



(1)

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

**CRA-D-288-DB-2005 (O&M)**

Date of Decision: 24.02.2025

Gurdial Singh & another .....Appellants

Versus

State of Punjab .....Respondent

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

Present: Mr. J.S.Mehandiratta, Advocate as Amicus Curiae, with  
Ms. Navreet Dhaliwal, Advocate, for the appellants.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

**GURVINDER SINGH GILL, J.**

- Appellants, namely, Gurdial Singh @ Rodaa @ Balwinder Singh and Jarnail Singh @ Jaila, assail judgment 22.09.2004 passed by the learned Sessions Judge, Sangrur, vide which they have been held guilty of having committed offence under Section 302 read with Section 34 IPC and Section 404 IPC and have been sentenced as under:

Under Section 302 read with Section 34 IPC	To undergo RI for life and to pay fine of Rs.5000/- each and in default of payment of fine, to further undergo RI for one year
Under Section 404 IPC	To undergo imprisonment for one year and to pay fine of Rs.1000/- each and in default of payment of fine to undergo RI for six months

- The matter arises out of FIR No.210 dated 23.12.2001 registered at Police Station Bhawanigarh, under Sections 302, 404 IPC (Ex.PD) lodged at the



( 2 )

instance of Rajinder Singh, wherein he stated that he is resident of Village Kapial and is running a flour mill at Village Naraingarh on contract basis and that his son Jaswinder Singh (deceased) was also assisting him. He further stated that on 22.12.2001, while he (complainant) stayed at home, his son Jaswinder Singh went to the flour mill. Since Jaswinder Singh did not return home, he (complainant) thought that Jaswinder Singh must have stayed at flour mill in connection with work. The next morning, when he made telephonic inquiries, he came to know that his son Jaswinder Singh had in fact left for home from flour mill on his bicycle the last evening after shutting down the flour mill. The complainant and his other son Inderjit Singh went out to look for Jaswinder Singh and when they reached near Village Ramgarh, they noticed a trail of blood by the side of road alongwith marks of dragging, which led towards a wall of tubewell. After entering the tubewell, the complainant and his son Inderjit Singh saw the dead body of Jaswinder Singh lying there with his face and head smeared with blood. The wrist watch (brand HMT) and the bicycle of Jaswinder Singh were found to be missing. The dead body of Jaswinder Singh was having the mark of injury on the right side of head. The complainant alleged that on the evening of 21.12.2001 at about 7.00 PM, when his son and Harminder Singh were present at flour mill, then Gurdial Singh and Jaila Singh had come there and were demanding the flour forcibly. Upon refusal of Jaswinder Singh to accede to their demand, the aforesaid persons left while issuing threats of dire consequences. The complainant strongly suspected that his son Jaswinder Singh had been done to death by Gurdial Singh and Jaila Singh. The



( 3 )

aforesaid statement was got recorded by the complainant to SI/SHO Gurwinder Singh, who met them at bus stand Ramgarh.

3. Pursuant to lodging of FIR (Ex.PD/2), the matter was investigated by the police. Inquest report was prepared. The dead body of Jaswinder Singh was sent for autopsy. The blood stained soil was collected from the spot. SI Gurwinder Singh lifted one mould each of left and right shoe from the spot. Rough site plan was prepared and statements of the witnesses in terms of Section 161 Cr.P.C. were recorded.
4. It is further the case of prosecution that on the night intervening 22/23.12.2001, Piara Singh came across both the accused in the area of Village Ramgarh and that while Gurdial Singh was having a bicycle, Jarnail Singh was carrying a *sota* and when said Piara Singh enquired from them as to what they were doing at such late hours, both the accused looked puzzled and did not respond satisfactorily. It is further the case of prosecution that on 28.12.2001, both the accused confessed before Harmail Singh having murdered the deceased (Jaswinder Singh). Both of the accused were arrested by the police on the same day i.e. 28.12.2001. The *Jutti* (shoes) worn by Gurdial Singh were taken into possession. During the course of interrogation, Gurdial Singh made a disclosure statement and pursuant thereto, got a bicycle recovered. Jarnail Singh is also alleged to have made a disclosure statement and having got recovered a wrist watch and a *sota*. The foot moulds lifted from the place of occurrence were sent for comparison with the *Jutti* (shoes) of Gurdial



(4)

Singh and were found to be matching. The blood stained soil collected from the spot was reported to be stained with human blood.

