1 State vs. Anil

In the Court of Sandeep Garg, Addl. Sessions Judge, Jind.

Sessions Case No.: 04 of 04.01.2013 Sessions Trial No. 15 of 26.03.2013

CIS No. 163 of 2013

Date of decision: 14.8.2014

State vs. Anil son of Rajbir @ Raja, aged 22 years,

agriculturist, r/o village Rakhi Khan, Police Station Narnaund, District Hisar.

...Accused.

FIR No. 241 dated 16.09.2012

U/S: 302 and 404 IPC

Police Station : City Narwana

Present: Sh. S. B. Lather, Public Prosecutor for the State.

Accused in custody represented by Sh. R. K. Sheokand,

Advocate.

JUDGMENT:

Above named accused Anil has been sent to face trial under Section 302 and 404 IPC by SHO. Police Station, City Narwana.

2. The case of the prosecution, in brief, is that on 14.9.2012, ASI Balwan Singh (PW14) of Police Station, City Narwana alongwith other police

officials was on patrolling duty in the area of Model Town, Narwana where

complainant Satpal (PW3) son of Fakir Chand r/o Patel Nagar, Narwana met

him and made statement Ex.PE to the effect that his younger sister Birmati

was married with Roshan son of Abhay Ram r/o Garhi, Police Station

Narnaund, District Hisar and a son named Yogesh was born out of the

wedlock. Yogesh, since deceased, was aged about 17 years. His sister died

about 8/9 years prior to that day and his sister's husband Roshan had also

expired about 15years prior to that day. Yogesh, his nephew, was residing with him (complainant) since his childhood, who was student of 11th class. Complainant further alleged that on the previous day i.e. 13.9.2012 at about 1.00 pm Yogesh had gone outside the house without telling anything to other family members as to where he was going. He had also left his mobile phone at the house. Yogesh did not return till 3.30 pm. Hence, they proceeded to search him. They continued searching Yogesh till 10.30 pm on the previous night but could not find any clue. He further alleged that on that day i.e. 14.9.2012, his cousin Dallar son of Teki Ram r/o Chopra Patti, Narwana had gone towards backside of Municipal Committee shops on LIC Road, Narwana to answer the call of nature, who found that pigs were eating legs/flesh in the bushes. On that information received from Dallar, the complainant reached at the spot and found a pair of chappal and lower (pants) of Yogesh, lying there. He also found skull portion in three pieces and both legs at some distances in the bushes. Portions of legs, below ankle joint, were intact, while upper portion had been eaten away by the pigs. Upper and lower jaw were also lying at some distance and skeleton of one arm was lying towards eastern side. He also stated that from soles, it appeared that those were of Yogesh and slippers and lower were also of Yogesh. They had not noticed any injury on the bones. He did not suspect anybody. He sought action, after ascertaining the cause of death.

Endorsement Ex.PE/1 was made by Balwan Singh ASI and DDR No. 32 dated 14.9.2012 was recorded at 5.45 pm. Scene of crime team was informed. The spot was photographed. Pair of slippers and lower, a brick,

blood stained earth were taken into police possession. Proceedings under Section 174 Cr.P.C. were conducted and thereafter the body was sent to General Hospital, Narwana for autopsy. The doctor of General Hospital, Narwana referred the dead body to PGIMS, Rohtak for post mortem examination. The dead body could not be taken to PGIMS, Rohtak on account of night hours. On 15.9.2012 autopsy was conducted in PGIMS, Rohtak. The dead body was handed over to legal heirs. Four parcels containing bones and another Jar handed over by the doctor were taken into police possession. It was opined by the doctor that skeletonized dead body was of adolescent male individual, aged about 16 to 18 years and cause of death was head injury. On 16.9.2012, in view of autopsy report, present case was registered under Section 302 and 201 IPC. Special reports were sent to higher officers. Investigating machinery swung into motion. Statements of the witnesses were recored. On 12.10.2012, accused Anil was produced by Dilbag son of Telu Ram. Accused had suffered extra judicial confession. On interrogation accused suffered disclosure statement confessing his guilt and that he had removed a purse and mobile spice from body of deceased which had been kept concealed by him in a tubewell well. The accused got recovered the purse and mobile. He also got recovered his own clothes stained with blood. He demarcated the spot. Further investigation formalities were completed. After completion of investigation, report under Section 173 Cr.P.C. was submitted in the court. After supplying copies of challan to accused free of costs as per the provisions of Section 207 Cr.P.C., case was committed to the court of Sessions.

