

(1995) 10 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Murder Reference No. 3 of 1995 and Criminal Appeal No. 136 of 1995

State of Haryana, Prosecutor

APPELLANT

Vs

Jagbir Singh alias Lilu
 Jagbir Singh and Another Vs
State of Haryana

RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 226, 228, 313, 366

Evidence Act, 1872 — Section 27, 73

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364, 384

Citation : (1996) CriLJ 2545 : (1996) 1 RCR(Criminal) 735

Hon'ble Judges : R.S. Mongia, J;K.K. Srivastava, J

Bench : Division Bench

Advocate : S.S. Khetarpal, for the Appellant; Deepak Sibal, DAG and Mahabir Singh, for the Respondent

Final Decision : Allowed

Judgement

K.K. Srivastava, J.—The appellants Jagbir Singh alias Lalu (25 years) and Umed Singh (28 years), both sons of Sube Singh, were tried Under Sections 302 364 201 34, Indian Penal Code in the Court of Sessions Judge, Bhiwani, on the charge of kidnapping Manoj, a minor, son of the informant Daya Nand for ransom and then committing his murder and concealing the dead body. Appellant Jagbir Singh was also charged u/s 384, Indian Penal Code. The appellant Jagbir Singh has been convicted u/s 302, Indian Penal Code, and sentenced to death. He was also convicted Under Sections 364 201 and 384, Indian Penal Code, and sentenced to the period already undergone. Appellant Umed Singh was convicted only u/s 201, Indian Penal Code and sentenced to suffer three years' rigorous imprisonment and fine of Rs. 2,000/- in default of payment of fine to suffer further rigorous imprisonment for three months. Umed Singh was however, acquitted of the charges Under Sections 302 and 364, Indian Penal Code. Since Jagbir Singh appellant was sentenced to death, the learned Sessions Judge has made Murder Reference u/s 366, Criminal Procedure Code, for confirmation of

the death sentence, which has been registered as Murder Reference No. 3 of 1995. The appellants Jagbir Singh and Umed Singh have also filed Criminal Appeal against their conviction and sentence, which has been registered as Criminal Appeal No. 136-DB of 1995. The Murder Reference and Criminal Appeal are being disposed of by this judgment.

2. The case of the prosecution as unfolded by Daya Nand-complainant (P.W. 7) is as under :-

The deceased Manoj, aged about 4 1/2 years, son of the informant Daya Nand, was missing since 10.30 a.m. of September 6, 1991. Daya Nand (P.W. 7), who is a teacher by profession, returned home from the school when he learnt about his son missing. Daya Nand and his family members searched for Manoj till 11 p.m. but Manoj was not traceable. At about 11 p.m., Sukhbir son of Kewal Singh resident of Prem Nagar met Daya Nand at the bus stand of Village Mithathal where Daya Nand was sitting along with Mange Ram, Bharat Singh and Ram Chander. Sukhbir took Daya Nand with him on the pretext of some work to the house of Jai Singh son of Sarup Singh where Sarpanch of the village Om Parkash son of Darya, Mohinder Singh and Krishan Kumar, a teacher, were present. Sarpanch Om Parkash told Daya Nand that accused Jagbir Singh was seen tearing and throwing letter in the "Hara" by Smt. Sarti wife of Chhotu Ram the grand-mother (maternal) of Jagbir Singh. She collected the torn papers and handed them over to Sukhbir, who, in turn gave the same to the Sarpanch. The torn pieces of the paper were pasted on a piece of paper. When the torn papers were arranged properly, it turned out to be a letter demanding ransom, addressed to one Telu Ram. In this letter, there was a demand of Rs. 50,000/-. Daya Nand (P.W. 7), who was conversant with the handwriting of the appellant Jagbir Singh as he used to coach him since his childhood, at once recognized the said letter to be in the handwriting of the appellant Jagbir Singh. Talu Ram, aforesaid, resides in a house situated in front of the house of Daya Nand and he also has a son aged about 5/6 years. The Sarpanch expressed his suspicion about the involvement of the appellant Jagbir Singh in the kidnapping of Manoj, aforesaid. Thereafter, the appellants Jagbir Singh and Umed Singh were called there for interrogation. The aforesaid letter (mark "A1") was shown to Jagbir Singh, who denied his handwriting. It is alleged that Om Parkash and Umed Singh were sent to meet Smt. Sarti wife of one Chhotu Ram to enquire as to from where she had picked up the pieces of torn letter. Smt. Sarti confirmed to have seen her grandson, the appellant, Jagbir Singh throwing the same in the "Hara" and she collected the torn pieces from there. Chhotu Ram, aforesaid, is the real uncle of Daya Nand (P.W. 7). The accused-appellants are real brothers and daughter's sons of Chhotu Ram.

3. On September 7, 1991, Umed Singh, accused, met Daya Nand and took him to the house of Jagbir Singh started weeping and told that Daya Nand's son was in truck union, Bhiwani, and he would bring him within 1 1/2 hours. Thereafter appellant Jagbir Singh changed his statement and said that he had no knowledge

about Manoj. Then Sukhbir was sent to Village Chiri to call the father of appellant Jagbir Singh. The search for Manoj, in the meantime, was on. At about 1.30 p.m., another letter (Exhibit P. 1) was found lying in the compound of the house of Daya Nand (P.W. 7). Daya Nand read the letter and recognized the handwriting as that of appellant Jagbir Singh. Through this letter (Exhibit P. 1) a ransom of Rs. 25,000/- was demanded of Manoj (deceased) from Daya Nand (P.W. 7). This letter confirmed the suspicion of Daya Nand about the complicity of Jagbir Singh in the kidnapping of his son Manoj. Thereafter, Jagbir Singh (appellant) was detained in a shop owned by Umed Singh, which joined the house of Daya Nand. At about 3.30 p.m., Sube Singh the father of Jagbir Singh appellant also arrived there and he was apprised of the aforesaid facts. The father of Jagbir Singh made enquiries from his son and after having conversation with Jagbir Singh, he told Daya Nand that he was convinced about the involvement of the appellant Jagbir Singh in the kidnapping of Manoj and that Daya Nand should hand over Jagbir Singh to the police. Daya Nand reached Police Station Saddar Bhiwani along with Chatter Singh and Yudhvir and handed over both the letters (mark "A" and Exhibit "P-1") to the S.H.O. Mahender Singh Bhatti (P.W. 12) and narrated the whole story (facts) to him. Thereafter, the S.H.O. Mahender Singh Bhatti deputed Assistant Sub Inspector Kaura Ram and two Constables, who came with Daya Nand to the village. Assistant Sub Inspector Kaura Ram arrested Jagbir Singh, accused, and searched the shop of Umed Singh, the other accused, which is different from the one where Jagbir Singh had been locked by Daya Nand and others. Assistant Sub Inspector Kaura Ram returned to the police Station with accused Jagbir Singh.

