on front and both sides of chin, margins were clean cut

and sharp, infiltration of blood was present, underlying bone was found chipped off and intact at lower end.

3 6 x 2 cm incised wound with beveled appearance at lower end and exposed tissue at upper end was present on left side of skull behind ear at styloid and parietal region. On dissection of skull, underlying styloid was found fracture, extradural and subdural hemorrhage was present

under the injury.

4 3.5 x 3 cm pale abrasion with in filtration of blood was present on right side of forehead, 3 cm above eye brows.

5 6 x 3 cm pale lacerated wound with no infiltration of blood was present on the back and inner aspect of right forearm at its lower 1/3rd.

6 4 x 2 cm pale coloured lacerated wound was present on the back of right hand and wrist. No infiltration of blood was present.

7 3.5 x 2 cm pale lacerated wound with no infiltration of blood was present on front of right knee at upper border of patella.”

PW-1 opined the cause of death of Simranjit Singh to be severance of neck structures leading to shock which was sufficient to cause death in ordinary course of nature.

(24) PW-1 also conducted the post mortem on the dead body of Kamalpreet Kaur d/o Veer Singh r/o village Bhagra and found following injuries:

“1 11 x 25 cm (on apposition 11.5 x 2 cm) incised wound was present on left side of face involving ear pinna and left side of head at styloid region, margins were clean cut sharp infiltration was present.

2 10 x 3 cm incised wound was present on the left side of head at parietal region 7.5 cm above ear pinna, margins were clear cut sharp, infiltration of blood was present. On dissection of skull for injury no.1 and 2, extradural and subdural hemorrhage was present, left parietal bone was found fractured extending to middle cranial fossa on left side about 100 cc of fluid and clotted blood was present at the base of skull, brain matter was oedematous.

3 3.5 x 1 cm incised wound was present on left side of upper neck behind ear pinna, margins were clean cut, sharp, inverted with infiltration of blood and muscle deep.

4 6 x 1 cm incised wound was present on left side of upper neck just below injury no.3, margins were clean cut, sharp, inverted with infiltration of blood and muscle deep.

5 Multiple reddish brown abrasions 4 in number size varying from 4 x 3 cm to 1 x 0.5 cm was present on both sides of forehead.

6 7 x 3 cm reddish brown grazed abrasions with lacerated wounds of sizes 3.5 x 1.5 cm in its anterior part was present on right side of face and ear pinna, infiltration of blood was present.

7 4.5 cm x 2 cm pale abrasion with no infiltration of blood was present below chin on its right side.

8 3 x 2 cm pale abrasion with no infiltration of blood was present on right side of neck, 3 cm below ear lobule.

9 Multiple pale and grazed abrasions 4 in numbers size varying from 9 x 2.5 cm to 4 x 2 cm was present on outer aspect of right upper arm, throughout its length.

10 3.5 x 2 cm pale lacerated wound with no infiltration of blood was present on back of right wrist.

11 18 x 5 cm pale abrasion with no infiltration of blood was present on inner aspect of left elbow, upper armed forearm.”

PW-1 opined the cause of death of Kamalpreet Kaur to be haemorrhage and shock with compression of brain which was sufficient to cause death in ordinary course of nature.

(25) PW-1 was cross examined on behalf of the accused but nothing substantial could be elicited during his cross examination so as to doubt veracity of his statement or his opinion regarding the cause of death. In any case, the cause of death is not seriously disputed. As such, findings of the trial court to the effect that it is a case of homicidal death of Jaswinder Kaur along with her three minor children namely Kamalpreet Kaur aged 9 years, Simranjit Singh aged 7 years and Antar aged 1 ½ years are hereby affirmed.

DISCLOSURE STATEMENTS :

(26) Now coming to the disclosure statements made by the accused, it is the case of prosecution that Balbir Singh had been arrested on 11.10.2006 and during his interrogation he suffered four disclosure statements. The gist of the said disclosure statements made by Balbir Singh and the recoveries effected in pursuance thereof are as follows :

Disclosure statements of Balbir Singh :

i. Balbir Singh made disclosure statement Ex.PAB on 14.10.2006 to the effect that after committing murder of his sister-in-law Jaswinder Kaur and her three children, their dead bodies had been taken by him and Guru Bhaiya on a cycle from the house of Jaswinder Kaur to the canal bridge for throwing the same and that the cycle had been concealed by him in the sugarcane fields of Jagir Singh and that he could get the same recovered.