- 3. After hearing both the parties and on the basis of report under Section 173 Cr.P.C. and accompanying documents, accused was charge sheeted under Section 302 and 404 IPC vide order dated 5.2.2013 by this court. Contents of the charge were read over and explained to accused in simple Hindi, to which he pleaded not guilty and claimed trial. Thereafter the case was slated for prosecution evidence.
- 4. In order to prove its case prosecution has examined as many as 23 witnesses namely, Dr. Parbhu Dayal as PW1, C. Naresh Kumar as PW2, complainant Satpal as PW3, Dilbag as PW4, Sunil as PW5, Ramesh as PW6, Dallar as PW7, SI Jagbir as PW1, ASI Bhag Singh as PW9, Dr. Kamal Krishan as PW120, EHC Mahabir as PW11, Kuldeep Gupta draftsman as PW12, Pawan Kumar Photographer as PW13 ASI Balwan Singh as PW14, EHC Jai Karan as PW15, EHC Madan Lal as PW16, EHC Sube Singh as PW17, ASI Wazir Singh as PW18, SI Suraj Bhan as PW19, Inspector Rohtas Singh as PW20, Inspector Gurdayal Singh as PW21, ASI Mahinder Singh as PW22 and HC Subhash Chander as PW23. Thereafter, learned Public Prosecutor closed the prosecution evidence.
- 5. The accused was examined under section 313 of Cr.P.C wherein all the incriminating circumstances were put to him. He denied the entire prosecution allegations, pleaded innocence and false implication. Accused further pleaded that deceased Yogesh was his cousin, who used to reside at his maternal uncle's house, His maternal uncle used to take the lease money of the land comes in the share of Yogesh deceased as he was a minor and his parents were not alive. He was not treated properly by the maternal uncles

and by their respective families. He used to remain disturbed on that account. Due to the ill treatment of family of maternal uncles of Yogesh, he might have left his house of his own and might be still alive or has been murdered by his maternal uncles. He never visited Narwana on 13.9.2012 and never took Yogesh with him. It might be possible that Yogesh left the house of maternal uncle due to their ill treatment and is not coming back to the home. He has been falsely involved in this case as he and his family used to object the ill treatment meted out to Yogesh by his maternal uncle as he is cousin of the deceased Yogesh.

- 6. Since there was incriminating evidence against the accused so he was called to enter upon his defence. The accused opted to lead evidence and ultimately did not led any oral evidence in defence. He tendered in evidence documents Ex.DB (again numbered wrongly) i.e. court order dated 1.10.2014, Ex.DB/1 i.e. court order dated 5.10.2014 and Ex.DB/2 i.e. statement of accused in court on 5.10.2014, on police application for lie detection test.
- 7. I have heard learned Public Prosecutor for the State, and learned defence counsel and gone through the case file..
- 8. Before adverting to rival contentions of parties a brief resume of evidence adduced by the parties would be relevant at this stage.
- a) Complainant Satpal PW, testified as per his initial version made in the statement Ex.PE to the police as so detailed in para no.2 of this judgment.

- proceeding to his field in the evening time, accused Anil met him on the way. He told him that he was being surrounded by the police and that he (Dilbag) could produce him before the police and help him. Accused also disclosed that he had committed murder of his cousin Yogesh on 13.9.2012. He produced the accused before the police near bus stand. He stated that document Ex.PF bears his signature.
- c) PW5 Sunil deposed that Birmati was his bua (father's sister). Yogesh son of Birmati was residing with his uncle Satpal as Birmati had expired. On 13.9.2012, he and Yogesh were present at their house watching TV. At about 12.00 noon accused Anil came there. He also stated that accused is son of Rajbir and said Rajbir is real brother of Roshan, husband of Birmati. Anil joined them and then took alongwith him Yogesh on the pretext of having a round outside. He also left his house for market. After 30/45 minutes he returned to his house. His uncle Satpal met him. On enquiry from his uncle about Yogesh, Satpal replied that he was not aware as to where Yogesh was at that time. They searched for Yogesh till that evening. On the next day they came to know that dead body of Yogesh was lying near LIC in bushes behind shops of Market Committee, Narwana. He also stated that accused Anil had visited their house in the month of May, 2012 as well and had enquired where Yogesh was studying and also about his daily routine. He further deposed that land measuring little over three acres was in the share of his uncle Roshan and equal share was in the name of his brother

Rajbir. Rajbir father of accused used to deposit the share of the land falling in the name of Roshan with his uncle Satpal.

- d) PW7 Dalad deposed that on 14.9.2012 he had goner to answer the call of nature near LIC building, where he found that some pigs etc. were eating the dead body. He went near and found that it was a skeleton of a human being and there was flesh available near the ankle joint of the dead body. He returned to his house and thereafter informed about the fact to his cousin Satpal. Thereafter, they all the family member went to the spot and found that one pair of chappal (slippers) and a lower (pants) was lying. There were two three pieces of skull bone and lower and upper mandible also lying there. They identified the dead body with the help of chappal and lower to be of Yogesh deceased.
- e) PW9 EASI Bhag Singh, PW11 EHC Mahabir Singh, PW15 EHC
 Jai Karan, PW16 EHC Madan Lal and PW22 EASI Mahinder Singh are
 formal witnesses, who all tendered their affidavits Ex.PM, Ex.PH Ex.PX,
 Ex.PY, Ex.PDD respectively regarding safe deposit of case property and its
 dispatch on FSL Madhuban. PW12 Kuldeep Gupta, Draftsman prepared
 scaled site plan Ex.PS of the place of incident. PW13 Pawan Kumar took
 photographs of spot and dead body Ex.PT, Ex.PT/1 to Ex.PT/9. PW20
 Inspector/SHO Rohtash Singh prepared final report under Section 173 Cr.P.C.
 and submitted the same in the court. PW15 EHC Sube Singh handed over
 special report of this case to Illaqa Magistrate and higher officials. PW23 HC
 Subhash Chander brought the Daily Diary Register of Police Station, City

Narwana dated14.9.2012 bearing DDR entry No. 32-A and proved the copy of the same as Ex.PEE/2.