4. On September 8, 1991, at about 8.30 a.m. Daya Nand again visited the Police Station with Chatter Singh and Sadhu Ram to find out as to what happened to his son Manoj. The S.H.O. Mahender Singh Bhatti met Daya Nand and told him that he had already interrogated Jagbir Singh, but nothing could be elicited from him. The S.H.O. told Daya Nand that if Jagbir Singh was found involved in this occurrence, he would leave his job. It is alleged that thereafter, the S.H.O. Mahender Singh Bhatti got a report dictated which was scribed by a Munshi and the same was signed by Daya Nand vide D.D.R. (Exhibit P.M.). The appellant Jagbir Singh was, however, released by S.H.O. Mahender Singh Bhatti finding that he was not involved in this occurrence. The case of the prosecution further is that the villagers were quite agitated by the action of S.H.O. Mahender Singh Bhatti in releasing the appellant Jagbir Singh. The accused were, however, again interrogated by the members of the family of Daya Nand and the persons, who came from Village Chiri, in the Chaubara of one Partap. Jagbir Singh as well as Umed Singh continued to deny their complicity and expressed their ignorance about the whole matter. They were allowed time till the morning of the next day.

5. On September 9, 1991, Daya Nand and others again collected at about 7.30 a.m. and told the residents of village Chiri in clear terms that Daya Nand's son was with them and they should return the child, dead or alive, by 4 p.m. else it will not be good for them. Balbir resident of Village Chiri came to the house of

Daya Nand at about 11 a.m. and told him that Jagbir Singh had admitted his guilt and that he had buried the dead body of Manoj inside his house. At that time, Parkash son of Darya, Sukhbir, Telu Ram, Palu Ram, Manphool Singh, Hawa Singh and 5-7 other persons of the village were present there, Daya Nand sent Parkash to call one Master Bani Singh, who arrived there within 15 minutes and he was informed about these facts. Thereafter, they came to the house of Umed Singh. There, Jagbir Singh appellant told that he had committed the murder of the son of Daya Nand out of greed and that the dead body had been buried by him with the help of Umed Singh-appellant in his house inside the Kotha. Thereafter both the appellants Jagbir Singh and Umed Singh showed the place where the dead body had been buried. It is alleged that the residents of the village made a hole after removing a little bit of earth and they were able to see some portion of the feet of a child and the dead body emitted foul smell. The Chaukidar was left there. The door was locked by Master Bani Singh. Daya Nand and others came back. The key of the house after locking the same was given to Palu. 4, 5 persons were left outside the house of Jagbir Singh. Master Bani Singh asked Daya Nand to inform the police that the dead body was buried in the house of Jagbir Singh and that the dead body would be handed over only either to a Superintendent of Police or a Deputy Superintendent of Police and not to any other police officer as they had suspicion that the local police was siding with the accused. Daya Nand came to Police Station Saddar Bhiwani and informed these facts to S. H. O. Mahender Singh Bhatti, who was told that the dead body would be handed over only to the Superintendent of Police or Deputy Superintendent of Police and to none else. The case prosecution further is that the statement of Daya Nand (Exhibit P.L.) was recorded and the same was signed by complainant Daya Nand. Sub Inspector Mahender Singh Bhatti (P.W. 12) made endorsement (Exhibit P.L./1) on the basis of which First Information Report (Exhibit P. L./2) was recorded. This F.I.R. No. 211 dated September 9, 1991, was registered Under Sections 364 34, Indian Penal Code at Police Station Saddar Bhiwani by Moharrir Head Constable Satbir Singh, who despatched the copies of First Information Report and special report to the higher authorities through Constable Om Parkash (No. 218). After the registration of the case, Sub Inspector Mahender Singh Bhatti left for village Mithathal and reached the house of complainant Daya Nand (P.W. 7). He took into possession letters (Mark "A" and Exhibit P-I) vide memo Exhibit P.Q. He recorded the statements of the witnesses Daya Nand and Yudhvair Singh. Thereafter, he searched for the accused-persons and on the basis of secret information regarding the whereabouts of the accused, he reached culvert of Jai canal on September 9, 1991 at about 8 p.m. where in the presence of witnesses Chattar Singh and Om Parkash he arrested both the accused Jagbir Singh and lamed Singh. He interrogated Jagbir, who suffered a disclosure statement (Exhibit P.R.) and disclosed before the Investigating Officer that he had concealed the dead body of Manoj (deceased) in his house and he alone knew about it and could get the same recovered. The accused signed the disclosure statement. The witnesses also signed the same as attesting witnesses. Thereafter the other accused lamed Singh was also interrogated and he also

suffered a disclosure statement (Exhibit P.S.) vide which he disclosed that the dead body of Manoj had been concealed in the house of Jagbir Singh, which he could get recovered. The accused Umed Singh as well as the attesting witnesses signed the disclosure statement. Both the accused led Sub Inspector Mahender Singh Bhatti and witnesses to the house of accused Jagbir Singh and got recovered the dead body of the child Manoj after removing sand and earth from the place of concealment of the dead body. The complainant Daya Nand, father of the deceased Manoj, was also present there and he identified the dead body as that of his son Manoj. Recovery memo of the dead body was prepared which is Exhibit P.T. It was duly attested by the witnesses Chattar Singh and Om Parkash. The scene of recovery of the dead body was got photographed vide photographs Exhibits P. 3 to P. 15. The salt and sand, which were in the pit where the dead body was concealed, were also taken into possession vide memo Exhibit P.T./I. The investigating Officer then amended the First Information Report, aforesaid, and recorded the offence Under Sections 302 201, Indian Penal Code. He also prepared the site plan of the place of recovery of the dead body with correct marginal notes, which is Exhibit P.V. Statements of witnesses Chattar Singh and Om Parkash were also recorded. The Investigating Officer conducted inquest proceedings on the dead body of Manoj and prepared inquest report (Exhibit P.F.). He also prepared an application (Exhibit P.O.) requesting for the post mortem examination of the deceased and handed over the duly sealed dead body of Manoj with relevant papers to Constables Jaibir Singh and Shalender Singh and instructed them to take the dead body for getting post mortem conducted and to bring back the result of post mortem examination.

6. Dr. M.D. Sharma, Medical Officer, General Hospital, Bhiwani (P.W. 1) along with Dr. Sadhna Verma conducted post mortem examination on the dead body of Manoj on September 10, 1991, on police application dated September 9, 1991 (Exhibit P.D.) The age of the deceased was assessed above five years. The dead body was brought by Constables Jaibir Singh and Shalender Singh and was identified by the informant Daya Nand (P.W. 7). The body was soiled with dust and straw and wore white Kurta, a black thread around the waist. Rigor mortis was found absent in all the four limbs. Nails could be easily pulled out. The skin was peeling at various places. The body was emitting foul smell. Maggots were noticed at various places. The abdomen was distended and body was ballooned. The hair of skull were loose and could be easily pulled out. Sutures of the skull particularly coronal suture were widely separated. Liquified brain matter was coming out. Eyes were protruding. Mouth was closed. There was no mark of ligature around the neck. There was no external mark of injury around the anus. The autopsy surgeons noted the following ante mortem injuries :-

1. A lacerated wound of 1 1/2" x 1" on right temporal region of skull. On dissection there was extravasation of blood present. On further exploration, fracture of temporal bone was found and on deeper dissection, cranial contents were liquified and brain matter was mixed with blood and coming out.

