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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

Reserved on: 18.12.2024

Pronounced on: 28.01.2025

1. CRA-D-578-DB-2004

Padampreet SinghAppellant

Versus

State of PunjabRespondent

2. CRA-D-586-DB-2004

Binder SinghAppellant

Versus

State of PunjabRespondent

3. CRA-D-634-DB-2005

Jaspal Singh @ TholuAppellant

Versus

State of PunjabRespondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Charanjit Singh Bakhshi, Advocate with
Mr. Aryan Sharma, Advocate
Mr. Mohit Rana, Advocate
for the appellant(s) (in **CRA-D-578-DB-2004**).

Mr. Viren Sibal, Advocate (legal aid counsel)
Mr. Satyam Shanda, Advocate
Mr. Harshit Singla, Advocate
for the appellant(s)
(in **CRA-D-586-DB-2004 and CRA-D-634-DB-2005**).

Mr. Pardeep Sehrawat, Advocate
for the appellant (in **CRA-D-634-DB-2005**).

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Mr. Kuldeep V. Singh, Advocate and
Mr. Mandeep Singh Gill, Advocate
for the appellant(s) (in **CRA-D-586-DB-2004**).

SURESHWAR THAKUR, J.

1. Since all the criminal appeals (supra) arise from a common judgment, therefore, they are amenable for a common verdict becoming recorded thereons.
2. The appeals (supra) are directed respectively by the convicts-appellants, against the verdict of conviction, as made on 08.05.2004, by the learned Additional Sessions Judge, Mansa, upon, Session Case No. 17 of 2001, wherethrough, in respect of charges drawn for offences punishable under Sections 302/382/201/34 of the IPC, he made a finding of conviction against the accused.
3. Moreover, through a separate sentencing order drawn on 08.05.2004, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Sr. No.	Name of the convict	Under Section	Sentence
1.	Jaspal Singh @ Tholu	302/34 IPC	Imprisonment for life and to pay fine of Rs.5000/- or in its default to further undergo RI for 3 months.
	--do--	382 IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.1000/- or in its default to further undergo RI for one month.
	--do--	201 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.500/- or in its default to further undergo RI for 15

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			days.
2.	Binder Singh	302/34 IPC	Imprisonment for life and to pay fine of Rs.5000/- or in its default to further undergo RI for 3 months.
	--do--	382 IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.1000/- or in its default to further undergo RI for one month.
	--do--	201 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.500/- or in its default to further undergo RI for 15 days.
3.	Padampreet Singh	302/34 IPC	Imprisonment for life and to pay fine of Rs.5000/- or in its default to further undergo RI for 3 months.
	--do--	382 IPC	Rigorous Imprisonment for 7 years and to pay a fine of Rs.1000/- or in its default to further undergo RI for one month.
	--do--	201 IPC	Rigorous imprisonment for 3 years and to pay a fine of Rs.500/- or in its default to further undergo RI for 15 days.

Last of all, it is ordered that all the substantive sentence of each of the convicts shall run concurrently. The period of detention undergone by the convicts during inquiry or trial of this case, is ordered to be set off from the awarded sentence. The file be consigned to the record room.”

4. The convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon them, by the learned convicting Court concerned, and

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hence have chosen to institute thereagainst the instant appeal before this Court.

Factual background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PD/2 is assigned. Thereins the complainant Bhagirath Lal has made narrations before S.I. Hardam Singh that he is resident of Baretta Mandi and is running a shop as well as sheller of rice. One month earlier, he had purchased Uno car of Silver grey colour bearing registration No. PB-13-G-0214 and having chasis No.020871 & engine No.0001388 from one Parminder Singh son of Sukhdev Singh resident of Sunam. He has given affidavit and other papers for changing the registration of the car in his name in the office of SDM, Budhlada. He had employed Ravi Bahadur (since deceased) resident of Dung Singh, Distt. Argawar, Nepal, as driver on his car.

