

Bench: M.B. Shah, Doraiswamy Raju

undergo RI for six months each. He also convicted the accused for the offence punishable under Section 201/34 IPC and sentenced them to undergo RI for five years and to pay a fine of Rs.300/- each in default of payment of fine to further undergo RI for three months each. Both the sentences were directed to run concurrently.

Against the said judgment and order, Sandeep (A-1) preferred Criminal Appeal No. 49-DB of 1997, Arun Bhatia (A-2) filed Criminal Appeal No. 93-DB of 1997, Vikram (A-3) filed Criminal Appeal No. 48-DB of 1997 and Mandeep (A-4) preferred Criminal Appeal No. 616-DB of 1996 before the High Court of Punjab & Haryana at Chandigarh. V.K. Goel, complainant and father of the deceased also filed Criminal Revision No.199 of 1997 praying for enhancement of sentence. The High Court re-appreciated the evidence and considered the circumstances connecting the accused with the crime. The High Court disbelieved the evidence of PW6 Gulshan Kumar that he saw the deceased and accused quarrelling near Kesar Hotel and that he separated them as in his previous statement he had not stated that he enquired the names of those boys from them. The High Court held that even if the said evidence is ruled out of consideration, it will make only motive in the case behind the killing of Vishal absent. However, the Court relied upon the evidence of PW9 Laxmi Narain on the ground that Sandeep was known to him earlier and that Vikram, Aman and Sandeep went to the house of Laxmi Narain in expectation that he was having association with the complainant V.K. Goel so he would be able to help them in the investigation or in the trial. The Court relied upon the evidence of PW11 Manish Sharma for arriving at the conclusion that the accused and the deceased were last seen together. Manish also gave motor-cycle number as HR-29 E/3698. The Court also relied upon the evidence of PW7 Bankey Lal who after some time saw motor-cycle and scooter coming at fast speed. On the motor-cycle, he saw Sandeep, Aman and Arun. Arun was driving the motor-cycle and Sandeep was having sword in his hand. He also saw Mandeep driving the scooter and Vikram sitting on its pillion. On the basis of the information, V.K. Goel alongwith Manish Sharma, Bhuneshwar and Bankey Lal went in search of Vishal and when they reached near Gurgaon canal they found a pair of chappal of brown colour belonging to deceased. One locket belonging to the deceased was also found lying there. At the instance of accused Sandeep, bloodstained sword and clothes were recovered. Similarly, at the instance of accused Vikram, motor-cycle was recovered and also bloodstained clothes containing human blood as reported by the Chemical Analyst were found. Considering the aforesaid circumstances, the Court arrived at the conclusion that the prosecution has successfully brought home beyond pale of doubt against Vikram and Sandeep the charge of murder of Vishal Goel on 15th March, 1995 in furtherance of their common intention. However, the Court arrived at the conclusion that there was no evidence of recovery so far as Mandeep and Arun were concerned and only evidence that they were last seen in the company of deceased would not alone be sufficient to convict them.

The High Court by the impugned judgment and order dated 28th April, 1999 dismissed the Criminal Appeal Nos. 48 and 49-DB of 1997 filed by Sandeep (A-1) and Vikram (A-3) and confirmed their conviction. The Court partly allowed the Criminal Revision No.199 of 1997 filed by the complainant V.K. Goel for enhancement of sentence and enhanced the fine in respect of Sandeep (A-1) and Vikram (A-3) to Rs.25,000/- each for the offence punishable under Section 302/34 IPC and to Rs.5,000/- each for the offence punishable under Section 201/34 IPC. In default of payment of fine, they were further directed to undergo RI for one year and six months respectively. The Court

allowed Criminal Appeal No. 93-DB of 1997 and Crl. Appeal No. 616-DB of 1996 filed by Arun Bhatia (A-2) and Mandeep (A-4) respectively and acquitted them for the offences for which they were charged.

The said judgment and order is challenged by, Sandeep (A-1) by filing Criminal Appeal No. 345 of 2000, by Vikram (A-3) in Criminal Appeal No. 350 of 2000, by the complainant V.K. Goel in Criminal Appeal Nos. 346 to 348 of 2000 against Mandeep, Arun Bhatia and State. The State of Haryana has also filed Criminal Appeal No. 349 of 2000 against acquittal of Mandeep.

