

COURT’S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
{Chapter VIII, Rule 32(2)(b)}
Description of the Case.

CRIMINAL APPEAL No. 487 of 2001
(Old No. 1753 of 1990)

Jagdish Lal S/o Mathura Misra, R/o Village Dohil,
P.S. Joshimath, Distt. Chamoli (Gopeshwar)

.....**Appellant**

Versus

The State

..... **Respondent**

Sri Rakesh Thapliyal & Sri Lalit Sharma, learned counsel for the appellant
Sri Amit Bhatt, Addl. G.A. and Sri M.A. Khan, learned brief holder for the State/respondent

Approved for reporting.
~~Not approved for reporting.~~

Date: June 29, 2007

(J.C.S. Rawat, J.)

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

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Dated: June 29, 2007

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**Coram: Hon'ble J.C.S. RAWAT, J.
Hon'ble DHARAM VEER, J.**

PER HON'BLE DHARAM VEER, J.

This appeal, preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 04.09.1990 passed by Sessions Judge, Chamoli (Gopeshwar), in Session Trial No.29 of 1989, State Vs. Jagdish Lal, whereby the learned Sessions Judge has convicted the appellant for an offence punishable u/s 302/376 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) and awarded sentence u/s 302 IPC for life term imprisonment and u/s 376 IPC for 10 years R.I. Both the sentences were directed to run concurrently.

2. In brief, the prosecution story is that Basant Lal has lodged a First Information Report in the Police Station, Joshimath, District Chamoli with the allegations that on 11.3.1989 at about 6:00 A.M., when he was in his in-laws house in village Ravigram, there his younger brother Roshan Lal came and informed him that his mother Chandri Devi has gone to the last night about 10-11 P.M. from the house for easing out, but she did not come back home up till the morning. Then, in the morning, he saw that she was lying near the apple tree in the west of his house. On this information, he went his house along with his brother running and saw that from the some distance of his house near the apple tree, his mother Chandri Devi was lying in a dead condition. The dead

body was naked from the lower side of the waist. For that reason, he had spread a Dhoti in the naked portion of his mother and that Dhoti was pressed by stones. After seeing the condition of his mother, he was confident that somebody has committed wrong with his mother and thereafter she was murdered. It was also stated that his mother was having illicit relation with Jagdish for the reason that his mother was living along with Jagdish before last four years and from the last 4 months before the incident, his mother had come to the house of Basant Lal and she was living there with him. It was further stated that he has a doubt that his mother was murdered by Jagdish. For the said allegations, he lodged the FIR at 7:35 A.M. on 11.3.1989 at P.S. Joshimath, that FIR is Ex.Ka-1. On the basis of this FIR, a Chik FIR was prepared by Constable Clerk Balbir Singh, that Chik FIR is Ex.Ka-9. The entry was made in the G.D., the copy of G.D. is Ex.Ka-10. The investigation of the case was entrusted to Station Officer, Jauhri Lal, P.S. Joshimath. The inquest report of the dead body of Smt. Chandri Devi was prepared on 11.3.1989, that inquest report is Ex.Ka-12. The I.O. has also prepared a Form No.13, i.e. Ex.Ka-23. The Photo lash of the dead body is Ex.Ka-17, Seal Mohar is Ex.Ka-18, letter written to SMO, Gopeshwar, Chamoli is Ex.Ka-19 and letter written to CMO, District Hospital, Gopeshwar, Chamoli is Ex.Ka-20. After that the dead body was sent for the post-mortem and the post-mortem of the dead body was conducted on 12.3.1989 at 12:05 P.M. by Dr. A.K. Dwivedi, the post-mortem report is Ex.Ka.8. The Investigating Officer has also prepared the site plan of the place of occurrence on 11.3.1989, i.e. Ex.Ka-11. He has also taken in his possession the 'Peticoat' of the deceased on 11.3.1989 and a recovery memo Ex.Ka-13 was prepared. During the investigation, appellant Jagdish has given a statement of extra judicial confession before the P.W.4 Chatru Lal on 12.03.1989. The statement of the Chatru Lal was recorded by the Investigating Officer on 13.3.1989. The appellant was arrested on 14.03.1989. The site was inspected by the Investigating Officer on the pointing out of the appellant Jagdish and the memo for the inspection of the place of occurrence was prepared, that is Ex.Ka.6. After the arrest of the appellant, he was medically examined by the Medical

