



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-400-DB-2005 (O&M)

Date of Decision:-4.4.2025

Pawan and another ... Appellants

Versus

State of Haryana ... Respondent

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

Present:- Mr. R.S. Cheema, Senior Advocate with
Ms. Sumanjit Kaur, Advocate and
Mr. Satish K. Sharma, Advocate for the appellants.

Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. The appellants Pawan Kumar and Satya Narain assail judgment dated 3.5.2005 passed by learned Additional Sessions Judge, Narnaul, whereby they have been held guilty for having committed offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and stand sentenced as under:

Name of the convict(s)	Offences	Imprisonment	Fine	In default of payment of fine
Pawan Kumar	302 r/w 34 IPC	Life imprisonment	Rs.2,000/-	R.I for 6 months
	201 r/w 34 IPC	Seven years	Rs.1,000/-	R.I for 2 months
Satya Narain	302 r/w 34 IPC	Life imprisonment	Rs.2,000/-	R.I for 6 months
	201 r/w 34 IPC	Seven years	Rs.1,000/-	R.I for 2 months



2. The matter arises out of FIR No.302 dated 6.11.2000 registered at Police Station Mahendergarh, under Sections 302/201/34 of Indian Penal Code (Ex.PF/2) lodged at the instance of statement of complainant Jagdish Parshad. The translated gist of his statement (Ex.PF) reads as under:

“I am a resident of Village Pathera, District Mahendergarh and I am an agriculturist. We are three brothers. Om Parkash is my elder brother and younger to him is Rohtash, who is also an agriculturist. Ashok son of Rohtash aged about 10-11 years was studying in Class 4th. On 1.11.2000 at about 11:00 A.M. Ashok went out after taking meal, but did not return back till night. We searched for him, but did not get any clue about his whereabouts. On 5.11.2000, I lodged a report regarding Ashok Kumar having gone missing at Police Station Mahendergarh vide DDR No.8 dated 5.11.2000. Today i.e. on 6.11.2000 Somdutt, Beldar, Pump House, Pathera came to the village and informed that a dead body of a child was seen floating in canal at Pathera Pump House. We went to the Pathera Pump House and saw a dead body of a child, which was found to be of my nephew Ashok Kumar. On 1.11.2000, my nephew Ashok Kumar was with Pawan Kumar. Upon collecting information, I came to know that Ashok Kumar had been killed by Pawan Kumar because of an old enmity and pending litigation and his dead body had been thrown in the canal. A criminal case was pending in the High Court of Punjab and Haryana. After leaving Rakesh near the dead-body, I came to the village to telephonically inform the police station. I was waiting for you at Bus Stand Pathera, where you met me. Action be taken.”

3. Consequent upon recording of aforesaid statement, Sub Inspector Jarnail Singh went to the Pump House, Pathera. The dead body was taken out of the canal and was got photographed. Inquest proceedings were conducted. The dead body was sent for post-mortem examination. A rough site plan (Ex.PT)



of the place of occurrence was prepared. Statements of witnesses were recorded.

4. It is the case of prosecution that the accused Pawan Kumar specifically confessed his guilt before Laxmi Narain, Ex. Sarpanch on 15.11.2000 while stating that he alongwith Satya Narain had killed the deceased Ashok Kumar. As per the case of prosecution, Pawan Kumar was produced before the police by Laxmi Narain on 15.11.2000 and was formally arrested. Upon interrogation Pawan Kumar made a disclosure statement (Ex.PN) on 16.11.2000, pursuant to which he got a 'danda' (stick) and a cycle recovered from his house, which were taken into possession vide recovery memo Ex.PR.
5. The remaining investigation was conducted by Inspector Rajinder Singh (PW-18), who arrested Satya Narain on 24.3.2001 and also recorded his disclosure statement Ex.PS. Upon conclusion of investigation he prepared the final report under Section 173 Cr.P.C. and presented the same in the Court of learned Sub Divisional Judicial Magistrate, Mahendergarh on 10.2.2001, who committed the case to the Court of Sessions vide commitment order dated 23.2.2001. Learned Additional Sessions Judge, Narnaul framed charges against the accused for offences under Sections 302, 201/34 of Indian Penal Code on 6.3.2002, which were later altered on 6.6.2002, to which the accused pleaded not guilty and claimed trial.
6. The prosecution, in order to establish its case, examined as many as 20 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Jaspal Singh, Photographer stated that on 6.11.2000, he had taken photographs of the dead body at Pump House, Village Pathera,



which was floating in water and proved the photographs as Exs.P-1 to P-4 and the negatives as Exs.P-5 to P-8.