2. A bruise of $1\frac{1}{2}$ " x 1" present on zygomatic process of left side of face. The colour as pinkish green.

7. Pleurae were dark, discoloured and larynx and trachea showed congestion of mucus membranes. Both the lungs were dark, black in colour. Heart was normal and chambers were empty, soft and dark in colour. On abdominal examination, peritoneum was normal mucus membranes of mouth, pharynx were congested. Stomach contained semi-digested food material. Intestines were inflated with the formation of gases. Liver, spleen and kidney were discoloured. Urinary bladder was empty and scrotum was swollen and distended. In the opinion of the autopsy surgeons, the cause of death was head injury which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. The probable time between injuries and death was within a few hours and the time that elapsed between death and post mortem was three to five days. Post mortem report (Exhibit P.E.) was prepared and the dead body was handed over to the police with the post mortem report. Sub Inspector Mahender Singh Bhatti (P.W. 12) brought both the accused at the Police Station and lodged them in the police lock up. He deposited the case property at the Police Station.

8. The investigation of the case was then transferred to C.I.A. Staff, Bhiwani. Hira Lal, Sub Inspector/S.H.O. Police Station Safidon (P.W. 11) was working as Sub Inspector C.I.A. Bhiwani on September 10, 1991. On that day, he took both the accused from Police Station Saddar Bhiwani to C.I.A. Staff, Bhiwani and interrogated them. The accused Jagbir Singh made a disclosure statement about concealing a stick (Danda) in the kotha of Turi in his house and offered to get the same recovered. The other accused Umed Singh also suffered a disclosure statement about concealing a Kassi in the Turiwala Kotha of his house and offered to get the same recovered. However, no recovery could take place in pursuance of the aforesaid disclosure statement of the accused. The disclosure statement were not even attached with the police report and were placed on the police file. Subsequently, Inspector Hira Lal (P.W. 11) of C.I.A. Staff moved application (Exhibit P.J.) before Chief Judicial Magistrate praying for obtaining the specimen handwritings of both the accused Jagbir Singh and Umed Singh. The said application came before Mr. Vinod Jain, Additional Chief Judicial Magistrate, Bhiwani (P.W. 4). On September 10, 1991, the accused were produced in custody before the Additional Chief Judicial Magistrate, Bhiwani, and vide statement (Exhibit P.J. 1) accused Jagbir Singh admitted that the handwriting of letter Exhibit P. 1 was in his hand and he also agreed to give his specimen handwriting, which was taken vide Exhibit P. 2. Specimen handwriting of accused Umed Singh was also taken, which is Exhibit P.W./A. The specimen handwriting of Jagbir Singh accused was handed over by the Additional Chief Judicial Magistrate, Bhiwani, to Sub Inspector Hira Lal. The Additional Chief Judicial Magistrate had prepared his notes about this which are exhibited as P.K./2.

9. The Senior Scientific Officer (Documents)-cum-Ex-Officio Assistant Chemical Examiner to Government of Haryana, Forensic Science Laboratory, Madhuban

(Karnal) examined the original letter (Exhibit P. 1) written to complainant Daya Nand with specimen letter, which were marked - "R-1" relating to the handwriting of accused Jagbir Singh and "R-2" relating to the handwriting of accused Umed Singh. The two specimen writing were compared with the original letter which was marked as "Q-1" by the expert. After comparing the questioned document with the specimen handwritings, of both the accused, the expert gave his opinion that the writing on the questioned document marked "Q-1" and the writing on the specimen marked "R-1", of accused Jagbir Singh, have been written by one and the same person. The report of the handwriting expert is Exhibit P.H.

10. Inspector Hari Singh of C.I.A. Staff, Bhiwani (P.W. 13) on September 11, 1991, interrogated accused Jagbir Singh in the presence of Head Constables Maha Singh and Ranbir Singh, Jagbir Singh again suffered a disclosure statement about concealing his clothes, a stick, a hatchet (kassi) in his residential house in the Dukariya under a trunk and that he could get the same recovered. He further told that the Kassi was concealed in the Kotha of turi. His disclosure statement (Exhibit P.N.) was recorded and it was signed by accused Jagbir Singh and Head Constables Maha Singh and Ranbir Singh. Thereafter, the accused Jagbir Singh led the Inspector and the two Head Constables to his residential house and got recovered Kurta (Exhibit P. 16), Pyjama (Exhibit P. 17), Parna (Exhibit P. 18) and a Danda (Exhibit P. 19) vide recovery memo (Exhibit P.N./1) which was attested by P.Ws. Manphool and Suresh. The recovered articles were duly sealed with a seal which was given to Manphool. Accused Jagbir Singh also got recovered Kassi (Exhibit P. 20) from the Kotha of turi recording which recovery memo (Exhibit P.N./ 2) was prepared duly attested by the aforesaid witnesses Manphool and Suresh. The Kassi (Exhibit P. 20) was also sealed with the same seal. Site plan of the place of recovery was prepared which is Exhibit P.Y. Thereafter, the Inspector recorded the statements of the aforesaid witnesses and deposited the case property intact in the Malkhana. On September 13, 1991, Inspector Hari Singh got accused Jagbir Singh medico-legally examined vide his application (Exhibit P.G.) He also recorded the statements of the other witnesses including the Constable who had carried the special report. After completion of the investigation, he submitted challan report u/s 173, Criminal Procedure Code, against both the accused.

11. The accused persons were produced before the learned Sessions Judge, Bhiwani, on committal of their case before him. The learned Sessions Judge conducted proceedings Under Sections 226-228, Criminal Procedure Code and after hearing the learned State counsel and the learned counsel for the accused-persons proceeded to frame charges against the accused. The accused denied the charges and claimed to be tried.

12. At the trial, the prosecution examined Dr. M.D. Sharma, Medical Officer, General Hospital, Bhiwani (P.W. 1) Dr. I. J. Arora, Medical Officer, General Hospital, Bhiwani (P.W. 2) Mr. Gulshan Rai, Senior Scientific Officer (Documents),

Forensic Science Laboratory, Haryana, Madhuban (P.W. 3), Mr. Vinod Jain, Additional Chief Judicial Magistrate, Bhiwani (P.W. 4), Kanwar Pal Parmar, Naqsha Nawis (P.W. 5), Parveen Kumar, Photographer (P.W. 6), Daya Nand-complainant (P.W. 7), Maha Singh, Head Constable (P.W. 8), Manphool Singh (P.W. 9), Om Parkash (P.W. 10). Sub Inspector Hira Lal (P.W. 11), Sub Inspector Mahender Singh Bhatti (P.W. 12) and Inspector Hari Singh (P.W. 13), Reports of the Forensic Science Laboratory, Madhuban, Karnal (Exhibits P.U., P.V.I 1 and P.U./2) were also tendered in evidence. Thereafter, the prosecution closed its case.