6. On 25.8.2001, he alongwith his children went in that car, driven by Ravi Bahadur, to Surya Marriage Palace, Mansa to attend a marriage party of his relative. His brother Amar Nath also brought separate vehicle, which was driven by his nephew, Kamaldip son of Mohan Lal. They parked their vehicles outside the marriage palace and went inside the marriage palace, while drivers of both the vehicles, Ravi Bahadur and his nephew Kamaldip, remained outside the marriage palace. They went inside the marriage palace around 10.00 p.m. and on the intervening night of 25/26.08.2001 around 1.30 a.m., they came out of the marriage palace for going back to their house. Then his nephew Kamaldip disclosed them that Ravi Bahadur alongwith Jaspal Singh son

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of Tulsi Ram resident of Baretta, took their car around 1.00 a.m. and went away. They searched for them for a considerable period of time, but in vain and then by arranging another vehicle, they came back to Baretta. They continued searching for the car, but could not locate the same, nor Ravi Bahadur returned. He prayed that action be taken against Ravi Bahadur and Jaspal Singh. After recording the above statement (Ex.PD) of Bhagirath Lal, SI Hardam Singh made his endorsement (Ex.PD/1) thereunder, and sent the said statement to Police Station, on the basis of which formal FIR (Ex.PD/2) bearing no.135 dt.27.8.2001 under section 406/34 IPC became recorded by S.I. Harpal Singh. Thereafter, S.I. Hardam Singh alongwith police officials and complainant Bhagirath Lal went to Surya Marriage Palace and prepared site plan (Ex.PD/3) of the place of occurrence.

7. On 26.08.2001, SI Neeraj Kumar who was then posted at Police Station, Kotwali, Delhi, along with Constable Parveen Kumar were present at Shanti Ban Chowk, Delhi and they intercepted the car bearing No.PB-13G-0214 with a person standing near Shanti Ban Chowk, Delhi on suspicion. On interrogation, the said person was found to be Padampreet Singh (accused) and he disclosed that the said car was stolen by him alongwith Jaspal Singh & Binder Singh from the State of Punjab. The car was taken into possession vide memo (copy Ex.PS) and its documents were taken into possession vide memo (copy Ex.PU) and a case under FIR No.460 dt.26.8.2001 (Copy Ex.PT) was registered in police station, Kotwali Delhi, under section 411 IPC. SI

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Neeraj Kumar further confirmed the identity of Jaspal Singh accused on wire less message from Police Station, City Mansa and Police Station, Baretta on the intervening night of 26/27.8.2001. SI Hardam Singh of Police Station, City Mansa went to Delhi on 28.08.2001 and the vehicle was identified from a person accompanying him.

Investigation proceedings.

8. On 30.08.2001, Harpal Singh, SHO, alongwith S.I. Hardam Singh and other police officials started from Police Station in connection with the investigation of this case. When they reached at the crossing of village Ramdittesala, P.Ws. Santa Singh and Raj Kumar met them and they got recorded their statements before Harpal Singh SHO that at about 8.30 a.m. they went to have tea at the Dhaba of Hari Ram, situated on Thuthianwali crossing, Barnala Road, Mansa, where two persons were sitting and were talking with each other that the car which they had stolen from outside Surya Palace Mansa has been apprehended by the Delhi Police along with Padampreet Singh @ Soni. They were also talking that Ravi Bahadur driver of the said car was also done to death by them by strangulation with Parna at some canal near Bhiwanigarh. Their conversation was heard by P.Ws. Santa Singh & Raj Kumar, and on being inquired, that persons disclosed their names as Jaspal Singh @Tholu and Binder Singh.

9. Thereafter, Harpal Singh SHO, issued special report after adding the offence under section 302 IPC. Bhagirath Lal complainant met them in the way and he was joined in the police party. Then the

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police party reached at Mansa crossing, from where accused Jaspal Singh @ Tholu and Binder Singh were arrested on the pointing of Bhagirath Lal. Nothing was recovered from their personal search and memo (Ex,PD/4) was prepared in this respect.