- f) PW1 Dr. Parbhu Dayal deposed that on 14.9.2012 ASI Balwan Singh came to General Hospital, Narwana with request for post mortem examination of a human skeleton. A board was constituted by Dr. R. K. Singla and he was member of the board including Dr. Shuchi Goel and Dr. Himanshu Bansal on police application Ex.PA. They examined the skeleton and opined vide Ex.PA/1 that it was not possible for them to ascertain the identity and cause of death and the skeleton was referred to PGIMS, Rohtak.
- g) PW10 Dr. Kunal Khana testified by means of affidavit Ex.PN that on 15.9.2012 he was posted as Resident in the department of Forensic Medicines, PGIMS, Rohtak. He alongwith Dr. Ashish Tyagi and Dr. Jitender Jakhar had conducted autopsy on the dead body of Yogesh son of Roshan Lal, aged 17 years r/o village Garhi. The dead body was referred by Dr. Shuchi, Dr. Pbhu Dayal and Dr. Himanshu Bansal of General Hospital, Narwana. He further deposed that the articulated length of body was 180 cms. It was skeletonized dead body and wrapped in a white sheet cloth in eight pieces which was arranged anatomically and then examined. They found the following injuries:
 - 1. The skull bone of typically male character was present in three pieces with large part of the skull smudged with mud, blood like material and remnants of the wet soft tissues and the maxillary teeth. The maxilla consisted of all the permanent teeth

of their sockets except the third molar with no space available.

The teeth showed milk grinding on their occlusal surface.

In the skull, some part of both the occipital and the frontal bone were missing and the two other separate pieces of the skull of both the parietal bones with sutures was present which showed irregular margins and the margins showed infiltration of blood in the exposed trabeculae. The whole brain was found missing. Gnawing effects were present all over the the available skull.

- 2. Mandible was typically of male character having all the permanent teeth except the third molar with no space available. The teeth showed mild grinding on their occlusal surface. There was no loosening of the teeth in both the maxillary and mandibular teeth.
- 3. A right humerus and right ulna articulated at the right elbow joint were received loosely with both the bones smudged with mud, blood like material and wet remnants of the soft tissues adherent to them at places. Gnawing effects were present all over the bones at places.
- 4. Pelvic bones with sacrum and the bones of lower extremities except the right fibula was received loosely in a single piece. The pelvic bones and sacrum were typically of male character. The available bones were smudged with mud, blood like material and the remnants of the wet soft tissues were

adherent to them at places. Both the femur, both tibia and left fibula were articulated at their joints i.e. hip joint, know joint and ankle joints. The foot portion was not skeletonized and showed postmortem bulllae at places. The upper medial aspect of the right tibia was missing with evidence of gnawing effect. Gnawing effects were present all over the bones at places and also skin and subcutaneous tissues were missing at places on the lateral aspect of the right foot.

- 5. Skin portion of the anterior abdominal and chest wall was present with the part having umbilicus in it. The skin showed gnawing effect at places.
- 6. Two pieces of the bones appearing to be non human were also received loosely with the body.

In reply to the questions asked by the police it was replied as under:

- i) The skull and other available bones appear to be of same individual. However, bones and teeth have been preserved and sealed for DNA profile and blood grouping needed.
- ii) This is a skeletonized dead body of an adolescent individual aged between 16 to 18 years.
- iii) The cause of death is head injury as described.
- iv) Probable time between death and autopsy is between 1 to 3 days.

v) Bones, skin and the teeth have been preserved and sealed for DNA profile and blood grouping if required.

The probable time that elapsed between death and autopsy was between 1 to 3 days.

He also stated that on 21.9.2012 a brick was produced so as to opine if injury could be caused by that brick or not. The parcel was bearing four seal impressions of BS which was opened and reddish colour brick having a cemented portion, weighing 5 kgs. was found therein. He also stated that head injury described in the PMR of Yogesh could be caused by such type of weapon. He further deposed that blood stain an DNA, brick with cemented portion should be sent to FSL, Madhuban.

h) PW14 Balwan Singh ASI conducted initial instigation and testified that on 14.9.2014 he was posted as ASI in police station, City Narwana. On that day he alongwith other police officials was present in Model Town, Narwana for patrolling where Satpal Singh complainant met him and made statement Ex.PE. He made his endorsement Ex.PE/1 and sent the same to police station, City Narwana for recording DDR through constable Naresh Kumar. Thereafter he reached at the spot and took photos of the place of occurrence with the help of Govt. Digital camera. During the spot inspection he noticed that parts of the dead body were lying there. Chappal, blood stained lower and blood was scattered there. A blood stained brick was also lying there at the spot. He took into possession pair of chappal, lower, blood stained earth, blood strained brick vide recovery memo Ex.PU after preparing separate parcels with seal of BS. He prepared inquest report

of Ex.PP of the skeleton of the dead body of Yogesh. Thereafter he took the skeleton of the dead body of Yogesh to General Hospital, Narwana for postmortem examination and moved application Ex.PA before the doctor. The board of the doctors referred the skeleton to PGIMS, Rohtak vide report Ex.PA/1. He also deposed that on 15.9.2012 he took the dead body to PGIMS, Rohtak where the doctors conducted autopsy. Doctors handed over the parcels of bones to him which were taken into possession vide recovery memo Ex.PB. The dead body was handed over to the family members of the deceased. He returned to the police station, City Narwana on 16.9.2012 and recorded formal FIR Ex.PV. Thereafter he again visited the place of occurrence and prepared rough site plan Ex.PW. Further investigation was taken by Inspector Gurdayal Singh.

