(2010) 05 P&H CK 0226

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 405-DB of 2007

Arvind @ Chuni Lal and Another		APPELLANT
	Vs	
The State of Haryana		RESPONDENT

Date of Decision: May 5, 2010

Acts Referred:
Arms Act, 1959 â€" Section 25, 39#Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 162, 313#Evidence Act, 1872 â€" Section 25, 27, 3, 8#Juvenile Justice (Care and Protection of Children) Act, 2000 â€" Section 7A#Penal Code, 1860 (IPC) â€" Section 120B, 201, 302

Citation: (2010) 05 P&H CK 0226

Hon'ble Judges: Jaswant Singh, J; Hemant Gupta, J

Bench: Division Bench

Judgement

Hemant Gupta, J.
This order shall dispose of Criminal Appeal No. 405-DB of 2007 filed by Arvind @ Chuni Lal and Joginder @ Dhilla, residents

of village Dichau Kalan, Police Station Nazafgarh, Delhi; Criminal Appeal No. 465-DB of 2007 filed by Joginder @ Dhilla and Criminal Appeal No. 528-

DB of 2007 filed by Sonu alias Sombir, resident of Dichau Kalan, Nazafgarh against the judgment and order dated 28/30.3.2007, passed by the learned

Additional Sessions Judge, Jhajjar.

2. The Appellants alongwith one Virender @ Chota, have been convicted for an offence u/s 302 read with Section 120B IPC for causing death of

Manjeet son of Rajender, resident of village Dichau Kalan and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5000/-each and in

default of payment of fine, to further undergo RI for one year. Virender @ Chota has not filed any appeal against the judgment of conviction and order of

sentence.

3. In the judgment under appeal, the co-accused Sonu has been acquitted for an offence u/s 25 of the Arms Act, 1959. The reason for acquittal is that the

sanction has not been granted by the competent authority u/s 39 of the Arms Act, 1959, though it was found that the offence has been committed by Sonu

@ Sombir, by using a country made pistol (Exhibit P.15) recovered at his instance.

4. The First Information Report, Exhibit P.17 and Exhibit P19/B, was recorded on the statement of Harke Ram, Chowkidar, on 22.2.2004 at 4.50 p.m.

by ASI Balwinder Singh. He has stated that at about 3 p.m., he left for a walk towards the passage of new drain towards field and when he reached near

the field of Balraj son of Kundan, he saw a dead body of a young boy aged 20/25 years lying on the passage of drain. Blood was present in his mouth, ear

and at the back of right shoulder and above the left ear. On the head and behind the right shoulder, there were injuries on the dead body. He went to the

village to enquire about the Sarpanch and found that the Sarpanch had gone out for some marriage. He then took Chowkidar Zile Singh son of Chandgi

Ram and member Dheer Singh son of Jage Ram, Jat from the village. He left them with the dead body and proceeded to inform the police. On way, the

police party met him and got recorded information about the recovery of the dead body. ASI Balwinder Singh sent a ruqa for recording of an FIR u/s

302/201 IPC and to send a photographer. On the basis of such statement, the FIR was recorded on 22.2.2004 at 5 p.m. It was reported by the

Investigating Officer that none could identify the corpse.

5. The post mortem on the dead body was conducted by Dr.

6. P.K. Paliwal on 25.2.2004 at 11 a.m. The post mortem report is Exhibit P.2. The Doctor has found two fire arm injuries on the dead body. He also

recovered two bullets, Exhibits PE and PF, from the unidentified dead body at the time of post mortem examination. He opined that the cause of death

was fire arm injuries and the duration between death and post mortem examination was about a week. The Doctor has also given one sealed jar having

fingertips for DNA test. The Investigating Officer has sought the dead body to be kept in mortuary for identification, but opined that if it was not fit for

being kept in mortuary, then it be handed over to the Municipal Committee for cremation. The Associate Professor of Anatomy has endorsed on such

writing on 25.02.2004 that the dead body is not fit for stitching purposes and it may be handed over to the Municipal Committee for cremation. It is

thereafter, the dead body was cremated.