10. On interrogation, Jaspal Singh and Binder Singh disclosed that they alongwith Padampreet Singh had thrown the dead body of Ravi Bahadur in the canal after committing his murder towards the flow of water in the area of Nadampur about which they only knew and can get the same recovered on demarcation. Their disclosure statements (Ex.PE & Ex.PF) were recorded. Thereafter, both these accused pointed out separately, the place from where the dead body was thrown in the canal. Site plan of that place (Ex.PQ) was prepared. After that the dead body of Ravi Bahadur was recovered from Nadampur canal in front of Janta Brick Klin, at a distance of one kilometer from Lehra Gaga canal bridge. The dead body was got identified from Bhagirath Lal and Rajinder Kumar. Inquest report on the dead body of Ravi Bahadur was prepared. Rough site plan of the place of recovery of dead body was also prepared. Dead body was handed over to SI Hardam Singh for post mortem examination. Supplementary statement of Bhagirath Lal was also recorded.

11. On 12.09.2001, Padampreet Singh from whom the stolen car belonging to the complainant was recovered was interrogated by SHO Harpal Singh in the presence of PWs Raj Kumar and ASI Darshan Singh. He disclosed that he alongwith accused Jaspal Singh and Binder

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Singh had thrown the dead body of Ravi Bahadur in a canal in the area of Nadampur towards the flow of water and they only knew about it and could point out. His disclosure statement (Ex. PJ) was recorded. Thereafter, accused Padampreet Singh pointed out the place where the dead body was thrown and memo in this respect was prepared.

12. After completion of investigation by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

13. Finding the offence punishable under Section 302/307 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, vide order dated 03.12.2001 committed the case for trial to the Court of Sessions.

Trial Court Proceedings

14. On finding a *prima facie* case, charge under Sections 302/34/201/382 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

15. In support of the prosecution case, the prosecution examined fourteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Mansa, drew proceedings under Section 313 of the Cr.P.C., but therein, all the accused claimed false implication, and, pleaded innocence. The accused examined Jarnail Singh as DW-1 and

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Buta Singh as DW-2 in their defence and thereafter closed the defence evidence.

16. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Mansa, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants.

Submissions of the learned counsel for the convicts-appellants.

17. The learned counsel for the aggrieved convicts-appellants herein, have vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, they have argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel.

18. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

CIRCUMSTANTIAL EVIDENCE BASED CASE, BASED ON THEORY OF LAST SEEN PROPAGATED BY PW-6.

19. The theory of last seen together of the accused and the deceased one Ravi Bahadur is spoken by PW-6. The contents of the

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examination-in-chief, as rendered by PW-6 are ad verbatim extracted hereinafter.

*On the night of 25.08.2001, I alongwith the members of my family and another family of my Taya Baghirath Lal came to Mansa on two different cars to attend the marriage of our relations. The family of Baghirath Lal was in the car make Uno bearing Registration No. PB 13G – 0214. We reached Mansa around 10 PM (Night). Ravi Bahadur was driver on the car of my taya Baghirath Lal. I alongwith Ravi Bahadur stayed outside near our car when the members of my family went inside the Marriage Palace. Ravi Bahadur sat inside the said car of Baghirath Lal. I sat inside my own car. Around 1 A.M. our family came out from marriage palace. Jaspal Singh accused now present in Court came and sat by the side of Ravi Bahadur in the car in which Ravi Bahadur was already sitting before our family came outside the marriage palace. **Jaspal Singh accused and Ravi Bahadur took the aforesaid Uno Car towards city Mansa at about 11 PM (night).** When our family came outside the marriage palace around 1 A.M. (night) my taya Baghirath Lal asked me about Uno car and I told that the same had taken away by Ravi Bahadur and Jaspal Singh accused towards city Mansa. We waited for about half and hour but the said Uno car did not return nor Ravi Bahadur returned. Thereafter, Baghirath Lal arranged some vehicle and went to Baretta.*

20. The said witness was subjected to an ordeal of a scathing cross examination. He admitted a suggestion made to him that one Baghirath Lal, who is the complainant, thus had borrowed the vehicle of his relations for going back to Baretta. He further admitted a suggestion made to him by the learned defence counsel, that deceased Ravi Bahadur, was employed as a driver on the said vehicle about 10-15 days prior to the relevant occurrence taking place.

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21. Though a plain reading of the deposition as embodied in the examination-in-chief of PW-6, unfolds that accused Jaspal Singh alongwith the deceased Ravi Bahadur, who was driving the crime vehicle bearing No. PB-13G-0214, had been last seen together by the said witness, besides further unveils that subsequently neither the vehicle became retrieved to Baghirath Lal nor Ravi Bahadur who was employed as a driver on the said vehicle, thus did return.

