In the High Court of Punjab and Haryana at Chandigarh

1. **Murder Reference No. 4 of 2016**
Reserved on: 24.7.2024
Date of Decision: 05.8.2024

State of Punjab .....Prosecutor

Versus

Sukhjinder Singh @ Sukha .....Respondent

2. **CRA-D-80-DB-2014 (O&M)**

Sukhjinder Singh @ Sukha .....Appellant

Versus

State of Punjab .....Respondent

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

Present: Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. H.S.Mann, Advocate with
Mr. G.K.Sarabha, Advocate,
Ms. Avneet Kaur, Advocate and
Ms. Kirandeep Kaur, Advocate
for the respondent (in MRC No. 4 of 2016) and
for the appellant (in CRA-D-80-DB-2014).

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SURESHWAR THAKUR, J.

1. This judgment shall dispose of Murder Reference No. 4 of 2016 made by Additional District and Sessions Judge, Ferozepur, for making confirmation of death sentence awarded to convict-appellant Sukhjinder Singh @ Sukha; as well as Criminal Appeal No. D-80-DB of 2014, preferred by convict (supra) against the judgment and order dated 11.12.2013, passed by the Court of Additional Sessions Judge, Ferozepur.

2. CRA-D-80-DB-2014 (supra) is directed against the impugned verdict, as made on 11.12.2013, upon case bearing No. 05 of 2011, by the learned Additional Sessions Judge, Ferozepur, wherethrough in respect of charges respectively drawn against the accused-appellant qua offences punishable under Sections 364-A and 302 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the appellant-convict.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the convict-appellant to capital punishment for an offence punishable under Section 364-A IPC, besides also imposed upon the convict-appellant (supra) sentence of fine, as comprised in the sum of Rs. One Lac, besides in default of payment of fine amount, he sentenced the said appellant to undergo rigorous imprisonment for a period of two years. The learned convicting Court concerned, also sentenced the convict-appellant to capital punishment for an offence punishable under Section 302 IPC, besides also imposed, upon the said convict-appellant sentence of fine, as comprised in a sum of Rs. One Lac, besides in default of payment of fine amount, it sentenced convict-appellant to undergo rigorous imprisonment for a period of two years.

4. Both the above imposed sentences of imprisonment upon the convict-appellant, were ordered to run concurrently but the period of detention undergone by the appellant-convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

5. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent

thereto sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-18 is assigned. It is narrated in Ex. P-18, that on 23.10.2010, SI Gurmeet Singh, SHO, Police Station Makhu with other police officials was present at Jalla Chowk, Makhu. There Davinder Sharma son of Maharaj Chander, resident of Makhu along with Varinder Thukral, resident of Makhu, came present. The said Davinder Sharma (complainant), made the statement that he was running Sharma Clinic at Makhu and was having a daughter Akriti Sharma, aged 14 years and a son Hardik Sharma, aged 7 years, at the time of occurrence in 2010. The said Hardik Sharma was in 7th standard at Doon Valley School, Zira, who used to get tuition from 4.30 P.M., to 6.00 P. M., from Madam Gurpreet Kaur, residing at Makhu. On 23.10.2010, at about 6.00 P.M., the complainant on telephone was informed by his wife that the said son had not returned from tuition. The complainant closed the clinic, reached home and started searching his son with the help of neighbours. At about 8.45 P.M., from Mobile No. 98555-52977, he received a call at his Mobile No. 94631-11739, upon which a man asked to pay rupees four lacs, as his son was kidnapped by him. The complainant prayed that he was unable to pay the said amount and also prayed for some time to arrange the amount. After some time, he received another call to arrange rupees two lacs and to place the same near a room at Bus Stand of Village Sudan. In case he informed the police, his son would be killed. After arranging rupees two lacs, the same were placed by

three respectable of the locality at the above said place, as per the demand of the man. The said money was removed from that place by a man but his son was not released. Thereafter, the complainant connected the same mobile number but there was no response. Then the police was informed who came there. Then during search near Makhu Gas Agency on Makhu-Moga Road Village Sudan, on the berm of seepage drain, there was some light of mobile phone. The complainant reached at that spot but the person there fled away. Then in the nearby bushes, the body of Hardik Sharma (son) was found. It was taken to Kalra Hospital, Makhu, where doctor declared him dead. The police recorded the statement of the complainant. On the above statement of the complainant, the appeal FIR became registered.

Investigation proceedings

7. During the course of investigations, the accused was arrested having been found guilty of kidnapping the above said boy and killing him for ransom. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

8. Since the offences under Sections 364-A and 302 IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 3.2.2011, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

9. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to

draw charges against the accused-appellant for offences punishable under Sections 364-A and 302 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

10. In proof of its case, the prosecution examined 14 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

11. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. Though, the accused chose to lead evidence in his defence, however, he did not lead any witness into the witness box.