13. Statements of the accused were recorded u/s 313 of the Code of Criminal Procedure, Accused Jagbir Singh denied the prosecution evidence against him and stated that he was innocent. Daya Nand-complainant was related to him. He had a land dispute in respect of land of Chhotu Ram, his maternal grand-father, Daya Nand wanted to grab the land, houses and other property. Due to this dispute, Daya Nand was annoyed with him and his brother, co-accused Umed Singh, and he has been falsely implicated in this case. He also stated that he and his brother Umed Singh resided in separate houses. The letters produced in the case were obtained under threat by the police and the dead body of Manoj was not recovered at his instance. The entire investigation was fabricated under the pressure and influence of Daya Nand, who was being helped by some villagers. He stated that he would lead evidence in defence.

14. The statement of accused Umed Singh is also one of denial of the prosecution case. He has also stated about his being innocent and having a land dispute with complainant Daya Nand. He has stated that he has been falsely implicated in this case. He has also stated about his separate residence from his brother, co-accused Jagbir Singh and denied his complicity in the murder of Manoj. According to the statement of accused Umed Singh, the entire investigation was fabricated under the pressure and influence of Daya Nand, who was being helped by some villagers. He stated that he would lead evidence in defence. Thereafter, the accused tendered in evidence documents Exhibits D.B. and D.C. and closed their defence evidence.

15. The learned Sessions Judge, after hearing the arguments of both the sides, believed the prosecution evidence in respect of accused Jagbir Singh for kidnapping Manoj for ransom and then committing his murder and concealing his dead body in his house. Consequently, he has convicted Under Sections 302 364 201 384, Indian Penal Code, and sentenced as mentioned of the offence u/s 201, Indian Penal Code and convicted and sentenced thereunder, as mentioned above.

16. We have heard the learned counsel for the appellants, the learned Deputy Advocate General, Haryana, for the State-respondent and the learned counsel for the complainant and have carefully gone through the evidence on record.

17. The informant Daya Nand is the son of Jug Lal, Jug Lal had a real brother named Chhotu Ram. Chhotu Ram had no son and had only one daughter named Smt. Chander, who was married to Sube Singh resident of Village Chiri, Police

Station Meham, District Rohtak. The accused Jagbir Singh and Umed Singh are the sons of aforesaid Sube Singh from Smt. Chander, Chhotu ram was the maternal grand-father and Smt. Sarti is the maternal grandmother of the accused-appellants. The accused-appellants are, thus, the sons of the first cousin sister of the informant Daya Nand. Chhotu Ram had transferred all his property including house to his daughter. Smt. Chander. The accused-appellants had shifted to village Mithathal to reside at the house of their maternal grand-father Chhotu Ram and were cultivating the land of their maternal grant-father.

18. The complainant Daya Nand (P.W. 7) is a teacher by profession and was working at a school situated in village Gujrani. Daya Nand has three daughters and two sons, including the deceased Manoj. Manoj was the youngest child of the complainant Daya Nand. Manoj was aged about 5 years when the occurrence took place. On September 6, 1991, the complainant Daya Nand left Manoj at his house when he left for his school at village Gujrani. He returned at about 1.30 p.m. and learned about Manoj missing since 10.30 a.m. The complainant and his family members continued to search Manoj, as mentioned earlier. On September 7, 1991, as mentioned above, the complainant had found a letter allegedly written by the appellant Jagbir Singh informing Daya Nand about his missing son in his custody and demanding a ransom of Rs. 25,000/-. Prior to it on September 6, 1991, it is alleged by the prosecution, a letter which was torn into pieces and collected by Smt. Sariti, the maternal grand-mother of the appellant, from the "Hara" was handed over by her to one Sukhbir, who, in turn, gave the same to Sarpanch Om Parkash (P.W. 10). When the said letter was arranged and pasted on a piece of paper, it was found addressed to one Telu Ram of village Mithathal demanding a ransom of Rs. 50,000/- for the son of Telu Ram, who was also aged about 5/6 years. That letter was recognized by Daya Nand to be in the handwriting of appellant Jagbir Singh. The case of the prosecution, as stated earlier, is based on these two letters. Daya Nand, informant, had a suspicion regarding the involvement of the appellants Jagbir Singh and Umed Singh in the kidnapping of his son Manoj. The complainant Daya Nand named the two appellants in the First Information Report on September 9, 1991, at Police Station Saddar, Bhiwani, During the course of investigation, the case of the prosecution is that the appellants made extra judicial confession admitting their involvement in the kidnapping and murder of Manoj and they also suffered disclosure statements leading to the recovery of the dead body buried in the house of Jagbir Singh. On these facts and circumstances, in the absence of any direct evidence regarding the occurrence, the prosecution has relied on the following circumstances against the accused appellants to prove the charge of kidnapping, murder and demanding ransom :-

(i) Letter (mark "A") written to Telu Ram, aforesaid, demanding ransom of Rs. 50,000/- for the release of his son and letter (Exhibit P. 1) written to Daya Nand complainant (P.W. 7) demanding a ransom of Rs. 25,000/- in respect of Manoj (deceased);

(ii) Extra-judicial confession of the accused-appellants Jagbir Singh and Umed Singh about their involvement in this occurrence; and

(iii) The accused-appellants having got the dead body of Manoj and stick, Kassi and clothes recovered from the house of appellant Jagbir Singh in consequence of the disclosure statements made by the two appellants.

19. The law relating to the conviction of accused for an offence, based solely on circumstantial evidence, is well-settled. The Supreme Court has recently in the case of Suresh Chandra Bahri Vs. State of Bihar with Gurbachan Singh, observed as under (para 40 of Cri LJ) :-

Before we discuss the merits or demerits of the aforesaid submissions we would like to state that the law relating to conviction based on circumstantial evidence is well-settled and it hardly requires a detailed discussion on this aspect. Suffice to say that in case of murder in which the evidence that is available is only circumstantial in nature then in that event the facts and circumstances from which the conclusion of guilt is required to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they also must entirely be compatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with the innocence.

20. We proceed to discuss the evidence led by the prosecution on the aforesaid circumstances and relied upon by it as under :-

Circumstance (i):

According to the prosecution case, letter (mark "A") written to Telu Ram, aforesaid, contained an averment that the son of Telu Ram was in the possession of the writer of the said letter, who had demanded ransom of Rs. 50,000/- failing which a threat was given in the letter that his son would be killed. This letter was found in the aforementioned circumstances in torn pieces. The complainant Daya Nand, after properly arranging the torn pieces of the letter by pasting them on a piece of paper, is said to have recognized the handwriting as that of Jagbir Singhappellant. Now, if this letter is considered for a moment, it shows about kidnapping of the son of Telu Ram, aforesaid, for whose release a ransom of Rs. 50,000/- was demanded with a threat to kill the child if demand was not met. The prosecution has not led any evidence to show that the son of Telu Ram had, in fact, been kidnapped. On the other hand, it appears that before this letter could reach Telu Ram, it had been allegedly torn and thrown in the "Mara" by the appellant Jagbir Singh. The prosecution did not think it proper to examine Telu Ram to show if his son had been kidnapped and he had received any communication demanding ransom for his release. In this background, the said letter loses its significance and it was, apparently, not meant to be used as a letter demanding ransom. The only purpose for producing this letter seems to show that the appellant Jagbir Singh was indulging in this kind of activity. As per his statement, Daya Nand (P.W. 7) handed over the said letter, addressed to Telu