22. Though on the basis of the said testification the prosecution *prima facie* appears to succeed in proving the charge to the hilt. **However, for the reasons to be assigned hereinafter, the supra speakings made by PW-6 in his examination-in-chief are un-worthy of any credence being assigned thereto.**

23. The crime vehicle is stated by the prosecution as well as by the complainant, to be thus owned by the complainant. However, the supra assertion of ownership over the crime vehicle, as made by the complainant rather becomes paled from

a) PW-6 conceding to a suggestion made to him by the learned defence counsel during the course of his becoming subjected to cross examination, that as a matter of fact the complainant Baghirath Lal had borrowed the vehicle of his relations.

b) from Ravi Bahadur becoming purportedly employed by him on the said vehicle about 10 to 15 days prior to the crime event taking place, especially when no cogent evidence in respect thereof became adduced.

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c) the owner of the vehicle on his stepping into the witness box as PW-14, though did in his examination-in-chief, did irrefutably made an echoing that he is owner of the crime vehicle. However, he further stated that under a power of attorney/affidavit which became executed by him, therebys, he transferred the crime vehicle to the complainant one Baghirath Lal. The said affidavit became tendered into evidence and theretos Exhibit PX became assigned and the signatures as exists thereons also were admitted by him to be his authentic signatures. However, he stated that he had not seen the original of Ex. PX, besides also stated that he is not personally known to Baghirath Lal. In addition, he further testified in his examination-in-chief that Baghirath Lal rather had never informed him about the crime vehicle becoming stolen.

24. Now further bearing in mind the facts as become detailed in points b and c (supra), the inferences therefroms are that :

i) the statement of the complainant was both an invention and a concoction.

ii) the crime vehicle did not as a matter of fact ever arrive at the crime site nor did it became stolen.

iii) The deceased never becoming employed as a driver over the crime vehicle by Baghirath Lal.

25. The reasons for mobilizing the supra inferences further ensue from:

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a) A closest reading of the date of execution of power of attorney/affidavit, photocopy whereof, became tendered into evidence by PW-14, and, to which Exhibit PX is assigned, rather reveals that it was executed on 27.08.2001, which is however a date subsequent to the crime event taking place. Though, the execution of the supra power of attorney/affidavit, thus is evidently on a date subsequent to the date when the crime event rather happened, but though the supra may not lead to a further inference that there was yet never earlier theretos, thus parting of possession of the crime vehicle from PW-14 to Baghirath Lal. However, some echoing in the said regard was required to be occurring in Ex. PX. Nonetheless, the said occurring is not made thereins. Moreover, when PW-6 in his cross examination admits, that the crime vehicle had been borrowed by the complainant Baghirath Lal from his relations, yet when the said fact is not spoken by PW-14 in his examination-in-chief. Therefore, it appears that the supra affidavit was an invention or a concoction, so as to fabricate a false story about the genesis of the crime event.

b) The deceased never becoming employed on the crime vehicle by Baghirath Lal.

c) The crime vehicle though may have been stolen but since PW-14 admits in his cross examination, that Baghirath Lal did not intimate him, about the crime vehicle becoming stolen, thereby, it has to be concluded, that the assumption of possession over the crime

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vehicle purportedly by Baghirath Lal rather becoming engulfed in a cloud of suspicion.

26. Necessarily therebys benefit of doubt is to be assigned to the accused. Conspicuously also therebys the theory of last seen together of the accused and deceased, as propagated by the prosecution, looses its credit worthiness.

27. The inspector of the Delhi Police who had seized the crime vehicle at Shanti Bann Chowk, Delhi, stepped into the witness box as PW-11, and though supported the fact, that the crime vehicle becoming seized through memo Exhibit PS, thus, whereons the signatures of the accused exists. However, neither the disclosure(s) as made by the accused Padampreet Singh, in the recovery memo Exhibit PS, that the crime vehicle was stolen, besides nor the echoings made in the further disclosure statement as made by the said accused, to which Exhibit PJ became assigned, rather manifesting that the said accused confessed his guilt in murdering the deceased Ravi Bahadur, thus gather any credit worthiness. The reason for so stating becomes grooved in the hereafter premises.