12. As above stated, the learned trial Judge concerned, proceeded to convict the accused-appellant for the charge(s) (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the accused-appellant.

Submissions of the learned counsels for the appellant

13. The learned counsels for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. The above submissions become rested on the following grounds-

(i) That the prosecution has totally failed to connect the appellant with the mobile No. 98555-52977, which was allegedly used for the ransom call. Moreover, it is also argued before this Court that there are no recorded

conversations which occurred between the complainant and the unknown kidnappers, and, though there is only a CDR, which was taken in possession, however, the same was not proved as per law, therebys the prosecution has miserably failed to prove the genesis of the prosecution case, relating to a ransom call being made by the accused to the father of the deceased, over the incriminatory mobile phone No. 98555-52977.

(ii) The learned counsel for the appellant has further argued, that neither any witness from the cellular service provider has been led into the witness box, nor the certificate under Section 65-B of the Indian Evidence Act, has been produced, therebys the CDR purportedly enclosing thereins the ransom conversations, which occurred between the convict-appellant and the father of the deceased, does have no probative sanctity at all.

(iii) The learned counsel for the appellant has also argued, that though the prosecution has examined PW-6 Mukhtiar Singh and PW-13 Gabbar Singh, to connect the present appellant with the alleged mobile number, however, the testimonies of both the witnesses (supra) are contradictory. In addition, he submits that, on the statement of PW-6, DDR No. 33 dated 22.10.2022 was recorded at P.S. Makhu, which, however falsifies the testimonies of the above witnesses.

(iv) In addition, the learned counsel for the appellant submits, that the recovery of hair from the right fist of the deceased, is but an inefficacious recovery, thus on the ground, that the same has been falsely planted in the instant case, merely to implicate the appellant in the present case. Therefore, the prosecution story qua recovery of hair from the right fist of the deceased, is doubtful and the same also gets falsified from the police inquest report (Ex. P-20). The above argument becomes rested on the

ground, that at the time of preparing the inquest report, nothing was recovered from the dead body of the deceased concerned. Moreover, during investigations, no photograph was taken to either prove the fact that the right fist of the deceased was containing hair or that his right fist was closed. He has also argued that the alleged memo qua recovery of hair from the right fist of the deceased has not been signed by any independent witness.

(v) The learned counsel for the appellant has further argued before this Court, that since PW-10 Madan Mohan, Tehsildar, in his cross-examination also admitted that there is no mentionings in his statement recorded under Section 161 Cr.P.C., that the foot mould was lifted in his presence, and, qua in his presence, the purported hair of the deceased becoming taken into possession by the police. Therefore, he has submitted, that the makings of the apposite inter se comparisons vis-a-vis the supra at the FSL concerned, rather are of no legal worth, thus for sustaining the charge drawn against the convict-appellant.

(vi) Furthermore, the learned counsel for the appellant has also argued, that the prosecution case qua recovery of foot moulds, is also doubtful. He rested the above submission on the ground, that the investigating officer (PW-7) has admitted that there was no mentioning of lifting(s) of mould of the convict from the place of occurrence, besides there is no mentioning qua either the depositing of the mould, as became lifted from the spot, thus in the police malkhana, nor there is any mentioning(s) in the zimni dated 23.10.2010 or 24.10.2010 qua preparation of any memo regarding lifting of foot mould. Moreover, at the time of recovery of the dead body of the deceased, 100/150 persons had gathered at the spot, but only 2 moulds were taken from the spot, besides no mould was taken from

the place from where the ransom amount was taken.

(vii) The learned counsel for the appellant has also argued, that the theory of last seen, as propagated by the prosecution through PW-12, is also doubtful. Moreover, the makings of recovery(ies) pursuant to the disclosure statement(s) of the accused-appellant also create a doubt in the prosecution story. In addition, the learned counsel for the appellant submits that as per the post-mortem report the deceased suffered various injuries on different parts of his body, however, there is no disclosure statement of the accused to that effect, nor he has caused any recovery of any thick thread/rope, which he allegedly used for strangulation. Moreover, since the prosecution has also failed to explain the injuries suffered by the deceased. Therefore, the complete chain of incriminatory circumstances is missing in the instant case.

(viii) The learned counsel for the appellant has further argued, that the testimonies of PW-5 and PW-7 rather create a doubt about the prosecution case. He has also argued that there is a delay in sending the alleged case property to the FSL concerned, inasmuch as the case property was of 24.10.2010, and, thereafter the accused was arrested on 25.10.2010, but yet subsequently, the case property became sent to the FSL concerned, on 26.10.2010. The learned counsel for the appellant has further submitted that the deposition of PW-3 Archana Sharma, is hearsay evidence, as there is no previous enmity of the accused with the deceased's family.

(ix) He has further argued, that the appellant has been illegally and arbitrarily sentenced to death, as the learned trial Court concerned, failed to consider that the instant case does not fall within the ambit of the rarest of rare cases.