Pursuant to aforesaid disclosure statement, accused Balbir Singh led the police party to the disclosed place and got the bicycle recovered, which was taken into possession vide recovery memo. Ex.PAG.

ii. Accused Balbir Singh is stated to have made another disclosure statement Ex.PAC regarding his having concealed a 'kirpan' (sword) used for committing the crime in a room where 'turi' (chaff) had been stored in the 'haveli'.

Pursuant to the said disclosure statement, Balbir Singh led the police party to the disclosed place and got the kirpan recovered which was taken into possession vide recovery memo Ex.PAF. The said kirpan was having a 27" long blade and 4" long handle.

iii. Another disclosure statement Ex.PAD was made by Balbir Singh on the same day i.e. on 14.10.2006 to the effect that he had burnt the clothes which he was wearing at that time in his 'haveli'.

Pursuant to the said statement, the accused led the police party to the disclosed place and got recovered some ashes of the burnt clothes which were taken into possession vide recovery memo Ex.PAH.

iv. Accused Balbir Singh made yet another disclosure statement Ex.PAH on 15.10.2006 to the effect that after committing the murder of Jaswinder Kaur and her children, he had concealed his bloodstained clothes in the bushes on the bank of Shah Nehar.

Pursuant to said statement, accused Balbir Singh led the police party to the disclosed place and got the blood stained

shirt recovered which was taken into possession vide recovery memo Ex.PAK.

(27) It is also the case of the prosecution that accused Guru Singh had also suffered a disclosure statement Ex.PAJ on 14.10.2006. The gist of the said disclosure statement made by Guru Singh and the recovery effected in pursuance thereof is as follows :

Disclosure statements of Guru Singh :

i.Guru Singh made disclosure statement Ex.PAJ on 14.10.2006 to the effect that after committing murder of Jaswinder Kaur and her children and throwing their dead bodies in the canal, he had concealed his blood stained clothes on the bank of *Shah Nehar*.

Pursuant to the aforesaid disclosure statement, accused Guru Singh led the police party to the disclosed place and got the blood stained shirt recovered which was taken into possession vide recovery memo Ex.PAL.

(28) All the aforesaid disclosure statements and recovery memos are signed by the Investigating Officer SHO, Ravinder Singh and are attested by the witnesses ASI Baldev Singh and ASI Avtar Singh. Though, learned counsel for the accused attempted to assail the aforesaid documents on the ground that neither the disclosure statements nor the recoveries were made in the presence of any independent witness, but this Court is unable to accept the aforesaid contention as there is no mandate of law that under all circumstances, such documents should be prepared in the presence of an independent witness only. The prosecution has examined the Investigating Officer PW-21 Inspector Ravinder Singh as well as the attesting witness PW-11 ASI Baldev Singh who have both specifically stated about the accused having made the disclosure statements in their presence and having got the recoveries effected thereof. Both the aforesaid official witnesses had recorded the statements etc. of the accused in discharge of their official duties and they had no axe to grind against the accused so as to depose falsely. In these circumstances, this Court does not find any reason to doubt that the accused has made the aforesaid disclosure statements and pursuant to the same had got the recoveries effected.

(29) Pritam Kaur accused is also stated to have made a disclosure statement Ex.PS wherein she deposed that deceased Jaswinder Kaur had strained relations with her husband Veer Singh and also with mother, sisters and brothers of Veer Singh and she had

been granted maintenance out of the salary of Veer Singh and was residing separately at Village Bhagran. She stated therein that on the night of 7.8.2006 after committing murder of Jaswinder Kaur and her three children and after throwing the dead bodies in the canal her brothers Daljodh Singh and Balbir Singh came to her house and went back the next day. However, no recovery of any incriminating piece of evidence was ever got effected in pursuance to the aforesaid statement and as such the said disclosure statement of Pritam Kaur would carry no value and is of no use to the prosecution.