7. It was on 26.2.2004, PW4-Rajender identified the dead body from the photographs as that of his son and made a statement u/s 161 Code of Criminal

Procedure It was stated to the effect that he is resident of Dichau Kalan and has two sons and a daughter. The eldest is daughter; next is Rajnish (son) and

the youngest is Manjeet (son), who has passed 8th standard. On 21.2.2004 at about 1.00 p.m., Chuni Lal son of Jagdev Jat, resident of Dichau Kalan,

who is his neighbor came to his son and asked his son Manjeet to go to the School at Hiran Kudna to bring the certificate. He told his son not to

accompany him. After sometime, he saw that his son Manjeet had gone with Chuni Lal with some clothes. On the same day, when his son did not return

home upto 10 p.m., he visited the house of Jagdev and enquired about Chuni Lal and his son. Jagdev did not give any satisfactory reply. He again visited

the house of Chuni Lal, next day. Jagdev told him that Chuni Lal visited his house once and left for Sureda for some marriage on scooter having taken his

clothes leaving behind the motorcycle. He along with Nafe Singh visited the house of Chuni Lal next day. Jagdev, father of Chuni Lal told him that Chuni

Lal had gone to Chandigarh to attend a Barat and that he cannot tell about Manjeet. Since he could not get any information about Manjeet, he moved an

application on 24.2.2004 in Police Station, Nazafgarh, Delhi, for the search of his son. He along with his brother Nafe Singh came to police station for

search of his son Manjeet. He was told that a dead body of an unknown boy was found on 22.2.2004. The photographs were shown by the police. He

and his brother Nafe Singh identified the photographs to be that of his son. He stated that his son Manjeet has been murdered by Chuni Lal son of Jagdev.

The identification memo Exhibit P.13 was prepared on the basis of statement of Rajender.

8. It was on 14.3.2004, the Appellant Arvind @ Chuni Lal was arrested. He is said to have made a disclosure statement Exhibit P.22 to Shri Virender

Singh ASI, SHO, Police Station, Line Paar, Bahadurgarh on the aforesaid date. In pursuance of such statement, the place where Manjeet was shot dead,

was demarcated. On the basis and in pursuance of subsequent disclosure statement Exhibit P.24, the recovery of scooter, on which the said Appellant

escaped from the place of occurrence was made on 17.3.2004 vide Exhibit PW24/A.

9. The Appellant Joginder was arrested on 15.4.2004. He suffered a disclosure statement Exhibit P.25 on 15.4.2004. He has disclosed that about 2-1/2

years ago, his sister Neesha and Manjeet were caught in a compromising position in a room. Some respectables of the village got the matter compromised,

but he decided to take revenge from Manjeet. After sometime, he was arrested in a case and then at Tihar Jail, his friend Sonu @ Sombir came to him. He

asked his friend that Manjeet is to be murdered. He asked Sonu that Arvind @ Chuni Lal will call Manjeet from his house. After some days, Sonu @

Sombir; Chuni Lal and a friend of Sonu, murdered Manjeet son of Rajender on his asking as Manjeet wanted to outrage the modesty of his sister. Exhibit

P.14 is the disclosure statement suffered by Sonu @ Sombir. On the basis of such disclosure statement, a country made pistol, 315 bore was recovered

hidden on the passage of Barhi drain wrapped in a polythene vide recovery memo Exhibit P.15/A.

10. The Forensic Science Laboratory has given its report Exhibit P.26 finding that the bullet Marks BC/1 and BC/2 have been fired from a country made

pistol. It also found that the holes on shirt and banian have been caused by a single bullet projectile. In a separate report Exhibit P26/A, the FSL found

human blood on shirt, pant, knicker, banian, whereas the blood could not be detected on socks. Vide report Exhibit P26/B, the FSL found material

disintegrated in blood stained earth and shoes, The prosecution has sought to prove charges against the Appellants on the basis of evidence of last seen led

by PW4-Rajender. Disclosure statements Exhibits P.22, P.24 and P.25 and the recovery memos of the articles in furtherance of such disclosure statement

coupled with the result of the scientific tests finding human blood on the articles mentioned above.