<u>Submissions of the learned State counsel</u>

14. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.

<u>Circumstantial evidence based case rested on the deposition of PW-12, who in his testification propagated a version qua his last seen the accused and the deceased together.</u>

15. PW-12, in his examination in chief, has made echoings, that he is running a milk dairy at Makhu, and, that deceased Hardik Sharma was personally known to him. He further deposed that accused Sukhjinder Singh was personally known to him as he had been running a shop of television at Main Bazar, Makhu. He also identified the accused, who was then present in Court. He further deposed that on 23.10.2010, at about 6.00 P.M., when he was present in his plot where the construction work was going on, that then he had seen the accused going along with deceased Hardik Sharma towards Kindergarten School, Makhu, and, later on he came to know that Hardik Sharma had been kidnapped and murdered.

16. Since neither any suggestions, became put to PW-12 during the latter's cross-examination, suggestive that his speakings qua his last seeing the accused concerned, and, the deceased together, and/or, in the proximate company of the deceased, rather at the apposite site, hence proximate to the crime site (Ex.P-26), thus are uncreditworthy, nor when any answers favourable to the accused, emanated theretos from PW-12. Thus, the effect of no suggestions (supra) becoming meted to PW-12, during the latter's

cross-examination, thus to bely the efficacy of the above candidly spoken facts, is that, it leads to an inference that the defence concedes to PW-12 last seeing the deceased and the accused proximately together, thus in the vicinity of the crime site. The effect thereof is but naturally, qua the apposite last seeing together theory, as espoused by PW-12, thus acquiring the firmest evidentiary vigour.

Signatured disclosure statement of convict-appellant Sukhjinder Singh @ Sukha Ex. P-7

17. During the course of investigations, being made into the appeal FIR, convict-appellant Sukhjinder Singh @ Sukha, thus made his signatured disclosure statement, to which Ex. P-7 becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"x x x x*
> *I have taken ransom amount of Rs. Two lacs on 23.10.10 from Davinder Kumar Sharma s/o Maharaj r/o Makhu. Out of them, I put Rs. One lac into a waxen envelope of black colour and I have kept concealed in the corner of a room, constructed in low land in Sodhi Market, near Bus Stand of Joge Wala. I have only knowledge of it. I can get recovered the same on pointing out."*

18. Pursuant to the above made signatured disclosure statement, the convict-appellant ensured the recovery of one waxen black envelope containing currency notes in the denomination of Rs. 500/- each, total amounting to Rs. One lac, which was taken into police possession, through recovery memo, to which Ex. P-8 becomes assigned.

Signatured disclosure statement of convict-appellant Sukhjinder Singh @ Sukha Ex. P-9

19. During the course of investigations, being made into the appeal

FIR, convict-appellant Sukhjinder Singh @ Sukha, thus made another signatured disclosure statement, to which Ex. P-9 becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"x x x x*
> *At the time of incident, I threew the bag (jhola) of books of Hardik Sharma, in the hurbs of wild shrubs grown in the Tahli trees on the link road, leads from Makku to Soodan. I have only knowledge about it. I can get the same recovered on pointing out."*

20. Pursuant to the above made signatured disclosure statement, the convict-appellant ensured the recovery of one bag containing the books of deceased Hardik Sharma, which was taken into police possession, through recovery memo, to which Ex. P-10 becomes assigned.

<u>Signatured disclosure statement of convict-appellant Sukhjinder Singh @ Sukha Ex. P-11</u>

21. During the course of investigations, being made into the appeal FIR, convict-appellant Sukhjinder Singh @ Sukha, thus made another signatured disclosure statement, to which Ex. P-11 becomes assigned. The signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"x x x x*
> *Out of Rs. One lac, I purchased TV and Presses fro amounting Rs. 59940/- from Moga and took them on a Tempo to Makhu and have kept them into my shop at Makhu, cash amounting to Rs. Thirty thousand only have kept in my shop at Makhu in the cash box. I have only knowledge about it. I can get the same recovered on pointing out."*

22. Pursuant to the above made signatured disclosure statement, the convict-appellant ensured the recovery of Rs. 30,000/- cash, two photostat

bills of T.Vs. and iron presses, besides also got recovered televisions, iron presses, DVD and other electronic articles, which were taken into police possession, through recovery memo, to which Ex. P-12 becomes assigned.

23. Since all the memos (supra) became signatured by the convict-appellant, thereupons when no efficacious evidence became adduced by the convict, rather to bely the occurrence of his signatures on the said memos (supra), whereupon, the memos (supra), acquire immense evidentiary worth. In sequel, the recovery(ies) (supra), as became made in pursuance to the appositely recorded efficacious disclosure statements (supra), do beget, the hereinafter inferences.