PW18 ASI Wazir Singh remained associated in investigation with PW14 ASI Balwan Singh and corroborated the version of ASI Balwan Singh.

- i) PW8 SI Jagbir Singh testified that on 19.9.2012 he was posted as SI in police Station, City Narwana. On that day Balwan Singh ASI handed over to him parcel of a brick duly sealed with seal of BS for producing the same before doctors of PGIMS, Rohtak and seeking their opinion. On police application Ex.PL, doctors of PGIMS,Rohtak gave their opinion on 21.9.2012.
- j) PW21 Inspector Gurdayal Singh testified that on 16.9.2012, he was posted as Inspector/SHO, P.S.Narwana. On that day, he visited the spot

after receiving of the information regarding the present case. He took up the investigation from ASI Balwan Singh

On 17.9.2012, he recorded the statements of Ramesh @ Bablu, Dallar under Section 161 Cr.P.C. On 18.9.2012, he recorded the statements of Sunil son of Madan under Section 161 Cr.P.C. On 19.9.2012 he handed over application Ex.PL to Jagbir Singh SI for taking the opinion of the doctor after showing the parcel of the brick to the doctor. On 1.10.2012, he moved application Ex.PCC in the court of learned Illaqa Magistrate, Narwana for permission to get conducted the lie detection/polygraphy test of the accused Anil. Learned Illaqa Magistrate served notice to Anil for 5.10.2012. Accused visited police station, City Narwana and showed his volunteerness for the said test.

On 12.10.2012 he was present at bus stand Narwana where PW Dilbagh son of Telu Ram met him and he got recorded the extra judicial confession Ex.PF and he (Dilbag Singh) produced accused Anil before him. On his interrogation, Anil accused confessed his guilt before him and that he could point out the place from where he provided juice to the deceased. He further disclosed that he could also pin point the place of occurrence where he committed the murder of deceased Yogesh. He also deposed that accused demarcated those places from where he provided the juice to the deceased and he demarcated that place also where he committed the murder of the deceased.

On 13.10.2012, he again interrogated accused Anil in the premises of P.S.City, Narwana. On his interrogation, accused suffered

disclosure statement Ex.PG and further disclosed that he can get recovered the clothes and shoes etc. which were worn by him at the time of occurrence. He further disclosed that he can also get recovered mobile, purse and a photo of the deceased which he had kept concealed by him. Police remand of the accused was obtained and allowed for three days. Thereafter, the investigation was handed over to SI Suraj Bhan as he was transferred to P.S. Safidon from P.S.City, Narwana.

k) PW19 SI Suraj Bhan deposed that on 13.10.2012 he alongwith other police officials and PWs Ramesh and Satish reached in village Rakhi where the accused in pursuant of his disclosure statement led the police party to his fields and got recovered a polythene taken out from the well of the tubewell, containing one purse, one photo of Yogesh, one mobile marka spice, one card, which were taken into possession vide memo Ex.PJ after converting the same into parcel which was sealed with seal of SB. These articles were identified by the witnesses as that of Yogesh deceased. He added Section 404 IPC in this case.. He prepared rough site plan Ex.PAA. He further deposed that thereafter the accused led the police party to his house in the village and after entering into the room of his Chobara (room on first floor of house), he got recovered pair of sport shoes, pant and shirt which were taken into possession vide recovery memo Ex.PK after converting them into a parcel with seal SB. He also prepared rough site plan Ex.PBB of the place of recovery.

- m) PW6 Ramesh remained associated in the investigation with Inspector Gurdayal Singh PW21 and SI Suraj Bhan PW19 and corroborated their their version
- n) Vide FSL report Ex.PC blood was detected on chappal, pajama, blood satined earth and brick. Traces of blood too small for serological analysis were detected on shirt, pants and and shoes of the accused Anil.. Vide report Ex.PD origin of blood was found human on the chappal, pajama, blood stained earth and brick.
- 9. Learned Public prosecutor for the State argued that the prosecution has proved its case beyond shadow of reasonable doubt. It is substantiated beyond doubt that Yogesh was murdered as his skeletonized dead body in different parts was found behind shops of Municipal Committee, Narwana on LIC road, Narwana. Dead body was sent for autopsy in the department of forensic medicines of PGIMS, Rohtak where skeleton was found to be of a male aged 16 to 18 years. The clothes of the deceased and slippers were also identified by the complainant to be that of the deceased. The defence has also suggested in cross examination that Yogesh was murdered by PW Ramesh and not by the accused. He further submitted that complainant and other witnesses have no reason to depose falsely against the accused nor any such version was made at the time of lodging FIR or subsequently. There are clinching circumstantial piece of evidence against the accused as he got recovered purse of the deceased containing photograph. He also got recovered his own blood stained clothes for which he could not furnish any explanation. He suffered extra judicial confession before PW4

Dilbag Singh, who has no reason to falsely implicate the accused. The accused was last seen with the deceased as so stated by PW5 Sunil. The accused also demarcated the spot. Weapon of offence was lying at the spot which is a brick and human blood was found thereon. Medical evidence is consistent with ocular version. The motive is also established as the accused wanted to eliminate the deceased so as to inherit the property of the deceased. He prayed for convicting the accused.