11. It may be noticed that 4th non appealing accused Virender was arrested on 5.2.2006 and that he has not filed any appeal against the judgment of

conviction.

12. Learned Counsel for the Appellants has vehemently argued that there is no legal evidence of linking the Appellants with the commission of crime.

PW4-Rajender has deposed in respect of the last seen of the deceased with Appellant-Chuni Lal. The said statement was said to be unbelievable for the

reason that though the son of the witness has not returned home after 21.2.2004, but no missing report has been lodged. Though the witness has deposed

that the report was lodged at police station Nazafgarh, but such report has not been produced on record. Thus, the inference is that either the witness has

not lodged any report or if lodged, the contents will not help the prosecution.

13. It is also argued that the prosecution has examined only the interested witnesses, but has not associated any independent witness, who can depose

about the commission of the crime by the Appellants. The motive of commission of crime remained unproved as PW4-Rajender has not said a word about

the sister of Joginder having been found in a compromising position with the deceased. The motive cannot be proved on the basis of the disclosure

statement.

14. No recovery has been effected on the basis of the disclosure statements of accused, namely, Arvind @ Chuni Lal and Joginder and that there is no

evidence against Virender. In disclosure statement Exhibit P.22, name of Virender alias Chota is not disclosed though he is resident of the same village. It is

only mentioned therein that a boy with Sonu met him on the motorcycle. Even the disclosure statement of Joginder (Exhibit P.25) does not disclose the

name of Virender. The statement is also to the effect that a friend of Sonu murdered Manjeet. It is contended that such part of the statements are not

admissible. The non-disclosure of the identity of Virender, though he is resident of the same village, shows that the prosecution has enlarged its net to rope

in Virender as well without any evidence.

15. It is also argued that the evidence led by the prosecution is in respect of accused Arvind @ Chuni Lal, but there is no proof of motive and no meeting

of minds amongst the accused. Therefore, the last seen evidence by itself is not sufficient to complete the chain of circumstances to prove the allegation of

culpability of homicide amounting to murder. There is no corroboration of the statement of PW4-Rajender by any independent witness. Jagdev, father of

Chuni Lal, has not been examined in respect of the allegations of the conduct of PW4-Rajender and that of Chuni Lal. It is further argued that as per the

post mortem report, two bullets were fired, but only one bullet matches with the pistol (Exhibit P.15). It is the prosecution story that two bullets were fired

from a country made pistol by Sonu, but the FSL report completely belies the prosecution case. The bullets were recovered at the time of post mortem on

25.2.2004, but sent for the opinion of the fingerprints laboratory on 22.3.2004 i.e. almost after long gap of one month, which shows that the prosecution

has manaeuvred the facts so as to rope in the present Appellants. It is also argued that the scooter is owned by Krishan son of Balbir. There is no evidence

to connect the recovery of the scooter with the scooter used in the crime. It is also argued that the identification of the dead body from the photographs is

not sufficient whereas PW3 has taken fingertips for DNA test, but no such DNA test was conducted. Therefore, the identification on the basis of

photographs cannot be said to be reliable and conclusive so as to link the dead body with the missing son of PW4-Rajender.

16. It may be noticed that Chuni Lal @ Arvind in his statement u/s 313 Code of Criminal Procedure stated that he has been falsely involved in this case by

the police due to village party factions whereas Joginder stated that he has been falsely implicated in the case by the police due to party factions between

villages Dichau and Bataru. He stated that he is innocent and has no concern with the present occurrence.