PW-2 Dr. Vijaypal Khangwal, Lecturer Department of Forensic Medicine, P.B.DS, PGIMS, Rohtak, who had conducted the post-mortem examination on the dead body of Ashok Kumar, described the injuries found on the dead body and proved the post mortem report as Ex.PC. He opined that the cause of death was head injury, which was ante mortem and sufficient to cause death in ordinary course of nature.

PW-3 Head Constable Suresh Chand, stated that on 6.11.2000 he was posted as MHC at Police Station Mahendergarh and that upon receipt of *ruqa* he recorded formal FIR Ex.PF/2. He further stated that he sent special reports through EHC Narender.

PW-4 EHC Narender tendered his affidavit Ex.PH in evidence, wherein he deposed that on 6.11.2000 MHC Suresh Chand had handed over special reports to him, which he delivered to the Sub Divisional Judicial Magistrate, Mahendergarh and also to the senior police officers.

PW-5 UGC Raj Kumar tendered his affidavit Ex.PJ in evidence, wherein he stated that on 6.11.2000 he was posted at Police Station Mahendergarh on general duty and had been deputed to get the post mortem examination on the dead body of Ashok Kumar conducted from P.B.DS, PGIMS, Rohtak and that he accordingly got the needful done.



- PW-6** Dharmbir, Patwari Halqa Dhanunda, who had prepared the scaled site plan proved the same as Ex.PK.
- PW-7** Som Dutt stated that on 6.11.2000 he was posted as Beldar at Pump House N.5 in Village Pathera and on the said day at about 08:30 A.M. he had spotted a dead body floating in the main canal and that he immediately informed the villagers and some villagers thereafter came to the spot and identified the dead body to be that of Ashok Kumar.
- PW-8** Karambit Singh Patwari stated that he had prepared the scale site plan of Pump House Pathera and proved the same as Ex.PM.
- PW-9** Sunita Devi stated that on 1.11.2000 at about 2-2:30 P.M. when she was returning from her parental Village Bahujhorli to her matrimonial home at Village Pathera, she saw Pawan Kumar and Ashok Kumar near Dhanunda Pump House going on a cycle towards the pump house and that while Pawan Kumar was pedalling the cycle, Ashok Kumar was sitting on the carrier (pillion seat) of the cycle. She stated that Ashok Kumar was wearing a shirt having white, *mahroon* and blue strips and a 'saleti' (grey) coloured pants. She further stated that on 5.11.2000 she came to know that Ashok Kumar was missing since 1.11.2000 and that she had told the members of the Panchayat about having seen Ashok Kumar. She identified the clothes of the deceased, which were shown to her.
- PW-10** Ramesh Kumar, Constable stated that on 16.11.2000 while he was posted at Police Station, Mahendergarh, Sub Inspector Jarnail



Singh interrogated Pawan Kumar in his presence, during the course of which he disclosed that he had concealed a '*danda*' (stick) and a cycle in the old house situated in Village Pathera and had kept the same under fodder.

PW-11 Vir Parkash stated that he is Sarpanch of Village Pathera and that on 5.11.2000 a meeting of the Gram Panchayat was held to discuss the matter regarding disappearance of Ashok Kumar and at that time the Gram Panchayat was informed that Ashok Kumar had been seen by Sunita while going on a cycle with Pawan Kumar on 1.11.2000 towards Pump House Dhanoda and that thereafter he went to the house of Sunita and verified the said facts from her, who confirmed having seen Ashok Kumar on 1.11.2000.