Officer, Swasthya Kendra, Joshimath on 14.3.1989 at 7:20 P.M., the medical report prepared by Medical Officer is Ex.Ka-7. Ex.Ka-14 is the copy of the G.D. dated 14.3.1989. The I.O. has also prepared the map on the pointing out of the appellant Jagdish, i.e. Ex.Ka-15. He has also prepared a Fard Ex.Ka-16 for taking into possession the N.C.R. No.58/87 u/s 323/504/506 IPC dated 17.6.1987 lodged by deceased Smt. Chandri Devi against the appellant Jagdish, his father Mathura Lal and his mother Smt. Bindra. He has also taken in his possession the underwear of the appellant Jagdish on 14.3.1989 and a Fard was prepared, that Fard is Ex.Ka-22. During the course of investigation, he has recorded the statements of the witnesses and the witnesses were also examined u/s 164 Cr.P.C. before Sub-Divisional Magistrate, Joshimath. The statement of the Jamni Mistri recorded u/s 164 Cr.P.C. is Ex.Ka-2, the statement of Roshan Lal recorded u/s 164 Cr.P.C. is Ex.Ka-3, the statement of Santosh Lal recorded u/s 164 Cr.P.C. is Ex.Ka-4, the statement of Chatru Lal record u/s 164 Cr.P.C. is Ex.Ka-5. The copy of the G.D. in which the entry was made in the NCR No.58/87 dated 17.6.1987, was taken into possession by the I.O. is Ex.Ka-25 and the carbon copy of the said NCR is Ex.KA-26. After completing the investigation, the I.O. has submitted the charge sheet against the appellant u/s 302/376 IPC, that charge sheet is Ex.Ka-24.

3. The learned CJM, Chamoli has committed the case to the court of Sessions on 15.12.1989 u/s 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

4. The learned Sessions Judge, Chamoli has framed the charge against the appellant Jagdish Lal on 6.2.1990 for the offence punishable u/s 376 and 302 IPC. The charge was read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined P.W.1 Basant Lal, P.W.2 Roshan Lal, P.W.3 Santosh Lal, P.W.4 Chatru Lal, P.W.5 Arvind Singh Hayanki, SDM, Joshimath, P.W.6 Mohan

Lal, P.W.7 Jamni Lal, P.W.8 Dr. S.D. Uniyal, P.W.9 Dr. A.K. Dwivedi, P.W. 10 S.O. Jauhari Lal and P.W. 11 S.O., Nakli Singh.

6. After that the statement of the appellant was recorded u/s 313 Cr.P.C. who has denied the allegations made against him, but he did not produce any oral or documentary evidence in the defence.

7. After appreciating the evidence on record, the learned Sessions Judge, Chamoli (Gopeshwar) vide his judgment and order dated 04.09.1990 has convicted appellant Jagdish Lal for an offence punishable u/s 302/376 IPC and awarded sentence u/s 302 IPC for life term imprisonment and u/s 376 IPC for 10 years R.I. Both the sentences were directed to run concurrently. Against the said judgment and order dated 04.09.1990, the appellant Jagdish Lal has preferred the present appeal before this Court.

8. We have heard Sri Rakesh Thapliyal & Sri Lalit Sharma, learned counsel for the appellant and Sri Amit Bhatt learned Addl. G.A. and Sri M.A. Khan, learned brief holder for the State and perused the entire material available on record.

9. To prove its case, the prosecution has examined P.W.1 Basant Lal, who is the complainant of the case and also the son of deceased Chandri Devi. He has stated that deceased Chandri Devi was his mother and his father had died 10 years before the said incident and they were three brothers. Appellant Jagdish Lal is his uncle in relation and he was not married and he was also living in his village Dauril Tok. After the death of his father, his mother Chandri Devi was living with Jagdish since last 5 years in the house of Jagdish and from appellant Jagdish, girl Babita was also born. The age of Babita is four years. Jagdish Lal had started to beat Chandri Devi and for that, a complaint was made by her to his younger brother Biraj Lal. Then Biraj Lal has taken his mother along with Babita in his house and before the incident, Chandri Devi had come to his house 4 months back. His brother Biraj Lal was serving in Delhi. The said incident was happened on 10.3.1989 when he had gone to his in-laws house in Ravigram. His

children were in his in-laws house. In his house in village Dauril Tok on that day, his mother, his younger brother Roshan Lal and Km. Babita were there. His younger brother Roshan Lal had come to him on 11.3.1989 at 6:00 A.M. and he has informed him that his mother Chandri Devi was lying dead near the apple tree. Then he along with his brother Roshan Lal had come in village Dauril Tok and there he saw his mother was lying dead. Then with some other people, he went to P.S. Joshimath which is 4-5 Kms. away from his house. Then he dictated FIR to Bijendra Lal and thereafter he has signed on the report, that report is Ex.Ka-1. Then along with police, he had come to the spot. His brother Roshan Lal had told him that his mother on the night of the incident had gone for easing out but she did not come back and on the next day morning, he saw his mother in the dead condition. She was in a half-naked condition. The inquest report was prepared and he has also signed on the inquest report. At the time of the inquest, he has seen the sign on the neck of strangulation. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

10. P.W.2 is Roshan Lal who is also the son of Chandri Devi, who was the student to Class V. Some questions were asked by the Sessions Judge from him to examine whether he is in a condition to give the evidence or not. After asking the questions and recording the answers, the Sessions Judge has observed that this witness was a competent witness to give the evidence. This witness has stated that Chandri Devi, deceased was his mother and she had got three sons. The first one is Basant Lal, another is Biraj Lal and he is the third one (Roshan Lal). His father had died before 8-10 years and appellant Jagdish is his uncle in relation. After the death of his father, his mother was living with Jagdish since last 4-5 years. Due to this relation, his mother had delivered a girl namely Babita and Babita is 4-5 years old at the time of incident. Before 4-5 months of the incident, his mother had started to live with them. The incident was said to be taken place on 10.3.1989.