Ram, as well as the letter (Exhibit P. 1) addressed to him to the S.H.O. Mahender Singh Bhatti at Police Station Saddar Bhiwani, in the evening of September 7, 1991. The statement of Sub Inspector Mahender Singh Bhatti (P.W. 12) on the other hand, shows that it was on September 9, 1991, after the First Information Report had been registered on the basis of the statement of Daya Nand, when he went to the village, he took into possession the said letter addressed to Daya Nand (Ex. P-I). It may be mentioned that the letter addressed to Telu Ram has not been placed on record by the prosecution. Daya Nand (P.W. 7), while in the witness box, produced a photostat copy of the letter addressed to Telu Ram (Mark "A"). Here it may be mentioned that the letter addressed to Telu Ram was not sent for comparison of handwriting to the Hand- writing Expert. The said letter, as per statement of Daya Nand (P.W. 7) had been shown to accused Jagbir Singh on the night of September 6, 1991, but he had denied the same being in his handwriting. Apart from it, the material witnesses regarding the circumstances in which the torn pieces of the letter addressed to Telu Ram were seen being thrown by Jagbir Singh in the "Hara" of his house and subsequently being collected by his maternal grandmother and handed over by her to Sukhbir have not been examined by the prosecution. The prosecution did not examine either the maternal grandmother of Jagbir Singh i.e. Smt. Sarti or Sukhbir. Therefore, the case of the prosecution regarding the letter addressed to Telu Ram being written by the appellant Jagbir Singh has not been proved beyond shadow of reasonable doubt. It is relevant to note that according to Daya Nand (P.W. 7), it was Sukhbir who met him on September 6, 1991, at about 11 p.m. and had taken him to the Sarpanch Om Prakash (P.W. 10), where the said letter addressed to Telu Ram had been shown to him and he expressed his suspicion that Manoj might have been kidnapped by Jagbir Singh. Once the case of the prosecution regarding the letter addressed to Telu Ram being written by appellant Jagbir Singh is disbelieved, the subsequent story of the prosecution regarding the letter (Exhibit P. 1) being thrown in the house of Daya Nand on September 7, 1991, at about 1.30 p.m. demanding ransom for releasing Manoj, being written and thrown by Jagbir Singh would become doubtful.

21. The prosecution made a request before Additional Chief Judicial Magistrate, Bhiwani, for obtaining specimen handwritings of the two appellants so that the letter (Exhibit P. 1) allegedly written by Jagbir accused to Daya Nand complainant may be sent with the specimen handwritings for comparison to Handwriting Expert. The application (Exhibit P.J) submitted before Additional Chief Judicial Magistrate, Bhiwani, by the Investigating Officer of C.I.A. Staff, Bhiwani, contains an averment about Jagbir Singh accused admitting the letter to be in his handwriting. The Additional Chief Judicial Magistrate, Bhiwani, Mr. Vinod Jain, before whom both the accused-appellants were produced, recorded their statements. The accused Jagbir Singh stated before the Additional Chief Judicial Magistrate that he had no objection for giving his specimen handwriting. He also stated that the letter, addressed to Daya Nand-complainant, was perused by him and the same was in his handwriting. He also stated that he was giving specimen

handwriting for comparison. The Additional Chief Judicial Magistrate allowed the application and ordered that specimen handwriting of the accused be obtained. Likewise, Umed Singh accused in. his statement before the learned Magistrate expressed his no objection for giving the specimen handwriting. The Magistrate accordingly ordered that his specimen handwriting be also obtained. Consequently, the specimen handwritings of both the accused were obtained for comparison with the letter (Exhibit P. 1). As mentioned earlier, the handwriting Expert in his report found the letter (Exhibit P. 1) to have been written by the same person who had written the specimen handwriting (mark R-I). Thus, according to the report of the Senior Scientific Officer (Documents) Mr. Gulshan Rai (P.W. 3), the disputed letter (Exhibit P-I) was in the handwriting of the appellant Jagbir Singh.

22. The learned Counsel for the appellants contended that the prosecution could not obtain the specimen handwritings of the accused for comparison with the letter (Exhibit P. 1). He has also submitted that the learned Additional Chief Judicial Magistrate. Bhiwani, did not take any precautions by giving the accused time to think and by apprising them that they were not obliged to give their specimen handwritings. He also did not warn the accused that the disputed letter, if found to be in the handwriting of any one of them, the same could be used against them. A perusal of the Court proceedings noted on application (Exhibit P.J) will go to show that no such precautions were taken by the learned Magistrate. The learned Additional Chief Judicial Magistrate Mr. Vinod Jain was examined by the prosecution as P.W. 4. In his cross-examination, he admitted that before writing state ments of the accused, who were not assisted by any counsel, he did not warn them that the statements could be used against them. He stated that though it is not mentioned in the order that the accused were allowed to think, but he allowed them time to think. He further stated that he could not say whether it was necessary for him to append a note about the fact whether time was given to the accused to think or not. He stated further that Sub-Inspector Hira Lal was present throughout in the Court when the accused made their statements.

23. The learned Counsel for the appellants in support of his aforesaid contention cited State of Uttar Pradesh Vs. Ram Babu Misra, . In that case, the Investigating Officer moved the Chief Judicial Magistrate, Lucknow, to direct the accused to give his specimen writing for the purpose of comparison with certain disputed writings. The Chief Judicial Magistrate held that he had no power to do so when the case was still under investigation. The plea of the State was rejected by the High Court and thereafter the matter was taken by the State before the Hon"ble Supreme Court. The Hon"ble Supreme Court held that Section 73 of the Evidence Act did not enable the Magistrate to give such a direction when the case was still under investigation. Section 73 of the Evidence Act lays down as under :-

73. Comparison of signature, writing or seal with others admitted or proved,-- In order to ascertain whether a signature, writing or seal is that of the person by

whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

24. The Hon^{ble} Supreme Court in State of Uttar Pradesh Vs. Ram Babu Misra, considered the provisions of Section 73 of the Evidence Act and observed as under (para 4) :-

The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings "for the purpose of enabling the Court to compare" such writings with writings alleged to have been written by such person. The clear implication of the words "for the purpose of enabling the Court to compare" is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of enabling the investigating or other agency "to compare". If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court.

25. The learned Deputy Advocate General for the State-respondent, on the other hand, contended that the only bar on the Magistrate is that the Magistrate cannot u/s 73 of the Evidence Act issue a direction to the accused to give his specimen handwriting. He contended that, in the instant case, as a matter of fact, the learned Additional Chief Judicial Magistrate, Bhiwani, did not issue any such direction to the accused to give specimen handwriting and it was the voluntary act of the accused to give their specimen handwritings for comparison.