PW-12 Laxmi Narain stated that on 15.11.2000 at about 9-9:30 A.M. when he alongwith Krishan was present in the '*baithak*' (sitting area) of his house, then Pawan Kumar came there and confessed before him and Krishan Pal that on 1.11.2000 he had taken Ashok Kumar to the canal situated in the area of Dhanunda on cycle and that Satnarain, his brother-in-law was also accompanying him and that they killed Ashok by inflicting injuries to him with sticks and threw his dead body in the canal. He further stated that since Pawan Kumar requested him to produce him (Pawan Kumar) before the police, they started for the police station and met the police party on the way at bus stand, where he produced the accused before the police and narrated all the facts. He further stated that the police



took Pawan into custody and recorded his confession Ex.PO and was also interrogated at the bus stand itself.

PW-13 Krishan Pal, who was present in the house of Laxmi Narain when the accused Pawan Kumar allegedly came there and confessed his guilt as regards having killed Ashok Kumar stated identically as stated by PW-12 regarding the aforesaid confession.

PW-14 Pehlad, who is a witness to the inquest proceedings conducted on 6.11.2000, stated that on 6.11.2000 the dead body of son of Rohtash was found floating in canal water and that the police had taken out the body and had got the same photographed and that during inquest proceedings his statement was also recorded.

PW-15 Puran in whose presence the accused Pawan Kumar had got a cycle and 'danda' (stick) recovered stated with regard to the same. He stated that the recovery memo Ex.PR bears his signatures.

PW-16 Rakesh stated that on 6.11.2000 when he was present in the village (Pathera), Som Dutt Beldar of Pump House, Pathera came in the village and informed that a dead body was floating in the canal and that thereafter he (Rakesh) alongwith Pehlad and Jagdish went to the Pump House, Pathera and saw the dead-body, which was found to be of Ashok Kumar and thereafter Jagdish went to the village to inform the police. He further stated that police had come to the spot and had recorded his statement.

PW-17 Jagdish (complainant) stated in tune with his statement (Ex.PF) on the basis of which FIR had been recorded. He stated that he had lodged a report with the police on 5.11.2000 regarding



disappearance of Ashok Kumar and in respect of which a panchayat was convened on the same day i.e. on 5.11.2000, where Sunita was also present and it was during panchayat that it surfaced that Sunita had seen Ashok Kumar being taken away by Pawan Kumar. He further stated that V.P. Singh, Sarpanch of the village went to the house of Sunita and verified the facts from her.

PW-18 Inspector Rajender Singh, who had partly investigated the matter and had arrested Sat Narain on 24.3.2001 stated with regard to the same.

PW-19 Sub Inspector Jarnail Singh, who had investigated the case stated in detail with regard to the entire investigation conducted by him and also proved various memos and documents prepared during the course of investigation. He further stated with regard to the disclosure statement made by accused Pawan Kumar and the recovery of '*danda*' (stick) and cycle pursuant to the aforesaid disclosure statement.

PW-20 Assistant Sub Inspector (ASI) Daya Ram stated that on 25.3.2001 he was posted at Police Station, Mahendergarh and was associated with the investigation of the case alongwith Sub Inspector/SHO Rajender Singh. He stated that Sat Narain had been interrogated during the course of which he (Sat Narain) admitted that he alongwith Pawan Kumar had murdered Ashok Kumar on 1.11.2000 and had thrown his dead-body in the canal.

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



the case of prosecution and pleaded false implication. Accused Pawan Kumar further pleaded that he has been falsely implicated on account of acrimonious relations with the complainant. The accused, however, did not lead any evidence in their defence.

8. Learned Trial Court upon appraisal of the evidence on record returned its findings to the effect that the prosecution has fully established its case qua accused/appellants Pawan Kumar and Satya Narain and accordingly held them guilty of having committed offences punishable under Section 302 r/w Section 34 of Indian Penal Code and Section 201 r/w Section 34 of Indian Penal Code vide impugned judgment dated 3.5.2005 passed by learned Additional Sessions Judge, Narnaul.
9. Learned counsel representing the appellants, while assailing the impugned judgment, submitted that it is a case of blind murder, wherein the appellants have been falsely implicated at the instance of the complainant. It has been submitted that although the prosecution seeks to establish its case on the basis of circumstantial evidence, but neither the circumstantial evidence is convincing nor forms a complete chain so as to hold the accused guilty. Learned counsel submitted that the sequence of events in the present case, wherein the deceased went missing on 1.11.2000 and the factum of disappearance of Ashok Kumar was already known in the village, the “last seen” evidence would not inspire confidence as no plausible explanation is forthcoming as to why PW-9 Sunita Devi chose to remain mum till 5.11.2000 though she claims to have seen deceased in the company of accused Pawan on 1.11.2000. It has further been submitted that infact the factum of accused having been last seen does not even find any mention in



