

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2024:PHHC:029710-DB

MRC-1-2020

State of Punjab

.....Appellant

Versus

Baljinder Kumar @ Kala

.....Respondent

(2)

CRA-D-323-2020

Baljinder Kumar @ Kala

.....Appellant

Versus

State of Punjab

.....Respondent

Reserved on : 23.01.2024

Pronounced on: 04.03.2024

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr. V.G. Jauhar, Additional Advocate General, Punjab.

Mr. Naveen Sharma, Advocate
for the respondent in MRC-1-2020 and
for the appellant in CRA-D-323-2020.

G.S. Sandhawalia, J.

The present judgment shall dispose of MRC-1-2020 and criminal appeal bearing CRA-D-323-2020 preferred by the accused against the judgment of conviction passed by the Additional Sessions Judge, Kapurthala dated 29.02.2020, whereby he has been held guilty and convicted under Section 302 IPC in FIR No.54 dated 29.11.2013 under Sections 302, 308, 325, 323 IPC registered at Police Station Satnampura, Phagwara, District Kapurthala. The conviction under Section 302 IPC read with Section 308, 325 IPC was on four counts for causing the death of Seema Rani, Reena Rani, Harsh and Suman Kumari. The resultant effect

MRC-1-2020 & CRA-D-323-2020

is that in view of the said finding, he has been sentenced to death on account of committing the murder of two ladies and two children of tender age and murder reference is also thus subject matter of consideration which was forwarded to this Court by the Trial Court for confirmation in view of Section 28(2) and 366(1) of Cr.P.C. The appellant has also been sentenced for 7 years each under Section 308 IPC and a fine of Rs.50,000/- alongwith fine of another Rs.50,000/- under Section 325 IPC and in default of payment of fine to further undergo rigorous imprisonment for ten months, in case death sentence is not confirmed. The fine is to be paid to the victim PW-2 Manjit Kaur as well injured persons namely Harry and Om Parkash @ Tari. Directions had also been issued to pay compensation to the victim as well as to the injured persons under Section 357A of Cr.P.C. and judgment was sent to the District Legal Services Authority.

Reasons for sentencing by Trial Court:

2. The reasoning which prevailed as such to impose the extreme penalty of death on account of the fact that the injuries were inflicted on the said persons when they were sleeping in a room in the wee hours of the day and this act of the accused had shaken the conscience of the society at large and the accused was guilty of such a diabolic act. One of the persons namely Om Parkash @ Tari had suffered injuries on the vital part of the his body and, thereafter, forced to live a vegetative life. The aggravating circumstances and mitigating circumstances were accordingly noticed by the Court that the crime was not committed in heat of passion but the same was pre-planned, since the accused had visited the house of his mother-in-law on 14.11.2013 and threatened to kill his wife and children on a failure of payment of Rs.35,000/-and, thereafter travelled about 15 kms from his village to commit the offence on 29.11.2013, since his wife and children

MRC-1-2020 & CRA-D-323-2020

were residing with his mother-in-law. The act of eliminating his wife and two innocent children and sister-in-law in a brutal manner and the way assault had been carried out led to the imposition of the extreme punishment. The fact that the survivors would remain vulnerable because of their deposition against the appellant was also a ground to sentence him to death.

3. The Trial Court has marshalled the facts and rejected the ground of delay in lodging the FIR by noticing that the FIR was lodged at 11:00 AM, whereas incident was took place at 6:00 AM on 29.11.2013. The complainant, Vijay Kumar had to make arrangement of a Ambulance to take six injured to the hospital and out of which four were declared as brought dead and two were seriously injured. Therefore, the first effort was to save the life of his family members comprising of sisters, brother, nephew and niece and, thus, the FIR could not be stated to be delayed in any manner. Reliance was placed upon various judgments that the prosecution case could not be thrown away outrightly on this score. The factum of injured being referred to DMC, Ludhiana and the fact that arrangements had to be made for postmortem of four persons and the mental condition of the complainant was kept in mind while rejecting the plea of delay. The factum of independent witness being not examined was rejected on the ground that at the time of occurrence eye witnesses namely PW-17 Harry (child witness) and PW-23 Om Parkash @ Tari were present and the fact that their statements could not be rejected as they had received injuries in the said incident and their presence cannot be denied.

4. The argument of the defence counsel that PW-2 Manjit Kaur was not at the spot and had gone to the Gurudwara Sahib was rejected by the Trial Court that the presence at the spot is quite natural and being

MRC-1-2020 & CRA-D-323-2020

human and she out of fear slipped away outside the house after seeing that her son-in-law inflicting injuries with the Gandasi upon her daughter and the grandchildren and hid herself in the bushes near the factory and came back home after half an hour. Recovery of the weapon and the disclosure statement of Ex.PW19/C being not recorded in the presence of any independent witness was rejected on the ground that it was only a rule of prudence, but the recovery of blood stained clothes would find corroboration with the statement of PW-2 Manjit Kaur who had stated that what the accused was wearing at the time of incident. Placing reliance upon the statement of PW-17 Harry and PW-2 Manjit Kaur, apart from PW-1 Vijay Kumar and the fact that they withheld the test of scrutiny during the lengthy cross-examination, let the Court to observe that it should not attach much significance to minor discrepancies. The defence that the left arm of the accused had been amputated and the accused was not in a condition to cause a brutal murder was met with the reasoning that the arm was not amputated prior to the occurrence. Rather the accused was also admitted in Civil Hospital, Phagwara on the same day in the evening and there was a wound on the left arm with stitches, as per the statement of PW-7 Dr. Kamlesh Kumar and, therefore, amputation had taken place after the occurrence.

5. The motive aspect was kept in mind that a sum of Rs.35,000/- was to be paid to the accused and his sister, since the mother-in-law had arranged the marriage of sister of accused with one Haria, but the marriage had not worked out and Manjit Kaur was instrumental for not ensuring the re-payment of the money to the accused. Even the wife of the accused alongwith children had left the matrimonial house and come to her parents house due to which the accused was nourishing a grudge. The question of

MRC-1-2020 & CRA-D-323-2020

alibi that the accused himself was admitted in the Civil Hospital, Phagwara at 7:00 PM on the said day for management and treatment due an accidental injury was brushed aside on the ground that there were four injuries recorded on the person of Baljinder Kumar, which were stated to be received by a road accident when he was admitted in Civil Hospital, Phagwara, but when his statement was recorded by PW-21 ASI Surjit Singh he had not explained the manner in which he had received injuries. The absence of the appellant from the place where his wife and two children had been done to death and not to come to the hospital and rather kept himself away were the circumstances which were kept in mind and the fact that he had taken the plea of false implication and had not taken the plea of *alibi*.

6. The nature of injuries on the persons of the deceased were also kept in mind that injuries were all inflicted on the head and vital parts of the body while they were sleeping in the early morning hours and thus there was only the intention to brutally kill them. The injured Harry (PW-17) who was only 5 years old, also having received injuries on the right side of the neck just below the right ear and complaining of pain in the abdomen. He had also suffered a fracture and a splenic injury, whereas the other injured Om Parkash @ Tari (PW-23) had suffered injuries and a lacerated wound was present on the left parietal bone of the skull .9cm above left ear and a lacerated wound was present over the middle of parietal bone of the skull. The other lacerated wound was present over the lower part of left lip and one over the middle of the left ear pinna, were reasons to record the conviction under Sections 325 and 308 IPC. The Trial Court had also noticed the fact that Om Parkash @ Tari aged 18 years was unable to speak properly and understand the

MRC-1-2020 & CRA-D-323-2020

surrounding and unable to move without help of his mother and, thus, has been left with no option but to lead a vegetative life. Blood stained Gandasi having been recovered alongwith blood stained clothes and the cycle on the basis of disclosure statement made by accused and as per the report of chemical analysis the weapon and clothes being stained with human blood, were the reasons to hold the appellant guilty.