On the date of the incident, he along with his mother deceased Chandri Devi and Km. Babita were at home. His elder brother Basant Lal has gone in his in-laws house at Ravigram. On the same night, appellant Jagdish had come to his house and he has asked from him about his elder brother Basant Lal and then he had told him that he had gone to his in-laws house. After that appellant Jagdish had gone from there. After the going of Jagdish, his mother told him that she had to go for easing out and then he had told that he will also go with her. Then his mother had told him to live there along with Babita at the house and after that she had gone. When she did not come to the house in the night, then with the Kerosene Oil, he has burned a Mashal and on that light after taking Babita in his back, he had gone to the house of his aunt Prema. There he had told his aunt that his mother had gone for the easiness long back but she did not come back and appellant Jagdish had come to his house before some time and asked about Basant Lal. Then he had come along with his aunt and he had tried to search his mother but he could not get her. After that, he and Babita were slept in the house of her aunt. On the next day morning, he searched his mother and then he saw that his mother was lying dead under the apple tree. Then he had gone to Basant Lal and had told him that his mother had died. After that Basant Lal and he had come on the spot. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

11. P.W.3 is Santosh Lal who belongs to the same village of Dauril Tok. He has stated that Jagdish Lal was known to him and he was living in the same village of Dauril Tok and in relation, Jagdish Lal is his uncle. On 10.3.1989, his uncle Jamni had come and he had gone from his house about 10:00 P.M. after taking dinner and after that he had slept. After sometime, the dogs started barking and then he came out from his house and he saw one person going upwards near his house. He asked from that person about him and then his person said that "I am" and this

person was identified by him as Jagdish (appellant). Then Jagdish Lal had gone upwards. This witness was also cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

12. P.W.4 is Chatru Lal who belongs to the same village Dauril Tok. Before him, appellant Jagdish Lal had given a statement (extra judicial confession) on 12.3.1989. This witness has stated that the deceased Chandri Devi was known to him. She was living in Village Dauril Tok along with his children and Jagdish Lal was also living in the same village and Jagdish Lal is his cousin brother. The husband of Chandri Devi had died and since last 4-5 years, Chandri Devi was living with Jagdish Lal. At the time of occurrence, Chandri Devi was living with her sons and appellant Jagdish was not married. He has further stated that on 10.3.1989, Chandri Devi was murdered. At the time of Panchyatnama (inquest report), he had gone on the spot and he was appointed Panch.

13. He has further stated that “12-3-1989 को अभियुक्त जगदीस मुझे फौजी के जाने वाले रास्ते में बाग में अपने खेत में मिला व मुल्लिम ने मुझसे कहा कि मुझसे गलती हो गई है। उसने बताया कि वह 10 मार्च, 1989 को मुझे चन्द्री देवी मृतका पानी के धारे के पास मिली थी और मृतिका ने जगदीस से कहा था कि आज रात खाना खाने के बाद मुझसे मिलने आना। फिर जगदीस वहां उसे रात में मिलने गया। वहाँ रात में उसे रोसन लाल भी मिला था पूछने पर बताया कि बसन्त लाल अपनी ससुराल गया है। चन्द्री देवी वहीं पर थी। जगदीस ने मुझे यह भी बताया था कि वह वहाँ से चला गया था उसके बाद चन्द्री देवी मृतका घर से सेब के पेड़ के पास आई थी। उसने यह भी बताया कि उसने मृतिका के साथ सम्भोग किया उस दरमियान मृतिका चन्द्री देवी ने जगदीस से कहा कि तेरे से एक लड़की पैदा हुई है, इसलिए तब मृतिका को अपने साथ अपने घर रख ले तो जगदीस लाल ने कहा की उसके माँ बाप मना करते हैं। वह उसे अपने घर नहीं रखेगा। जब चन्द्री देवी जिद्द करने लगी व चिल्लाने को कहा तो संभोग के दौरान ही जगदीस लाल ने कहा कि उसके चिल्लाने के डर के कारण चन्द्री देवी का गला दबा दिया जिससे वह बेहोस होने लगी व थोड़ी देर बाद देखा कि उसकी गरदन लुढ़क गई तो वहाँ से भागकर चला गया। जगदीस लाल ने यह भी कहा कि पुलिस मेरा पीछा कर रही है। मेरा बचाव करना।” On 12.3.1989, Jagdish Lal had met him in the filed near the way going towards Fauji. Then Jagdish Lal had told him that he has committed a mistake. He had told him that on 10.3.1989, Chandri Devi had met him near the waterfall and the deceased Chandri Devi had told to meet her after taking dinner in