10. On the other hand learned defence counsel vehemently argued that the instant case is false and fabricated. Facts were concocted in pursuant to a well planned conspiracy hatched by Ramesh and his family members so that accused may not inherit property of the deceased with view to grab property of the deceased in connivance with the police. He contended that no one is named in the FIR nor any body was suspected at that time. First version was given to the police on 14.9.2012 by way of statement Ex.PE by Satpal. On 1.10.2012 investigating agency moved application for conducting lie detection test upon the accused which was allowed on 5.10.2012 but the accused was not taken for lie detection test and was falsely involved in this case by way of crude padding of purse of deceased Yogesh, blood stained clothes and creating evidence of last seen and extra judicial confessions. He further submitted that the prosecution could not substantiate that deceased Yogesh had died as the dead body was not identifiable. It was not subjected to DNA test to ascertain the identity of the deceased. Lower (pants), slippers recovered from the spot are ordinarily available in the market and could not be connected with the deceased to establish that skeleton recovered was of Yogesh. He further submitted that evidence of last seen and extra judicial confession is unworthy of credence as PW5 Sunil and PW4 Dilbag are related to the complainant party. Recoveries have been foisted. The blood stains allegedly found on the clothes of the accused were not got matched with DNA of deceased nor origin thereof could be ascertained. Purse of the deceased was also foisted upon the accused, otherwise the accused had no reason to retain purse of the deceased. A prayer was made to acquit the accused.

- 11. I have duly considered the rival contentions of both the parties. In this case prosecution was required to prove that Yogesh was murdered and skeleton recovered from behind Municipal Committee Shops on LIC road Narwana was of deceased Yogesh. It was further required to be substantiated that circumstantial evidence adduced by the prosecution is of clinching nature which points to the guilt of the accused and none else and every hypothesis of innocence of the accused is not available to him.
- 12. Firstly it is required to be determined if the skeleton pieces recovered on 14.9.2012 from back side of Municipal Committee shops on LIC Road, Narwana are of the deceased or somebody else. In this regard it is observed that PW7 Dallar son of Teki Ram deposed that he had gone to answer the call of nature near LIC building on 14.9.2012 and found that some pigs were eating the dead body and he found skeleton of human being, with some flash available near ankle joint. He informed this fact to his cousin Satpal and they reached at the spot and found a pair of slippers and lower (pants) was lying there. He also stated that 2-3 pieces of skull bones and

lower and upper mandible were also lying there. They identified the dead body from the slippers aqud lower to be that of deceased Yogesh.

To this effect PW3 Satpal testified that Yogesh his nephew aged 17 years, student of 11th standard, residing with him, had gone missing since 13.9.2012. On the information of Dallar, he alongwith others went near LIC office on 14.9.2012 and found slippers and lower were lying there to be that of Yogesh and they also found bone and skeleton without flesh lying in the bushes. He also identified foot portion, lying there, to be that of his nephew Furthermore, in this regard PW14 ASI Balwan Singh, who Yogesh. conducted initial investigation, deposed that he reached the spot on 14.9.2012 on receipt information from Satpal complainant by way of statement Ex.PE. During spot inspection, he found chappals, blood stained lower and blood was scattered at the spot. A blood stained brick was also lying there at the spot. Articles were taken in possession vide recovery memo Ex.PU. He conducted inquest report Ex.PP and sent the skeletonized dead body of Yogesh to General Hospital, Narwana with application Ex.PA for conducting autopsy. The doctors of General Hospital, Narwana referred the dead body for autopsy to PGIMS, Rohtak with their report Ex.PA/1.

A perusal of inquest report Ex.PP conducted in the afternoon of 14.9.2012 would indicate that dead body was in the shape of skeleton lying scattered. He has specifically marked place where slippers were lying there and also the place where the lower (pants) was lying. Blood stained earth was also taken into possession from the spot.

- Dr. Kunal Khana PW10 of the department of forensic medicines, PGIMS, Rohtak alongwith other doctors namely, Dr. Ashish Tyagi and Dr. Jitender Jakhar conducted autopsy on 15.9.2012 at 11.40 am. In his affidavit Ex.PN Dr. Kunal Khana has given details of post mortem examination. It is mentioned that skull bones were of typically of male character in three pieces. It is also mentioned that mandible was typically of male character. It is also mentioned in the details at serial no. 4 that foot portion was not skeletonized. Two pieces of non human bones were also received. The findings were given in reply to police questions in the manner that skull and other available bones appeared to be of same individual and it was skeletonized dead body of the adolescent male individual aged between 16 to 18 years and cause of death was head injury. Probable time between death and autopsy was given 1 to 3 days. Bones, skull and teeth were preserved and sealed for DNA profile and blood grouping.
- 14. It is evident that autopsy was conducted by medical board of Forensic department of PGIMS, Rohtak and after mentioning all the details skeletonized dead body was found to be of adolescent male individual aged between 16 to 18 years. Hence it was dead body of a young boy. Deceased Yogesh was male aged about 17 years and autopsy report corroborates this fact. The deceased had gone missing since afternoon of 13.9.2012 and adolescent male individual aged between 16 to 18 years' skeletonized body was found on the afternoon of 14.9.2012 where as autopsy was conducted on 15.9.2012 at 11.40 am. The time elapsed between autopsy and death is given 1 to 3 days which also coincide with probable date of death as 13.9.2012 in