Submissions by Counsel for the Appellant:

7. Counsel for the appellant has taken us through the paper-book and the record to submit that it was a case of circumstantial evidence and it was a case of blind murder and there was a delay in lodging the FIR. The presence of the eye witnesses is doubtful and, therefore, the conviction is not justified and the evidence of the alleged injured eye witnesses namely PW-17 Harry is also cannot be relied upon, as it is own case of the prosecution that they were sleeping when the assault took place. He has submitted that the prosecution had introduced PW-1 Vijay Kumar, the complainant who was not residing in the house in question and similarly PW-2 Manjit Kaur was not at the spot having been gone to the Gurudwara Sahib early in the morning. Counsel for the appellant highlighted the fact that initially the case was that the appellant was not alone, but was accompanied by 3-4 persons, to submit that the Investigating Agency had not arrested any other person and only proceeded against the appellant. It is submitted that one person could not have inflicted fatal injuries on the four deceased and on the two other injured and, thus, it was a case of robbery and dacoity by un-identified persons and the appellant had been wrongly implicated in the said case. It is, accordingly contended that the chain of circumstance on the basis of circumstantial evidence is also not complete. In the alternative, he has argued that it has been almost 10 years

MRC-1-2020 & CRA-D-323-2020

since the appellant is in custody and also has an amputation of his left arm. Therefore, keeping in view the fact that charge was framed against him on 21.05.2014 and he was only 28 years old at that point of time, leniency is prayed for on the ground that it is not a rarest of rare case.

Submissions by Counsel for the State:

8. Counsel for the State on the other hand has taken us meticulously through the paper-book and the evidence to submit that it was a case where the Trial Court has rightly invoked the principle of rarest of rare punishment to be awarded on account of it being a diabolic act, as two minor children had been done to death by the father who also killed his own wife and his sister-in-law over a petty dispute of Rs.35,000/-. It is submitted that the motive as such had been proved by way of the strained relationship between the two families. The appellant not coming to the house thereafter even though knowing such a gruesome incident had taken place, as it was published in the newspaper and had also been put to the prosecution witnesses and the fact of injured having received injuries which had not been explained on the same day and the fact that there was no plausible defence led and the fact that there was an eye witness account of the complainant brother-in-law, Vijay Kumar and mother-in-law, Manjit Kaur and the child witness Harry, are the facts which were noticed by the Trial Court. It is submitted that the consequential recoveries of the weapon and the blood stained clothes from the house of the accused, are also the factors which were duly kept in mind by the Trial Court and there is no plausible reason to disbelieve the case of the prosecution. It is further submitted that the reverse presumption under Section 106 of the Indian Evidence Act, 1872 (for short 'Evidence Act') would fall upon the appellant in the facts and circumstances as he had the knowledge of the

MRC-1-2020 & CRA-D-323-2020

incident having taken place and in the absence of any defence evidence being led, the conviction and the sentence of death was rightly imposed. Reliance was placed upon the recent judgment of the Apex Court in **Manoharan Vs. Inspector of Police, Variety Hall Police Station, Coimbatore, (2019) 7 SCC 716**, wherein the death sentence has been upheld in the case of rape and murder of two minor children.

9. Counsel for the State has further submitted that it was never the case of the appellant that it was a case of dacoity or robbery by unknown persons as there was no proof that some valuables had been taken away. Mere discrepancies in the statements of the witnesses could be overlooked, especially in view of the fact that there was a motive and there was an eye witness account by the injured.

The examination of record and evidence by us:

10. The statement of Vijay Kumar (Ex.PA) which was recorded by PW-22 Karnail Singh, SHO, Police Station Satnampura at 11:00 AM led to the FIR being registered at 11:15 AM which showed that occurrence had taken place at 6:00 AM. The statement of the complainant was that he had a joint family with his younger brother PW-23 Om Parkash and he was running a cycle repair shop at his residence and they were two brothers having two houses. His mother Manjit Kaur, brother Om Parkash @ Tari, sister Seema Rani and her children Harry aged 6 years, Suman Kumari aged 3 years and Harsh aged 2 years alongwith another sister Reena Rani were sleeping in the house. Reena Rani's husband namely Sunehri Lal was living abroad and thus she was residing with them. The marriage of the appellant with Seema Rani was solemnized 6 years ago and she had left the house of the accused due to disputes with him. On 14.11.2013 the accused had come to their house and threatened all of them

MRC-1-2020 & CRA-D-323-2020

that if Rs.35,000/- is not paid to him, he would kill his wife and children. On 29.11.2013 at 6:00 AM when the complainant had come along with his wife to drink tea from his mother saw that the accused armed with Datar had come out from the house who told him that he would face consequences for not giving the money and fled away from the spot along with 3-4 unidentified persons armed with Gandasis and Rods who also ran away along with him towards the cremation ground. Thereafter, when he entered the house and saw that both his sisters Seema Rani and Reena Rani, brother Om Parkash @ Tari and Harry, Sumani Kumari and Harsh smeared with blood. He had called the Ambulance and all of them were taken to Civil Hospital, Phagwara, where four were declared brought dead and brother Om Parkash @ Tari and Harry were admitted for treatment. Resultantly, he prayed for action to be taken against the appellant along with other unidentified persons.

11. The inquest proceedings conducted by the SHO would go on to show that the place where the dead bodies were found at Civil Hospital at 8:30 AM on 29.11.2013 and the marks of injuries were with the sharp-edged weapon. The identification had been done by Sunita Devi wife of complainant Vijay Kumar and Sukhdev Kumar son of Bhajan Lal Ex.PW22/C to Ex.PW22/F. The injuries have thus been inflicted on facial area apart from other vital parts. The application was duly made to the doctor for recording the statements of the injured Harry, Ex.PW22/G and Om Parkash @ Tari Ex.PW22/H and the doctor had opined at 8:30/8:35 AM that the patients were unfit for making statement. Efforts were also made to record the statement by writing request to Dr. Rajiv Garg on 30.11.2013 (Ex.PW22/L) which met with the same effect. The site plan (Ex.PW22/J) was drawn on 29.11.2013 itself, showing the place Mark-A

MRC-1-2020 & CRA-D-323-2020

where all the four were sleeping on a double bed and a carpet and the accused had inflicted injuries alongwith other unidentified persons. The appellant was arrested apparently on 30.01.2014 and the iron Gandasi and blood stained clothes, which were lying in his house were recovered on 01.02.2014 alongwith a cycle. After the recovery rough site plan of place of recovery (Ex.PW22/M) and rough sketch of the weapon (Ex.PD) was drawn up on the same day in the presence of complainant, Vijay Kumar. The recovery memo (Ex.PE) which was also signed by the complainant, which showed that iron Gandasi having a length of 28 inch of iron rod and 8 inch of cutting blade was recovered alongwith the blood stained clothes i.e. a black T-shirt and a blue colour Pajama.