17. We do not find any merit in the argument that the dead body could not be identified by PW4-Rajender from mere photographs and such identification

based upon photographs is not a reliable evidence only for the reason that the DNA examination has not been carried out. The photographs Exhibits P.3 to

P.7 are crystal clear. The face and the body is clearly identifiable. There is no disfiguration or colouration, which may distort or create doubt in

identification of the dead body. PW4-Rajender has rightly identified the body as that of his son. Such witness has not been cross-examined in respect of

identification of the deceased as that not of Manjeet. Therefore, the argument that from the photographs, the dead body cannot be identified is not

available to the Appellants in the present case. It depends upon the facts of each case. The photographs on record, the statements of the witnesses and the

cross-examination thereof, leaves no manner of doubt that the dead body recovered is that of deceased Manjeet son of Rajender. The fingertips were not

sent for DNA test as the dead body was identified the very next day of the post mortem examination. Therefore, mere fact that the fingertips were not sent

for DNA examination, does not affect the prosecution case.

18. PW4-Rajender has deposed that his son left house at 1.00 p.m. on 21.2.2004 along with Arvind @ Chuni Lal, the present Appellant. The evasive

replies given by the father of the Appellant-Chuni Lal, in disclosing the whereabouts of his son and the subsequent statement of Jagdev to PW4-Rajinder

that Chuni Lal came and left on a scooter, supports the prosecution story. It is the scooter, which has been recovered on the basis of disclosure statement,

Exhibit P.24, of the accused Arvind @ Chuni Lal.

19. The argument that the prosecution has not produced the application allegedly given by Rajender to police station, Nazafgarh, therefore, the inference is

either no such report was lodged or that it does not support the prosecution case, is again without any effect. In the cross-examination, the witness has

deposed that in his handwritten application, he has mentioned that Manjeet had gone with Chuni Lal on 21.2.2004 and that the Delhi Police has visited the

house of Chuni Lal. He did not enquire from the police station Nazafgarh. He came to know on 26.2.2009 regarding murder of his son. In the cross-

examination, he has not even been suggested that such report was not lodged with the police of Police Station, Nazafgarh.

20. The evidence of PW4-Rajender coupled with the recovery of the scooter at the instance of the accused Arvind @ Chuni Lal, completes the chain of

events in respect of Manjeet leaving home in the presence of Rajender on 21.2.2004 at 1.00 p.m. with accused Chuni Lal. The recovery of scooter used

by the Appellant in taking Manjeet to the place of crime and subsequent hiding of the scooter in bushes, is relevant chain of circumstances, pointing out to

the culpability by Arvind @ Chuni Lal in commission of crime.

21. The main stress of the argument raised by the learned Counsel for the Appellants is that the disclosure statements in pursuance of which recovery is

effected, are not admissible in evidence. Reference has been made to Section 27 of the Indian Evidence Act, 1872 (for short `the Evidence Act''). It is

argued that since no recovery has been effected on the basis of statement of Joginder, therefore, such statement in respect of conspiracy or motive is not

admissible in evidence, whereas recovery of scooter in pursuance of disclosure statement of Arvind @ Chuni Lal does not lead to recovery of any

incriminating circumstances, which will advance the prosecution case. Therefore, the case of the prosecution is not based upon any legal and admissible

evidence.

22. The question as to which part of the disclosure statement is admissible in evidence has attracted the attention of the Courts since long. One of the

earliest judgments is the Seven Judge Bench of the Lahore High Court reported as Sukhan v. Emperor AIR 1929 Lah 344, has dealt with the scope of

Sections 3 and 27 of the Evidence Act. It was held to the following effect:

The expression ""fact"" as defined by Section 3 of the Statute includes, not only the physical fact which can be perceived by the senses, but also the

psychological fact or mental condition of which any person is conscious. It is in the former sense that the word is used in Section 27. The phrase ""fact

discovered"" used by the legislature refers to a material and not a mental fact.

The fact discovered may be the stolen property, the instrument of the crime, the corpse of the person murdered or any material thing; or it may be a

material thing in relation to the place or the locality where it is found.