5. Upon conclusion of investigation, challan was presented against the accused on 15.03.2002 in the Court of Additional Chief Judicial Magistrate, Sangrur, who committed the case to the Court of Sessions vide order dated 26.03.2002. The Court of Additional Sessions Judge, Sangrur, upon finding that the evidence collected *prima facie* disclosed that the accused had committed offence punishable under Sections 302/404 IPC, framed charges against the accused on 04.04.2002 to which they pleaded not guilty and claimed trial.

6. The prosecution in order to establish its case examined as many as 11 PWs. The gist of their statements is briefly referred to herein under:-

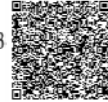
**PW-1** Dr. P.S.Sibia, Medical Officer, Civil Hospital, Sangrur, who had conducted post-mortem examination on the dead body of Jaswinder Singh, proved the post-mortem report as Ex.PA and described 4 injuries found on the dead body. He opined that the cause of death was due to shock and haemorrhage as a result of injuries inflicted to the deceased.

**PW-2** Rajinder Singh (complainant) at whose instance FIR (Ex.PD/2) was lodged, stated in tune with the version got recorded by him in the FIR. He further stated as regards accused Jarnail Singh having suffered disclosure statement and having got recovered a wrist watch and a *sota*. He further stated that the bicycle recovered during investigation belonged to his son Jaswinder Singh.



( 5 )

- PW-3** Inderjit Singh (brother of the deceased) stated identically as stated by PW-2 Rajinder Singh (complainant). He further stated that during the course of interrogation, Gurdial Singh had disclosed that he had concealed the 'Hero' cycle under a '*parali*' (heap of straw) near a road leading to canal bridge of Ghanaur Jattan and that pursuant to the said statement, Gurdial Singh got the same recovered in his presence after removing the *parali*.
- PW-4** HC Gurmel Singh, who is a formal witness, tendered into evidence his affidavit Ex.PJ, wherein he deposed as regards the case property having been kept safely by him in the police station.
- PW-5** Piara Singh stated that on the night intervening 22/23.12.2001, he had gone to his fields in the area of Basiarak so as to irrigate his barley crop and when he was returning to his village at about 10/11 PM, he saw Gurdial Singh, who was having a bicycle and Jarnail Singh, who was carrying a *sota* and that after stopping his scooter, when he enquired from them as to what they were doing at such late hours, both of them were looked puzzled and did not reply satisfactorily. He further stated that on the next day, he went to his relatives and thereafter when he returned home the 3<sup>rd</sup> day, he came to know that Jaswinder Singh had been murdered on the night intervening 22/23.12.2001 and that he suspected that Jaswinder Singh had been murdered by Gurdial Singh and Jarnail Singh.
- PW-6** Harmail Singh stated that he is Member Panchayat of the Village and that on 27.12.2001, he had returned to his village from Chandigarh and that on the morning of next day i.e. 28.12.2001, when he was present at his house, Gurdial Singh and Jarnail Singh came there at about 10.00 AM. He stated that since he had also remained a Member of the Gurudwara Parbhandak Committee, so Gurdial Singh was known to him. He stated that Gurdial Singh disclosed to him that on the night of 22.12.2001,



(6)

he alongwith Jarnail Singh had murdered Jaswinder Singh and they had thrown his dead body in the pit of tubewell and that since police was raiding their houses, they requested him (Harmail Singh) to produce them before the police and he accordingly produced them before the SHO and they were arrested and that in his presence, the shoes of accused were taken into possession by the police.

**PW-7** HC Darbara Singh stated that on 23.12.2001, SHO Gurwinder Singh had handed over the dead body of Jaswinder Singh to him for getting the post-mortem examination conducted and that he accordingly got the needful done.

**PW-8** SI Gurwinder Singh stated that on 23.12.2001, when he alongwith other police officials was present at bus stand Ramgarh, Rajinder Singh (complainant) came there and got his statement (Ex.PD) recorded on the basis of which formal FIR (Ex.PD/2) was recorded. He stated with regard to the investigation conducted by him in the matter including preparation of inquest report, preparation of rough site plan, lifting of blood stained soil from the spot etc. He also stated as regards the disclosure statements made by the accused and the recoveries of bicycle, wrist watch and *sota* effected pursuant thereto.