The evidence of the prosecution witness:

12. A perusal of the statement of PW-1 Vijay Kumar, the complainant would go on to show that he had confirmed in verbatim which he had stated in his statement (Ex.PA), which had been discussed above regarding the motive aspect and the presence of the deceased in the house of his mother and the threat which had been made out on 14.11.2013. As per his statement also his mother had gone to the Gurudwara Sahib at 6:00 AM and at that time his sisters, mother and children of Seema Rani were present in the house situated in the area of Dashmesh Puri where he alongwith his wife was proceeding to take a tea with his mother. At that point of time he had seen the accused coming out from the said house alongwith Gandasi and had told him that he had done what he had to do and he had ran away from the spot. At that point of time he had seen the deceased smeared with blood and the ambulance was called and all injured were taken to the Civil Hospital, Phagwara, where Seema Rani, Reena Rani and children Suman Kumari and Harsh were

MRC-1-2020 & CRA-D-323-2020

found dead. His injured brother Om Parkash and the child Harry were admitted in the hospital. It is his case that the police had reached the spot and lifted blood from the spot which was put into a plastic container sealed with mark 'KS' and taken into possession vide Ex.PB. The police had also taken into possession blood stained shawl and bed sheet of double bed from the spot vide Ex.PC, which was also attested by him. He has also verified the recoveries of Gandasi made of iron, blood stained clothes which were done on 01.02.2014 when the accused was arrested and got recovered the same from his residence in village Gurrey. The cycle had also been recovered and the sketch Ex.PD of the recovered Gandasi was prepared and the all the items were taken into possession vide Ex.PE. He had also identified the Gandasi on the opening of the parcel Ex.P1 that it was the same Gandasi (Ex.P3) which was got recovered by the accused. Similarly, he had identified the blood stained clothes (Ex.P4 & Ex.P5) and the cycle (Ex.P6) which had been recovered. He was confronted in his cross-examination with his initial statement (Ex.PA) that the weapon he had mentioned was a Datar and not a Gandasi and that the cycle repair shop was situated 10 Kms from his house where the occurrence took place. The fact that his mother used to go Gurudwara Sahib about 6:00 AM and return at 7:00 AM and the suggestion was put to him that his mother had not witnessed the occurrence and he had not got recorded the said fact when in his statement (Ex.PA) had been recorded by the police at about 11:00 AM at Civil Hospital, Phagwara. In his cross-examination he had also stated the accused was accompanied by 3-4 persons and he and his wife had not chased the accused. He admitted that the news had been published regarding the alleged occurrence (Ex.D1) and had stated that the accused was arrested after 3 days of the occurrence.

MRC-1-2020 & CRA-D-323-2020

13. PW-2 Manjit Kaur admitted the factum of having two sons and that Om Parkash @ Tari was a mentally retarded person and she had two daughters Seema Rani and Reena Rani. The deceased Reena Rani was living with her, because her husband was living abroad. Reena Rani was issueless and had taken one child namely Harry into adoption who was from the first marriage of Seema Rani. The second marriage of Seema Rani had been performed with the accused about 5-6 years back and from whom she had two children Suman Kumari and Harsh. The sister of the accused Rekha Rani had been married with Hariya and on account of not having cordial relations, divorce had taken place in the presence of Panchayats, in which she was also present. Hariya had returned all the dowry articles to the accused and he had also undertaken to pay Rs.35,000/-. She had stood as guarantor on behalf of Hariya, as she was mediator in the above said marriage and on account of Hariya not making the payment, dispute had arisen between the accused and his wife Seema Rani. They had come to her house together on 14.11.2013 and the accused had threatened if they did not make the payment, he would kill all of them. Seema Rani alongwith her children had then come to her house after she was beaten by the accused. She had deposed that she was likely to go to Gurudwara at about 5:30 AM and had gone to bathroom and on coming out she had seen the accused armed with the Gandasi wearing black shirt and Pajama of blue colour and causing injuries to his daughters, son and grand-children Harsh, Harry and Suman Kumari. He was asking about her that he would kill her also for not making the payment of Rs.35,000/-. Due to fear she ran out of the house and raised a *Raula* and entered into the house after sometime and saw that her both daughters, son and three children were lying in injured condition. Her son Vijay Kumar

MRC-1-2020 & CRA-D-323-2020

alongwith his wife had come and called the Ambulance and taken the injured to the Civil Hospital, Phagwara, where four of them were declared as brought dead.

14. In cross-examination PW-2 Manjit Kaur had stated that Gurudwara is 10-15 minutes away and that cycle shop of his son Vijay Kumar was situated nearby her house and shop comes after crossing two shops. Her son Vijay Kumar and his wife resided in other house and they had come to the place of occurrence. Police had recorded the statement when they had come back after depositing the dead bodies in mortuary after 11:00 AM. The male folk were separate from the women folk when the police recorded their statements. There was only one bathroom near the kitchen. She denied the suggestion that the place of occurrence was not visible from the bathroom. She had heard the noise while sitting in the bathroom but did not go immediately to her room but ran outside of the house being afraid of the accused and the gate was open. Her son and his wife had come hearing the noise and she had concealed herself near the factory situated near colony, near the bushes and lost consciousness behind the bushes and only gained the same after half an hour.

15. PW-3 Dr. Sukhwinder Pal Singh, Medical Officer, Civil Hospital, Phagwara submitted his evidence in the shape of affidavit giving the details of the injuries inflicted on the injured Om Parkash and minor child Harry. In his affidavit he had deposed that the weapon used upon them was a blunt weapon. In his cross-examination apart from proving the MLRs of the deceased he had also showed the seats of injuries. He had also proved the information sent to SHO, Police Station Satnampura (Ex.PJ) which would go on to show that information was sent to the SHO regarding the four persons who had been brought dead by the Medical

MRC-1-2020 & CRA-D-323-2020

Officer of the Civil Hospital, Phagwara and the two persons who had come with the injury and the fact that he had referred the injured to the DMC Hospital, Ludhiana on seeing the seriousness.

16. PW-4 Dr. Ashish Jaitly, Medical Officer, Civil Hospital, Phagwara, who conducted the postmortem submitted his affidavit and proved the constitution of the Board of Doctors (Ex.PL/1) wherein the request for postmortem had been made by the SHO accused on the ground that the accused Baljinder Kumar alongwith other unidentified persons injured the family members and four of them had been declared dead, whose bodies were lying at Mortuary. The said request was made at 4:20 PM on the said date. He had also proved the postmortem reports of four deceased as Ex.PM, Ex.PN, Ex.PO and Ex.PP alongwith the pictorial diagram showing the seats of injuries.

17. PW-5 ASI Balwinder Singh had stated that he had accompanied SI/SHO Karnail Singh to the Civil Hospital, Phagwara on getting the information. He had accompanied the SHO to the place of occurrence where the recovery was effected of the blood stained earth which was put into a plastic box, sealed and signed in the presence of Vijay Kumar. One bed sheet and blood stained shawl were also taken into possession alongwith the blood stained earth. He had stated that except Vijay Kumar no other witness was present when the memos were prepared. He also stated that the statement of the complainant as well as the statement of Manjit Kaur was recorded at about 2:00 PM and the first statement of the complainant was recorded at 11:00 AM and second at the spot after 12:00 noon.

18. PW-6 Dr. Naresh Kundra, Medical Officer, Civil Hospital, Phagwara proved the treatment given to Harry aged 5 years, who was

MRC-1-2020 & CRA-D-323-2020

further referred to DMC Ludhiana for immediate management. Being admitted in the hospital as a case of medico legal injury, he had examined him at 10:15 AM from pediatric point of view. Similarly PW-7 Dr. Kamlesh Kumar, Medical Officer, Civil Hospital, Phagwara proved the admission of the accused Baljinder Kumar at 7:00 PM in Civil Hospital, Phagwara where the following injuries were found on his person:-

“1. Lacerated wound 07 inch x 02 inch wide with muscles exposed with fresh bleeding on the left upper arm.

2. Lacerated on the forehead 01 cm x 01 cm x 0.5 cm on the right eyebrow with fresh bleeding.

3. Lacerated wound on the upper eyelid left. It was 03cm long x 0.2 cm wide with associated swelling on the cheek.

4. Abrasion injury on the forehead which was 03 cm long 02 cm wide.”

19. PW-7 further stated that on 30.11.2013 Baljinder Kumar was referred to Civil Hospital, Jalandhar/Higher Centre for further management and treatment and he could not say whether the injured came at his own or he was brought by someone else and whether he got discharged from the hospital from where he had got further treatment.