a) since the genesis of the prosecution case, relating to the assumption of possession initially by complainant Baghirath Lal and subsequently by the accused who had taken the crime vehicle to Delhi and wherefroms PW-11 - S.I. Neeraj Kumar, made the seizure of the crime vehicle, when becomes enveloped in a grave shroud of doubt. Resultantly when for the supra reason, this Court has also fortifyingly

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concluded, that the story propagated by the prosecution, that the crime vehicle was stolen rather becomes belied by the owner of crime vehicle, who stepped into the witness box as PW-14. Consequently, the evidentiary effectivity, qua the accused in his disclosure statement making a confession, that he had stolen the crime vehicle, besides of the further confession as made therein by him, that he had murdered the deceased, rather loosing their respective creditworthiness.

b) The fortifying reason for so concluding becomes generated from the fact, that since the arrival of the crime vehicle at Surya Palace, Mansa, has but fallen into grave suspicion, besides the fact that it was allegedly stolen when also becomes engulfed in a grave shroud of doubt. Therefore, concomitantly and reiteratedly, the last seen together theory of the accused and the deceased at Surya Palace, Mansa, whereafters the crime vehicle being not seen, excepting it becoming seized, in Delhi, besides the deceased who was allegedly driving the crime vehicle also not being seen thereafter, but all do loose their evidentiary tenacity.

c) Emphatically, if Baghirath Lal, had not assumed either lawful ownership nor had assumed any possession over the crime vehicle, therebys, rather when PW-6 in his cross examination concedes that the complainant Baghirath Lal, thus had borrowed the crime vehicle from one of his relations, who obviously is PW-14. Resultantly, the above stand is but contradictory to the story propagated by the prosecution, that Baghirath Lal was the owner of the vehicle and

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the said vehicle had been stolen and which had been ultimately recovered besides became seized through recovery memo Exhibit PS. In sequel, the supra contradiction but completely jettisons, the truth of the prosecution case, wherefrom an inevitable conclusion ensues, that on the basis of a falsely made charge, besides on the basis of invented evidence, thus the accused have been convicted.

28. Since this Court for reasons supra has concluded that PW-14 was the owner of the crime vehicle, therebys, if the crime vehicle was borrowed by Baghirath Lal, from PW-14, therebys, the deceased is deemed to be employed on the crime vehicle by PW-14, unless evidence surged forth, suggestive that the complainant Baghirath Lal after purportedly borrowing the crime vehicle from PW-14, had employed the deceased Ravi Bahadur as a driver thereons. The said evidence is abysmally lacking. The absence of the supra evidence leads to a conclusion that the prosecution has concocted a false story, that the deceased Ravi Bahadur, thus arrived at the venue of the marriage located at Surya Palace, Mansa, and also has further concocted a story that Ravi Bahadur was engaged as a driver on the crime vehicle.

29. The further ensuing effects therefrom but, is that, fortifyingly the theory of last seen together of the accused and deceased, when for reasons supra loses its creditworthiness, therebys also the police but making a shoddy and skewed probe, about the persons concerned, who had in fact murdered deceased Ravi Bahadur.

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30. Now assuming that there is some fallacy in the above inference, therebys, the said fallacy would have acquired some momentum, but only when some of the members of the family of deceased Ravi Bahadur, had been cited as prosecution witnesses, so as to enable them to state, that as a matter of fact, deceased Ravi Bahadur was employed as a driver over the crime vehicle. Even the said evidence is amiss, whereas, if the said evidence had appeared on record, therebys, this Court may have concluded, that the deceased had been employed as a driver over the crime vehicle, wherebys also, this Court would have concluded that the theory of last seen together of the accused and the deceased, as propagated by the prosecution, but acquired some aura of truth.

31. Since the said evidence is amiss, therebys, this court fortifyingly concludes that the prosecution has raised a false story that deceased was engaged as a driver over the crime vehicle by the complainant Baghirath Lal. Resultantly therebys, the theory of last seen together of the accused and the deceased also suffers emasculation.