**PW-9** HC Gurmeet Singh, who is a formal witness, tendered into evidence his affidavit Ex.PR, wherein he deposed that on 26.12.2001, HC Gurmail Singh had handed over to him the case property i.e. parcel containing two mould of the *Jutti* (shoes), parcel containing blood stained earth etc. for depositing the same in the office of FSL, Punjab, Chandigarh, which he accordingly deposited the same day and that as long as the case property remained in his possession, the same was not tampered with.



(7)

**PW-10** HC Jaspal Singh, who is a formal witness, tendered into evidence his affidavit Ex.PS, wherein he deposed that on 04.01.2002, MHC Gurmail Singh had handed over to him the case property i.e. parcel of eucalyptus bat and parcel containing a pair of *Jutti* (shoes) etc. for depositing the same in the office of FSL, Punjab, Chandigarh, which he accordingly deposited the same day and that as long as the case property remained in his possession, the same were not tampered with.

**PW-11** Dharminder Singh stated that he had visited the place of occurrence on 02.01.2002 and had prepared the scaled site plan Ex.PT.

7. Upon conclusion of the prosecution evidence, statements of both the accused were recorded in terms of Section 313 Cr.P.C., wherein entire incriminating evidence was put to them to enable them to explain the same, but the accused denied the case of prosecution and raised a plea of having been falsely implicated at the instance of Sarpanch. The accused, however, did not lead any evidence in their defence.
8. The learned trial Court, upon marshalling the evidence on record, held that the prosecution had fully established the charges framed against both the accused and consequently, held them guilty vide impugned judgment.
9. Learned counsel for the appellants, while assailing their conviction, submitted that there is no direct evidence in support of the allegations leveled against the appellants and that although the prosecution had led circumstantial evidence in the shape of 'last seen' evidence, extra judicial confession and disclosure statements, but the said evidence does not inspire confidence so as to justify the conviction of the appellants.



( 8 )

Learned counsel submitted that the alleged 'last seen' evidence in the shape of testimony of PW-5 Piara Singh is merely to the effect that he had seen the appellants Gurdial Singh and Jarnail Singh, when he was returning from his fields to his village and that while Gurdial Singh was having a bicycle, Jarnail Singh was carrying a *sota* and that such like statement would not even qualify to be termed as 'last seen' evidence, as the accused were neither seen in the company of the deceased nor were present in the immediate proximity of the place of occurrence and that in any case even the presence of PW-5 Piara Singh during the late hours of a December night is itself doubtful.

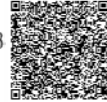
10. Learned counsel for the appellants further submitted that the factum of disclosure statements coupled with the recovery of bicycle of the deceased at the instance of Gurdial Singh and recovery of wrist watch of the deceased at the instance of Jarnail Singh is again surrounded with suspicion inasmuch as concealing of a bicycle of the deceased underneath the *parali* would not have served any purpose of the accused and that ownership of said bicycle or allegedly recovered wrist watch cannot even be connected with the deceased as apart from oral statement of PW-2 Rajinder Singh (complainant), there is nothing else to establish the ownership. Further, it is not even the case of the prosecution that the motive for killing was to rob the deceased. It has been submitted that the motive otherwise alleged by the prosecution that the accused felt offended upon refusal of the deceased to give flour for free itself is not a very strong motive to kill a person. It has also been submitted that the extra judicial confession made by the accused before PW-6 Harmail Singh loses



( 9 )

its credibility substantially inasmuch as PW-6 Harmail Singh before whom the extra judicial confession was made belongs to a different village and that there is no evidence of his proximity with the accused so as to have prompted them to confess before him.