the remand application dated 16.11.2000 whereas the police, while seeking police remand, would have placed all the incriminating evidence before the Court concerned in case the same had actually been collected. Learned counsel further submitted that the alleged extra-judicial confession of accused Pawan Kumar before PW-12 Laxmi Narain and PW-13 Krishan Pal also does not inspire confidence inasmuch as even the said extra-judicial confession does not find any mention in the remand application made by the police before the Area Magistrate on 16.11.2000. It has been submitted that since it is a case based solely on circumstantial evidence, therefore, it was incumbent upon the prosecution to have led convincing evidence as regards motive for commission of offence, but there is no evidence with regard to the alleged motive of previous enmity. Learned counsel thus submitted that under these circumstances the accused deserve to be acquitted.

10. Opposing the petition, learned State counsel submitted that it is a case where there is “last seen” evidence in the shape of statement of PW-9 Sunita Devi coupled with the fact that the accused Pawan Kumar had confessed his guilt before PW-12 Laxmi Narain and PW-13 Krishan Pal and had also got recovered the ‘*danda*’ (stick) with which the injuries had been inflicted to the deceased and as such the impugned judgment does not warrant any interference.
11. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
12. Before proceeding further it is apposite to refer to the medical evidence led by the prosecution as regards the homicidal death of deceased Ashok Kumar. Although the dead-body of Ashok Kumar was found floating in the canal, but



upon post-mortem examination the doctor opined that the cause of death was the injuries inflicted to Ashok Kumar. PW-2 Dr. Vijaypal Khangwal, who had conducted post-mortem examination, had described injuries found on the dead body as under:

- “1. A reddish contusion of size 4 x 3 cms. Was present over right frontal region of scalp, situated 3 cms. away from midline and 2 cms. above giabella. On dissection, the underlying tissues were ecchymosed along with infiltration of blood in the pericranium.
2. A reddish contusion of size 5 x 3 cms. over right parietal region of scalp at a level 3 cms. beyond (lateral) to parietal eminence over the mastoid region. On dissection, the underlying scalp was ecchymosed along with infiltration of blood in pericranium.
3. A reddish contusion of size 7 x 5 cms. present over the vertex on both sides of midline—2 cms. from midline on the right and 3 cms. away from midline on the left side. On dissection the underlying tissues were ecchymosed and the coronal and saggital sutures were loosen along their entire lengths. The coronals sutures were completely loosened for 2.5 cms. in midline in comparison to saggital sutures which was loosened for 0.5-1 cm coronal sutures, deep infiltration of blood was seen along with infiltration of blood in the pericranium. The brain matter was liquefied and consisted of bloody paste like material, more so on the left half and posterior two-thirds.
4. A reddish contusion of size 9 x 5 cms. present over left parieto-temporal region of scalp just below the partietal eminence. On dissection, the underlying tissues were ecchymosed.
5. A reddish contusion of size 9 x 6 cms. present over occipital region of scalp, situated 2 cms. away from midline on right side and 4 cms. away from midline on the left side. On



dissection, the underlying tissues were ecchymosed with infiltration of blood in pericranium.