the night. He had met with Roshan Lal and he told him that Basant Lal had gone to his in-laws house and Chandri Devi was there. Jagdish had also told that after that, he had gone from that place and Chandri Devi had come near the apple tree. He had further informed him that he did sexual intercourse with her. During that period, deceased Chandri Devi had asked him that she had delivered a girl by him and then she asked her to keep her in his house. Then Jagdish had told him that his mother and father were refusing for it and he could not get her in his house. When Chandri Devi insisted for it and asked to cry, then during the intercourse, Jagdish had pressed the neck of Chandri Devi in order to escape form the crime committed by him. After that she became unconscious and thereafter she had died. Then he has run away form there. Jagdish had also requested him that police is searching for him and he had requested for his help. This witness has given the statement before the I.O. and the S.D.M. This witness was cross-examined at length but nothing has come out which may create any doubt in his evidence. This evidence of this witness is trustworthy, reliable and believable.

14. P.W.5 is Arvind Singh Hayanki who was posted as SDM, Joshimath. He has stated that on 11.4.1989, he was posted as SDM, Joshimath. He has recorded the statements of the witnesses Jamni Mistri, Roshan Lal, Santosh Lal and Chatru Lal u/s 164 Cr.P.C. as per the order of the C.J.M. and the witnesses have given their statements voluntarily. After recoding the statements, the statements were read over to the witnesses and after that, they have signed on it and thereafter he has also signed on those statements. The statements are Ex.Ka-2 to Ex.Ka-5.

15. P.W.6 is Mohan Lal who has stated that Jagdish Lal appellant was known to him and deceased Chandri Devi was also known to him and he also belonged to the same village where she was residing. On 14.3.1989, appellant Jagdish was arrested by the police and at that time, he had also gone on the place of occurrence. After reaching at the place of occurrence, Jagdish and

stated that he could show the place where he had committed intercourse with Chandri Devi and thereafter he had murdered her. Then Jagdish Lal had shown that place where an apple tree was there. At that time, the Investigating Officer has prepared a recovery memo, site plan and he had also signed on that recovery memo i.e. Ex.Ka-6.

16. P.W. 6 Mohan Lal has only stated in his statement about the discovery of the place of occurrence at the pointing out of the appellant Jagdish Lal. The place of occurrence had already been discovered on the morning of 11.3.1989 at 6:00 A.M. when the dead body of deceased Smt. Chandri Devi was seen by Roshan Lal P.W.2. Thereafter, Roshan Lal has informed his brother Basant Lal P.W.1 about the incident and then Basant Lal came on the spot and after that, he has lodged the FIR in the P.S. Joshimath and after that police has reached on the spot. Hence, the discovery of the place shown on 14.3.1989 in the present of his witness Mohan Lal on the pointing out of the appellant Jagdish Lal is not admissible as per law because the same discovery had already been made on 11.3.1989.

17. P.W.7 is Jamni Lal who had stated that he and Jagdish Lal, both belonged to the same village Dauril Tok and were known to each other and deceased Chandri Devi was also living with his sons in the same village on the date of the incident. He has also stated that on 10.3.1989 in the evening, he had gone to the house of his nephew Santosh to give some articles. Santosh had asked him to go after taking the food and then after taking food in the night, he had started towards his house. The time was about 9 p.m., then Jagdish had met him near the water pump. Then he had asked from Jagdish that where he was going in that late night. Jagdish had told him that he was going towards downside. Then he had gone to his house in the night and slept. The place where Jagdish had met him, from that place, his house is in the upward and the house of deceased Chandri Devi was in the lower side from the water pump where Jagdish Lal was going. About the incident, his statement was recorded by the SDM, i.e. Ex.Ka-2 and his

signatures are also there. The same face he has told to the SDM. This witness was also cross-examined at length but nothing has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

18. P.W.8 is Dr. S.D. Uniyal who has stated that on 14.3.1989, he was posted as In-charge Medical Officer in P.H.C. Joshimath. On that day at 7:20 P.M., he had medically examined Jagdish who was brought to him by Constable B.M. Bahuguna and he has found the following injuries on his person: -

One abraded contusion present over right side face 3.5 cm from right external ear measuring 2cm x 1cm and contusion is brownish in colour and abrasion is blackish in colour. No other injury is present.

He has further stated that the injuries on the body of Jagdish Lal is about 4 days old and could possible be caused on 10.3.1989 and this injury is possible by nails. He has also prepared the injury report, that report is Ex.Ka-7.

19. P.W.9 is Dr. A.K. Dwivedi who has stated that on 12.3.1989, he was posted as Medical Officer in District Hospital, Gopeshwar. On that day at 12:05 P.M., he has conducted post-mortem of deceased Smt. Chandri Devi. The dead body was brought by Constable Ishwar Prasad and Bhupal Sharma. The deceased was about 40 years old and she had died about 2 days before. He has found the following ante-mortem injuries on her body.