11. Lastly, it has been submitted that the report of the FSL as regards matching of foot moulds is to some extent vague and in any case since several persons had already gathered at the spot, it remained unexplained as to how the Investigating Officer was able to shortlist only two of the foot moulds. It has further been submitted that identification on the basis of comparison of foot moulds in any case is not accurate unlike comparison of finger prints which is well accepted to be an accurate science. Learned counsel, thus, submitted that in the absence of clinching evidence to establish the chain of circumstances, the conviction of the appellants could not sustain and is liable to be set aside.
12. Opposing the appeal, learned State counsel submitted that the circumstantial evidence led by the prosecution establishes the complete sequence of events and that no link is missing therefrom and the same lead to the inevitable inference that it is the accused who had murdered the deceased.
13. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
14. Before proceeding further, it is apposite to first of all refer to the medical evidence as regards alleged homicidal death. The prosecution has



( 10 )

examined PW-1 Dr. P.S.Sibia, Medical Officer, Civil Hospital, Sangrur, who had conducted post-mortem examination on the dead body of Jaswinder Singh. He has proved the post-mortem report as Ex.PA and has described the injuries found on the dead body of Jaswinder Singh as under:

- “1. Lacerated wound 5 x 2 cm scalp deep on the right side of head above about 7 cm upper margins of right pinna and 7 cm above outer sept of right eye brow. Clotted blood was present. On dissection, there was fracture of right parietal bone and adjoining temporal bone with extra dural hematoma overlying anterior and middle cranial fossa. Size of hematoma was 10 x 8 cm.
2. Swelling in the right side of neck in upper lateral part 10 x 6 cm overlying sterno cleido mastoid muscle and extending into posterior triangle of neck. On dissection, fracture mandible present on right side with clotted blood was present underneath.
3. An abrasion 5 x 3 cm on anterior aspect of left shoulder with reddish place. On dissection, fracture of clavicle was present at junction of medial 2/3<sup>rd</sup> and lateral 1/3<sup>rd</sup> of clavicle. Hematoma was present around the fracture.
4. Contusion 7 x 15 cm present on back of right side of chest overlying right 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> ribs, 2 cm on right of mid line. On dissection, underlying hematoma was present.”

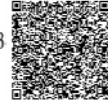
15. PW-1 Dr. P.S. Sibia opined as regards the cause of death as under:

“The cause of death in this case in my opinion was due to shock and haemorrhage as a result of these injuries described above. All these injuries were antemortem in nature and were sufficient to cause death in the ordinary course of nature. The time that elapse between injury and death can be immediate to six hours and between death and post-mortem 24 to 48 hours.”



( 11 )

16. PW-1 Dr. P.S.Sibia was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as to either doubt the veracity or his opinion. It is, thus, held that it is a case of homicidal death on account of injuries sustained by the deceased which is in tune with the case of prosecution.
17. Admittedly, nobody had seen the occurrence and the prosecution mainly banks upon the circumstantial evidence, which is as under:
- (i) 'last seen' evidence in the shape of statement of PW-5 Piara Singh;
  - (ii) disclosure statements made by the accused leading to recovery of bicycle and wrist watch of the deceased and also blood stained *sota*;
  - (iii) extra judicial confession made by the accused before PW-6 Harmail Singh; &
  - (iv) comparison of foot moulds lifted from the spot with the *Jutti* (shoes) of accused Gurdial Singh.
18. 'Last seen' evidence – As per the case of prosecution, Jaswinder Singh (deceased) had left his home on 22.12.2001 for village Naraingarh where his flour mill was situated and did not return home and it was on the next day i.e. 23.12.2001, his dead body was found. PW-5 Piara Singh stated that on the night intervening 22/23.12.2001, he had gone to his fields in the area of Basiarak for irrigating his barley crop and when he was returning to his village on his scooter at about 10/11 PM and reached in between Ramgarh and drain of bridge of Ghanaur Jattan, he saw Gurdial Singh, who was having a bicycle and Jarnail Singh, who was carrying a *sota* and that after stopping his scooter, when he enquired from them



( 12 )

about the purpose of their presence, both the accused did not give any satisfactory answer. Firstly, the presence of the said witness (PW-5 Piara Singh) at such late hours on a winter night for the purpose of irrigation itself is rather doubtful. Even the factum of his having seen both the accused would hardly advance the case of prosecution inasmuch as they were not in the company of the deceased and it cannot even be said that they were seen immediately near the place of occurrence or immediately after the occurrence had taken place. In fact, the exact time of occurrence is not known, which is one of the determinative factors while assessing the evidentiary value of 'last seen' evidence.