It is the prosecution version that on 15th March, 1995 at about 7.30 p.m., i.e. on the day of incident, when deceased Vishal was at his house and was about to take meals, some one called him from outside on which he went out and did not come back. In the night, father of the deceased lodged a missing report, Ex.PP. On the next day, complainant was informed by PW11 Manish Sharma that he had seen the deceased going on a motor-cycle along with Sandeep (A-1) and Arun Bhatia (A-2) in the evening time on 15.3.1995. He was also informed by Bankey Lal (PW7) and Bhuneshwar that on 15.3.1995 they saw one motor-cycle and one scooter coming from the side of canal. On the motor-cycle, they saw Sandeep, Aman and Arun. Arun was driving the motor-cycle and Sandeep was having a sword in his hand. The scooter was driven by Mandeep and Vikram was pillion rider. It is also stated that one Gulshan Malik PW6 also informed V.K. Goel that he had seen Vishal and 5/6 boys quarrelling near Kesar Sweet Restaurant and that he separated them. He also disclosed the names of those boys as Arun, Aman, Sandeep, Vikram and Mandeep. While continuing with the search, the complainant and others reached at Gurgaon canal and found a pair of chappal which V.K. Goel identified as belonging to his son Vishal. Close- by they noticed trail of blood going up to the canal as also drag mark. The matter was reported to the police and on the basis of information given by the witnesses, FIR No. 221 was lodged on 16.3.1999 at about 7.00 p.m. under Section 364/34 IPC. After lodging the FIR, the police party along with PW7, PW11 and the complainant went to Gurgaon canal where they found a locket Om belonging to the deceased. It was sealed, marked and seized by the police. Similarly, chappals were sealed, marked and seized. Divers were called from the Fire Brigade Station, but despite their efforts they could not locate the body as it was night. Thereafter, on 17.3.1995, at about 10 a.m. divers could recover the dead body from the canal. An autopsy on the dead body was conducted. Dr. V.K. Aggarwal PW5 found several incised wounds and opined that the death was due to shock and haemorrhage as a result of injuries to the vital organ which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. It is also the prosecution story that on 18.3.1995, Sandeep, Vikram and Aman went to the house Laxmi Narain PW9 and made an extra judicial confession that they committed the murder of Vishal and his body was thrown in Gurgaon canal. Accused further informed him that they were afraid of the police as they had committed heinous crime and requested him to produce them before the police. He produced them before the police and they were taken into custody. On the basis of their disclosure statements, recoveries were effected. Sandeep (A1) disclosed about the sword Ex. P7, black pant Ex.P22, blood stained jacket Ex. P.21, and sandow banian Ex.P.23. Vikram (A3) disclosed about the motor-cycle and clothes.

At the time of hearing of these appeals, learned Senior Counsel Mr. U.R. Lalit appearing for Sandeep submitted that (1) Courts below erred in relying upon so-called confession before PW9 Laxmi

Narain as it is absolutely vague. So called confession nowhere indicates who committed murder and where it was committed. For proving the confession, exact words uttered by the accused are necessary to be proved. In any set of circumstances, there was no reason for the accused to approach PW9 and make such confession. PW9 is not related or acquainted to the accused nor having any status in the society or holding any post so as to be helpful to the accused. Further, the say of PW9 Laxmi Narain that he handed over the accused to the police inspector does not find any corroboration from the evidence of I.O.; (2) Prosecution has failed to establish motive as narrated by PW6 Gulshan Kumar and the same is rightly disbelieved by the courts below as witness was not knowing the accused nor he was familiar with them; (3) The trial court had arrived at the conclusion that the prosecution has failed to prove charge of criminal conspiracy and the accused were acquitted for the same. Therefore, the chain of circumstances, namely, last seen together and seeing them coming together, upon which the prosecution relies is also weakened as two accused are acquitted by the High Court; (4) The prosecution case that despite the detailed FIR stating the names and addresses of the accused, being recorded on 16th March, 1995 at 7 p.m., I.O. did not arrest any of the accused named in the FIR and that the I.O. is totally silent with regard to the steps taken by him after recording of the FIR, is not believable. He submitted that if this part is disbelieved, so-called recoveries at the instance of accused become suspicious. In any case, recovery is not proved by any independent witness as PW9 Laxmi Narain cannot be said to be an independent witness; (5) The evidence led by the prosecution is that of all interested witnesses, who are connected with the complainant V.K. Goel in one way or the other. He pointed out that evidence of V.K. Goel is not reliable because his version that he came to know about the arrest of accused after five days is totally unbelievable as he was in constant touch with the I.O. Learned counsel further pointed out that all the prosecution witnesses have not specifically stated before the court that they were knowing accused and if knowing since when and how. Further, as there was no identification parade, their evidence is not reliable.