26. After carefully perusing the application (Exhibit P. J) moved by the Investigating Officer before Additional Chief Judicial Magistrate, Bhiwani, and the proceedings conducted thereupon by the learned Magistrate, we have no doubt that the Investigating Officer had prayed before the learned Magistrate for obtaining the specimen handwritings of the accused for comparison. The learned Magistrate proceeded to record the statements of the accused and it was thereafter that he passed the following order in respect of Jagbir Singh accused on September 10, 1991 :-

Present A.P.P. for the State. Both the accused in custody with Investigating Officer Hira Lal, SubInspector of C.I.A. Staff, Bhiwani.

In view of the statement of the accused, application is allowed. Let specimen handwriting of the accused be obtained.

Similar order was passed by the learned Magistrate on September 10, 1991 in respect of Umed Singh accused. The said orders are in substance a direction of the learned Magistrate for obtaining the specimen handwritings of the accused. That being so, in view of the law laid down by the Hon"ble Supreme Court in State of Uttar Pradesh Vs. Ram Babu Misra, the learned Magistrate had no jurisdiction u/s 73 of the Evidence Act to issue such a direction to the accused to give specimen handwriting. Apart from it, the learned Magistrate did not observe any precautions while recording the statement of the accused, which contained an admission of the accused Jagbir Singh about the disputed letter being in his handwriting. Resultantly, the report of the Handwriting Expert is of no consequence. Besides it, if the statement of Daya Nand (P.W. 7) be believed that he had suspicion on Jagbir Singh accused about sending the two letters, one to Telu Ram and the other to him, as early as on 6th/7th September, 1991, then the conduct of Daya Nand in not expressing his suspicion on Jagbir Singh in the Daily Diary Report No. 4 dated September 8, 1991 (Exhibit P.M.) throws considerable doubt about these two letters being in existence by that time. As a prudent man, Daya Nand-complainant (P.W. 7) was expected to express suspicion on Jagbir Singh, accused in the said report. Faced with the situation arising out of the non-mentioning of the suspicion on the accused in the report registered vide Daily Diary Report No. 4 dated September 8, 1991 (Exhibit P.M), Daya Nand (P.W. 7) tried to wriggle out of it by saying that he did not make any such statement as is mentioned in the Daily Diary Report (Exhibit P.M.) before S.H.O. Mahender Singh Bhatti. He further stated that, as a matter of fact, it was the S.H.O. himself who got the said report written at his dictation and got the same signed from him. Sub-Inspector Mahender Singh Bhatti (P.W. 12) on the other hand stated, on oath, that on September 8, 1991 he recorded Daily Diary Report (Exhibit P.M.) on the statement of complainant Daya Nand. It will, thus, appear that the prosecution evidence is discrepant regarding the recording of Daily Diary Report (Exhibit P.M). There appears to be no valid reasons to disbelieve the statement of S.I. Mahender Singh Bhatti (P.W. 12) regarding the Daily Diary Report (Exhibit P.M.) having been prepared on the basis of the statement made by complainant Daya Nand on September 8, 1991. Daya Nand-complainant is a literate person and is a teacher by profession. It cannot be expected that he would sign without any murmur on the Daily Diary Report and without caring to know the contents thereof. In these circumstances, the non-mentioning of suspicion on the accused Jagbir Singh in the said Daily Diary Report (Exhibit P.M) lodged on September 8, 1991, after the alleged receipt of the letter (Exhibit P. 1) addressed to Daya Nand and the letter addressed to Telu Ram, aforesaid, assumes significance and casts a serious and reasonable doubt about the veracity of the prosecution case. Not only this, there is no reference of the letter addressed to Telu Ram, aforesaid in the First Information Report (Exhibit P.L) lodged by Daya Nand. The complainant Daya Nand mentioned in the "First Information Report (Exhibit P.L) about the

letter addressed to him and about his suspicion based on the said letter in the following words :-

Now I have full suspicion that Umed Singh and Jagbir Singh have kidnapped my son Manoj Kumar with an intent to kill him. They have either concealed him somewhere or have killed him because a letter written by Jagbir Singh has been found in my house vide which ransom of Rs. 25,000/- has been demanded. I identify his handwriting. I have kept the letter in my house which I will produce before you."

27. In view of what has been discussed above, we are of the opinion that the prosecution evidence does not prove beyond shadow of reasonable doubt the receipt of the said letter demanding ransom from Daya Nand and, in any case, there is a great suspicion about the appellant Jagbir Singh writing the said letter and leaving it at the residence of Daya Nand.

Circumstance (ii):

28. The prosecution has relied on the statements of Daya Nand (P.W. 7) and Om Parkash (P.W. 10) regarding the fact of the appellant Jagbir Singh making extra-judicial confession about kidnapping and murdering and burying Manoj (deceased). A careful perusal of the statements of Daya Nand (P.W. 7) and Om Parkash (P.W. 10) will go to show that the accused was continuously interrogated by these persons and other residents of the village right from 11 p.m. of September 6, 1991 up to September 9, 1991. The accused Jagbir Singh did not admit his involvement in the said incident despite the searching interrogation by these witnesses. As per statement of Daya Nand (P.W. 7) accused Umed Singh came to his residence on September 7, 1991 at about 5.30 a.m. and took him to the house of accused Jagbir Singh. Accused Jagbir Singh, on seeing Daya Nand at his house, started weeping and told him about his son Manoj being present in the office of Truck Union, Bhiwani. He also promised Daya Nand to produce his son in 1 1/2 hours' time and about his (Jagbir Singh appellant) deputing four persons to fetch Manoj. Thereafter, Jagbir Singh again started weeping and said that it was out of fear that he made this statement to him and, as a matter of fact, he did not know about the whereabouts of Manoj. Daya Nand further stated that he summoned Sube Singh, the father of the accused from village Chiri through Sukhbir, aforesaid. Daya Nand found the letter demanding ransom the same day i.e. September 7, 1991, at about 1.30 p.m. lying in the courtyard of his house. The letter, aforesaid, corroborated his suspicion about the involvement of Jagbir Singh accused in the kidnapping of his son Manoj. Thereafter, Jagbir Singh was detained at the shop of accused Umed Singh. Sube Singh, aforesaid, came to the village around 3.30 p.m. and he was apprised about these facts and the suspicion on accused Jagbir Singh about his involvement in this occurrence. Daya Nand stated that accused Jagbir Singh was also interrogated by his father Sube Singh, who later on told Daya Nand that he was also satisfied about the involvement of his son Jagbir Singh in the kidnapping of Manoj and that he (Daya Nand) may hand over Jagbir Singh to the police. The statement of Daya Nand