20. Treatment given on 30.11.2023 reads as under:-

“Wound on the left arm with stitches and collection of blood. Stitches were removed and cleaned with injection H₂O and betadine. Dead necrotic tissue was found. Debridement wound was cleaned and antiseptic dressing was done.

21. There is also endorsement by the doctor that the patient was not cooperative. A perusal of the treatment chart (Ex.PW7/A) would go on to show that there was an endorsement recorded on that ‘having fallen from the height’.

MRC-1-2020 & CRA-D-323-2020

22. PW-8 Dr. Avik Banerjee, Radiologist, who was posted at DMC, Ludhiana at that point of time had proved the treatment on the child Harry. PW-9 Dr. Amarminder Singh who was working as Resident in Radiodiagnosis Department, DMC, Ludhiana at that point of time had also proved the treatment of the CT Scan films of Taari.

23. PW-10 HC Parminder Singh proved the entrustment of the iron Gandasi, blood stained clothes from SHO Karnail Singh, as he was posted at MHC on 01.02.20214. PW-11 HC Sarwan Singh had produced Talaknama/Ikrarnama Mark-A and Mark-B, which were taken into possession vide Ex.PW11/A, whereby the separation between Rekha Rani and Hardial Singh had taken place on 19.10.2013, who were earlier married in May, 2012.

24. PW-12 Sodhi Singh, Patwari proved the factum of moving of the application (Ex.PW12/A) before him by the SHO for preparing scaled site plan of the place of occurrence on 03.03.2014 and he accordingly prepared the same on 04.03.2014 (Ex.PW12/C) which showed that house was constructed in Khasra No.2342, Mohalla Kot Rani Dashmesh Puri, Tehsil Phagwara.

25. PW-13 HC Jarnail Singh the formal witness who had handed over blood stained clothes. He had visited the police station again on 09.02.2014 and MHC Parminder Singh handed over to him from the Malkhana two parcels i.e. one of Gandasi and one of blood stained clothes for depositing the same in the office of Chemical Examiner, Kharar.

26. PW-15 Dr. Rajesh Chander, Orthopadic Surgeon, Civil Hospital, Phagwara, who had examined the appellat on 29.11.2013 and had found wound on the left arm with stitches and collection of blood. The same were removed and cleaned with hydrogenperoxide and betaden

MRC-1-2020 & CRA-D-323-2020

and thereafter antiseptic dressing was done alongwith proper antibiotic and patient was further referred to Civil Hospital, Jalandhar for further management. The original file of treatment was proved as Ex.PW7/A.

27. PW-17 the child witness namely Harry was duly examined in camera proceedings and was 12 years old at that point of time and studying in 5th standard, duly answered the questions put by the Court which recorded that the child was a competent witness and the evidence could be recorded. His statement being injured eye witness is most important, which reads as under:-

“Stated that I am resident of abovesaid address and now studying in 5th standard. On 28.11.2013 I was present in my maternal grand mother Manjit Kaur's house. On that night I alongwith my mother Reena alongwith my masi Seema Rani, my uncle Tari and my cousin sister Sumani and my cousin brother. Harsh were-sleeping together. In early morning of 29.11.2013 at about 5.00 a.m my masar Baljinder Singh @ Kala accused present in the court armed with Gandasi came there in the room where we all were sleeping and opened attacked on all of us with gandasi and killed my mother Reena alongwith my masi Seema Rani and my cousin sister Sumani and my cousin brother Harsh. The accused caused three injuries to me on my neck and stomach. After causing the occurrence, the accused ran away from the spot. Due to injuries I was got admitted in the Civil Hospital, Phagwara.

PW17 (XXXXXXXXXX by Sh. Lakhbir Singh, Advocate, counsel for the accused)

When I woke up I have not seen the accused in the room volunteered I was half sleep. Press reporter after visited the seen. I do not remember the time when the press reporter came at the spot. I have not seen masar inflicting injuries on that deceased and injured volunteered as I was half sleep. My maternal grand mother used to go to Gurudwara at 5.00 am. She used to come from the Gurudwara after two hours come back. I was sleeping straight way. When I received injury I was

MRC-1-2020 & CRA-D-323-2020

sleeping at that time. I am studying in 5th class. First I received injury on my left arm. It is wrong to suggest that there is no visible injury mark on my left arm. (became unconscious when I received first injury on my left arm. On that day my nani came back from Gurudwara at 6.00 am By that time accused has fled away from the spot. My nani came there after half an hour of the occurrence. It is wrong to suggest that I have deposed falsely.”

28. PW-18 Satnam Singh proved the Panchayati divorce executed on 19.10.2013 and stated that Hardial Singh @ Haria was to give Rs.35,000/- to Rekha being the maintenance and having not been given, differences had arisen between the family of Kalia Ram father of Rekha Rani and Manjit Kaur. He stated that he had come to know on this account the accused assaulted his wife and his sister-in-law, which he had come to know later. He had thus proved the Panchayati divorce which had taken place having signed on it in the court complex where it was typed.

29. PW-19 SI Bharat Bhushan proved the arrest memo (Ex.PW19/A) having attested the same alongwith ASI Harjinder Singh and also proved the disclosure statement (Ex.PW19/C) and the recovery memo of the cycle (Ex.PE) and sketch of Gandasi (Ex.PD). He admitted that Gandasi was recovered from the iron box which was lying in the house of the accused, which was not locked and the house was located in the middle of the village. Vijay Kumar was joined by the police party who was the eye witness. PW-20 ASI Harjinder Singh also proved the disclosure statements and the recoveries. He admitted in his cross-examination that nobody from the village was tried to join in the recovery. The brother and other family member of the accused were residing in the house and he had signed on the recovery memo at about 3:30 PM and articles were lying in the open in one room.

MRC-1-2020 & CRA-D-323-2020

30. PW-21 ASI Surjit Singh stated that he had got information from MHC Police Station Goraya that accused was admitted in the Civil Hospital, Phagwara and he had gave an application (Ex.PW21/A) to the doctor for taking the opinion regarding the fitness of patient accused Baljinder Kumar. The doctor had informed that he had referred the patient to Civil Hospital, Jalandhar. On 02.12.2013 he had gone to Civil Hospital, Jalandhar where after the permission of the doctor who gave his opinion that the patient is fit to give his statement and he made a DDR (Ex.PW21/B).

31. A perusal of the said DDR would go on to show that the accused was working as a labourer and stated that he had not met with any accident but could not give any reply that how he received injuries.

32. PW-22 Inspector Karnail Singh proved that he had received a chit on 29.11.2013 regarding the four persons who had been declared dead and other injured and sent the ruqa (Ex.PW22/A), on the basis of which the FIR (Ex.PW22/B) was registered. The statements recorded under Section 175 Cr.P.C. and filling up of the forms with the inquest report (Ex.PW22/C to Ex.PW22/F) were also proved. The opinion taken regarding the fitness of the two injured as Ex.PW22/G and Ex.PW22/H, whereby patient were declared unfit for making the statement had been duly proved. The site plan Ex.PW22/J had been proved. He stated that he had taken into custody one blood stained bed sheet and a shawl. The necessary applications moved for taking information regarding the fitness of the statements of the injured in Ludhiana were also duly proved apart from the fact that the Ikrarnama of the sister of the appellant had been into possession and the arrest which was done on 30.01.2014 in the presence of the father of the appellant. The disclosure statements Ex.PW19/C and the

MRC-1-2020 & CRA-D-323-2020

blood stained clothes were taken into possession and the sketch plan of the Gandasi and the site plan were also duly proved. Clothes being sent to FSL and the enhancement of the offence under Section 308, 325 IPC vide DDR (Ex.PW22/N) was also proved.