Learned senior counsel Mr. Sushil Kumar appearing for Arun Bhatia submitted that there is no evidence worth the name for convicting Arun and, therefore, the High Court has rightly acquitted him. He has not made any confession. He pointed out that nothing was recovered from Arun Bhatia and complainant has named only four boys and he has not named Arun.

Mr. Jaspal Singh, learned senior counsel appearing for Mandeep adopted the aforesaid contentions raised by the learned counsel and in addition submitted that there is no confession by Mandeep and from the evidence on record the prosecution has failed to prove chain of circumstances to connect him with the crime. Learned counsel Mr. S.N. Bhardwaj appearing for Vikram adopted the aforesaid contentions raised by learned senior counsel Mr. Lalit as well as Mr. Sushil Kumar and submitted that the High Court erred in convicting Vikram Singh.

As against this, learned counsel Mr. Mahabir Singh appearing for the State at the outset submitted that some lapses on the part of I.O. in not carrying out prompt investigation would not mean that evidence of the prosecution witnesses is not reliable. He also submitted that it is true that Public Prosecutor has not taken care in bringing on record the fact that accused were known to the witnesses but considering their evidence and the cross-examination it is apparent that accused were known to the witnesses and during the trial defence has not doubted their identity by the witnesses

at any point of time. It is his contention that prosecution has fully proved the chain of circumstances which connect the accused with the crime. For this purpose, he relied upon the witnesses who have seen the accused going and coming on motor-cycle and scooter, particularly, Sandeep having sword in his hand. He also relied upon the evidence of PW6 and submitted that prior to the commission of crime, an incident had taken place at 4 or 4:30 p.m. on the day of incident. Apart from this, he referred to cross-examination of PW13 V.K. Goel, wherein it was suggested by the defence that because of throwing of acid on a girl named Deepika, there was dispute between the accused and the deceased. He pointed out that recovery of blood-stained sword and clothes of accused Sandeep clearly establishes his connection with the crime. He submitted that apart from the evidence of I.O. as well as PW9 Laxmi Narain, even the evidence of DW1 corroborates the recovery of clothes from the houses of Sandeep. For Vikram Singh, it is his contention that he was found alongwith Sandeep. A motor-cycle was found at his instance and that his blood-stained clothes were also recovered. For the other acquitted accused Mandeep, he submitted that there is no reason to acquit him as from his house scooter was recovered on the basis of his disclosure statement. He contended that accused made confessional statements before PW9 who handed over the accused to the I.O. and at that stage also in his presence accused made confessional statements and thereafter they were arrested by the I.O. The learned counsel for the complainant also supported the aforesaid contentions.

In our view, submission of learned counsel for the appellants that the courts below erred in relying upon the confessional statement made by Sandeep before PW9 Laxmi Narain requires to be accepted. Alleged confessional statement narrated by the witness PW9 is limited to the extent that Sandeep, Vikram and Aman came to his house at 9.30 a.m. on 18th March, 1995. Sandeep told him that on 15th March, they committed the murder of Vishal Goel and his body was thrown in Gurgaon canal near bypass Sectors 9 and