FOOTPRINTS MOULDS :

(30) It is the case of prosecution that on 08.10.2006 i.e. the day the FIR was lodged, the police party headed by PW-21 Inspector Ravinder Singh went to the residence of Jaswinder Kaur where the Investigating Officer also called the finger print expert i.e. PW-12 Inspector Gurdeep Singh who lifted foot print moulds from outside the main gate of the house of Jaswinder Kaur. A perusal of the site plan (Ex.PW-21/E) shows that the foot prints moulds were lifted from the points shown in the site plan as point E,F,G and H which are in fact located on street abutting the house of the deceased. PW-12 Inspector Gurdeep Singh during his cross examination has also specifically stated as follows:

“..... I took the moulds from outside the main gate of the house but did not take from inside. The place from where I took the mould is a thoroughfare.....”

(31) The aforesaid cross-examination shows that the place from where the foot prints were lifted, was a thoroughfare. In fact ASI Baldev Singh, during his cross-examination has stated that when the police party reached village Bhagran, it was night time and that about '50-60-70' persons had gathered at the house of Jaswinder Kaur. If this be so, it remains unexplained as to how and why the police lifted just three foot prints moulds from the street. It is not the case of the prosecution that the foot prints moulds were lifted from inside the room or inside the compound of the house. Since, the place from where the foot prints moulds were lifted, was a thoroughfare and a large number of persons had already gathered there, then certainly the prosecution has a lot to explain as to why only three foot prints moulds were lifted.

(32) From perusal of the statement of PW-11 ASI Baldev Singh, it transpires that it was at about 6 PM on 8.10.2006 that the recovered

dead bodies were identified upon arrival of Jagir Singh complainant and thereafter the SHO recorded the FIR at 7 PM and then inquest proceedings were conducted and the dead bodies were handed over for post mortem. He has stated that about 2 hours were consumed in the said process at Civil Hospital, Mukerian and thereafter they proceeded to village Bhagran. He further deposed that it was about 9 PM when they reached at village Bhagran and after seeing the police, in the house of Jaswinder Kaur, several persons had come there who were numbering about 50-70. He further deposed that when they were inspecting the spot, several respectables of the village were inside the house and remaining were standing outside the house. He further stated that all the members of in-laws' family of Jaswinder Kaur were standing outside the room as the room was of a small size and only the police officials, complainant and respectables were there inside the room. He has further stated that the floor of the room was a *kutchra* one.

(33) PW-12 during his cross-examination did state that though several people were near the place of occurrence but the place of occurrence was fully preserved by the police. He stated that the prints were not preserved by covering them with anything but were protected by using bricks. He stated that he does not remember as to how many moulds were taken by him. He further stated that he had seen only the footprints of naked foot and did not see any prints of shoe, *chappal* or any footwear.

(34) From the statement of PW-12, it is very clear that several persons had gathered in the house of the deceased. Even the in-laws' family i.e. the accused were there at that time. The footprint moulds were lifted from the street outside the house which is a thoroughfare. It is rather strange that the witness stated that he had seen only the footprints of naked foot and did not see any prints of shoe, *chappal* or any footwear. Nowadays, even in villages, people don't move about in streets bare-footed. In any case, the existence of foot prints of the accused in the street would be quite natural and normal as the accused Balbir Singh and Daljodh Singh are also stated to be residing in the same house though, Jaswinder Kaur had been given a separate room. In any case the evidence of footprints in itself is a weak type of evidence. Our High Court in *Om Parkash* versus *State of Haryana*¹ held that evidence of footprints is not as conclusive in nature as the science of finger prints and is a weak evidence.

¹ 1993(1) RCR (Cri) 328 (DB)

(35) In view of the aforesaid discussion, especially bearing in mind that the place from where the foot prints were lifted is a thoroughfare and also that the accused Balbir Singh and Daljodh Singh are residing in the same house, the evidence of comparison of the foot prints in the shape of report of FSL (Ex.P- 2/12) would not advance the case of prosecution.