33. In the cross-examination PW-22 stated that statements of the injured were recorded after 15 days and the statement of Manjit Kaur was recorded at her home whereas statement of Sunita Devi was recorded in the hospital on 29.11.2013. The weapon of offence was recovered from the house of the accused and at that point of time father of the accused was present. No independent person was joined while effecting the recovery. The weapon of offence was blood stained and he denied the suggestion that the accused was falsely implicated at the instance of his in-laws.

34. PW-23 Om Parkash was examined, but the Trial Court declared him unfit as he was unable to speak and he was not in full senses. It was recorded that his mother was also present in the Court, who stated that she is looking after him. Accordingly, the Trial Court observed that since he has lost his senses and was not a competent witness for the purpose of present judicial proceedings. Manjit Kaur vide separate statement stated that on account of grievous head injuries, he was unable to give rational answers.

35. The only defence of the accused under Section 313 Cr.P.C. was that he was innocent and did not want to lead defence evidence.

The reasons for upholding the conviction:

36. The argument as such which is raised by counsel for the appellant regarding the presence of Vijay Kumar, complainant at the spot in the morning of the day of the incidence has considerable depth in it. It has already come on record that apparently he was not living with his

MRC-1-2020 & CRA-D-323-2020

brother and mother and was living separately. The site plan (Ex.PW22/J) which has been drawn up does not show that his house is adjacent in any manner. The adjacent house is of Sada Ram son of Gurdev Ram. It has also come on record that cycle repair shop of the complainant which was at village Kotrani and was situated 10 KMs from the house where the occurrence took place. The incident apparently took place at Mohalla Dashmesh Puri and even in the FIR the address of the complainant was Kotrani, Police Station Satnampura. The site plan (Ex.PW12/C) was prepared by PW-12 Sodhi Singh Patwari on moving of the application, which would go on to show that the house was constructed apparently in the agricultural land in Khasra No.2342, which does not depict any construction or other houses adjoining the house in question, which is also similar to the site plan which had been prepared by the Investigating Officer to that extent. It does not show any adjoining constructions. Thus, it is apparent that Vijay Kumar was not residing near the house in question and, therefore, for him to be at the spot to come at that point of time when the accused was coming out by holding Gandasi after committing the murder and inflicting injuries is highly improbable. Apparently, being a close relative of the victims he was called at the subsequent point of time after Manjit Kaur had raised alarm. This aspect has not been taken into consideration by the Trial Court and it has been recorded that the house is situated in the residential area, without examining the site plans. However, the argument that Manjit Kaur not being present at the spot and having gone to the Gurudwara is not liable to be accepted. Merely, because she had not been injured would not be a ground to reject her testimony, as apparently she was able to slip out unnoticed.

MRC-1-2020 & CRA-D-323-2020

37. A perusal of the statement of eye witness PW-2 Manjit Kaur would go on to show that she was in the process of going to the Gurudwara which was her normal routine early in the morning and had gone to the bathroom. It was only providence that she escaped the assault not being in the room at that point of time.

38. We have also examined the site plan (Ex.PW22/J) in question as discussed above. The fact regarding her presence at that point of time in the morning is liable to be accepted, as before going to Gurudwara she would be going for her morning rituals. The bathroom is located closer to the gate on the other side of the courtyard, whereas the lobby and the room were across the courtyard, which is the normal construction of small one room/two room house set in the rural areas and the bathroom always being away from the room, so that all the members of the family can use it without going through the bedroom. The lobby is adjoining the portion and the site plan shows that there is a house of Sada Ram and also a small shop and two plants which are opposite. It is, thus, highly, probable that out of fear on seeing the assault being done on the minor children, she in order to protect herself had escaped from the gate on the other side. It is not disputed that her statement had been recorded at 11:00 AM thereafter. As per her statement, she had concealed herself near the factory situated in the colony, near the bushes and had also lost consciousness behind the bushes and thus gained the same after half an hour. It is the settled principle that different people react in a different manner to the situation. Her son-in-law armed with weapon was inflicting injuries on his wife, children and sister-in-law and being aware that he had threatened them on account of the fact that Rs.35,000/- was to be paid to his sister had not been done, she herself would have been the next target of assault, if

MRC-1-2020 & CRA-D-323-2020

spotted. It is her own case in affirmative that after she came back, she had seen her daughters, son and three children lying in injured condition. Her son Vijay Kumar and his wife had come there and called the Ambulance. There was no reason for her to falsely implicate the son-in-law and neither was the defence as such of the appellant that it was a case of dacoity and robbery by some un-identified persons. Nothing has been suggested by the witnesses that valuables were missing from the house.

39. Another reason which prevails with this Court is that even if it was a case of injuries being inflicted by some unknown persons in an attempt to rob the occupants of the house, the said persons would have never killed the minor children as they would have never come in their way. The only person who could have resisted was Om Parkash @ Tari, who was already mentally retarded and was unfortunately been handicapped further to the extent that he could not even depose in the Court. The manner in which the assault had been carried out would also go on to show that it was by a person who was keenly nursing a grudge and it was not a case of the robbery by unknown persons who could have easily over-powered the minor children and ladies, if they so wanted and there was no need to inflict injuries on the persons of the children deceased in the manner it had been done. The injuries on the person of Seema Rani as per the postmortem report proved by PW-4 Dr. Ashish Jain, who was the member of the Board of Directors and conducted the postmortem, read as under:-

- i. Incised wound on left frontal region on head, measuring 4cm x 2 cm, bone deep, underlying bone fracture, clotted blood present in and around the wound.
- ii. Incise wound on head, back, cruciate in shape, 15 cm x 10

MRC-1-2020 & CRA-D-323-2020

cm on occipito temporo parietal region, bone deep underlying bone fractured, 12 cm from upper pole of left hear pinna, clotted blood present in and around the wound.

iii. Punctured wound on neck, antriorly, 1 cm from mid line on right side, measuring 3 cm x 1 cm, tracheal rings injured.

iv. Punctured wound on left side abdomen, measuring 2.5 cm x 1cm, at 7 cm from left anterior superior iliac spine, clotted blood present in and around the wound, underlying gutt injured.

v. Incised wound on chin, left side measuring 2 cm, at 0.,5 cm from midline, muscle deep, clotted blood present in and around the wound.

On opening skull, menangial vassals torn, meninges, injured, gyri and sulci injured in relation to injury No.1 & 2. Free blood present in the skull.

It was opined that cause of death in this case is because of hemorrhage and shock, due to head injuries, injuries are anti mortem in nature, which are sufficient to cause death in ordinary course of nature.

The probable time between death and post mortem was within six to nine hours.”

40. Similarly, the postmortem of Reena depicts the same pattern whereby the attack was done on the head and the bone of the right leg was fractured. As per postmortem the following injuries were found upon the person of Reena:-

“i. Incised wound on right sub occipital region, measuring 4.5cm x 0.5 cm, underlying bone fractured at 2.5 cam behind lower pole of right ear pinna. On opening skull, menangial vassals torn, meninges, injured, gyri and sulci injured in relation to injury No.1. Free blood present in the skull.

ii. Both bone of right leg fractured, at 25 cm above right medical malleous, a punctured wound of 0.2 cm diameter present anteriorly.”

41. The toddler less than two years namely, Harsh Kumar, who could have offered no such resistance was done to death in the same manner. In the postmortem the following injuries were found:-

MRC-1-2020 & CRA-D-323-2020

“i. Incised wound on Scalp, measuring 12 cm x 2 cm, starting 2 cm from midline forehead, going laterally and posteriority, underlying bone crushed.