13. They also informed him that they were afraid of the police and requested him to produce them before the police. It is his say that when he was going along with the accused to inform the police, police met him at T-point of Sector 8 and 9, Faridabad and accused were handed over to the police. From the aforesaid version of the witness it is apparent that neither Vikram nor Aman made any confessional statement. Hence, it is difficult to arrive at the conclusion that Vikram and Aman made any confessional statement. Only Sandeep told the witness that they have committed the murder of Vishal Goel. Further, the learned counsel is right in submitting that there was no necessity for Sandeep and other accused to go at the residence of Laxmi Narain, more so when Laxmi Narain was not closely acquainted with the accused nor was having any status in the society so that he could be helpful to them. On this aspect prosecution has not brought anything on record to point out the reason as to why Sandeep and others had gone at the house of PW9. In cross-examination witness stated that he was a member of Lions Club and that Vikram had visited his house 2-3 times and last time 2 1/2 months prior to the date of occurrence. He has also stated that he was knowing Sandeep prior to his visit at his residence. It is his say that he met him in a restaurant and both of them took snacks and he made payment. Considering the entire evidence of this witness, in our view, the prosecution has not brought on record any reason for the accused to go at the residence of Laxmi Narain to confess their crime. Therefore, the said confessional statements cannot be relied upon.

However, there is no reason to disbelieve the say of this witness that Sandeep made confessional statement that the dead body of Vishal Goel was thrown in Gurgaon canal near bypass Sectors 9 and 13 and that sword and blood-stained clothes were kept at his residence. On the disclosure statement of Sandeep, blood stained sword wrapped in red cover, one black pant and jacket of fauji colour stained with blood were recovered from his house. On the basis of disclosure statement of Vikram, blood-stained T-shirt and a motor-cycle bearing No.HR-29 E/3698 parked at the ground floor of his house near garage were recovered. Further discovery of articles from the house of Sandeep gets corroboration from the evidence led by the accused. Accused led the evidence of DW1 Jai Bhagwan Singh Dahiya who was at Security service in Sector-9, for contending that accused Sandeep was arrested on 16.3.1995 and not on 18.3.1995 as stated by the prosecution. It is say of DW1 that on 16th March, he learnt that one boy was murdered and son of Mahender Sharma, namely Sandeep was involved in the crime. He had gone at the house of Mahender Sharma at about 10.15 p.m. In the meantime, S.I. Bhagat Singh accompanied with 2/3 other police officers arrived at his house. It is his say that Sandeep was handcuffed along with one other boy. The witness admitted that police enquired about the clothes of Sandeep when he was sitting in the drawing room of Mahender Sharma. Sandeep brought clothes consisting of one jacket, sandow baniyan of blue colour, one black pant and thereafter the police along with the accused left the place. In cross-examination, he admitted that he was on visiting terms with Mahender Sharma for the last many years and that he came to know about the murder at about 4/5 p.m. on 16th March, 1995. He also came to know about the involvement of Sandeep in murder case at 10 p.m. Mahender Sharma and his wife were present in their house when police came. He admitted that he had not disclosed this version to anybody and was not summoned as a witness, but at the instance of Mahender Sharma he appeared as a witness. This evidence, in our view, amply corroborates that Investigating Officer discovered the blood-stained clothes from the house of Sandeep in presence of his parents. Once this part of discovery is believed, then there is no reason to disbelieve the evidence of Laxmi Narain who was present at the house of Sandeep when the discoveries as stated above were made. He has stated that on the disclosure by Sandeep, they were taken at his residence and Sandeep produced blood stained sword and clothes in presence of his parents and the witness had attested the recovery memos.

Further, The prosecution has also produced on record the report of Assistant Director, (Serology), Forensic Science Lab, Haryana who found stains of human blood in the earth, shirt, T-shirts, pant, sweater, underwear and sword. As per the FSL report, the said articles were found stained with human blood of B-Group which was also the blood group on the articles recovered from the dead body of Vishal Goel.