further shows that on the same day i.e. Sept. 7, 1991, at about 5 p.m. he went to Police Station Saddar, Bhiwani accompanied by Yudhvair and Chatter Singh and gave the two letters to S.H.O. Mahender Singh Bhatti and told about Manoj being missing from the house and about his suspicion on accused Jagbir Singh. The S.H.O. Mahender Singh Bhatti deputed Assistant Sub Inspector Kaura Ram and two Constables, who came to village Mithathal, arrested Jagbir Singh and brought him to the Police Station. On the next day, it will appear from the statement of Daya Nand (P.W. 7) that he again visited Police Station Saddar, Bhiwani. accompanied by Chatter Singh and one Sadhu Ram and met the S.H.O. Mahender Singh Bhatti, who told them about his interrogating Jagbir Singh accused and finding him innocent in the case, released him. Thereafter, Daya Nand returned to his village. Daya Nand stated further that on the same day, some more relatives of accused Jagbir Singh came from village Chiri and at about 7 p.m. accused Jagbir Singh was interrogated by his relatives at the Chaubara of one Partap. Accused Jagbir Singh, however, denied his involvement in this case. Daya Nand, on the other hand, continued to express his suspicion regarding the involvement of the accused Jagbir Singh in the occurrence and he gave some more time till next day to these relatives of Jagbir Singh to think over the matter again. On Sept. 9, 1991, at about 7.30 a.m. Daya Nand pulled up the relatives of accused Jagbir Singh and told them about his suspicion that his son Manoj was with them and asked them for the production of his Manoj, dead or alive by 4 p.m. else it would not be good for them. Daya Nand (P.W. 7) stated that at about 11 a.m. on Sept. 9, 1991, one Balbir of Village Chiri came to his house and told him in the presence of Parkash son of Darya, Sukhbir, Telu Ram, Palu Ram, Manphool Singh, Hawa Singh and 5/7 other persons that Jagbir Singh accused was admitting his guilt and that he (Jagbir Singh) had buried the dead body of Manoj inside his house. Daya Nand stated that thereafter he accompanied by the aforesaid persons reached the house of accused Umed Singh where accused Jagbir Singh confessed that he had committed the murder of Manoj out of greed and that the dead body had been buried by him with the help of accused Umed Singh in the house inside the Kotha. This confession of the accused Jagbir Singh before Daya Nand and other persons, named above, has been relied upon by the prosecution as an extra-judicial confession. Besides Daya Nand, the only other witness regarding the extra-judicial confession of the accused Jagbir Singh is Sarpanch Om Parkash (P.W. 10). Om Parkash (P.W. 10) has stated that on Sept. 9, 1991, at about 7, 8 a.m. a Panchayat was held wherein the residents of village Chiri were also present. The Panchayat told them to produce, alive or dead the child by 10 11 a.m. otherwise the matter was going to be precipitated. He further stated that Balbir of village Chiri came and told the Panchayat that Jagbir Singh appellant had admitted that he had killed the child and buried the same. Thereafter, the other members of the family of Daya Nand were also called. Besides Manphool Singh, Hawa Singh, Telu Ram, Palu Ram etc. were also present in the Panchayat. Jagbir Singh accused was not present at that Panchayat. Thereafter, the members of the Panchayat went to the house of Chhotu Ram the maternal grandfather of the accused where the maternal

grandmother of the accused was present. Accused Jagbir Singh and Umed Singh were also present there. At that time, around 10, 11 a.m. accused Jagbir Singh told the members of the Panchayat that he had killed Manoj and buried his dead body in his house. The statements of Daya Nand (P.W. 7) and Om Prakash (P.W. 10) will go to show that accused Jagbir Singh was constantly under interrogation not only by Daya Nand and other village people of village Mithathal, but by the father and other relatives of the accused also. The interrogation continued for about three days i.e. on 7th, 8th and 9th Sept. 1991, when finally Balbir resident of Chiri came to inform Daya Nand about Jagbir Singh accused confessing his guilt. It is also significant to note that the accused prior to Sept. 9, 1991, consistently denied his involvement in this occurrence. The learned counsel for the appellants submitted that the case of the prosecution regarding extra judicial confession made by the appellant Jagbir Singh is rendered suspicious by the non-mentioning of it in the First Information Report (Exhibit P.L/2). A perusal of the First Information Report (Exhibit P.L/2) will go to show that there is no mention of the extrajudicial confession made by the appellant Jagbir Singh. The appellant Jagbir Singh, according to the statement of Daya Nand (P.W. 7), had made his confession prior to his going to the Police Station to lodge the report. Under these facts and circumstances, the said confession, if believed to have been made by the accused, is not at all voluntary. The Hon'ble Supreme Court in the case of Sarwan Singh Vs. The State of Punjab, , held that it must be established that a confession is voluntary and also that it is true.

29. It is also relevant to note that the prosecution examined Manphool Singh (P.W. 9), who according to Daya Nand (P.W. 7), was present when the said confession was made by the appellant Jagbir Singh but Manphool Singh (P.W. 9) did not state a word about the appellant Jagbir Singh confessing before him and other persons above kidnapping and murdering Manoj. The statement of Manphool Singh (P.W. 9) is only in respect of recovery of the clothes, Stick and kassi on the pointing of the accused Jagbir Singh in consequence of his disclosure statement. Manphool Singh (P.W. 9), it may be mentioned, is the real first cousin brother of the informant Daya Nand. If, in fact, Manphool Singh (P.W. 9) was present when the appellant Jagbir Singh is said to have confessed his guilt, he would not have omitted to mention it in his statement.

30. In view of the foregoing discussion, we are of the considered opinion that the evidence of the prosecution regarding the accused Jagbir Singh making extra-judicial confession becomes quite doubtful and it is not worthy of credence.

Circumstance (iii):

31. According to the case of the prosecution, the two accused-appellants were arrested by Sub Inspector Mahender Singh Bhatti (P.W. 12) on Sept. 9, 1995, on the culvert of Jai canal about 8 p.m. in the presence of Chattar Singh and Om Parkash (P.W. 10). Om Parkash has, however, denied about the arrest of the accused Jagbir Singh and Umed Singh by the S.H.O. Mahender Singh Bhatti from near the Jai canal in his presence. He was confronted with his statement

recorded during investigation by the Investigating Officer to the effect that in his presence the accused, aforesaid., were arrested from near the Jai canal but he denied having so stated before the I.O. The other witness of the arrest of the accused, namely, Chatter Singh has not been examined by the prosecution. The case of the prosecution regarding the arrest of both the accused by the S.H.O. Mahender Singh Bhatti from near the Jai canal is thus, materially and substantially contradicted by the witness of arrest and disclosure statements, namely, Om Parkash (P.W. 10). The statement of the arresting officer S.H.O. Mahender Singh Bhatti (P.W. 12) regarding the interrogation of both the accused at the canal and about their suffering disclosure statements regarding the concealment of the dead body of Manoj and their offer to get the dead body recovered, in the presence of the said witnesses Chatter Singh and Om Parkash (P.W. 10), is also materially contradicted by Om Parkash (P.W. 10). The statement of Om Parkash (P.W. 10) shows that on Sept. 9, 1991, between 10, 11 a.m. when accused Jagbir Singh made confessional statement in his presence and in the presence of other witnesses, he (Jagbir Singh) at that time pointed out the place where the dead body of the child Manoj was buried. The accused Jagbir Singh scratched the earth to dig out the dead body of the child Manoj in the presence of all. The place where the dead body was buried was Kotha of the house of Jagbir Singh, who alone used to live in that room. He further stated that after the land was scratched by accused Jagbir Singh, bad smell came from the earth and a foot of the child was visible. Thereafter, the persons present there threw the sand back on the dead body of Manoj and the house was locked by the Panchayat and a Chaukidar was deputed outside the house. Thereafter, he (Om Parkash (P.W. 10), Daya Nand complainant, Sadhu Ram and Mange went to the Police Station, met the S.H.O. Mahender Singh Bhatti and told the entire things to him including the fact that the dead body of Manoj had been found. Om Parkash (P.W. 10) stated further that they told the S.H.O. that they were not going to allow him to take the dead body and further that the dead body would be handed over only to the Senior Superintendent of Police or a Deputy Superintendent of Police. The statement of Om Parkash (P.W. 10) further shows that S.H.O. Mahender Singh Bhatti (P.W. 12). accompanied by Assistant Sub Inspector Kaura Ram and two three more police officials left for the village in a police jeep and they also followed them. In the village, at least a thousand people had assembled to prevent the police jeep from going to the house of the accused. Then the police resorted to some firing in the air. S.H.O. Mahender Singh Bhatti went back and the remaining police officials, however, remained there. Sub-sequently, the Superintendent of Police and Inspector Jai Singh came to the village in the evening. A Deputy Superintendent of Police was also present there. Both the accused Umed Singh and Jagbir Singh were arrested by the Deputy Superintendent of Police. He further stated that accused Jagbir Singh made a disclosure statement to the Deputy Superintendent of Police in the village that he had kept the dead body of Manoj in his kotha which he could get recovered. He proved the disclosure statement (Exhibit P.R.) and stated that accused Jagbir Singh had signed the same. He further stated that he and Chatter