32. Additionally, since the police has not been able to collect the driving license of the deceased Ravi Bahadur. Since the collection of the driving license of the deceased Ravi Bahadur, by the investigating officer concerned, was of grave importance. However, when the driving license of the deceased Ravi Bahadur, thus personifying that as a matter of fact he was fit to be engaged as driver over the crime vehicle rather remains uncollected, therebys, it has to be

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concluded that Ravi Bahadur was not fit to drive the crime vehicle nor could he be seen to drive the crime vehicle.

33. Moreover, even the relations of the deceased became not joined in the relevant investigations, so that thereby, they could become enabled to reveal to the investigating officer concerned, thus the Motor Licensing Authority concerned, who had issued any driving license to the deceased. Resultantly the absence(s) of the collections of the above best evidence by the investigating officer concerned, thus suggestive that the deceased Ravi Bahadur, had been employed as a driver over the crime vehicle by Baghirath Lal, but necessarily fosters a conclusion, that the complainant, had never engaged the deceased as a driver over the crime vehicle nor also the said deceased could ever have been sighted to occupy the driver's seat of the crime vehicle.

34. Furthermore, also thereby, the theory of last seen together of the accused and the deceased at Suraya Palace, Mansa, appears to be a falsely propagated theory by the prosecution so as to falsely implicate the accused.

HEARSAY EVIDENCE OF ACCUSED JASPAL SINGH AND BINDER SINGH AS PROPAGATED BY PW-8.

35. The prosecution for proving the charge against the accused had referred to the statement made by one Raj Kumar Bansal, who stepped into the witness box as PW-8.

36. In his deposition as comprised in his examination-in-chief, he testified that about one year ago, he along with Santa Singh, went to have tea at Dhaba situated on the crossing of Thuthianwali Mansa. The

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name of Dhaba owner was Hari Ram. He testified that two persons who were also sitting at Dhaba were heard by him talking with each other that the car which they had stolen from outside Surya Palace Mansa, has been apprehended by the Delhi police alongwith Soni. He further made echoings therein that since the owner of that stolen car was his acquaintance, therebys, he took interest in the said conversation. PW-8 testified that he heard the accused talking with each other, with speakings that Ravi Bahadur, the driver of said car, was also done to death by strangulation with user of parna, at some canal near Bhiwanigarh. He further testified that accused Jaspal Singh who is now present in the Court was already known to him and accused Jaspal Singh was talking with Binder Singh.

37. Further, in his examination-in-chief, **he echoed that he cannot say that accused Binder Singh was present today in Court.** PW-8 further testified that accused Padampreet Singh was not interrogated in his presence nor he knew him.

38. Ex facie, since the witness supra was unknown to accused Binder Singh, therebys, in his previously made statement in writing, he was required to be speaking about the key physical attributes of accused Binder Singh, so that therebys the investigating officer becomes facilitated to conduct a valid test identification parade, so that therein the witness supra identifies the accused. Resultantly therebys the subsequently made identification in Court by the supra witness vis-a-vis the accused Binder Singh but would hold some evidentiary effect.

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However, since neither in the apposite previously made statement by the witness supra, he neither described the key physical attributes of accused Binder Singh nor a valid test identification parade became conducted nor the witness supra therein identified accused Binder Singh. Moreover additionally, when the witness (supra) also failed to identify accused Binder Singh in Court, thereby also, the supra testification made by PW-8, but loses its evidentiary tenacity.

39. Additionally also, the effect of the above, is that, thereupons, the supra echoing made by PW-8 in his examination-in-chief, but only becomes hearsay evidence, to which no worthwhile evidentiary value can be assigned.

40. Moreover also, if this Court has made the supra conclusions in paragraph No. 38 (supra), thereby, even if accused Jaspal Singh was previously known to the witness (supra) but yet when he renders echoings in his examination-in-chief, that both accused Binder Singh and Jaspal Singh, were overheard by him to be making an incriminatory confession, thereupons, if he has failed to identify co-accused Binder Singh, whereupons, the attribution of guilt to one of the co-accused Jaspal Singh also becomes completely weakened. Furthermore, no piecemeal reading of the deposition of witness (supra) is permissible in law, to the extent that this Court believes the inculpatory echoing as made by him vis-a-vis accused Jaspal Singh, and, disbelieves his making incriminatory echoings vis-a-vis accused Binder Singh. Contrarily, the evidence of supra witness when is

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extremely frail vis-a-vis the attribution of guilt made qua accused Binder Singh, therebys, it is deemed to collapse in its entirety but obviously even to the extent that he attributes criminality to accused Jaspal Singh.