(a) That given no valid explanation becoming purveyed by the convict to the police officer concerned, magnificatory qua the said recovered moneys becoming well accounted for. Moreover, when also during the course of cross-examination(s) being made, upon the marginal witnesses, to the apposite recovery memos, rather for belying the efficacy of the said made recovery(ies), thus no apposite suggestions became meted to the prosecution witnesses concerned, nor when any answers favourable to the convict-appellant emanated from the said prosecution witnesses. Therefore, the apt sequel thereof, is that, the recoveries of moneys, as made through recovery memos (supra) at the instance of the convict to the investigating officer concerned, are to be construed to be the recovery(ies) of ransom money(ies), as became demanded, and, also became received by the convict-appellant.

(b) Since this Court has hereinabove assigned, thus the utmost evidentiary vigour to the theory of last seeing of the accused and the deceased together, as propagated by PW-12, thereupons, when through

recovery memo (Ex. P-9), the convict-appellant also ensured the recovery of books of deceased Hardik Sharma. Consequently, unless evidence surge-forth but revealing that the said recovered books were not belonging to deceased Hardik Sharma, thereupon, the recovery of books of deceased Hardik Sharma, as made to the investigating officer concerned, thus by the convict-appellant, but is deemed to be made of the books belonging to the deceased. Resultantly, therebys it has to be concluded, that as such the theory of last seeing together of the accused and the deceased, as propagated by PW-12, thus becomes fortifyingly proven.

(c) Moreover, the further effect thereof, is that, the recovery of ransom moneys, as made through recovery memos (supra), by the convict-appellant to the investigating officer concerned, thus also becoming most efficaciously proven. In addition, the user of the ransom moneys by the convict-appellant is also proven by the convict-appellant, through the making of a valid signatured disclosure statement to which Ex. P-12 is assigned, especially when in pursuance thereof, he caused the recoveries of the articles, as became purchased therefroms. Since the above made recoveries are proximate to the convict-appellant receiving the ransom money from the father of the deceased. Therefore, the receipt of ransom money by the convict-appellant from the father of the deceased rather becomes tenaciously proven to the hilt, thus by the prosecution.

(d) The further conclusions from the above inference(s), are that, assumingly if the prosecution has not proven to the hilt the making of a ransom call by the convict-appellant to the father of the deceased, through the latter using Sim No. 98555-52977, rather through a validly proven certification being made by the service provider concerned, or through the

prosecution proving that the voice inside the CDR respectively belonging to the convict, and, the father of the deceased, but yet all the purported ill-effects of efficacious non-provings of facts (supra), thus becoming underwhelmed, through the adduction of cogent evidence by the prosecution in respect of validity(ies) qua the drawings of the above memos. Therefore, thereby all the incriminatory links in the chain of circumstances, do become unerringly proven by the prosecution. In sequitur, the prosecution has succeeded in proving the charge to the hilt.

Matchings of hair recovered from the hands of the deceased concerned, with the hair of the convict-appellant.

24. During investigations, from the right fist of the deceased hair were recovered, which were put into a small plastic box and sealed with the seal impressions 'GS' and sample seal was prepared separately. The said parcel was taken into possession vide recovery memo Ex. P-2. Thereafter, on 24.10.2010 after removing some hair from the head of the accused, for getting the same compared with the hair recovered from the hand of the deceased, the same were put into a small plastic box, whereafter a cloth parcel was prepared, which became sealed with seal bearing impression 'GS. The sample of the seal was also prepared separately. The said parcel was taken into possession vide recovery memo Ex. P-14.

25. Through Reference Nos. 25976/C of 26.10.2010 and 26504 of 1.11.2010, two sealed parcels, became sent, through HC Rajinder Kumar to the FSL concerned. The FSL concerned, thus upon making inter se examinations of all the incriminatory items, as became sent to it, in a sealed cloth parcel, thus made an opinion thereons, which becomes ad verbatim

extracted hereinafter.

"x x x x

Articles received	*Two sealed parcels which were marked A and B in the laboratory.*
	The seals were found in tact and tallied with the specimen seal.
Parcel 'A' contained	*Hair alleged to be collected from the hand of the deceased Hardik Sharma*
Parcel 'B' contained	*Hair alleged to be of the accused Sukhjinder Singh taken in the presence of Naib Tehsildar.*

Result of Examination

The exhibits (Hair) contained in Parcels A and B have been examined scientifically and it has been concluded that the exhibits (Hair) contained in Parcels A and B are Human scalp hair and show similar characteristics."

26. The DNA specialist, after making the apposite inter se DNA profiling(s) of the above, came to a conclusion, that the hair recovered from the fist of deceased, through memo Ex. P-2, hence showing similar characteristics with the hair of accused-appellant. Therefore, the report (supra) of the DNA specialist, as carried in Ex. P-35, does completely prove the charges drawn against the accused. In addition, it supports the prosecution's theory, hence as became propagated through PW-12 qua the apposite last seeing together, thus of the concerned, in proximity to the crime site, and, in proximity to the discovery therefroms of the dead body.