1. *Bluish colored contusion present over left side of the face about 3 cm. Lateral to left angle of mouth, size 3 cm x 2 cm, some what oval in shape.*
2. *Bluish colored contusion mark present in front of neck, above the thyroid cartilage, about 10 cm x 2.5 cm on either side of the wind pipe. On dissection, hyoid bone fractured, Echinom and dark blow present on this region.*
In the internal examination, he has found that in the head and in the neck, hyoid bone was found fractured; Membrances and brain were found congested; Trachea was found congested & compression was there and Tracheal rings present; Lungs were found congested; semi-digested food was present in the bladder.

Dr. A.K. Dwivedi has stated in his evidence that in his opinion, the cause of death is asphyxia due to compression of the neck. He has also stated that before her death, injury No.1 could also be possible by pressing the mouth. The tongue was clinched between

teeth and swelling was there which could come by compressing the neck. He has also stated that during the time intercourse by compressing the neck of the deceased, the injury No.1 is also possible and due to this injury, the death is also possible. He has also prepared the post-mortem report i.e. Ex.Ka-8.

20. P.W.10 is Jauhari Lal S.O., who is the I.O. of the case, has stated that on 11.3.1989, he was posted as S.O. Joshimath and on that day, a written FIR Ex.Ka-1 was lodged by Basant Lal, on the basis of which a Chik FIR was prepared by Constable Clerk Balbir Singh, i.e. Ex.Ka-9. The entry was made in the G.D. by the Constable Clerk Balbir Singh and the entry was made at 7:35 A.M. On 11.3.1989, the copy of G.D. is Ex.Ka-10. After that, he had reached on the place of occurrence along with the complainant and he has inspected the place of occurrence. He has also recorded the statement of Basant Lal and prepared the site plan of the place of occurrence, i.e. Ex.Ka-11. The Panch was appointed on the spot and the Panchayatnama was prepared, i.e. Ex.Ka-12. Thereafter, he has recorded the statements of the witnesses. The 'Peticoat' of the deceased was also taken into possession and a Fard was prepared, that Fard is Ex.Ka-13. On the spot, he also took the statements of Roshan Lal and Prema Devi. On 12.3.1989, he searched appellant Jagdish Lal but he could not get him and on that day, he has recorded the statements of Jamni Mistri and Santosh. On 13.3.1989, Chatru Lal had met him in the Check Post of Joshimath. Then Chatru Lal had given his statement and he has recorded the same. On 14.3.1989, appellant Jagdish Lal was arrested by him and arrest memo was prepared on the spot and he has interrogated Jagdish who has confessed his guilt, that copy of G.D. is Ex.Ka-14 and appellant Jagdish was medically examined on the same day by Dr.S.D. Uniyal, Incharge Medical Officer, PHC, Joshimath, the medical report is Ex.Ka-7. Then the appellant was taken on the place of occurrence and on his pointing out, a map was prepared, that is Ex.Ka-15. On 12.3.1989, complainant Basant Lal had given an NCR No.58/87 dated 17.6.1987, the same was lodged by deceased against Jagdish Lal in the police station

and a Fard was prepared on the spot, i.e. Ex.Ka-16. On 15.3.1989, he had received the post-mortem report and other papers and on 16.3.1989, he had submitted a report to CJM, Gopeshwar for recording the statements of the witnesses u/s 164 Cr.P.C. He has investigated the case up to 22.5.1989 and thereafter he was transferred. He has also proved the Photo Lash i.e. Ex.Ka-17; Specimen of seal Ex.Ka-18; letter written to SMO, Gopeshwar, Chamoli Ex.Ka-19 and letter written to CMO, District Hospital, Gopeshwar, Chamoli Ex.Ka-20. He has also prepared a Fard of clothes of the deceased Chandri Devi and other articles on 11.3.1989, i.e. Ex.Ka-21. The underwear of appellant Jagdish was taken on 14.3.989 in his possession and a recovery memo was prepared i.e. Ex.Ka-22. He has also filed the photographs, which he had taken on the place of occurrence during the investigation, negatives and photographs are Ex.1 to Ex.8.

21. P.W.11 is Nakli Singh who has stated that on 30.05.1989, he was the S.O. in Joshimath. He has started the investigation on that day. On 8.6.1989, he has made an enquiry from Santu Lal, Laxman and on 20.6.1989, he has interrogated Nanku and Laxman Singh and on the same day, he has also made an enquiry from Amrawati Devi. On 22.6.1989, he had filed charge sheet against the appellant, i.e. Ex.Ka-24. He has also stated that NCR No.58/87 dated 17.6.1987 which was also lodged by the deceased Chandri Devi against appellant Jagdish Lal, for that he has taken the original G.D. and a copy of the same he has filed, i.e. Ex.Ka-25. The duplicate copy of the NCR is on the record which he has proved, i.e. Ex.Ka-26.

22. Thereafter, the statement of appellant was recorded u/s 313 Cr.P.C. who had denied the allegations made against him. He has stated that he has been falsely implicated due to the enmity and he has further stated that deceased Chandri Devi had gone to the house of Basant Lal before 4 days of the incident. Basant Lal had told him that he has come to call his mother. He and Chandri

Devi had a good relation and they were living like husband and wife.