In this manner, medical evidence corroborates ocular version regarding death of male individual who was aged 17 years and had died as per case projected by the prosecution and broad particulars of age and sex of Yogesh, do not deviate from the autopsy finding. Further more, lower and slippers of deceased were identified by PW Dallar and PW Satpal. The family members can always identify the day to day wearing clothes, slippers etc of their near and dear one. The argument of learned defence counsel that such type of slippers and lower are ordinarily available in the market would not be a ground to discard the prosecution case as with the passage of time same set of slippers and lower become identifiable to all family members and it has been identified at the spot. Hence, the prosecution has adduced sufficient evidence to establish skeletonized body recovered in this case was of deceased Yogesh and none else. Deceased Yogesh has not been seen thereafter till date. No other male boy aged 16-18 years had been reportedly gone missing during that period in that area. On the contrary, the defence has come up with the version that Ramesh had committed murder of Yogesh. Hence, the defence also suggested that it was dead body of Yogesh. It was also suggested that Ramesh had thrown the dead body of Yogesh behind the LIC office. It was also put to the witnesses that dead body was not identified by them. However, in view of the evidence led by the prosecution as discussed above, it has been established that dead body was of Yogesh.

15. The argument of learned defence counsel that DNA profile was not prepared to establish the identity of the deceased would not be available in this case as parents of the deceased had expired and there is nothing on

record that he has any surviving brother and sister. Hence, DNA profile was not possible to establish the identity of the dead body.

- 16. Now next question for determination is as to whether the prosecution has been able to prove that Yogesh was murdered and further if it was only accused Anil who committed this murder and none else.
- The deposition of PW10 Dr. Kunal Khana and autopsy findings of post mortem report Ex.PO would indicate that cause of death is given head injury. On police application dated 19.9.2012, Ex.PL, produced before the board of doctors including Dr. Kunal Khana on 21.9.2012, it was opined that head injury described in autopsy report could have been caused by brick with cemented portion Ex.P7 produced before them in sealed parcel, vide opinion Ex.PQ. Hence, from medical evidence it is proved that Yogesh was murdered by causing head injury with brick Ex.P7.
- 18. submitted Learned defence counsel that of in cases circumstantial evidence when there is no eye witness, presumption of innocence of the accused must have a dominant role. On this aspect, he placed reliance upon Musheer Khan @ Badshah Khan and another vs. State of Madhya Pradesh, 2010(1) RCR (Criminal) 817. He also placed reliance upon State of Rajasthan vs. Naresh @ Ram Naresh, 2010(1) RCR (Criminal) 128 wherein it was a case of murder and there was no eye witness. Prosecution case was based upon circumstantial evidence. The accused was seen running from the place of occurrence with a Potli and also seen washing his hands after committing murder. Strap of his wrist watch was found near dead body. These facts raised suspicion but do

not prove the commission of murder. The findings of acquittal were upheld by Hon'ble Supreme Court.

It is undisputed proposition of law that in cases based upon circumstantial evidence, the prosecution is required to prove circumstances from which the conclusion of guilt is to be drawn and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. While appreciating the circumstantial piece of evidence the court must be on its guard to avoid danger of allowing suspicion to take place of legal proof and must be watchful to avoid any danger of being swayed by emotional consideration. It will be apposite to refer law laid down by the Hon'ble Supreme Court in Tanviben Pankajkumar Divetta V. State of Gujarat, 1997 (7) SCC - 156:

"The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypotheses is against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various

circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is long mental distance between "may be true" and must be true" and the same divides conjectures from sure conclusions."

20. Prosecution adduced circumstantial evidence of extra judicial confession, recovery of purse of the deceased containing photograph, recovery of his own blood stained clothes and that the accused was last seen with the deceased as so stated by PW5 Sunil. Firstly taking up the aspect of extra judicial confession, it is observed that PW4 Dilbag Singh testified that accused Anil met him on 12.10.2012 and told that police was after him and he should produce him before the police and before him the accused also confessed of committing murder of his uncle's son on 13.9.2012 and he accordingly produced the accused before the police near bus stand, Narwana. Learned defence counsel submitted that the accused has no reason to confess his guilt. The accused had consented to being subjected to lie detection test on 5.10.2012 as so evident from statement Ex.DB/2. PW Dilbag is related to the complainant party. He further submitted that extra judicial confession is made before a person having influence with the police and to none else and in

the given circumstances, no weight can be attached to the deposition of PW4 Dilbag. In order to substantiate his argument, he relied upon Puran vs. State of Haryana, 1990(3) Recent Criminal Reports 520 wherein the accused suffered extra judicial confession before a person with whom he had no relation nor that person had any influence with the police. Confession was made after several days. Our Hon'ble High Court held that confession cannot be relied upon. Further reliance was placed upon Roopi @ Roopa vs. State of Haryana, 1990(3) Recent Criminal Reports 41 wherein it was a case of murder. Our Hon'ble High Court held that extra judicial confession is weak type of evidence. To make it worthy of belief regard be made to the person to whom it is made; connection if any of the accused with him; the occasion or reason for the accused to go and make such a confession to him; and the circumstances in which confession was made.