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The language of Section 27 when analyzed, shows that the legislature has prescribed the following two limitations in order to define the scope of the

information provable against the accused: (1) the information must be such as has caused the discovery of the fact. This condition follows from the phrase

discovered in consequence of information"" and also from the expression ""thereby discovered"" used by the legislature with reference to the fact. In other

words, the fact must be the consequence, and the information the cause of its discovery. The information and the fact should be connected with each other

as cause and effect. If any portion of the information does not satisfy this test, it should be excluded. (2) The information must ""relate distinctly"" to the fact

discovered. The word ""relate"" means to ""have reference to"" or ""to connect""; and the word ""distinctly"" means clearly unmistakably, decidedly or indubitably.

To put it in a different language, the information must be clearly connected with the fact.

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When, in consequence of information furnished by the accused, a fact is discovered, then the discovery of that fact supplies a guarantee of the truth of the

information which may amount to a confession. The confession in so far as it is confirmed by the discovery should be deemed to be true.

This no doubt, is the rationale of the exception enacted by Section 27, but its scope must depend upon the actual language employed by the legislature. As

I have pointed out, the wording of the section shows that the requirements of both the conditions specified above must be satisfied before an incriminating

statement can be received in evidence. These conditions, when combined lead us to the conclusion that only that portion of the information is provable

which was the immediate or proximate cause of discovery of the fact. Anything, which is not connected with the fact as its cause, or is connected with it,

not as its immediate or direct cause, but as its remote cause, does not come within the ambit of the section and should be excluded.

23. The Privy Council in its celebrated judgment reported as Pulukuri Kottaya and Ors. v. Emperor AIR 1947 PC 67, has approved the aforesaid

judgment of the Full Bench judgment of the Lahore High Court, when it was held to the following effect:

In their Lordships'' view it is fallacious to treat the ""fact discovered"" within the section as equivalent to the object produced; the fact discovered embraces

the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.

Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

24. The aforesaid judgments of the Privy Council, have been quoted with approval in number of judgments, but in Mohd.

25. In Mohmed Inayatullah Vs. The State of Maharashtra, , the Court held to the following effect:

.... It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of

the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the

time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only ""so much of the

information"" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word ""distinctly"" means

directly"", ""indubitably"" ""strictly"", ""unmistakably"". The word has been advisedly used to limit and define the scope of the proveable information. The phrase

distinctly"" relates ""to the fact thereby discovered"" (sic) (and?) is the linchpin of the provision. This phrase refers to that part of the information supplied by

the accused which is the direct and immediate cause of the discovery.

26. In State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, , the Court has examined all the judgments including Pulukuri Kottaya''s case (supra)

and observed as under:

125. We are of the view that Kottaya case is an authority for the proposition that ""discovery of fact"" cannot be equated to the object produced or found. It

is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental

awareness of the informant as to its existence at a particular place.

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128. So also in Udai Bhan Vs. The State of Uttar Pradesh, , J.L. Kapur, J. after referring to Kottya case stated the legal position as follows:

A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence.

The above statement of law does not run counter to the contention of Mr. Ram Jethmalani, that the factum of discovery combines both the physical object

as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical object was not

recovered at the instance of the accused was not discussed in any of these cases.

27. The Court proceeded to consider the judgments in Om Parkash''s case (supra); Mohd. Inayatullah''s case (supra) and State of Maharashtra Vs. Damu

Shinde and Others, , to return a finding that in any of these decisions, discovery of fact was not held to comprehend a bare and simple mental fact or state

of mind relating to a physical object dissociated from the recovery of the physical object. The `fact'' embraces within its fold both, the physical object as

well as the mental element in relation thereto. It was held that the information given must relate to discovery of fact.

28. Keeping in view the legal principles enunciated in the aforesaid judgments, it is apparent that the fact discovered within the meaning of Section 27 of

the Evidence Act, includes the physical object as well as the information given by the accused in police custody relating to the discovery of that object

which is relevant, but what is admissible being a discovered fact is the information given by the accused, which is within his exclusive knowledge, leading to

such recovery.