27. The learned counsel for the convict-appellant has argued, that since in the inquest report, there is no mentioning thereins, about the hair of the accused becoming firmly clasped in the fist of the deceased, therebys the discovery of the hair of the accused from the closed fist of the deceased, is ridden with a grave suspicion. Resultantly, he has argued, that the

affirmative report of the DNA specialist rather is meaningless.

Reasons for rejecting the above submissions

28. However, for the reasons to be assigned hereinafter, even the above argument has no legal strength. The reason for forming the above inference ensues from the factum, that the date of the drawings of inquest report is 23.10.2010, whereas, the date of recovery of the hair of the accused-convict from the closed fist of the deceased, thus is 24.10.2010, and, the drawings of post-mortem report is at about 12.45 P.M., on 24.10.2010. Therefore, the autopsy upon the body of the deceased, became conducted post the above recovery becoming made. Since only on the post-mortem examination, being made of the deceased, that as such the closed fist of the deceased, thus could have been opened. Therefore, unless evidence became adduced by the defence, suggestive that the body of the deceased was earlier thereto not beset with rigor mortis, and/or suggestive, that at the time of making of autopsy upon the deceased, his fist was open, and, yet earlier through pressure becoming exerted by the investigating officer concerned, the same being opened and thereafter becoming closed, but only after enclosing thereins the hair of the accused-appellant, thereupons, it was to be presumed, that rigor mortis with all its consequential effects, did beset the deceased. However, the above evidence is grossly amiss. Resultantly, when the fist of the deceased was closed even prior to the makings of an autopsy thereons, rather by the doctor concerned. In sequitur, there was no occasion for the same being earlier thereto opened, nor there was any facilitation, thus to the investigating officer concerned, to after removing a strand of hair from the scalp of the accused, to enclose the same in the open fist of the deceased, and, thereafter through his applying pressure, rather his

ensuring the closure of the fist of the deceased. As such, the recovery/discovery of hair of the accused in the closed fist of the deceased through Ex. P-2, thus cannot be a doubtful recovery, nor it can be concluded to be ridden with any suspicion. Resultantly, the results of the relevant comparisons, at the FSL concerned, are to be assigned immense evidentiary worth. As such, therebys the prosecution has proven the best forensic evidence, thus to thereby invincibly establish the guilt of the accused-appellant.

Collection of shoe moulds and report of the FSL concerned, to which Ex. P-34 becomes assigned

29. During the course of investigations being made into the appeal FIR, the investigating officer concerned, through memo Ex. P-3, hence collected the foot track moulds of the right and left foot, thus from the crime site. The investigating officer also through Ex. P-13 collected the respective foot track moulds of convict-appellant Sukhjinder Singh.

30. Through Reference No. 25916/C of 25.5.2010 and No. 26503 of 1.11.2010, four sealed cloth parcels, became sent, through HC Rajinder Kumar No. 218/FZR to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

"***Description of articles/exhibits received***

Parcel C1	*It contained one mould bearing an impression of right naked foot lifted from the scene of crime. It has been marked as C-1 by this laboratory.*
Parcel C2	*It contained one mould bearing an impression of left naked foot lifted from the scene of crime. It has been marked as C-2*

by this laboratory.

Parcel T1	*It contained one mould bearing an impression of right naked foot stated to be of suspect Sukhjinder Singh. It has been marked as T-1 by this laboratory.*
Parcel T2	*It contained one mould bearing an impression of left naked foot stated to be of suspect Sukhjinder Singh. It has been marked as T-2 by this laboratory.*

Laboratory Examination

The impressions of right naked foot marked as C-1 contained in parcel C1 and left naked foot marked as C-2 contained in parcel C2 are from the right naked foot and left naked foot of suspect Sukhjinder Singh, the test impressions of which have been provided on test mould marked as T-1 contained in parcel 'T1 and T2 contained in parcel 'T'2' respectively as referred above."

31. Though, the learned counsel for the convict-appellant has vigorously argued before this Court, that since admittedly, the crime site became trudged, upon by 100-150 persons, thereupon there was every possibility of one of those persons, who trudged the crime site, also having foot tracks equal to the size and dimension of the foot tracks of the convict-appellant. Moreover, the learned counsel for the convict-appellant has also argued, that since the investigating officer concerned, has admitted that there is an omission of mentioning qua liftings of foot moulds of the convict-appellant from the crime site, besides when there is a purported admission on his part with respect to the purported omission qua the depositing of the apposite foot moulds in the police malkhana. Consequently, he has argued, that the result of the matchings (supra), as made of the foot moulds lifted from the crime site, thus with the foot moulds of the convict-appellant, are completely inapt. As such, the same is not a conclusive piece of evidence, so

as to constrain this Court to conclude, that therebys the prosecution has firmly established that the convict-appellant was available at the crime site.