6. A reddish contusion of size 4 x 3 cms. present over anterolateral aspect of right wrist. On dissection, the underlying tissues were ecchymosed.
 7. A reddish contusion of size 7 x 5 cms. present over anteromedial aspect of right thigh, 8 cms. below public symphysis and 2 cms. above right knee. On dissection the underlying tissues were ecchymosed.
 8. A reddish contusion of size 6 x 4 cms. present over anteromedial aspect of left thigh situated 8 cms. above left knee. On dissection, the underlying soft tissues were ecchymosed. The vertebrae, meninges, ribs and cartilages and pericardium were healthy. Brain was liquefied and consisted of bloody paste like material. More so in the regions corresponding to left parietotemporal and occipital lobes of cerebral hemispheres.”
13. PW-2 Dr. Vijaypal Khangwal opined that the cause of death was head injury, which was ante mortem and sufficient to cause death in ordinary course of nature. Although the said witness was cross-examined at length on behalf of the accused, but nothing substantial could be elicited so as to doubt either the veracity or the opinion of the doctor. As such, this Court has no hesitation in holding that it is a case of homicidal death.
14. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of Hanumant v. State of Madhya Pradesh, AIR 1952 Supreme Court 343, wherein it was held as follows:



- "10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."
15. The aforesaid principles have consistently been followed and have been affirmed in catena of authorities. Recently, a three Judges Bench of Hon'ble Apex Court reiterated the aforesaid position of law in 2025(1) RCR (Criminal) 12, Vishwajeet KerbaMasalkar vs. State of Maharashtra, while stating as under:
- "20. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalised in the judgment of this Court in the case of *Sharad Birdhichand Sharda v. State of Maharashtra (1984) 4 SCC 116 : 1984 INSC 121*, wherein this Court held thus:
- "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]*. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55]* and *Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656]*. It may be useful to extract what Mahajan, J. has laid down in



Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

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

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783]*** where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

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



- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
- (3) the circumstances should be of a conclusive nature and tendency,
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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

21. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused `must be' and not merely `may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between `may be proved' and `must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except the one where the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities, the act must have been done by the accused."
16. In the present case, prosecution banks upon the following pieces of circumstantial evidence to establish its case:



- (i) “last seen” evidence in the shape of statement of PW-9 Sunita Devi;
 - (ii) extra-judicial confession made by accused before PW-12 Laxmi Narain and PW-13 Krishan Pal;
 - (iii) motive of there being enmity between the complainant and the accused due to pending civil and criminal litigation.
17. As per the case of prosecution, the deceased Ashok Kumar went missing from the house on 1.11.2000. While a report (DDR) (Ex.PS) regarding disappearance of Ashok Kumar was lodged on 5.11.2000, the FIR for offence of murder came to be lodged on 6.11.2000, when the dead-body of Ashok Kumar was recovered. The prosecution has built up a case that the deceased Ashok Kumar was last seen by PW-9 Sunita Devi in the company of Pawan Kumar while sitting on the pillion of cycle pedalled by Pawan Kumar, but some sort of doubt stands created by the fact that despite PW-9 Sunita Devi having seen the deceased in the company of Pawan Kumar on 1.11.2000 and despite being a resident of the same village where the deceased was residing and had gone missing and also despite the fact that the factum of disappearance of Ashok Kumar was known in the village as has also been admitted by PW-12 Laxmi Narain, it remains unexplained as to why PW-9 Sunita Devi did not disclose this fact to anybody all along for a good five days. Although in the witness box PW-9 Sunita Devi stated that the factum of disappearance of Ashok Kumar came to her notice on 5.11.2000, but the said fact is not specifically recorded in her statement under Section 161 Cr.P.C. with which she had also been confronted. It is also pertinent to notice that PW-17 Jagdish (complainant) while in the witness box stated that when panchayat was convened in the village on 5.11.2000, Sunita was also present in the panchayat and that it had come to the notice of the panchayat that Sunita had



seen Ashok Kumar in the company of Pawan Kumar. The said assertion regarding presence of Sunita in the panchayat is rather in contradiction with the stand of prosecution as none of the other eye-witnesses including PW-11 Vir Parkash, Sarpanch has stated regarding presence of Sunita in the panchayat. He, however, stated that upon coming to know that Sunita had seen Ashok Kumar, he (PW-11) went to the house of Sunita to verify the said fact. It also needs to be noticed that the aforesaid last seen evidence is only in respect of one accused i.e. Pawan Kumar and not Satya Narain. The value and reliability of the aforesaid “last seen” evidence has to be considered in context of the quality of other evidence led by the prosecution particularly when the “last seen” evidence does not find any mention in the remand application.