(36) Having held that the report of FSL regarding foot prints moulds cannot be relied upon by the prosecution, the case of prosecution has to be evaluated in light of the disclosure statements and other evidence pertaining to motive and conspiracy.

(37) There is hardly any evidence against the following six accused, much less convincing evidence :

- i. Bhajan Kaur (sister of husband)
- ii. Pritam Kaur (sister of husband)
- iii. Gurdip Kaur (sister of husband)
- iv. Harminder Singh (husband of husband's sister Pritam Kaur)
- v. Lakhwinder Singh (husband of husband's sister Gurdip Kaur)
- vi. Satwant Kaur @ Sukhwant Kaur (wife of husband's brother Balbir Singh)

(38) Out of the aforesaid six accused, it is only Pritam Kaur who had suffered a disclosure statement Ex.PS wherein she stated that deceased Jaswinder Kaur had strained relations with her husband Veer Singh and his family and had been granted maintenance out of the salary of Veer Singh. She stated therein that on the night of 7.8.2006 after committing murder of Jaswinder Kaur and her three children and after throwing the dead bodies in the canal my brothers Daljot Singh and Balbir Singh came to her house and the next day they went back to their house. However, since no recovery was effected in pursuance of the aforesaid disclosure statement, therefore no reliance can be placed upon the same as the same would be hit by Section 25 of the Indian Evidence Act being in the nature of confessional statement recorded by the police. The remaining five accused namely Bhajan Kaur, Gurdip Kaur, Harminder Singh, Lakhwinder Singh and Satwant Kaur @ Sukhwant Kaur, in any case, have not made any disclosure statements. As such there is absolutely lack of circumstantial evidence against them

to connect them with the occurrence and they cannot be held guilty solely on the basis of statement of complainant Jagir Singh and his son Hardeep Singh (PW-14) who in any case have not witnessed the occurrence. The aforesaid six accused are entitled to be acquitted.

(39) As regards the case of Guru Singh we find that he is not a member of the family of the in-laws of the deceased Jaswinder Kaur. Though it is the case of prosecution that he had suffered a disclosure statement Ex.PAJ on 14.10.2010 to the effect that he had concealed his blood stained clothes on the bank of *Shah Nehar* (canal) and pursuant to the said statement had got his bloodstained shirt recovered which was taken into possession vide recovery memo Ex.PAL but there are some chinks in the case of prosecution which render his involvement in the occurrence doubtful. First of all Guru Singh is not named in the FIR. He is not even a member of inlaws' family of deceased. Though, he was arrested on 11.10.2006 as is evident from his arrest memo Ex.PAA/1, but a perusal of the entire file does not show as to on what basis he was arrested as neither he was named in FIR nor did the police have anything against him till 14.10.2006 when Balbir Singh, in his disclosure statement, had named Guru Singh as an accomplice for the first time. Guru Singh cannot even be attributed any motive being not a family member of the remaining accused. It is not even the case that he was a contract killer having been paid for committing the offence. His arrest on 11.10.2006 without there being any evidence and without his being named in the FIR would certainly entitle him the benefit of doubt. He is, thus, also held entitled to acquittal.

(40) Balbir Singh, upon his interrogation made four different disclosure statements Ex.PAB, Ex.PAC, Ex.PAD and Ex.PAH and in pursuance thereof he led the police party to the disclosed places and got a cycle, a *kirpan*, ashes and blood stained shirt recovered which were taken into possession vide recovery memos Ex.PAG, Ex.PAF, Ex.PAH and Ex.PAK, respectively. As per FSL reports, Ex. PZ/2 regarding cycle carrier, Ex. PZ/3 regarding *kirpan* and Ex. PZ/9 regarding shirt, the said articles were found to be stained with human blood.

(41) Though learned counsel for the accused raised an argument that since the blood group matching was not got done, therefore mere presence of human blood on these articles carries no value, but it needs to be borne in mind that the dead bodies had been thrown in canal in order to dispose them off and the same were recovered much

after the death. Hon'ble the Supreme Court in judgement reported as **R. Shaji** versus **State of Kerala**² held that sometimes it is possible either because of disintegration of serum or due to the fact that the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question but even in such a situation unless the doubt is of a reasonable dimension no benefit can be claimed by the accused in this regard. It was further held therein that once the recovery is made in pursuance to disclosure statement made by the accused, the matching or non-matching of blood group loses significance.