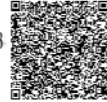
19. Disclosure statements – It is the case of prosecution that after the accused were arrested on 28.12.2001, both of them suffered disclosure statements and that while accused Gurdial Singh disclosed that he had kept concealed the bicycle of the deceased under '*parali*', accused Jarnail Singh disclosed that he had kept concealed the wrist watch of the deceased and a *sota*. As per the case of prosecution, pursuant to their disclosure statements, accused Gurdial Singh got recovered the bicycle and accused Jarnail Singh got the wrist watch of the deceased and a *sota* recovered. While in the recovery memo (Ex.PH), identification number engraved on the frame of bicycle, is mentioned and the complainant while in the witness-box stated that he (complainant) purchased the same from Sunam, but no such bill regarding purchase has been produced on record. It is not the case that the bicycle in question was found to be blood stained. Similarly, the wrist watch got recovered by Jarnail Singh is stated to have been gifted by the complainant to the deceased. Though PW-2 Rajinder Singh



( 13 )

(complainant) stated that he had purchased the watch for his son Jaswinder Singh (deceased), but he did not remember as to from whom he had purchased the watch. In the absence of any such evidence that the watch in question had indeed been purchased/acquired by the complainant and gifted to the deceased, it is difficult to relate the factum of recovery of wrist watch with the deceased. The prosecution is thus left with the factum of recovery of *sota* at the instance of accused Jarnail Singh, which was found to be smeared with blood and upon its chemical examination, the FSL reported the same to be stained with human blood. The said fact can be taken into account, but the evidentiary value of the case in the given case can only be assessed in relation to all other evidence led by the prosecution.

20. Extra judicial confession – The prosecution has examined PW-6 Harmail Singh, who stated that he is a Member Panchayat and was also officiating as Sarpanch and that on 27.12.2001, he had come to his village from Chandigarh and that on the next day i.e. 28.12.2001 in the morning at about 10.00 AM, when he was present in his house, Gurdial Singh and Jarnail Singh accused came to his house and confessed having murdered Jaswinder Singh on 22.12.2001 during night and having thrown his dead body in the pit of tubewell and that the police was raiding their houses. He stated that since the accused requested him to produce them before the police, he accordingly took along them for producing before the police and while on the way, he met ‘*Thanedar*’ near bus-stand Raitgarh and he accordingly produced the accused before him. During the course of his cross-examination, PW-6 Gurmail Singh stated that while the accused had



( 14 )

made confession to him in the morning at about 10.00 AM, he took them to the police in the evening and he had not informed anybody else about the accused. It is worth noticing that while PW-6 Gurmail Singh is a resident of Village Kapial, both the accused are residents of different village i.e. village Ghanaur Jatta. PW-6 Gurmail Singh while in the witness-box stated that he knew Gurdial Singh, but Jarnail Singh was not known to him previously. He has not stated as to why the accused were not taken to the police immediately when they had confessed their guilt in the morning and as to why he has waited till evening to produce them before the police. No convincing reason is forthcoming as to why the accused chose the said witness i.e. PW-6, who is resident of a different village to make their confession before him. Extra judicial confession is a weak type of evidence and conviction cannot be based on an extra judicial confession in the absence of any other corroborative evidence, which points towards the guilt of the accused.

21. Foot moulds – It is the case of prosecution that the police had lifted foot moulds from near the tubewell where the dead body had been found. PW-8 SI Gurwinder Singh during the course of cross-examination stated that when the dead body was taken out from the tubewell, 25/30 persons had already collected there. Under these circumstances, when a large number of persons had gathered there, it remained unexplained as to how the police was able to short-list only two of the foot prints in respect of which foot moulds were lifted from the spot. The said foot moulds lifted from the spot were got compared from FSL with the *Jutti* (shoes) of the accused Gurdial Singh and it has been opined in the report, that the



( 15 )

impression in respect of foot mould of right shoe “could be” from the right footwear of accused Gurdial Singh, the foot mould impression in respect of left shoe has been opined to be from the left shoe of Gurdial Singh. In other words, the report is partly conclusive qua the foot mould in respect of right shoe inasmuch as it is only the possibility of foot mould to be from the right shoe which has been opined.