On opening skull, menangial vassals torn, meninges, injured, gyri and sulci injured in relation to injury No.1. Free blood present in the skull.”

42. The other girl child namely, Sumani around 4 years old was brutally murdered in the same manner. The injuries would go on to show that the act was by a deranged person who had inflicted injuries not only to his wife, his sister-in-law but also on his minor children. The following injuries were found on her person:-

“i. Incised wound on forehead, measuring 8 cm x 2 cm, depressed fracture of underlying bone, Vertically present at 3 cm above from root of nose.

On opening skull, menangial vassals torn, meninges, injured, gyri and sulci injured in relation to injury No.1. Free blood present in the skull.”

43. The other child who survived the incidence namely, Harry had suffered fracture on the left 11th rib, but got a redish colour bruise over the right side of neck just below the right ear, apart from other injuries in his abdomen, due to which he was referred to DMC Hospital, Ludhiana. The injuries on his persons can be described as under:-

“i. Redish colour bruise of 3 cm x 2 cm was present over the right side of neck just below the right ear. Advise ENT and Surgical opinion.

ii. Swelling of 4 cm x 3 cm was present over the lateral aspect of above the left elbow joint. Advise ortho surgeon opinion and x-ray.

iii. Patient was complaining of pain in the abdomen, for which advised pediatrician opinion and ultra sound of whole abdomen urgently.”

MRC-1-2020 & CRA-D-323-2020

44. The injuries on Om Parkash @ Tari, the brother-in-law of the appellant, would also go on to show that he was assaulted by a blunt weapon having lacerated wound on his skull. The injuries found on the person of Om Parkash @ Tari read as under:-

“i. Lacerated wound 6 cm x 0.5 cm is present over the left parietal bone of the skull. 9 cm above left ear. Bone deep. Advise surgical opinion and x-ray skull.

ii. Lacerated wound 7 cm x 0.5 cm is present over the middle of parietal bone of the skull. 6 cm adjacent to first injury, towards right side. Advise surgical opinion and x-ray skull.

iii. Lacerated wound 2 cm x 0.5 cm is present over the lower part of left side of lower lip. Advise Dental opinion.

iv. Lacerated wound 1 cm x 0.5 cm is present over the middle of the left ear pinna.”

45. Thus, the seat of the injuries as argued by the counsel for the State would go on to show that the injuries are one which were inflicted by a person who had a grudge and there was no plausible reason that any other person would inflict injuries on minor children without any motive.

46. Coming back to the other eye witness accounts, it is apparent that the injured Harry, PW-17, was only 5 years old at the time of incident, has categorically stated about the appellant who is his close relative married to his mother's sister and opened the attack upon them, which he witnessed in the morning being half asleep. This Court is well aware of the manner in which the evidence of the child witness is to be recorded. Similarly, the Trial Court had also kept the said facts in mind and put appropriate questions to make the assessment of the witness whether child was a competent witness and evidence could be recorded. The assessment questions put while recording the evidence in the camera proceedings read as under:-

MRC-1-2020 & CRA-D-323-2020

“Questions regarding the competency of the Witness.

Q What is your name?

A. My name is Hary.

Q. What are the name of your parents?

A. Name of my father is Sunahari Lal & name of my mother is Reena.

Q. In which class do you read?

A. I am studying in 5th standard.

Q. What is your date of birth?

A. My date of birth is 27th August.

Q Do you know the place where you are present today and the purpose of your visit?

A. I am standing in a Court Room for seeking justice

Q Whether one should speak truth or tell lie?

A. One should always speak truth.

Certified that from the answers given by the child to the questions put to her I am of the considered opinion that the child has given the rational answers to the question. In my view child is a competent witness and her (sic. his) evidence can be recorded.”

47. The Apex Court in **Mangoo and others Vs. State of M.P., 1995 (2) RCR (Crl.) 481**, has held that it was for the Court to assess by examining the evidence and from the contents whether there are any traces of tutoring the child witness. The same is based on the rule of prudence that there should be corroboration of other independent evidence before conviction is recorded on the basis of child witness. The same has to be scrutinized closely and only if the Court finds it reliable then conviction can be based upon it. As noticed above if we correlate the statement of Manjit Kaur and the child witness, the motive aspect and fact that appellant himself was admitted in the hospital as he had suffered serious

MRC-1-2020 & CRA-D-323-2020

injuries on that day to which he has not given plausible explanation, would go on to show that the prosecution is able to prove its case beyond any shadow of doubt regarding the involvement of the appellant.

48. In **State of M.P Vs. Ramesh and another, 2011 (2) RCR (Cri.) 582**, the Apex Court has held that the evaluation of the statement of a child witness has to be done carefully and only if there is evidence that the child had been tutored, the Court could reject the statement and inference can be drawn from the deposition of the child witness. In **Rameshbhai Chandubhai Rathod Vs. State of Gujarat, (2009) 5 SCC 740**, which was pertaining to the rape and murder of minor child below 10 years, the statement of the child witness was kept in mind, since the last seen fact was being proved through the said witness, who had stated that the deceased and the accused were playing badminton together and then her father had come and taken the witness home. Resultantly, the Court had held that the said aspect was an important circumstance to implicate the accused.

49. In the present case during the cross-examination, counsel for the appellant never suggested to the child witness also that he had been tutored as such, as it would be clear from the reading of the statement, apart from the usual suggestion that the child witness deposed falsely. In the absence of such a cross-examination also to that extent gives us no valid reason to discard the statement of PW-17 Harry. There is nothing to show from the evidence of the child that he is not able to discern between right and wrong. The factum of being receptive to abnormal events, which had taken place in his life of which the child would be able to recapitulate the same when he deposed 5 years later. The statement of the child witness has been evaluated carefully by us and with great circumspection

MRC-1-2020 & CRA-D-323-2020

and we see no plausible reason to reject the same, even partly or fully, in the absence of any reason or suggestion that the child had been tutored in any manner to depose against his uncle.

50. In **State of M.P Vs. Ramesh (supra)** the High Court had reversed the judgment of conviction. The child witness PW-1 Rannu Bai, aged around 8 years, was daughter of the deceased Chatra. The Apex Court did not agree with the discarding of the statement of the child witness while considering a large number of precedents on the issue of holding that there was no principle of law that it is inconceivable that a child witness would not be able to recapitulate the facts in his memory. It was held that the evidence of a child witness has to be evaluated more carefully, keeping in view the fact the child could be tutored. Resultantly, the acquittal was reversed by upholding the judgment of the Trial Court.

51. In **Yogesh Singh Vs. Mahabeer Singh & others, (2017) 11 SCC 195**, it has been held that minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. It was also held that the omission should create a serious doubt about the truthfulness or creditworthiness of the witness. The minor improvements, embellishments which are insignificant are liable to be ignored. Merely because investigating agencies has tried to improve the case by introducing the male member as a eye witness, would not be a ground for discarding the two eye witnesses accounts of Manjit Kaur and Harry whose presence is but natural in the house in question. The said judgment also goes on to hold that even if the weapon of the offence is not recovered, does not falsify the case of the prosecution where there is ample unimpeachable ocular evidence. Relevant paragraph of the said judgment reads as under:-

MRC-1-2020 & CRA-D-323-2020

“47. The next line of contention taken by the learned counsel for the respondents is that the recovery evidence was false and fabricated. We feel no need to address this issue since it had already been validly discarded by the Trial court while convicting the respondents. In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify the prosecution case where there is ample unimpeachable ocular evidence. [See **Lakhan Sao Vs. State of Bihar and Anr., (2000) 9 SCC 82; State of Rajasthan Vs. Arjun Singh & Ors., (2011) 9 SCC 115 and Manjit Singh and Anr. Vs. State of Punjab, (2013) 12 SCC 746**].”