Reasons for rejecting the submission (supra)

32. However, for the reasons to be assigned hereinafter, the above made submissions are rudderless, as a reading of the hereinafter extracted recovery memo qua the foot moulds, to which Ex. P-3 is assigned, thus reveals, that at the crime site foot, thus moulds were noticed there, and, after preparing one mould of left foot, and, one mould of right foot, besides thereafters, after his preparing two separate cloth parcels, thus the SHO concerned, rather sealing them, with his own seal bearing impression 'GS'. The sample seal is stated in Ex.P-3 to be handed over to ASI Gurnek Singh. The said Ex. P-3 is signed by an independent witness.

"***Recovery memo of moulds of feet (Ex. P-3)***

"In the presence of the following witnesses, from the place of occurrence, where dead body of deceased child Hardik was found near it, foot prints were stated to be there, after preparing one mould of left foot and one mould of right foot and prepared two parcels separately. Then, I the SI/SHO sealed them with my own seal bearing impression 'GS'. Both the parcels were taken into police possession as a token of proof vide this recovery memo. Memo is being got signed from the witnesses. The sample of the seal was prepared separately and seal after its use was handed over to ASI Gurnek Singh.

Witness: 1. ASI Gurnek Singh 403
I/C PP Joge Wala
Sd/- In English

Witness: . Narinder Kumar son of Maharaj Chander
R/o Phillor
Sd/- In English

Sd/- in Punjabi SI
SHO, PS Makhu
Dt. 24.10.10"

33. Since a reading of the deposition of SI Gurprit Singh, who stepped into the witness box as PW-7 reveals, that the said cloth parcels became unrebuttingly deposited in the malkhana concerned. In addition, since the incharge of the Malkhana concerned, who stepped into the witness box as PW-4, also unrebuttingly deposed that the said sealed parcels became deposited in the malkhana concerned. Furthermore, since it is also clear from a reading of the report (Ex. P-34) of the FSL concerned, that the said sealed cloth parcels became received in the FSL concerned, rather in an untampered condition. Therefores, besides when it is also apparent on a reading of the report of the FSL concerned, that the apposite seals' as revealed in Ex. P-3, were the very same ones, as became declared in the FSL report. Consequently, it has to be concluded that the foot moulds available at the crime site, thus travelled in an untampered and unspoiled condition, thus in the sealed cloth parcels to the FSL concerned.

34. Now, it has to be determined whether the investigating officer concerned, also elicited the cooperation of the convict-appellant for the latter accompanying him to the crime site, so that he collects therefrom rather the moulds of his right and left foot, thus for ensuring that the said collected foot moulds, through Ex. P-13 are along with the foot moulds, as collected through Ex. P-3, thus sent for their inter se comparisons, hence to the FSL concerned.

35. In the above endeavour, it is candidly forthcoming from the recovery memo, to which Ex. P-13 is assigned, as relating to the collection of the foot moulds of the convict-appellant, upon the latter accompanying the investigating officer concerned, to the crime site, contents whereof are

extracted hereinafter, that in the manner detailed thereins, the convict-appellant had ensured the collection of his foot moulds from the crime site, whereafters, the said collected foot moulds, thus from the crime site, were enclosed in cloth parcels, whereons, seal impressions 'GS' became embossed by the SHO concerned. The said cloth parcels are stated to be taken into police possession vide memo Ex. P-13, which became also signed by Sh. Madan Mohan, Naib Tehsildar-cum-Executive Magistrate, Makhu. Tritely, the apposite inter se comparison was made inter se the recoveries/collections as made respectively through Ex. P-3 and Ex. P-13. The hereinafter extracted results do tellingly make incriminatory echoings against the convict-appellant.

> "***<u>Recovery memo of moulds of feet (Ex. P-13)</u>***
>
> *"In the presence of the following witnesses, as well as in the presence of Sh. Madan, Naib Tehsildar, accused Sukhjinder Singh abovesaid was taken out from the police lock-up of Police Station and moulds of feet of abovesaid accused were picked of his right and left foot from the spot on 24.10.10. Moulds of the feet of the accused were lifted for comparisons of human being moulds of right and left feet on which the particulars of the case were written. Then two parcels of above noted two moulds of both feet have been prepared separately. I, the SI sealed the above noted both parcels with my own seal bearing impression 'GS'. The sample of the seal was prepared separately. Both the parcels were taken into police possession vide this memo. Memo was got attested from the witnesses.*
>
> *Witness: 1. ASI Gurnek Singh 403*
> *I/C PP Joge Wala*
> *Sd/- In English*
>
> *2. Sh. Madan Mohan,*
> *Naib Tehsildar-cum-Executive Magistrate,*
> *Makhu.*
> *Sd/- In English*
> *Dt. 29.10.10*
>
> *Sd/- in Punjabi SI*
> *SHO, PS Makhu*
> *Dt. 24.10.10"*