In the present case there is nothing on record to suggest that either complainant PW3 Satpal or PW4 Dilbag had any animosity against the accused to depose falsely. In case titled **Gura Singh vs. State of Rajasthan 2001 SCC (Crl.) 323** Hon'ble Supreme Court held that extra judicial confession if found voluntary and not obtained by coercion, inducement or promise or favour can form sole basis of conviction. Corroboration is required only by way of abundant caution. Adverting to the facts of the present case, it is observed that PW4 Dilbag had stood test of cross examination. The deceased is also related to the accused being his first cousin and complainant Satpal is maternal uncle of the deceased. Any related person to the complainant is also related to the accused as accused is none

else but first cousin of the deceased. From the documents adduced by the defence, it has been established on record that police had suspected involvement of the accused in this case and for that application was moved to conduct lie detection test upon the accused. The accused showed his voluntariness to under go the test but within a week of his consenting to undergo lie detection test, he confessed of his involvement in the present case. It would indicate that accused knew that police was after him and lie detection test could further bring scientific evidence against him and apprehending that he was looking for a person who could produce him before the police. The accused approached Dilbag PW4 and confessed his guilt. It is not unusual now a days for an accused to approach the relative of the deceased as well to confess his guilt when he feels repentant. It has been settled by now that the court must not start with the presumption that extra judicial confession is weak type of evidence. In the aforesaid authority titled **Gura Singh vs.** State of Rajasthan (Supra) the accused had committed murder of his father and made confession before the close relatives. Hon'ble Supreme Court held that witness being closely related to the accused in whom under normal circumstances he must have confided hoping help, protection and being safeguard. The confession was made instantaneously immediately after the occurrence and not procured under pressure, coercion or with promise to favour. It was further held that it would depend upon the nature of the circumstances, time when confession is made and credibility of the witness who seek for such confession. In the present case from the totality of the circumstances, as there was no animosity of PW4 Dilbag with accused and

deceased and accused are closely related to each other being cousin coupled with the fact that police was after the accused Anil suspecting him in this case, the extra judicial confession by the accused is reliable piece of evidence in this case. With due reverence, it is observed that the ratio of aforesaid authorities relied upon by learned defence counsel could not help his case.

22. The other circumstance is of recovery of purse of deceased containing photograph of deceased from the accused. In this regard the deposition of PW6 Ramesh would indicate that accused got recovered a purse containing photograph of deceased Yogesh and card from well of tubewell in pursuant to his disclosure statement Ex.PG. This fact is also corroborated by the Investigating Officer PW19 SI Suraj Bhan. Purse was produced as Ex.P1, photograph as Ex.P2, card as Ex.P3 and mobile phone as Ex.P4. The argument of learned defence counsel that the accused would not retain the purse and photograph of the deceased with him would be untenable as the purse was intentionally removed from the body of the deceased so that his identity could not be established. The depositions of PW6 Ramesh and PW19 SI Suraj Bhan regarding disclosure statement Ex.PG could not be Recovery of purse of deceased containing photograph of the shaken. deceased is also a strong incriminating circumstance against the accused as recovery was affected within one month from the incident. The argument of learned defence counsel that no independent witness was joined at the time of disclosure statement or recovery would not be a ground to discard the depositions of PW6 Ramesh and PW19 SI Suraj Bhan. Now a days the people from general public do not come forward to join in the police investigation

especially in such cases of heinous crime. Police party had already joined two witnesses namely Ramesh and Satish. At the time of seeking police remand, disclosure statement Ex.PG was also signed by the court of illaka magistrate and in pursuant thereto recovery was effected on the same day. It is not a case of repeated interrogations and multiple disclosures. The place of recovery is well of tubewell in the field of the accused. Hence, the contention of learned defence counsel that it was open place accessible to all would also be untenable. Place of recovery is not open and accessible to all as same is not visible to each and everyone nor it is a public place but private field of the accused. As regards, the recovery of mobile phone of the accused, it is observed that prosecution could not connect that mobile phone with the deceased as neither SIM number nor IMEI number of mobile phone were connected with the deceased nor any telephone call details were collected. Hence, mobile cell phone could not be connected with the deceased. It is also mentioned in the first version Ex.PE that deceased had left his mobile at the house. Hence, recovery of mobile phone Ex.P4 with SIM card could not be connected and linked with the deceased.