(42) As per post-mortem reports the time that elapsed between death and post-mortem was between 24-48 hours. In these circumstances the blood group matching loses significance especially in light of ratio of *R. Shaji's case* (supra).

(43) In *John Pandian* versus *State represented by Inspector of Police, Tamil Nadu*³, Hon'ble the Supreme Court held as follows :

"...The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

(44) Hon'ble Supreme Court in *Pawan Kumar* versus *State of U.P.*⁴, while discussing the scope of admissibility of information furnished by accused in terms of section 27 in context of section 25 of Evidence Act held as follows:

“ It is settled principle of law that statements made by an accused before a police official which amount to confession is barred under Section 25 of the Evidence Act. This prohibition is, however, lifted to some extent by Section 27
.....

² (2013)14 SCC 266

³ (2010) 14 SCC 129

⁴ (2015) 7 SCC 148

In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not.....

.....Simply denying their role without proper explanation as to the knowledge about those incriminating materials would justify the presumption drawn by the courts below as to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act.”

(45) Thus, we do not find any reason to discard the factum of recovery of blood stained cycle, '*kirpan*', shirt at the instance of accused Balbir which is incriminating piece of circumstantial evidence.

(46) As regards accused Daljodh Singh who is another brother of Veer Singh, there is no evidence in the shape of disclosure statement. However, both Balbir Singh and Daljodh Singh are residing in the same house where deceased Jaswinder Kaur was residing. So much so, accused Daljodh Singh even claims that Jaswinder Kaur had started living with him as his wife. The relevant extract from the statement of Daljodh Singh recorded under Section 313 Cr.P.C. is reproduced below:

“I am innocent and have falsely implicated in this case being brother of Veer Singh by the police at the instance of Jagir Singh. Jaswinder Kaur started living as my wife and in this regard I had sworn one affidavit on 10.12.2004. I never got recovered alleged things. I never conspired to commit murder of Jaswinder Kaur or children.”

(47) Though as per the above referred statement, Daljodh Singh himself admitted that Jaswinder Kaur was residing with him as his wife but even if the aforesaid statement is ignored still it is not in dispute that Daljodh Singh as well as his brother Balbir Singh were residing in the same house in which Jaswinder Kaur was given a separate room. As such when four murders had taken place in that house by causing a large number of injuries with sharp edged weapon, the deceased must have screamed out of pain and also in order to raise alarm. It may here

be mentioned that while Jaswinder Kaur was found to be having 10 injuries, Antar was found to be having 3 injuries, Simranjit Singh was found to be having 7 injuries and Kamalpreet Kaur was found to be having 11 injuries. It must have taken some time to cause such large number of injuries on the person of four deceased and the deceased would not have suffered the injuries in absolute silence, attracting no attention of the occupants of the same house. Thus, Balbir Singh and Daljodh Singh being occupants of the same house were expected to come out with some explanation regarding death of Jaswinder Kaur and her three minor children.

(48) In this context, reference may be made to provisions of section 106 of Indian Evidence Act 1872, which is in the nature of an exception to general rule enshrined in section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts existence of such fact. Section 106 in The Indian Evidence Act, 1872 is reproduced below for the sake of ready reference:

106. Burden of proving fact especially within knowledge.-

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

(49) In a judgment *Prithipal Singh* versus *State of Punjab*⁵ the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. It was further held therein that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offers some explanation which might drive the court to draw a different inference. Thus it was held that section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. To similar effect is ratio of judgment

⁵ (2012) 1 SCC 10

Harijan Bhala Teja versus State of Gujarat⁶

(50) As far as accused Veer Singh husband of Jaswinder Kaur is concerned, it is established on record that on the day of occurrence he was not in the village and in fact was posted on India-Pakistan Border being in Army. PW-24 Lakhwinder Singh, Subedar 13 Sikh Regiment who had produced the record of the Army Authorities produced the service record of Veer Singh and specifically deposed that as per record Veer Singh was present in his unit on 7.10.2006 and 8.10.2006. The certificate Ex.DY produced by the said witness is reproduced below :

“CERTIFICATE

1. It is certified that Number 3392148X Havildar Vir Singh of 13th Battalion The Sikh Regiment was present in the Battalion on 08 October 2006 and was performing the duties along line of control (LOC) on 08 October 2006, the day, his wife alongwith three children were found murdered.