36. Moreover, reiteratedly since a reading of the deposition of the investigating officer concerned, as occurs in his examination-in-chief, reveals that the said cloth parcels became unrebuttingly deposited in the malkhana concerned. In addition, the incharge of the Malkhana concerned, who stepped into the witness box as PW-4, also unrebuttingly testified that the said sealed parcels became deposited in the malkhana concerned. However, when no efficacious cross-examination became conducted, upon the said witness to rather bely his deposition, as occurs in his examination-in-chief. Therefore, it is invincibly concluded, that the foot moulds, as became recovered through recovery memo Ex. P-3, and, the foot moulds of the convict-appellant, which became collected through recovery memo Ex. P-13, rather are not respectively engineered recovery(ies) or collection(s) thereofs from the crime site, but was/were in fact respectively existing at the crime site, and/or were made at the crime site, through the accused walking thereons.

37. If so, especially when there is no further proof in respect of tamperings being made of the cloth parcels, whereins, the said foot moulds became enclosed. In sequitur, it has to be concluded, that the results of the examinations (supra), as made thereons by the FSL concerned, do acquire immense evidentiary tenacity. Therefore, an important incriminatory link in the chain of circumstances becomes cogently established by the prosecution.

38. In consequence, the submission(s) (supra) addressed by the learned counsel for the convict-appellant, that there was no valid recovery(ies) of foot moulds at the crime site, and/or that the said foot moulds were not of the accused-convict, nor the collections, as made through Ex. P-13 were of the foot moulds of the convict-appellant, thus lose

their evidentiary vigour. Moreover, when the marginal witnesses to the said memos have not been cross-examined for belying the disclosures as occur thereins.

39. Even if assumingly, as submitted by the learned counsel for the convict-appellant that a large number of people visited the crime site, yet therebys the collections, as made of the relevant foot moulds, thus through Ex. P-3, and, the apposite collections, as became made through Ex. P-13, but also would not lose their evidentiary potency, unless evidence became adduced, that the convict-appellant rather had not walked on the crime site, and, therebys had failed to ensure the collections of his foot moulds from the crime site, to the investigating officer concerned. Since there is no evidence to the above effect, therebys the said submission, thus also becomes completely foundered.

40. Moreover, in a circumstantial evidence based case, the incriminatory link vis-a-vis the last seeing together of the accused, and, the deceased, is of grave importance, importantly when the said link is spoken by a credible witness, through his making an untainted, and, unblemished testification before the learned trial Judge. Consequently, the same acquires immense evidentiary vigour. Moreover, when affirmative inter se matchings become made by the expert concerned, inter se the foot track moulds collected from the crime site, with the footwear/foot moulds of the accused-appellant, thereupon the presence of the accused-appellant, thus at the crime site but becomes proclaimed with open candour. Consequently, the affirmative matchings of the foot moulds, of the accused, as collected from the crime site, thus with the foot moulds, as became collected through Ex. P-3, do acquire potent evidentiary vigour. The said opinion of the FSL

concerned, is also a potent incriminatory link in the chain of incriminatory circumstances, as erected by the prosecution.

41. In addition, reiteratedly the report of the DNA specialist suggesting, that the DNA profilings of the relevant matchable DNA items of the deceased, hence matching with the DNA items of the accused, is also the best scientific evidence, and, if so, it did well enable the learned trial Judge concerned, to inevitably conclude, that the charge drawn against the accused, becomes formidably proven.

Post-mortem report

42. The post-mortem report, to which Ex. P-14/A is assigned, became proven by PW-14. PW-14 in his examination-in-chief, has deposed that on his and Dr. Davinder Singh making an autopsy on the body of deceased Hardik Sharma, thus theirs noticing thereons the hereinafter ante mortem injuries-

> *"1. Ligature mark – A ligature mark 26x2 cm brownish in colour present all around the neck.*
>
> *2. A brownish abrasion 3 x 1 cm on left side of neck. 2.5 cm above the ligature mark and 3 cm below the chin.*
>
> *3. An abrasion brownish in colour on right side of the neck just below the right ear measuring 1 x 0.5 cm.*
>
> *4. Multiple petechial hemorrhages were present all over the face and upper part of the neck.*
>
> *5. On dissection right carotid blood vessels appear ruptured and there was profuse bleeding in that area.*
>
> *6. Multiple abrasion were present on the right lower and middle leg on interior surface.*
>
> *7. Body is soiled with sandy particles at places.*

43. Furthermore, PW-14 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to major carotid vessels and asphyxia owing to strangulation, which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature. The time between injury and death was opined to be within few minutes and between death and post mortem was opined to be 24 hours

44. The above made echoings by PW-14, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-14 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-14, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

45. Thus, the signatured disclosure statements, as made by the convict-appellant, and, also consequent thereto made recovery(ies) through recovery memo(s)1, do also become fully supported by the above medical account/evidence.