29. In view of the above enunciation of law, it would be advantageous at this stage to reproduce the disclosure statement, Exhibit P.22, of the Appellant

Arvind @ Chuni Lal, made on 14.3.2004:

In the presence of following witnesses accused Arvind alias Chuni Lal, above, without any fear or lure made disclosure statement, ""that about 2-2-1/2

years ago since today, sister of Joginder son of Raju, caste Jat, resident of Dichau and deceased Manjeet son of Rajender Jat, r/o Dichau were caught in

compromising position in a room at the village. Owing to that grudge, Joginder son of Raju Jat, resident of Dichau asked me and Sonu, r/o Kukrola to

murder Manjeet. On 21.2.2004, I after having called Manjeet from his house and making him sit on my scooter bearing No. DL-S-4108, Bajaj Chetak

took him to Bahadurgarh at Barahi turning. There, Sonu resident of Kukrola and a boy, whom Sonu knows and I do not, met me on a motorcycle. Then,

we, four of us, having crossed railway crossing at Barahi road walked at the passage of drain which is 5-6 kills inside the road and reaching there made

Manjeet boarded down from the scooter, I and the boy who was along with Sonu, caught hold of Manjeet and Sonu fired a shot from behind at the

shoulder and one shot in the head near his ear. Manjeet having suffered the shots, fell down there itself and died. Then, I on my scooter and Sonu along

with his arm having made the other boy sit on the motorcycle left in different directions. The scooter on which I took Manjeet has been kept concealed by

me in a room at Ghaziabad (UP) about which none else than me has any knowledge, can be got recovered by me after demarcation. Where Manjeet was

murdered by fire shot, I can also get that place demarcated and I know the whereabouts of accomplice Sonu and can get him arrested while

accompanying you.

30 In the above disclosure statement of Arvind @ Chuni Lal, the words in italics are in the nature of confession of crime, when the accused was in police

custody and therefore, not admissible in evidence in terms of Section 25 of the Evidence Act. However, the statement that he called Manjeet from the

house, made him sit on the scooter and took him depicts and relates to his conduct, which is a relevant circumstance u/s 8 of the Evidence Act. We find

support for this conclusion by the authoritative judgment of the Hon''ble Supreme Court rendered in Himachal Pradesh Administration Vs. Om Prakash, ,

wherein it was found that even if nothing is found or recovered from an accused as a consequence of the information furnished by him, still the evidence of

the Investigating Officer and the Panches that the accused has taken them to a witness, as corroborated by the said witness, would be admissible u/s 8 of

the Evidence Act, as conduct of the accused. In Prakash Chand Vs. State (Delhi Administration), , the Court found that there is a clear distinction between

the conduct of a person against whom an offence is alleged, which is admissible u/s 8 of the Evidence Act, if such conduct is influenced by any fact in issue

or relevant fact and the statement made to the Police Officer during the course of investigation, which is hit by Section 162 Code of Criminal Procedure It

was held to the following effect:

.... What is excluded by Section 162 Code of Criminal Procedure is the statement made to a Police Officer in the course of investigation and not the

evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course

of investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led to a Police Officer and pointed out the place where

stolen Articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, u/s 8 of the

Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of

Section 27 of the Evidence Act (Vide Himachal Pradesh Administration Vs. Om Prakash, .

Arvind @ Chuni Lal also suffered a disclosure statement on 17.3.2004 to the effect that the disclosure regarding concealment of scooter at Ghaziabad was

incorrect, but in fact the scooter has been kept concealed in a fodder room of his residence. In pursuance of the said disclosure statement, scooter bearing

No. DL-S-4108, was recovered from a fodder room situated behind his house on 17.3.2004. The recovery memo of scooter is Exhibit P.24/A. This

statement/information is in relation to the recovery of physical object i.e. scooter and such information leading to said recovery is admissible in evidence in

terms of Section 27 of the Evidence Act.