18. As per the case of prosecution the accused Pawan Kumar went to the house of PW-12 Laxmi Narain on 15.11.2000, where Krishan Pal (PW-13) was also present and that Pawan Kumar confessed his guilt before the said person and thereafter Laxmi Narain produced Pawan Kumar before the police on the same day itself. Both PW-12 Laxmi Narain and PW-13 Krishan Pal while in the witness-box have stated identically. Pawan Kumar in his extra-judicial confession is stated to have named Satya Narain also as his co-accused.
19. While testing the reliability of the aforesaid extra-judicial confession, we find that although Pawan Kumar was formally arrested pursuant to the aforesaid extra-judicial confession, but when the police moved an application for grant of police remand before the Area Magistrate on 16.11.2000, a reference to the aforesaid extra-judicial confession is conspicuously missing in the said remand application. In case the aforesaid extra-judicial confession had indeed



been made by the accused, then it remains absolutely unexplained as to why the police did not chose to refer to the same in the remand application particularly when the police at the time of seeking remand is required to convince the Court concerned regarding involvement of the accused and refer to all the evidence already collected against him so as to justify grant of police remand. The conspicuous absence of any reference to the alleged extra-judicial confession would certainly make the said extra-judicial confession unreliable. In any case, it is also well settled that an extra-judicial confession is otherwise also a very weak type of evidence. Under the given circumstances as noted above it will be highly unsafe to rely upon the same.

20. Hon'ble the Apex Court in Surinder Kumar Versus State of Punjab, 1999 SCC(Cri) 33, wherein also material facts regarding extra judicial confession were not delineated in the application seeking police remand, the factum of the accused having made extra-judicial confession was held to be doubtful.

The relevant extract from the said judgment is reproduced hereinunder:

“.....While on this point it is pertinent to mention that in the remand application that P.W.10 filed on July 10, 1992 after producing the accused before the Magistrate concerned he did not disclose that they had made a confession before P.W.6. Form the impugned judgment we find that when this aspect of the matter was brought to the notice of the High Court by the appellant's counsel it observed that all details were not required to be given in that application. We are unable to share the above view of the High Court for if really such a confession was made before P.W.6 and told to P.W.10. it was expected that in praying for the remand of the accused, he (P.W.10) would refer the same, for that was the only material on which the prosecution could primarily rely in justification of such prayer. For the foregoing reasons we are unable to accept the claim of P.W.6 that the appellant and other accused made a confession of their guilt before him.”

21. This Court in Anil Kumar Versus State of Punjab, 2008(1) RCR(Criminal) 982, wherein in somewhat identical circumstances the police claimed that the



accused had suffered extra-judicial confession, but had not mentioned this fact in the remand application, expressed that the alleged factum of extra-judicial confession would be rendered highly suspected. The relevant extract from the said judgment is reproduced herein-under:

“18. There is another very important circumstance, which goes to prove that no extra judicial confession was made. On 20.1.1995 accused Madan Lal and Rakesh Kumar were produced before the Judicial Magistrate, in this case, for the first time, after having been arrested on 19.1.1995. A request dated 20.1.1995, for the police remand of both these accused was made, but there was no mention, in the same that Anil Kumar, co-accused had made extra judicial confession, before Ravinder Pal Singh Khalsa involving him and his co-accused, in the commission of crime, though Surjit Chand, SHO had already recorded the statement of Ravinder Pal Singh Khalsa, in this regard, on 19.1.1995. The accused were remanded to police custody till 23.1.1995. When both the accused were again produced for further police remand, vide a written request dated 23.1.1995 for further police remand, again no mention was made therein, that Anil Kumar, accused, had made extra judicial confession before Ravinder Pal Singh Khalsa to the effect that he along with Madan Lal and Rakesh Kumar committed the murder of Joginder Singh. Not only this Anil Kumar, accused, was arrested in this case, on 20.5.1995, and he along with Rajan Kumar, Pawan Kumar and Daya Nand were produced before the Judicial Magistrate, with a written request, for Police remand. They were remanded to Police custody till 4.5.1995. However, no mention of the extra judicial confession, having been suffered by Anil Kumar, was made in this remand request too. Had the extra judicial confession, been made by Anil Kumar, before Ravinder Pal Singh Khalsa, a few days before 19.1.1995, that he along with his co-accused committed the murder of Joginder Singh, it being a very important, significant and material fact, would have certainly been mentioned, in the remand requests, referred to above. Non-mention of this fact, in the remand requests, clearly proved that no extra judicial confession, was made by Anil Kumar, accused,