2. It is further certified that the above named individual was not granted any type of leave after re-joining the unit from leave on 27 September 2006 till the date he was produced in the Honourable court of Mrs. Mandeep Kaur, PCS, JMIC, Dasuya, on 09 November 2006, when he was placed in police custody.

Station: c/o 56 APO

(A N Walkade)

Dated: 18 May 2007

13 IKH”

(51) A perusal of the aforesaid certificate would shows that accused Veer Singh had reached to his unit on 27.9.2006 after availing leave. It is the case of the prosecution that PW-14 Hardeep Singh brother of deceased had visited his sister in village Bhagran on 20.9.2006 and while he was repairing the dish installed on the roof of the house, he overheard Veer Singh's brothers, sisters, sisters-in-law and mother-in-law talking that after retirement of Veer Singh Jaswinder Kaur will take away the entire retiral benefits as she is already getting

⁶ (2016) 12 SCC 665

half of his salary as maintenance and asked him to kill his wife and his children. Though the learned counsel for the accused has attempted to assail the said statement by referring to his statement recorded under Section 161 Cr.P.C. wherein the date of visit to his sister's house is mentioned as 24th but in our opinion the said discrepancy can be attributed to the fact that his statement was recorded after more than 3 years of the occurrence. It is certainly not possible for a human being to remember all the dates with accuracy though, the incidents may be recollected.

(52) Apart from the aforesaid motive of there being apprehension of the accused that deceased would lay claim on all retiral benefits, there is ample evidence on record to suggest that the relations between Jaswinder Kaur and her husband Veer Singh were far from being cordial. The very fact that the Army authorities had decided to give maintenance to Jaswinder Kaur and her children out of the salary of Veer Singh would show that all was not well between Jaswinder Kaur and her husband Veer Singh. In fact as per Veer Singh, his wife had started residing with his real brother Daljodh Singh. PW-24 Lakhwinder Singh had produced the relevant record from the Army authorities indicating that Jaswinder Kaur was getting maintenance out of the salary of Veer Singh. Further Veer Singh had filed a petition (Ex.PW-19/A) against his wife Jaswinder Kaur seeking divorce. Jaswinder Kaur had also filed a petition under Section 125 Cr.P.C. (Ex.PW-23/A) in the Court of JMIC Dasuya. The aforesaid documentary evidence shows that all was not well between husband and wife. So much so the husband in his divorce petition had even raised allegations to the effect that his wife was leading an adulterous life. In fact, the husband even levelled allegations to the effect that one of the three children had not been born out of his wedlock. In these circumstances Veer Singh would certainly have a motive to eliminate his wife and would have sought help from his brothers who would also have interest to safeguard the property of the family because Jaswinder Kaur and her children would have legitimate claim in the property of Veer Singh.

(53) During the course of arguments the learned counsel for Daljodh Singh submitted that Daljodh Singh cannot have any motive to kill Jaswinder Kaur and it cannot be said that he would have joined hands with Veer Singh as Daljodh Singh was in fact residing with Jaswinder Kaur and the said fact is virtually admitted by Veer Singh in his divorce petition. The learned counsel has further submitted that

deceased Jaswinder Kaur herself had furnished an affidavit to the effect that she was residing with Daljodh Singh as his wife.