52. In the present case as noticed above the manner in which the recovery of Gandasa alongwith blood stained clothes and the cycle had been effected, after a considerable period of two months from the house of the accused, does not inspire any confidence in the investigation. The same would go on to show that there was lapse on the part of the investigating agency. The report of the forensic expert was also received, which would also go on to show that the Gandasi and the clothes were stained with human blood. The non-exhibiting of the said report is mere an irregularity, since it was received on 20.02.2014 and the Trial Court rightly fell back on Section 293 Cr.P.C., which permitted it to use the said report as evidence in any trial or proceedings under the Code. Section 293 (4) provides that if the examination is done by any Deputy Director of a State Forensic Laboratory to the Government, the result of the said report may be used as evidence in trial. The report of the Forensic Expert reads as under:-

“Report No.: 78/2014/FSL/Pb/Bio./Exam,dated. 20/2/2014
Forwarding Authority : The Senior Superintendent of Police,
Kapurthala

Reference No. : 7895 dated 10.02.2014

MRC-1-2020 & CRA-D-323-2020

Case Reference : FIR No.54 dated 29.11.2013 U/s
302/323/34 IPC, PS Satnampura.

Date of Receipt : 10.02.2014

Mode of Receipt : HC Jarnail Singh, No.168/KPT.

Articles Received : Two sealed parcels which were
marked A and B in the laboratory and
each sealed with one seal of 'KS'. The
seals were found intact and tallied with
the specimen seal.

Parcel 'A' contained: Gandasi alleged to be stained with
blood.

Parcel 'B' contained: The following exhibits alleged to be
stained with blood:-

1. T-Shirt marked B-1 in the laboratory.
2. Pyjama/lower marked B-2 in the
laboratory.

RESULT OF EXAMINATION

The exhibits contained in the parcels A and B are
stained with human blood.

Examined by

Dr. (Mrs.) Seema Sharda,
Deputy Director,
Forensic Science Laboratory,
Punjab, SAS NAGAR.”

53. Reliance can also be placed upon a three Judges Bench
judgment of the Apex Court **Hema Vs. State through Inspector of
Police, Madras, (2013) 10 SCC 192**, wherein it has been held that it
would not be fatal to the case of the prosecution if the said report has not
been exhibited, if there is sufficient evidence on record. In the said case, it
has also been held that if there is negligence on the part of the
Investigating Agency regarding any omission, it is the duty of the Court to
scrutinize the prosecution evidence to find out whether the evidence is
reliable or not. The report of the FSL pertaining to the handwriting expert
in the said case had also not been exhibited. However, keeping in view the
fact that one of the witnesses had identified the writings available in

MRC-1-2020 & CRA-D-323-2020

exhibits and same had been rightly acted upon by the Trial Court and upheld by the High Court. The relevant part regarding the aspect of discrepancies and the defective investigation as such done is also liable to be brushed aside on the ground that there is no motive as such to implicate the appellant.

54. As noticed the appellant himself had suffered serious injuries and was admitted in hospital on the same day. As per the medical report and as per the statement of PW-7 Dr. Kamlesh Kumar, who had recorded his statement, it was his own case that he had fallen from height. Whereas when the police official had gone to record his statement, he had denied that he had met with any accident and failed to explain how he had suffered injuries, which would be clear from the statement of PW-21 ASI Surjit Singh. The reverse onus under Section 106 of the 1872 Act thus falls upon the appellant to explain as to how he suffered grievous injuries to the extent that his left arm had to be amputated on account of the injuries received on that day. The only explanation could have come of the person who cannot depose and now is a silent witness, that what had actually happened, who is the injured eye witness Om Parkash @ Tari, who unfortunately cannot depose about these facts which can correlate the matter. The provisions of Section 106 of the 1872 Act can be put into play, which reads as under:-

“106. Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the

MRC-1-2020 & CRA-D-323-2020

act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

55. In the present case the burden of proving the fact is upon the appellant, as it is within his knowledge as to in which circumstance he got injured on the same day due to which he had to be admitted in hospital in the evening. In the absence of any explanation given and in spite of the police officials asking him in what circumstance he sustained injuries, the burden of evidence or burden of explanation is liable to be shifted upon him. The facts were totally peculiar and within his knowledge and his failure to produce the evidence on his behalf can be regarded to confirm the conviction indicated by the evidence presented by the prosecution and his failure to give any explanation would be another reason to confirm the conviction.

56. In **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006) 10 SCC 681**, the appeal against acquittal was allowed by the Aurangabad Bench of the Bombay High Court and the appellant was convicted under Section 302 IPC. In the said appeal, it was a case based on circumstantial evidence and the death as such of the deceased was on account of asphyxia as a result of the compression of neck. It was, accordingly, held that the death having taken place inside the privacy of a house, the burden initially would be undoubtedly upon the prosecution, but the corresponding burden was also on the inmates of the house to give a cogent explanation as to how the crime was committed. Simply by keeping quiet and offering no explanation on the supposed principle that burden to establish its case was upon the prosecution, was not accepted.

MRC-1-2020 & CRA-D-323-2020

Resultantly, keeping in view the observations made in **Nika Ram Vs. State of H.P., (1972) 2 SCC 80** and the fact that there were strained relationship of the husband-wife, led to the pin-pointing of the guilt. Thus, the defence version that the deceased has died due to snake bite was rejected, keeping in view the medical evidence on record of asphyxia being the cause of death.

57. Similarly, in the case of **State of Rajasthan Vs. Thakur Singh, (2014) 12 SCC 211**, the acquittal order passed by the High Court was set aside and that of the Trial Court restored, keeping in view the provisions of Section 106 of the Evidence Act and while placing reliance upon the judgment passed in **Gian Chand Vs. State of Haryana, (2013) 14 SCC 420**. A three Judge Bench of the Apex Court in **Sabitri Samantaray Vs. State of Odisha, 2022 AIR (SC) 2591** upheld the conviction which was also based on circumstantial evidence. In the said case, the appellants had failed to explain the cause of death of the deceased, which had taken place in their house, who was associated with their daughter, who had been throttled to death and acid poured on him to impede identification. Resultantly, it was held that only the accused-appellants were present inside the house and there was evidence that the deceased was in love relationship with the daughter of the appellants and often visited the said house. In such circumstances, the conviction was upheld, as the appellants failed to offer any credible defence in this regard.

58. It is to be noticed that in the present case also, the appellant having been injured on the same day, admitted to hospital and also put to the prosecution witness fact of news item published. He, however, did not chose to come and find out as to how his wife and sister-in-law had died alongwith his two children. His arrest or surrender after he had already

MRC-1-2020 & CRA-D-323-2020

lost his arm in the intervening period, the reasons due to which he lost his arm, is also another aspect this Court will keep in mind while applying the principle of Section 106 of the 1872 Act. Cumulative effect would go on to show that the appellant had taken treatment elsewhere before and then returned back to the Civil Hospital. The appellant had not explained where he had received injuries and only explanation given was that he had fallen from the height. The incident having occurred on the same day and the appellant residing at a considerable distance from the place of incident but cycling to the place and receiving injuries during assault in the morning, on account of defence put by two deceased and injured male witness, is the conclusion we have to draw on account of the lack of explanation given by him.