In view of the aforesaid discussion, we find that the evidence of last seen provided by PW4-Rajender is corroborated with the aforesaid statement of

accused Arvind @ Chuni Lal relating to his conduct of taking deceased-Manjeet from his house on a scooter, being admissible u/s 8 of the Evidence Act.

Thus, in our view, the evidence of last seen stands proved. The aforesaid information provided by accused Arvind @ Chuni Lal leading to recovery of

scooter further completes the link of chain of incriminating circumstances against the accused, establishing his guilt towards the commission of the crime

beyond any reasonable doubt. Therefore, in our considered opinion, the conviction of Arvind @ Chuni Lal recorded by the learned trial Court does not

suffer from any illegality or irregularity warranting interference by this Court.

Coming to the next argument that since no physical object has been recovered on the basis of disclosure statement of Joginder, therefore, the information

disclosed by the said accused cannot be read into evidence. Similarly, evidence of Arvind @ Chuni Lal, as evidence of a co-accused, cannot be read into

evidence. Before we consider the aforesaid argument, the disclosure statement of Joginder is extracted herein-below:

In the presence of following witnesses, accused Joginder without any fear or lure made disclosure statement, ""that today, about 2-21/2 years ago, my sister

Neesha and Manjeet son of Rajender Jat, r/o Dichau were caught in compromising position in a room. At that time, the respectable persons of the village

got the matter compromised, but I decided to take revenge from Manjeet. Some days thereafter, I was arrested in a case. Then, at Tihar Jail, my friend

Sonu alias Sombir son of Umed Singh, r/o Kukrola came to me. Then, I asked my friend that Manjeet is to be murdered on which Sonu asked that if you

say so then, we will murder him. I asked Sonu that Chuni Lal alias Arvind son of Jagdev Jat, r/o Dichau will call Manjeet from his house. After some days,

Sonu @ Sombir son of Umed Singh, r/o Kukrola and Chuni Lal son of Jagdev Jat, r/o Dichau and a friend of Sonu who knows Sonu, murdered Manjeet

son of Rajender Jat, r/o Dichau on my asking because Manjeet wanted to outrage the modesty of my sister. To revenge that, I have got murdered

Manjeet.

31. It is true that no physical object was recovered on the basis of the statement of Joginder. However, the allegation against him is of criminal conspiracy

u/s 120B of the Indian Penal Code for having planned and implemented the murder of deceased Manjeet through his friend Sonu. None of the prosecution

witnesses has deposed in respect of the alleged motive attributed to Joginder nor the prosecution has led any evidence of his having met Sonu in Jail, as

disclosed in his disclosure statement, which may constitute the basis for sustaining conviction of Joginder towards the offence for which he has been

charged. Therefore, we find that the trial Court has erroneously convicted Joginder. Accordingly, we set aside his conviction and sentence, by extending

the benefit of doubt to him. Therefore, the appeal qua Joginder @ Dhilla, stands allowed and he is acquitted of the charges.

32. Coming to Criminal Appeal No. 528-DB of 2007 filed by Sonu @ Sombir. It may be noticed that on 13.11.2009, this Court ordered an inquiry into

the fact whether the Appellant Sonu is a juvenile or not. After inquiry, a report dated 18.2.2010 was submitted by the Superintendent of Police, Jhajjar,

pointing out that Sonu was a juvenile on the date of occurrence. Thereafter, an affidavit dated 20.2.2010 was filed by the Superintendent, District Jail,

Karnal, to the effect that Sonu was a juvenile at the time of occurrence of the crime.

33. In view of the said factual position, in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, the impugned judgment

of conviction and order of sentence qua Sonu @ Sombir, are set aside. The matter is remitted to the Juvenile Justice Board constituted under the aforesaid

Act, for further proceedings, in accordance with law.

34. Resultantly, Crl. Appeal No. 405-DB of 2007 is partly allowed and Criminal Appeal No. 465-DB of 2007 is dismissed as infructuous in view of Crl.

Appeal No. 405-DB of 2007 having been partly allowed, whereas Crl. Appeal No. 528-DB of 2007 is disposed of in the above terms.