23. Sri Rakesh Thapliyal, learned counsel for the appellant has submitted that on the basis of the evidence discussed above, there is no offence made out against the appellant u/s 302/376 IPC and the prosecution has failed to prove the above said offence against the appellant.

24. The present case relates to the circumstantial evidence. Where the case rests upon the circumstantial evidence, such evidence must satisfy the following tests: -

1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established'
2. Those circumstances should be of a definite tendency unerringly pointing out towards guilty of the accused;
3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be consistent with his innocence.

25. In the present case, there are following circumstances which complete the chain and prove the guilt of the accused: -

1. The extra-judicial confession made by appellant Jagdish Lal on 12.3.1989 before P.W.4 Chatru Singh who is his cousin brother.
2. Appellant Jagdish Lal has visited the house of complainant Basant Lal where Chandri Devi was living at the time of her death along with his son at 10-11 P.M. on 10.3.1989.

3. On 10.3.1989 at 9 o'clock, appellant Jagdish Lal was seen going towards the house of Smt. Chandri Devi by P.W.7 Jamni Lal.
4. On 10.3.1989 at about 10:00 P.M., appellant Jagdish Lal was seen going upwards towards the house of Smt. Chandri Devi by P.W.3 Santosh Lal.
5. As per the medical evidence, injury on the cheek of the appellant was caused by the nails and the death of the deceased caused by compressing the neck is also one of the circumstances which goes against the appellant to prove his involvement in the said crime.
6. The deceased Chandri Devi was living before her death with appellant Jagdish Lal for last 4-5 years as his husband had died before 8-10 years of the incident and from this relationship of the appellant with deceased Chandri Devi, a girl namely Babita was born who was about 4 years old at the time of her murder.
7. Deceased Chandri Devi had asked appellant Jagdish Lal to keep her in his house as his wife but he refused for the reason that his mother and father were not agreed.
8. On 10.3.1989 in the night, when appellant Jagdish visited the house of the deceased Chandri Devi, after sometime she has gone for easiness and in the morning, her dead body was recovered from some distance of her house near the apple tree and in the morning, Roshan Lal P.W.2 had seen the dead body of his mother and informed his brother Basant Lal P.W.1 who had gone to another village Ravigram in his in-laws house. When Basant Lal reached on the spot, he has lodged the FIR Ex.Ka-1 in the P.S. Joshimath.

26. From the evidence discussed above, it is well established that on the date of the incident i.e. 10.3.1989, Smt. Chandri Devi was living in village Dauril Tok along with his sons Basant Lal and Roshan Lal and on the date of the incident, Basant Lal had gone to

his in-laws house in village Ravigram which is in some distance from the village Dauril Tok. Appellant Jagdish Lal had come to house of Smt. Chandri Devi on 10.3.1989 at about 10:00 P.M. and he asked from Roshan Lal about Basant Lal and then Roshan Lal told him that Basant Lal had gone to his in-laws house in village Ravigram. After sometime, Smt. Chandri Devi had gone for the easiness and in the morning, her dead body was recovered in some distance of her house near the apple tree. Then Roshan Lal had seen the dead body of her mother in the morning when he was searching his mother and when he had seen the dead body, then he had gone to Basant Lal to inform him about the incident and then Basant Lal had come to his village Dauril Tok and after seeing dead body of his mother, he has lodged the FIR in police station, Joshimath at 7:35 A.M. on 11.3.1989. On the basis of this FIR, the Investigating Officer had reached on the spot and had started the investigation. On 12.3.1989, appellant Jagdish has also given his extra-judicial confession to P.W.4 Chatru Lal and he has told him that while doing intercourse with Smt. Chandri Devi, she insisted to keep her in his house and when she asked to cry, then he had pressed the neck of Smt. Chandri Devi. On 14.3.1989, appellant Jagdish was arrested by the police.

27. The first circumstance against the appellant Jagdish is his extra-judicial confession. This statement was made by him voluntarily with his consent and without any fear on 12.3.1989 before P.W.4 Chatru Lal, who is his cousin brother. P.W.4 Chatru Lal has stated that on 12.3.1989, Jagdish Lal had met him in the field near the way going towards Fauji. Then Jagdish Lal had told him that he has committed a mistake. He had told him that on 10.3.1989, Chandri Devi had met him near the waterfall and deceased Chandri Devi had told to meet her after taking dinner in the night. He had met with Roshan Lal in his house on 10.3.1989 at 10:00 P.M. and he told him that Basant Lal had gone to his in-laws house and Chandri Devi was there. Jagdish had also told that after that, he had gone from that place and Chandri Devi had come near the apple tree. He had further informed him that he did

sexual intercourse with her. During that period, deceased Chandri Devi had asked him that she had delivered a girl by him and the she asked her to keep her in his house. Then Jagdish had told him that his mother and father were refusing for it and he could not get her in his house. When Chandri Devi insisted for it and asked to cry, then during the intercourse, Jagdish had pressed the neck of Chandri Devi in order to escape from the crime committed by him. After that she became unconscious and thereafter she had died. Then he has run away from there. Jagdish had also requested him that police is searching for him and he had requested for his help. This circumstance also shows the involvement of the appellant in the commission of the above said crime. The trial court has held with regard to the extra-judicial confession as follows: -