before Ravinder Pal Singh Khalsa a few days before 19.1.1995, that he along with his co-accused committed the murder of Joginder Singh, but this piece of evidence was fabricated. Had any explanation been furnished, by the Investigating Officer, in that regard, the matter would have been considered, in the light of the same. In the absence of any explanation, the Court could not coin any of its own, to fit in with the case of the prosecution. In Surinder Kumar's case (supra), the extra judicial confession was allegedly made on 5.7.1992. An application for remand of the accused was moved on 10.7.1992 by PW-10. The accused was also produced before the Magistrate concerned, on that date. However, the factum was not disclosed, in the remand paper, that the accused had made extra judicial confession before PW-6. The lower Court, however, relied upon the said extra judicial confession. The matter was also brought to the notice of the High Court, in appeal, that since there was no mention of the judicial confession, in the remand request dated 10.7.1992, it could be safely held that no such extra judicial confession was made. However, the High Court did not accept this contention, and dismissed the appeal. In appeal before the Apex Court, the same very point was raised. The Apex Court held that non-mentioning of the factum, that the alleged extra judicial confession was made, by the accused before PW-6, on 5.7.1992, in the remand paper dated 10.7.1992, clearly proved that no extra judicial confession was made and as such, this circumstance was fabricated. The facts of the aforesaid authority, are identical to the facts of the present case. Thus, the observations made in Surinder Kumar's case (supra) by the Apex Court, are applicable to the facts of the present case with equal force. The trial Court did not take into consideration this aspect of the matter, by making reference to the remand requests, and, thus, erred in relying upon the alleged extra Judicial confession. The submission of the learned Counsel for the appellants, that no extra judicial confession was made by Anil Kumar before Ravinder Pal Singh Khalsa, being correct is accepted.”



22. It is a case of death of a minor boy aged about 10-11 years. At the time of lodging of FIR, the complainant attributed a motive to the accused Pawan Kumar while alleging that it was on account of some pending civil and criminal litigation between the complainant and the accused that his son had been murdered, but no documentary evidence as regards the pendency of any civil or criminal evidence has been brought on record. Under these circumstances, a vague statement regarding there being pendency of civil and criminal litigation would be insufficient to establish the alleged motive especially when the existence of litigation could have easily been proved by leading documentary evidence with regard to such litigation. The absence of any such documentary evidence will leave the alleged motive unestablished.
23. The cumulative effect of the aforesaid discussion is that there is some doubt as regards the “last seen” evidence. The factum of accused Pawan Kumar having made extra-judicial confession and even the alleged “last seen” evidence is conspicuously missing in the remand application moved on the very next day by the police and otherwise is also very weak type of evidence. The motive is not established at all. We further find that there is absence of any motive, strong enough for the accused to have murdered the deceased. In a recent judgment, 2025(1)RCR(Criminal) 140 Nusrat Parween vs. State of Jharkhand, Hon’ble Supreme Court has held although proof of motive is not *sine qua non* in a case of murder but in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution. As such, it is not a case where it could be said that there is a complete chain of



circumstances pointing towards the guilt of the accused so as to hold them guilty on the basis of circumstantial evidence.

24. As an upshot of the aforesaid discussion, the impugned judgment, wherein the accused have been held guilty, cannot sustained and is liable to be set aside.
25. The instant appeal, as such, is allowed and impugned judgment dated 3.5.2005 and order of sentence dated 5.5.2005 passed by learned Additional Sessions Judge, Narnaul are hereby set aside. The appellants are acquitted of all the charges framed against them. Their bail bonds/surety bonds shall stand discharged.
26. A copy of this judgment be sent to the quarters concerned. Case property be dealt with under rules upon expiry of limitation for filing appeal.

**(GURVINDER SINGH GILL)
JUDGE**

4.4.2025

Pankaj

**(JASJIT SINGH BEDI)
JUDGE**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No