(54) We have considered the aforesaid submissions. The accused in order to establish his aforesaid plea examined DW-1 Bawa Singh, Naib Tehsildar and DW-2 Deepak Joshi, Stamp Vendor to prove purchase of the stamp paper and attestation of the affidavit. However, PW-15 Kailash Kaur, Sarpanch, who had identified the deponents, stated that Veer Singh had come to her personally with the affidavits to get her signatures and she had appended her signatures. She further deposed that it was after a month of execution of the affidavit that she came to know about the contents of the affidavit which were different than what was told to her by Veer Singh. In any case, even if the statement of PW-15 Kailash Kaur is overlooked and contention of the learned counsel is accepted that Daljodh was living with Jaswinder Kaur deceased as her husband, still Daljodh Singh being husband of Jaswinder Kaur and living with her would have much to explain regarding death of Jaswinder Kaur and her children in her house. He was not expected to remain silent and not inform the police regarding murder of his wife Jaswinder Kaur and her children or at least even regarding the fact that they were missing from the house. The aforesaid facts clearly establish that all the three brothers namely Veer Singh, Balbir Singh and Daljodh Singh had joined hands and had conspired together to eliminate Jaswinder kaur and her three children. It is well settled that direct evidence of conspiracy is rarely available and the same has to be gathered from the circumstances. Hon'ble Supreme Court in *Gulam Sarbar* versus *State of Bihar*⁷ held as follows:

“Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The Offence can be proved by adducing circumstantial evidence or by necessary implication.”

(55) In view of our aforesaid discussions and in the light of the ratio of judgments referred to above it is held that the evidence in the shape of disclosure statements of accused Balbir Singh leading to recovery of blood stained articles including 'kirpan', the evidence of conspiracy and motive, coupled with absolute lack of explanation regarding death of Jaswinder Kaur and her children in her room especially when accused Balbir and Daljodh Singh are residing in same house and infact Daljodh claims to be living as her husband, form a

⁷ 2014 (3) SCC 401

complete chain of evidence sufficient to establish that the accused Balbir Singh and Daljodh Singh in conspiracy with Veer Singh had killed Jaswinder Kaur and her three children.

(56) Consequently, the conviction of Balbir Singh and Daljodh Singh under Section 302 IPC is upheld. The conviction of Veer Singh, Balbir Singh and Daljodh Singh for offence under Section 120-B read with Section 302 IPC is also upheld. The sentences awarded to the said accused by the trial Court for both the aforesaid offences also do not call for any interference and are affirmed. Thus, the appeals on behalf of accused Veer Singh, Balbir Singh and Daljodh Singh are hereby dismissed.

(57) However, as discussed already above, there is absolute lack of convincing evidence to connect the accused Bhajan Kaur @ Harbhajan Kaur, Satwant Kaur @ Sukhwant Kaur, Lakhwinder Singh, Gurdip Kaur, Harminder Singh, Pritam Kaur and Guru Singh with the crime. Their conviction cannot sustain and accordingly the appeals on their behalf are accepted. Their conviction is accordingly set aside and they are acquitted of all the charges framed against them.

(58) Before parting with the judgment, we wish to observe that the trial Court has rather been very casual in adjourning the matter. Adjournments had been given on the asking for reasons which can hardly be said to be justified especially at the stage of cross-examination of witnesses. The below mentioned dates of examination of some of the witnesses would be indicative of malady of adjournments:

Witness	Examination-in-chief	Cross-examination
PW-1 Dr. Amarjit Singh	16.11.2007	25.02.2008
PW-11 ASI Baldev Singh	04.03.2009	04.03.2009, 10.01.2011, 23.09.2011
PW-12 Inspector Gurdeep Singh	21.04.2009	02.07.2009
PW-13 Jagir Singh	01.09.2009	17.09.2009, 23.10.2009

PW-14 Hardeep Singh	01.09.2009	02.12.2009
PW-15 Kailash Kaur	16.03.2010	16.03.2010, 07.06.2010
PW-21 Inspector Ravinder Singh	07.11.2011	01.02.2012