“अतः बचाव पक्ष द्वारा दिया गया सुझाव मान्य नहीं है क्योंकि अभियुक्त जगदीश लाल, साक्षी चतुरु लाला का चचेरा भाई का रिस्ता है और करीब समान उम्र के होने से भी अभियुक्त का चतुरु से अपना बचाव करने के बारे में तथा घटना के बारे में बताया जाना कोई अस्वाभाविक बात नहीं है लेकिन फिर भी मैं इस साक्षी की इस प्रकार की साक्ष्य तथा अभियुक्त द्वारा दिये गये इस प्रकार की घटना के सम्बन्ध में स्वीकृति के बयान पर अधिक बल नहीं देता हूँ और मैं इस अभियुक्त की स्वीकृतिपूर्ण बयान को मूल साक्ष्य की श्रेणी में नहीं रखता हूँ और न मैं इसके अन्य साक्ष्य के सन्दर्भ में मान्य ठहराता हूँ।”

28. The above quoted findings recorded by the trial court are not consistent and the trial court has fell into error in not taking into account of the evidence of PW4 Chatru Lal and the extra-judicial confession made before him. In the case of **Nisar Khan Vs. State of Uttaranchal 2006(9) SCC 386**, the trial court convicted the accused persons under section 302 read with 149 IPC and in appeal, the High Court maintained the conviction and disbelieved the discovery of arms at the pointing out of accused immediately after the arrest. When the matter came up before the Hon'ble Apex Court, it has been held that the High Court fell in grave error by disbelieving the recovery memo.

29. Further, the learned Sessions Judge has not considered the statement given by the appellant as extra-judicial confession before P.W.4 Chatru Lal as main evidence. From the judgment referred above in the case of *Nisar Khan (Supra)*, it is clear that if the finding of the trial court is not as per the evidence, then it may

be set aside by the appellate court while deciding the appeal. From the evidence discussed above, we are of the view that the extra-judicial confession or the statement given by the appellant on 12.3.1989 before P.W.4 Chatru Lal was given voluntarily and we see no reason to disbelieve the evidence of P.W.4 Chatru Lal. There is no reason for P.W.4 Chatru Lal to falsely implicate the appellant without his being inimical to the appellant.

30. In the instant case, the conclusion arrived by the trial court was not correct. It is established from the evidence that P.W.4 Chatru Lal is the cousin of appellant and they are of the same age. It is natural that the appellant would have confessed his guilt before his cousin-P.W.4 Chatru Lal who is of the same age. The said extra judicial confession was made on 12.03.1989 before the incident and before the arrest of appellant. Thus, it cannot be held that there was no occasion to give an extra-judicial confession to P.W.4 Chatru Lal. The defence has not made any effective cross-examination of P.W.4 Chatru Lal with regard to the extra-judicial confession. It is well settled by the catena of decisions rendered by the Hon'ble Supreme Court that extra-judicial confession made even to a stranger cannot be eschewed from consideration, if it is found to have been truthful and voluntarily made before a person who has no reason to state falsely. In **Guru Singh Vs. State of Rajasthan 2001 SCC (Cri) 323**, the Hon'ble Supreme Court has held as follows: -

*"6. It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court of convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in **Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh 1954 Cri.L.J. 910** this Court again in **Maghar Singh Vs. State of Punjab 1975 SCC(Cri) 479** held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In **Narayan Singh Vs. State of M.P. 1985***

SCC(Cri) 460, this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In **Kishore Chand Vs. State of H.P. 1991 SCC (Cri) 172** this Court held that an unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized. To the same effect is the judgment in **Baldev Raj Vs. State of Haryana 1991 SCC(Cri) 659**. After referring to the judgment in **Piara Singh Vs. State of Punjab 1977 SCC (Cri) 614** this Court in **Madan Gopal Kakkad Vs. Naval Dubey 1992 SCC (Cri) 598** held that the extra-judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

The same view has also been followed in the latest decision of the Hon’ble Apex Court in **Ram Singh Vs. Sonia & others 2007 (3) SCC 1**. In the light of the enunciation of law as above, we have to examine as to whether the confession made by the appellant to P.W.4 Chatru Lal inspires confidence or not. Indisputably, the extra-judicial confession was made by the appellant to P.W.4 Chatru Lal prior to his arrest by the police and, therefore, question of it being made under any inducement, threat or promise by the police does not arise. Hence, the statement of P.W.4 Chatru Lal is trustworthy, reliable, believable, natural and truthful and the statement given by the appellant is also voluntary statement and the same is truthful. It is not disputed that the deceased Smt. Chandri Devi died in the intervening night of 10/11.03.1989. P.W.9 Dr.A.K. Dwivedi conducted the post-mortem of the deceased Smt. Chandri Devi. In opinion of the medical officer, the cause of

death is asphyxia due to compression of the neck. Hence, we hold that the extra judicial confession and the statement made by the appellant Jagdish Lal before P.W.4 Chatru Lal on 12.3.1989 is a voluntary statement.