22. Before proceeding to examine the collective effect of the aforesaid circumstantial evidence led by the prosecution, it is apposite to refer to the circumstances and conditions under which conviction may be based solely on the basis of circumstantial evidence without being there any direct evidence. 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."

23. The aforesaid principles have consistently been followed and have been affirmed in catena of authorities. Recently, a three Judges Bench of Hon'ble Apex Court reiterated the aforesaid position of law in 2025(1)



*RCR(Criminal) 12, Vishwajeet Kerba Masalkar v. State of Maharashtra,*

while stating as under:

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

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

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

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:



( 17 )

- (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



( 18 )

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.”

24. Examining the facts of the present case in the light of the ratio of judgments referred above as regards the circumstantial evidence, we find that the ‘last seen’ evidence led in the present case would not help the prosecution inasmuch as it is only the accused who were seen by one of the witness during late hours of the day and it is not the case that they were seen either in the company of the deceased or were seen near the place of occurrence. Rather the presence of the witness i.e. PW-5 Piara Singh, himself around mid night in the month of December is doubtful.
25. The opinion expressed by the experts as regards foot moulds is also partly supporting the case of prosecution and in any case the science of comparison of foot moulds, unlike comparison of finger prints is not a developed science and is placed on much lower pedestal. The Hon’ble Supreme Court in **Shankaria Vs. State of Rajasthan, 1978(3) SCC 435** held as under:

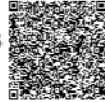
“85. Although the science of identification of foot-prints and foot-moulds is not a developed science, and track evidence, by itself, may not be deemed sufficient to carry conviction in a criminal trial, yet it is a relevant circumstance which taken into account along with the other evidence, may reinforce the conclusion as to the identity of the culprit. In the instant case, the other evidence per se, was sufficient to fix the identity of the appellant with the crime. The evidence of similarity of the



( 19 )

foot-moulds taken in conjunction with the circumstance, that at the scene of occurrence there were bare-foot prints which appear to be of one person, does lend further assurance to what the appellant has stated in his confessional statement with regard to his going about bare-footed inside and outside the Gurdwara at or about the time of committing the crimes in question.”

26. In the instant case, as already discussed above, the prosecution has not explained as to how the Investigating Officer was able to short-list only 2 of the foot prints although 25/30 persons had already gathered at the spot. Further, it is not a case where the accused was ‘bare-footed’. In the present case, the foot moulds in question are stated to be of a *Jutti*, which the appellant – Gurdial Singh was allegedly wearing. A *Jutti* is locally made footwear and there is no marking or branding on the sole. It is only from the shape and some peculiar wear and tear that the expert may be able to identify. Identification could perhaps be little more accurate in case of ‘bare-footed’ foot prints. Still further, the report with respect to the right foot print is not fully conclusive. Under these circumstances, it will not be safe to rely upon the report of the FSL as regards matching of foot prints more so when it is a case based on sketchy circumstantial evidence.
27. The Court is, thus, left with the extra judicial confession and the factum of recovery of bicycle, wrist watch and a blood stained *sota*. An extra judicial confession is a very weak type of evidence and in the absence of other affirmative evidence cannot be relied upon. Even if the said recoveries are taken to have been got effected at the instance of the accused, the identity of the bicycle and also of the wrist watch would still remain debatable inasmuch as there is no proof as regards the factum of



( 20 )

purchase of said articles by the complainant. Although he has stated orally while in the witness-box, but no document with regard to the purchase of the same has been brought on record. Thus, we find that the evidence led by the prosecution is rather lacking inasmuch as the same is grossly insufficient to establish all the links in the chain of circumstantial evidence so as to infer the guilt of the accused. The evidence is not of such kind from which it could be said affirmatively that it is the accused and only the accused, who have committed the offence in question.

28. Consequently, the findings as regards guilt of the accused, as recorded by the trial Court, cannot sustain and deserve to be set aside. The appeal, as such, is accepted and the impugned judgment is set aside. The appellants are ordered to be acquitted of all the charges framed against them. Necessary intimation be sent to the quarters concerned.

**(GURVINDER SINGH GILL)**  
**JUDGE**

**(JASJIT SINGH BEDI)**  
**JUDGE**

**24.02.2025**  
*Vimal*

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