Rarest of rare case requiring imposition of capital punishment upon the convict

46. Be that as it may, during the course of arguments, being addressed before this Court by the learned counsel for the convict-appellant, he has submitted to the extent, that the capital punishment, as imposed upon the convict-appellant, thus requires interference. He has supported the above submission through his canvassing that the instant case, does not fall within category of the rarest of the rare case, and, therebys in alteration to the imposition of capital punishment, thus the substantive sentence of life

imprisonment, be imposed, upon the convict-appellant.

47. However, the above made argument addressed, does not appeal to the judicial conscience of this Court, and, is rejected. The learned trial Judge concerned, while awarding capital punishment to the accused-appellant, thus in the relevant paragraphs of the order of sentence, paragraphs whereof become extracted hereinafter, has observed as under:-

> *"3. I have gone through the case law relied upon by both the sides and have given due consideration to the facts of the case at my hand. In Amrit Singh (supra) where the deceased was a girl of about 8 years old and her body was recovered from the fields with the injuries on her neck and mouth. On the basis of the medical evidence it was found that the girl died due to excessive bleeding from her private part on account of the rape committed by the accused who was more than 31 years old. Finding that the death occurred, as a consequence of not because of the specific overt act of injuries on the part of the accused who had intention to rape and not to kill the said girl. On assessing the brutality of the acts with which the offence was committed leading to the death of the girl, he imposition of death penalty which is to be imposed in the rare of the rarest case, in the given case was found to be not proper and the Rigorous Imprisonment for Life, was found to be appropriate one.*
>
> *4. In Vikram Singh (supra), three accused two men and a lady were involved who were found guilty of committing offence of murder in a pre-planned manner by using scientific methods and injecting fatal dozes of chemicals in order to ensure that the offence was not detected. In that case all the three accused remained closely associated with each other till the recovery of the body of the 16 years boy of the gold smith, complainant and were demanding ransom of rupees fifty lacs.*
>
> *5. I have given my careful consideration to the submissions made from both the sides. In Bachan Singh Vs. State of Punjab, (1980) 2 SCC 684 and Machhi Singh and Others Vs. State of*

Punjab, 1984(2) Recent Criminal Reports 412 while laying down the detailed guidelines to be followed before awarding death sentence in cases of murder it was observed that "....When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed, or when community feels that for the sake of self-preservation, the killer has to be killed, the community may well with draw the protection by sanctioning the death penalty. But the community will not do so e in every case. It may do so in rarest of rare cases, when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise or retaining death penalty."

6. It was further observed that when the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

7. In Vikram Singh (supra), the boy of 16 years was kidnapped and murdered on non satisfaction of demand of ransom money and the sentence of death awarded to the two main accused was confirmed in the murder reference by the Honorable Supreme Court of India.

8. In the case at my hand, from the facts it is clear that it is not a case of simple murder but the accused is also held guilty under Section 364-A of Indian Penal Code which was brought in statute book in order to curb the menace of kidnapping for ransom and even independent of penal provisions of Section 302 of Indian Penal Code, this Section also prescribes the punishment of death sentence in fit cases. This deceased boy in addition to his one sister, was the only son of his parents, and incident of his kidnapping had sent a shock wave throughout the town of Makhu

and the adjacent areas and further it also shocked the cumulative conscious of hue community causing be and cry all over. The accused-convict was successful in getting the ransom of rupees two lacs from the father of the said boy. Even then he killed the minor boy of seven years old who because of tender age, might not had been been able to resist the brutality committed upon him by the accused-convict Therefore, when it has been proved that an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder is the victim of the present accused- convict, this court finds that this case falls within the rare of the rarest cases and the accused does not deserve any leniency for the heinous crime committed by him.

x x x x"

48. The above well made observations by the learned convicting Judge concerned, whereby he was well led to sentence the convict-appellant to capital punishment, thus also appeal to the judicial conscience of this Court.

49. Evidently, the instant case is of the gruesome murder of a child. It exemplifies dehumanized, besides monster like conduct of the convict-appellant. As such, for the reasons above, and, also for the well made reasons by the learned trial Judge concerned, in his sentencing the convict-appellant to capital punishment, this Court accepts the Murder Reference. The death sentence imposed upon the convict-appellant, by the learned convicting Court, thus is confirmed. The District Magistrate is directed to, in terms of relevant provisions, forthwith appoint an Executioner, besides is also directed to draw the schedule for executing the sentence of capital punishment, upon, the convict-appellant

50. The sentence of capital punishment be executed after the elapse of the period of time for the filing of an appeal against the verdict (supra),

and, the consequent thereto sentencing of the convict-appellant, to capital punishment.

Final order

51. Consequently, the Murder Reference No. 4 of 2016, is accepted. The death sentence imposed upon the convict-appellant, by the learned convicting Court, thus is confirmed.

52. However, the appeal filed by the convict-appellant bearing No. CRA-D-80-DB-2014 is dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed.

53. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 5th, 2024
Gurpreet

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