23. Next taking up another circumstance against the accused, the recovery of his own clothes by accused in pursuant to his disclosure statement Ex.PG. PW6 Ramesh and PW19 SI Suraj Bhan deposed that accused had got recovered his shirt, pants and shoes on 13.10.2012 from a almirah in a room of first floor of his house. Testimony of PW6 Ramesh and PW19 SI Suraj Bhan could not be dented regarding recovery of clothes and shoes of the accused. The accused suffered disclosure statement Ex.PG and

in pursuant thereto he got recovered his own clothes and shoes from almira lying in his house. It was in the exclusive knowledge of the accused and he had kept concealed his clothes and shoes in his own house. Mere fact that place of recovery of clothes and shoes of the accused is a house which is occupied by other family members of the accused, would not be a ground to hold that the pair of shoes Ex.P5, shirt Ex.P6 and pants Ex.P7 do not belong to the accused. As per FSL report Ex.PC blood was detected on the clothes as well as shoes of the accused, which is also a strong incriminating circumstance against the accused. It was for the accused to explain as to how his clothes and shoes had got stained with blood which he had failed to explain.

- 24. PW5 Sunil has also stated that accused had visited his house on 13.9.2012 when he and Yogesh were watching TV and accused took along Yogesh with him and Yogesh did not return thereafter. Learned defence counsel submitted that version of Sunil is unnatural as he had disclosed this fact to his other family members in the evening of 13.9.2012 but despite that this fact is not mentioned in statement Ex.PE of Satpal complainant recorded on 14.9.2012. He also pointed out that Sunil and other family members are residing jointly with deceased Yogesh but Sunil stated that at that time when accused Anil took Yogesh none else was present in the house. He contended that evidence of last seen is accordingly false and fabricated.
- 25. The argument of learned defence counsel on this aspect looks attractive on its face but in the peculiar facts and circumstances of this case, does not hold much water and is liable to be rejected as statement Ex.DB of

Sunil was recorded on 18.9.2012 much prior to the arrest of the accused but it was made before moving application by the police for conducting lie detection test. It would indicate that the police had already come up with some incriminating circumstances against the accused Anil and for that purpose the investigating agency intended to conduct lie detection/polygraph test upon the accused. It has to be kept in mind that accused Anil is none else but first cousin of the deceased, who had earlier been visiting Anil. Father of accused Anil, namely Rajbir, is cultivating the land falling in the name of Roshan, father of the deceased and Rajbir used to give share of crop of that land to the complainant. In view of close relations between deceased and accused, the complainant party could not have suspected any foul play on the part of accused Anil, even if it has been told by Sunil that accused Anil had taken along Yogesh with him. Accused could not examine anyone to substantiate that he did not visit Narwana on the day of incident or that he was at his village Rakhi Kalan. PW5 Sunil had no reason to falsely depose against accused Anil nor any other family members had any reason to depose against accused Anil or his father Rajbir or other family members. Before levelling allegations against accused Anil and others, it was required on the part of the complainant's family to be sure about the same in view of close relationship between the deceased and the accused. It is also to be kept in mind that there is nothing on record that complainant ever objected the cultivation of land in the name of Roshan by family of accused Anil and everything in that regard was going on smoothly as Yogesh was being looked after by his maternal uncle Satpal complainant for which the crop share of his father's land was

used to be given by Rajbir, father of accused Anil. In case of death of Yogesh, it was only family of Anil and Rajbir, who were to be benefited by inheriting that land already in their possession. Despite death of Yogesh the complainant family could not have been benefited in any manner as land standing in the name of Roshan, father of Yogesh, could not have been devolved upon the complainant party. Hence, the accused had motive to commit crime whereas the complainant family had no motive to commit crime as so argued by learned defence counsel.

- 26. There is another circumstance against the accused Anil as in pursuant to his disclosure statement, he had also identified the spot vide demarcation memo Ex.PI. The identification of the spot, already in the knowledge of the police, by the accused may not be admissible under Section 27 of the Evidence Act but it admissible as conduct of the accused under Section 8 of the Indian Evidence Act, so so ruled in **Anupam @ Anup vs. State of Haryana, 2006(1) RCR 57.**
- 27. In view of foregoing discussion, it is observed that the prosecution has substantiated the guilt of the accused by way of circumstantial evidence by substantiating that accused got recovered the purse containing photograph of the deceased; he got recovered his own blood stained clothes and shoes for which he could not furnish any explanation; he suffered extra judicial confession and was last seen in the company of the deceased. He had also motive to commit the crime. Prosecution proved charge of murder under section 302 IPC and that accused removed purse from the dead body of deceased, dishonestly knowing that same belonged to deceased,

31

State vs. Anil

attracting offence under section 404 IPC. The contention of learned defence

counsel that accused had himself agreed to lie detection test on application of

police but police did not get conducted lie detection test, hence the

prosecution case is false and fabricated, would be untenable as after extra

judicial confession of the accused and other incriminating circumstances of

recovery of purse with photographs and blood stained clothes and shoes of the

accused, there was no necessity to get conducted the lie detection test.

28. As a sequel to above discussion, it is held that the prosecution

has successfully proved its case beyond shadow of reasonable doubt against

accused for offence under Section 302 and 404 IPC. He is held guilty and

convicted accordingly. The accused is already in custody. Let he be heard on

the question of sentence after sometime.

Pronounced in open court.

Dated 14.8.2014.

(Sandeep Garg),

Addl. Sessions Judge,

Jind.

Note: This judgment contains 31 pages and each page

has been checked and signed by me.

(Sandeep Garg)

Addl. Sessions Judge,

Jind 14.8.2014.