Singh had also signed the said disclosure statement. He further stated that Umed Singh accused also made a similar disclosure statement. Thereafter Om Parkash (P.W. 10) stated that he did not know the contents of the documents which had been prepared by the police as the same were not read over to him. He went on to say that even the statement made by Jagbir Singh accused was also not read over to them. He stated that their signatures were obtained without their knowledge regarding the contents of the same. Thereafter, he stated that all the papers, disclosure statements, were written in the Police Station and not in the village. Further on, the witness stated that the accused took the police party to his house where Jagbir Singh dug out and got the dead body of child Manoj recovered. A photographer was present there, who took the photographs of the dead body. Some salt, earth etc. were taken into possession by the police and memos were prepared in this regard. It will appear from a perusal of the statement of Om Parkash (P.W. 10) that long before the accused were arrested by the police, the police had been told about the dead body (of Manoj) being buried in the house of accused Jagbir Singh. It may be mentioned here that even the complainant Daya Nand has made a similar statement regarding the arrest and recovery of the dead body as made by Om Parkash (P.W. 10). In view of the statements of complainant Daya Nand (P.W. 7) and Om Parkash (P.W. 10), the statement of Sub Inspector Mahender Singh Bhatti (P.W. 12) about his arresting the accused Jagbir Singh and Umed Singh from near Jai canal and interrogating them and about the accused suffering disclosure statements regarding the burning of the dead body of Manoj in the house of accused Jagbir Singh and thereafter to get the dead body recovered, is not fit to be believed. Consequently, the recovery of the dead body of Manoj at the instance of accused Jagbir Singh cannot be connected with the disclosure statement suffered by him because the police had prior information from other sources (from Daya Nand P.W. 7 and Om Parkash P.W. 10) about the place where the dead body had been buried. The learned counsel for the appellants, in this connection, placed reliance on the case of Velayudhan Pilial and Narayana Piliyai Vs. Thanu Pillai and Krishnan Nair, . In that case, while dealing with the recoveries made u/s 27 of the Evidence Act, it was held that the recovery of incriminating articles alleged to have been made at the instance of the accused is inadmissible in evidence if the police already knew where they were hidden. The contention of the learned counsel for the appellants further is that in this case the evidence of Daya Nand (P.W. 7) and Om Parkash (P.W. 10) will go to show that the accused were arrested at a different place from the one alleged by the prosecution and, thereafter, the evidence of disclosure statements and recoveries is all padding done by the prosecution and the same is not fit to be believed. In support of his contention, he cited the case of State of Haryana Vs. Jagbir Singh and Others, . In that case, the arrest of the accused was stated by the prosecution witnesses to have been made from a different place than the one alleged by the investigating agency and in those circumstances it was held that it was a very serious infirmity in the entire prosecution case. The view of the High Court that there was padding in the prosecution case and that certain evidence was

fabricated against the accused, was upheld by the Hon''ble Supreme Court. In this case also there is a serious infirmity and padding done by the prosecution. The prosecution case regarding the recovery of the dead body at the instance of the accused Jagbir Singh is rendered unreliable and not credit worthy. It will not be safe to rely on such evidence of prosecution.

32. So far as the recoveries of other articles, such as, clothes, stick and Kassi (hatchet) are concerned, the evidence of the prosecution is not consistent and is rather, discrepant. The statement of Hira Lal, Sub Inspector (P.W. 11) will show that on Sept. 10, 1991, he had interrogated accused Jagbir Singh, who suffered a disclosure statement about concealing stick in the kotha of turi of his house and that he could get the same recovered. The other accused Umed Singh was also interrogated and he suffered a disclosure statement about concealing Kassi in the turiwala kotha. However, no recoveries could be made in consequence of the disclosure statements suffered by the accused persons. The case of the prosecution shows that it was on Sept. 11, 1991, that accused Jagbir Singh alone was further interrogated by Inspector Hari Singh (P.W. 12), when he suffered a disclosure statement (Exhibit P.N) wherein he stated that he could get his clothes, a stick, a kassi (hatchet) recovered from his residential house. It may be mentioned that Inspector Hari Singh (P.W. 10) did not interrogate accused Umed Singh who had been interrogated a day earlier by Sub Inspector Hira Lal (P.W. 11) when he stated that he had kept concealed a Kassi and could get the same recovered. There is, thus, discrepancy regarding the accused who concealed Kassi and who could get the same recovered. Apart from it, it does not stand to reason that the accused would suffer disclosure statements in the manner stated by Sub Inspector Hira Lal (P.W. 11) and Inspector Hari Singh (P.W. 13). So far as Manphool Singh (P.W. 9) is concerned, he is the first cousin of the informant Daya Nand and his evidence regarding the recovery is rendered suspicious in view of his statement that he did not know as to from where the key had been brought by Jagbir Singh before opening the lock, although he is one of the witnesses of the recovery memo (Exhibit P.N/2). He stated that in his presence, none gave the key. It may be pointed out here that according to the statement of Daya Nand (P.W. 7), the house had been locked and key of the house handed over to one Palu. The evidence of the prosecution regarding the recovery of these items is, therefore, not worthy of reliance.

33. Resultantly, the prosecution has not been able to substantiate by reliable and cogent evidence any of the circumstances set up by it. He, therefore, finds that the learned Sessions Judge was in error in believing the prosecution case and in convicting the appellants. We, therefore, accept the appeal and set aside the conviction and sentence passed by the learned Sessions Judge against the appellants and acquit the appellants of the charges levelled against them. The reference made by the learned Sessions Judge to confirmation of death sentence against the appellant Jagbir Singh is, consequently, not accepted and is declined. The appellants, if in custody, shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.