59. In **Balvir Singh Vs. State of Uttarakhand, 2023 AIR (SC) 5551**, the concurrent judgments qua conviction recorded under Sections 302 and 498A IPC were upheld, whereby the deceased had died due to poisoning. The defence put forward that she was suffering from heart ailment and she had consumed the poison and committed suicide, was not accepted, keeping in view the fact that the aluminium phosphide could not be used as a medicine for the heart ailment and the defence that she had died due to the medicines she was taking, was rejected. It was noticed that nothing was on record to show that the appellant who was present when the death had taken place and had failed to explain to which hospital he had taken the deceased and how he carried the dead body of his wife back home, being a medico-legal case. Keeping in view the conduct of the accused of not informing the family about the death of their daughter and the letters which had been written by the deceased whereby there was

MRC-1-2020 & CRA-D-323-2020

demand of money, Section 106 of the Evidence Act was put into play, to reject the defence taken since there was nothing to show that the accused had taken the wife for treatment, after she had become unwell.

60. The statement of ASI Surjit Singh, PW-21 is very clear that the accused had been again and again asked how he had received injuries, but he had not replied. The lapse of the police official was that he had not made any inquiry regarding Rapat No.23 dated 02.12.2013 and rather should have arrested the accused from the hospital. It was only after a period of 2 months that he was produced by his father and arrested and thereafter, the recovery was effected on 01.02.2014 and the blood stained clothes and Gandasi were sent to the Forensic Laboratory and received on 10.02.2014. The argument thus raised that it is a case of circumstantial evidence and chain of circumstances is not complete, is liable to be rejected, in view of the categorical statement of the eye witnesses and the motive aspect and the manner in which the injuries were inflicted upon the deceased and the injured and recovery of blood stained clothes and the Gandasi.

61. Counsel for the State is well justified that in the absence of any defence evidence being led and the lack of malafides there is no valid reason as such that the conviction should be interfered with. It was further argued that the death penalty had rightly been awarded in the facts and circumstances. We are in respectful agreement with the said argument.

The reasons to uphold the death penalty:

62. Merely because a considerable period has gone by though the charge was framed at the earliest on 29.05.2014, however, the trial apparently dragged the case and the statement under Section 313 Cr.P.C. was only recorded on 15.01.2020 almost six years later. The learned Trial

MRC-1-2020 & CRA-D-323-2020

Court had rightly relied upon various judgments which would cover the field of death penalty while referring to the case of **Bachan Singh Vs. State of Punjab, 1980 SCC (Criminal) 580** and **Machhi Singh and others Vs. State of Punjab, 1983 SCC (Criminal) 681** to come to the conclusion that the murders of four persons had been committed in an extremely brutal, grotesque, diabolical, revolting and dastardly manner whereby almost all the family members had been done to death. The Trial Court accordingly awarded the extreme punishment after due deliberation.

63. The crime was committed when the helpless women and children were half asleep in their own house and the motive is merely regarding return of Rs.35,000/-, on account of the fall out of the marriage of the sister of the accused. The manner in which two children of the appellant himself were done to death alongwith his wife and sister-in-law cannot be said to be a crime which was done in the heat of passion, but was pre-planned. Apparently, the appellant had entered the house of the deceased in the wee hours of the morning to inflict injuries whereby apparently he also lost his left arm in the melee having met some resistance apparently from the two deceased and one injured. The grudge if any was with the mother-in-law who luckily escaped, but had misfortune to see the incident whereby her two daughters and grand-children had been done to death and one of her son is forced to live a vegetative life. The brutality of the incident is thus one which we would describe as a diabolic act whereby the conscience of the society as a whole has been shocked. The deceased were done to death in the safety of their own house and in such circumstances we do not find any mitigating reasons for not to confirm the death reference, as it falls within the category of rarest of rare cases.

MRC-1-2020 & CRA-D-323-2020

64. In **Mohd. Mannan @ Abdul Mannon vs. State of Bihar, (2019) 16 SCC 584**, considering the provisions of Section 354(3) Cr.P.C., keeping in mind whether the case falls within the category of 'the rarest of rare cases', the brutality and the heinous nature of the crime and the gruesome manner in which it was committed were held to be the criteria to be taken into consideration. The Court has also to take into consideration the criminal state of his mind, social and economic background while awarding death sentence which is an exception. Thus, the principle which has been laid down by the Apex Court is that the snuffing out the life of the person under Section 354(3) Cr.P.C. is not to be taken lightly.

65. Resultantly, we do not feel as to why the death penalty should be modified to the sentence of rest of the life, as argued by the counsel for the appellant. The argument as such of the counsel for the appellant that he was only 28 years old when the charge was framed almost a decade earlier and, therefore, in the absence of any criminal antecedents which is a mitigating fact and keeping in view the fact he belongs to a marginalized part of the society, sentence should be modified.

66. In the present case, the appellant had committed the murder of his wife for whom it was her second marriage and his children. In the absence of any residuary doubt and the brutality in which he had done his children to death, there is apparently no mitigating circumstance in his favour. In **Dhananjoy Chatterjee Vs. State of West Bengal, (1994) 2 SCC 220**, the rape and murder of 18 years old girl by a Security Guard was the reason to uphold the death penalty by the Apex Court. It was also held that the offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society and, accordingly, the death

MRC-1-2020 & CRA-D-323-2020

sentence had been confirmed. Similarly the said facts would also apply to the present case as noticed above, it was the duty of the appellant to protect his family and not to kill them.

67. In the case of **Om Parkash Vs. State of Haryana, (1999) 3 SCC 19**, 7 persons were done to death by three accused persons. One of the accused died and the other two had been sentenced to death, which was converted into life imprisonment. The Apex Court had held that it was a gruesome act because of constant harassment of the family members and it was not a crime committed because of lust for wealth or women and not an act of anti-social element or crime for political ambitions and the accused was working in the BSF as a disciplined member of the armed forces and having no criminal background. It was in such circumstances, the sentence of death penalty was converted into sentence of life imprisonment. The said facts would not be applicable in the present case.

68. Similarly, in **Laxmi Naik Vs. State of Orissa, (1994) 3 SCC 381** rape and murder of a girl by her maternal uncle, the Apex Court had held that the case falls under the category of rarest of rare cases and had to attract no punishment other than the capital punishment, while noting that the deceased even could not have resisted the act which she was subjected to.

69. In **Mukesh and another Vs. State (NCT Delhi) & others, (2017) 6 SCC 1**, the infamous *Nirbhaya* case led to the imposition of death penalty on account of the gang rape and the conduct of the accused committing the heinous offence in consultation with each other. Resultantly, keeping in view the fact that the collective conscience of the society had been shocked, the death penalty had been confirmed by treating it as rarest of rare cases.

MRC-1-2020 & CRA-D-323-2020

70. In **Khushinder Vs. State of Punjab, 2019 (2) RCR (Cr.) 304**, a three Judges Bench of the Apex Court kept in mind the fact that two of the six persons were below 10 years of age and at the first instance three of them were pushed in a canal and thereafter the other three had been done to death. Resultantly, it was found that the death sentence imposed by the Sessions Court and confirmed by the High Court would not warrant any interference as the persons had been killed in a pre-planned manner and only one person of the family could survive out of the two stages of killing the six persons. Similar is the case herein, since Manjit Kaur as such survive the attack only on account of the fact that she was not in the same room where four persons were done to death, after the appellant cycled with a weapon to the place of occurrence in the wee hours of the morning. In such circumstances, it is a rarest of rare case and, therefore, we do not see any valid reason not to confirm the reference against the appellant.

71. Resultantly, we confirm the sentence of death under Section 368 Cr.P.C. and direct that the order of confirmation be sent to the Court of Sessions. Resultantly, the appeal filed by the appellant CRA-D-323-2020 is dismissed.

**(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE**

**(LAPITA BANERJI)
JUDGE**

04.03.2024

Naveen

| | | |
|-----------------------------|-------|----|
| Whether speaking/reasoned : | √ Yes | No |
| Whether Reportable : | √ Yes | No |