(59) The cross-examination of witnesses have been recorded after a gap ranging from 2 months to more than 2 ½ years. The cross-examination had been deferred either without any reason or for reasons which were not convincing enough to justify deferment. In the present case, while examination-in-chief of PW-11 ASI Baldev Singh was recorded on 4.3.2009 and was briefly cross-examined on the same day, the matter was adjourned to 30.3.2009 for remaining cross-examination. However, on 30.3.2009 upon a request made by the defence counsel on the ground that lawyers are abstaining from work, the matter was adjourned to 21.4.2009. On 21.4.2009, the witness was not present. On the 12.5.2009 as well as on 1.6.2009, no PW was present. The witnesses were again not present on the next two dates. On 13.8.2009 PW Jagir Singh was present but was not examined in view of an objection raised by the defence counsel against piecemeal recording of evidence. On 1.9.2009 PW Jagir Singh and Hardeep Singh were present and their examination-in-chief was recorded but upon request made by defence counsel their cross-examination was deferred. Again on the next date, after recording part cross-examination of PW Jagir Singh, the matter was adjourned upon request made by defence counsel. On 8.10.2009 no PW was present. On 23.10.2009 PW-13 Jagir Singh was cross-examined but cross-examination of PW Hardeep Singh was deferred upon a request made by counsel Shri Sarbjit Singh on the ground that he has to go to Jalandhar in order to conduct a trial there.

(60) Even on the next date i.e. 10.11.2009 though PW Hardeep Singh was present but his defence counsel Shri B.S. Riar sought adjournment on the ground that he has to conduct trial in some other Court. On 24.9.2010 the matter was adjourned as defence counsel was out of country. ASI Baldev Singh did appear on 6.1.2011 but again upon request of defence counsel the matter was adjourned. On next date i.e. on 10.1.2011, part of his cross-examination was recorded but upon request of defence counsel further cross-examination was again deferred. It was ultimately on 23.9.2011 that cross-examination of ASI

Baldev Singh was concluded. Similarly, examination-in-chief of PW-21 Inspector Ravinder Singh was recorded on 7.11.2011 but cross examination was deferred on request made on behalf of the accused. Thereafter, the matter was adjourned several times and ultimately it was on 1.2.2012 that his cross- examination was recorded.

(61) The scheme of the Code (Cr.P.C.) itself mandates day-to-day recording of evidence in criminal trials. Section 309 Cr.PC. specifically providing for the same reads as under :-

“309. Power to postpone or adjourn proceedings. –

(1) In every inquiry or trial the proceedings shall be continued from day- to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that -

- a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;
- b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;
- c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

(62) Despite, specific provisions in the Code, it appears that the same are hardly given any deference by the Trial Courts. The above stated position of deferring of cross-examination in a routine manner indicates the casual attitude of the Trial Court in the matter of adjournments. The time gap between examination-in-chief and cross-examination affords opportunity to accused to either win over the witnesses or to threaten and intimidate them leading to miscarriage of justice.

(63) Our High Court in ***Criminal Appeal No.D-796-DB of 2008 Rakesh Kumar*** versus ***State of Punjab***, decided on 6.11.2012, while noticing the casual manner in which adjournments have been granted in a trial had ordered for issuance of instructions to all the judicial officers to bear in mind provisions of Section 309 Cr.P.C. while postponing or adjourning the hearing in criminal cases, particularly when a material witness has been partly examined. A copy of the aforesaid judgment was circulated amongst all the judicial officers in the States of Punjab, Haryana and U.T. Chandigarh.

(64) Hon'ble the Supreme Court in ***Vinod Kumar*** versus

*State of Punjab*⁸ decided on while noticing casual attitude as regards grant of adjournments observed as follows :-

“41Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded.Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same amongst the learned Trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery ”

(65) Recently, in *CRM-M-14984 of 2017 titled as Ajay Kumar versus State of Punjab*, decided on 25.5.2017, this Court while deprecating the practice of deferment of cross-examination on request of the defence counsel, directed issuance of instructions to all the Judicial Officers that whenever cross-examination is deferred on

⁸ (2015) 3 SCC 220

request of the defence counsel the Presiding Officer would owe an explanation for the same.

(66) We hope that the provisions of Section 309 of Cr.P.C. as well as the mandate of Hon'ble the Supreme Court shall be followed in letter and spirit by all the judicial officers in the States of Punjab, Haryana and U.T. Chandigarh. A copy of the judgment be circulated amongst all the Judicial Officers in the States of Punjab, Haryana and U.T. Chandigarh.

Reporter