Medical Evidence

41. The doctor who conducted an autopsy on the body of the deceased Ravi Bahadur, stepped into the witness box as PW-1. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures.

42. Further, the doctor concerned opined that the cause of death of deceased thus was owing to asphyxia as a result of strangulation, which was declared to be ante mortem in nature and also was declared to be sufficient to cause death in the ordinary course in nature.

43. Moreover, PW-1 became subjected to an ordeal of scathing cross examination, whereins, he echoed that no fact did appear on the dead body which could give prove to the effect that death occurred due to strangulation. The above echoings as made by PW-1 in his cross examination, renders the cause of death of the deceased, to become engulfed in a cloud of doubt, whereupons, the benefit of doubt is to be given to the accused. Significantly therebys, the disclosures respectively made by the accused in their respectively made disclosure

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statement(s), qua theirs murdering the deceased by strangulating him, but also loose their respective creditworthiness.

Recovery of the body of the deceased on account of the disclosure statements made by the accused.

44. The effect of Exhibits PG, PH and PK which embody the demarcation/recovery memo prepared at the instance of the accused, in sequel whereto the body of the deceased was recovered from Nadampur Canal in front of Janta Brick Kiln, though prima facie is inculpatory. Though the recovery of the body of the deceased was made in pursuance to the respectively made disclosure statements by the accused, to which respectively Exhibits PE, PF and PJ become assigned. Further, though the accused led the investigating officer to the site, wherefrom the recovery of the body of the deceased became effectuated. However, the recovery as became effected of the body of the deceased, thus at the instance of the accused, rather is a feebly made recovery and therebys looses its creditworthiness, thus for the following reasons.

i) Since in verdict rendered by the Hon'ble Supreme Court in *Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police"*, decided on 03.01.2024, it has been declared that evidentiary tenacity is to be assigned to the relevant recovery but subject to the fact that it is made from a place known only to the accused.

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ii) The relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 of the said verdict, paragraphs whereof become extracted hereinafter.

22. *However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In **Mohmed Inayatullah v. State of Maharashtra**, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.*

23. *The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to*

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analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

iii) Now the principles set forth therein are that the defence, is required to be proving;

a) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;

b) That the fact discovered was planted;

c) It was easily available in the market;

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d) It not being made from a secluded place thus exclusively within the knowledge of the accused.

e) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, borne upon the concerned.

f) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

g) The defence adducing evidence to the extent that with there being an immense gap inter se the making of the signed disclosure statement and the consequent thereto recovery being made,

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that therebys the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

45. Since the present recovery becomes foul of the said principles, but on anvil of the trite echoing occurring, thus in the last portion of the cross examination of the investigating officer concerned, who stepped into the witness box as PW-10, inasmuch as, the said echoing becomes wrapped in the witness (supra) but acquiescing to a suggestion made to him by the learned defence counsel, that the effectuation of the recovery of the body of the deceased, thus was from an open and accessible place. Resultantly when therebys, the body of the deceased but is to be presumed to be earlier sighted by the investigating officer and/or by some other persons, who intimated the police, therebys also, when the site of the recovery was also within the knowledge of persons other than the accused, therebys, there was no exclusive knowledge with the accused qua the site of the recovery nor therebys any evidentiary effect can be assigned to the above nor the same has any inculpatory effect.

Final Order of this Court.

46. The result of the above discussion, is that, this Court finds merit in the appeal(s) (supra), and, is constrained to allow the same. Consequently, the appeals are allowed. The impugned judgment convicting, and, sentencing the appellants, as becomes recorded by the learned trial Judge concerned, is quashed, and, set aside. The appellants

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are acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellants, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

47. Records be sent down forthwith.

48. The miscellaneous application(s), if any, is/are also disposed of.

49. A photocopy of this order be placed on the files of other connected cases.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

28.01.2025

kavneet singh

Whether speaking/reasoned
Whether reportable

: **Yes/No**
: **Yes/No**