In our view, the High Court erred in disbelieving the evidence of PW6 Gulshan Kumar in its entirety. It is the say of PW6 that at about 4/4.30 p.m., near Kesar Restaurant, he saw Vishal Goel and 5-6 boys quarrelling with each other. Vishal Goel was caught by 4-5 boys, who were present in the court, and he separated them. In cross-examination, he has stated that he was not knowing them prior to the incident and that he was knowing Vishal Goel and his father since years. May be that, on the date of incident he was not knowing the names of the boys who were quarrelling with deceased but that would not, in any way, falsify his say that Vishal and 5-6 boys were quarrelling with each other and that he separated them. Even in chief- examination, he has not stated the names of accused. However, the High Court rightly appreciated the evidence of PW11 Manish Sharma who has stated

that at about 7.30 p.m. on the date of incident, he saw accused Sandeep and Arun going on a motor-cycle having the same number which was recovered at the instance of Vikram. This witness has specifically stated that he was knowing deceased Vishal Goel as he was a tenant in the house of V.K. Goel. He has also stated that he was knowing Sandeep and Arun since he became tenant at the house of V.K. Goel. There is no reason to disbelieve the evidence of this witness. The evidence is consistent with the evidence of complainant who has stated that at about 7.30 p.m. when his son Vishal Goel was taking his meals, someone called him from outside and thereafter he left the house. Next day, V.K. Goel was informed by PW11 Manish Sharma that he had seen his son in the company of Sandeep and Arun at 7.30 p.m. on a motor-cycle. Further there is evidence on record of Bankey Lal PW7 that on 15th March when he alongwith Bhuneshwar Goel was walking on the road leading to Sector 9 and 13, at about 8.30 p.m., he saw Sandeep, Aman and Arun on a motor-cycle. Motor-cycle was driven by Arun and Sandeep was having a sword in his hand. He also saw Mandeep driving a scooter and Vikram was pillion rider. The motor-cycle and scooter were coming from the side of canal in a fast speed. On the next day when he came to know that Vishal Goel was missing, he accompanied V.K. Goel in search of him towards canal and found a pair of chappal of brown colour and blood on the earth. One locket of Om was also found there and they noticed dragging marks on the spot up to the canal. In cross-examination, the witness has stated that he was on visiting terms with V.K. Goel and had gone at his house on number of occasions as he was residing in neighbourhood. He has also stated that the accused boys have been visiting the house of V.K. Goel and he was knowing their names as he had heard them talking with each other. As the evidence of the aforesaid two witnesses is consistent, cogent and reliable, it would be difficult to accept the contention of the learned counsel that because they knew V.K. Goel, therefore, they are interested and their evidence is not reliable. In case where the victim and accused are known to a witness, his evidence would be material and cannot be criticized that as witness was knowing the father of the accused, he is interested witness. In the present case, as the witnesses knew the deceased as well as the accused persons, they were in a position to inform the complainant and also to identify the accused. In such a case there was no question of holding an identification parade. The aforesaid evidence clearly establishes that the deceased was last seen in the company of Sandeep and others after leaving the house at about 7.30 p.m. Thereafter, Sandeep having sword and others were seen coming back from the canal side by Bankey Lal, PW7. From the house of Sandeep blood-stained sword and clothes were discovered. Similarly, the bloodstained T-shirt was discovered from the house of Vikram and from the garage of his house, motor-cycle bearing No.HR-29 E/3698 was also recovered. PW5 Dr. Aggarwal carried out the post-mortem and found as many as 10 incised wounds which could be caused by a sword. The sword and the clothes which were recovered were found stained with blood of B group which is also the blood group found from the earth lifted from the spot and from the articles found on the body of deceased Vishal.

In view of the aforesaid circumstantial evidence proved by the prosecution, even if we discard the confessional statement made by accused Sandeep before PW9 Laxmi Narain, the High Court was right in convicting accused Sandeep (A1) and Vikram Singh (A3). Further, the High Court held that against Mandeep and Arun, except seeing them together while coming back by PW7, there is no other evidence to connect them with the crime and that there was no discovery of blood stained articles at their instance. Hence, they were acquitted. But that would not in any way adversely affect the prosecution evidence qua A1 and A3. It is also true that despite the detailed FIR, the IO has not

taken immediate steps for arresting the accused named in the FIR. But sluggishness in investigation would not in any way adversely affect the evidence of complainant-PW13, PW7 and PW11. In this view of the matter, the finding recorded by the High Court convicting A1 and A3 and acquitting A2 and A4 does not call for any interference.

In the result, the appeals are dismissed.

(M.B. SHAH) (DORAISWAMY RAJU) February 26, 2001. @@ JJJJJJJJJJJJJJJJJ