31. The second circumstance against the appellant is that on 10.3.1989 at about 10:00 P.M., he was seen going towards the house of Smt. Chandri Devi which is also clear from the evidence of P.W.3 Santosh who has seen him going upwards towards his house in the night at about 10:00 P.M. He has stated in his evidence that on 10.3.1989 at about 10:00 P.M., he had come out from the house after hearing the barking of the dogs, then he saw that a person going upwards and he had identified that person as appellant Jagdish and Jagdish is his uncle. Another evidence P.W.7 Jamni Lal who has stated that on 10.3.1989, he had gone to the house of Santosh and then about 9:00 P.M., he had seen appellant Jagdish near the water pump. Then he had asked from Jagdish that where he was going in that late night. Jagdish had told him that he was going towards down. This witness had clearly stated in his evidence that the place where Jagdish had met him, from that place, his house is in the upwards and the house of deceased Chandri Devi was in the lower side from the water fall where Jagdish Lal was going. He was seen by these two witnesses on the date of the incident; at 10:00 P.M., he was seen by P.W.3 Santosh and at 9:00 P.M., P.W.7 Jamni Lal had seen him going towards the house of deceased Smt. Chandri Devi. This circumstance also goes against the appellant Jagdish Lal and proves his involvement in the said crime.

32. The third circumstance against the appellant is also the injury in his cheek in which the Dr. S.D. Uniyal has stated that the injuries on the person of appellant could be possible by nails. This circumstance also goes against the appellant for involvement of the commission of the above said crime. Further, the statement of Dr. A.K. Dwivedi who has conducted the post mortem also goes against the appellant. He has stated in his statement that

deceased Smt. Chandri Devi died during asphyxia due to the strangulation and he has stated that injury no.1 is possible by strangulation at the time of sexual intercourse.

33. The next circumstance against the appellant is the motive. Indisputably, deceased Smt. Chandri Devi was living with appellant Jagdish Lal before 5 years before her murder and a daughter Babita who was aged about 4 years at the time of incident, was born from this relationship and at the time of her death, deceased Smt. Chandri Devi was asking for the marriage or to keep her with him as a wife but he has refused him for the reason that Sri Mathura Lal, his father and Smt. Bindra, his mother were not agreed for it. This fact is clear from the evidence of P.W.4 Chatru Lal before whom, appellant Jagdish made extra judicial confession on 12.3.1989. He has stated in his evidence to Chatru Lal that his mother and father were refusing for it and he could not get her in his house. This fact is also supported by the evidence of P.W.1 Basant Lal. He has stated that Jagdish Lal was beating Chandri Devi and she has complained the same to Biraj Lal, one of the sons of Chandri Devi, then Biraj Lal had taken Chandri Devi from the house of Jagdish Lal to his house. This fact is also supported by the FIR Ex.Ka-25 dated 17.06.1987 which was lodged by deceased Smt. Chandra Devi against the appellant Jagdish Lal, his father Mathura Lal and his mother Smt. Bindra. Hence, motive is proved by the above-said evidence against the appellant.

34. The next circumstance against the appellant is that on 10.3.1989 i.e. on the date of occurrence, appellant Jagdish had come to the house of Smt. Chandri Devi in village Dauril Tok where he had asked from Roshan Lal, who was a minor of 11 years old, about his brother Basant Lal. Then he told him that Basant Lal had gone to the village Ravigram in his in-laws house and after that, deceased Smt. Chandri Devi had gone for the easiness and thereafter, her dead body was recovered in the morning near the apple tree. Then, Roshan Lal went to his brother Basant Lal who

had gone to his in-laws house at Village Ravigram. After that, Basant Lal along with his brother Roshan Lal came on the spot and he saw his mother lying dead. Then with some other people, he went to P.S. Joshimath which is 4-5 Kms. away from his house and after that, he dictated the FIR to Bijendra Lal and thereafter he has signed on it, i.e. Ex.Ka-1. This circumstance also goes against the appellant to show his involvement in the commission of the above said crime.

35. Further, the FIR lodged by P.W.1 Basant Lal is prompt as the Basant Lal was informed by his brother Roshan Lal P.W.2 in the morning at 6:00 A.M. in his in-laws house which is at some distance from his house at Village Dauril Tok. Then, Basant Lal reached on the spot and after seeing her mother dead, he immediately along with some other people went to police station which is 4-5 Kms. away from his house and at 7:35 A.M. on 11.3.1989, he has lodged the report of the incident at P.S. Joshimath. In this way, the FIR is very prompt and there is no chance of false implication.

36. From the evidence discussed above, it is proved that deceased Smt. Chandri Devi met with the appellant Jagdish Lal on 10.03.1989 near the waterfall and deceased Chandri Devi had told to meet her after taking dinner in the night. The appellant Jagdish Lal had also come in her house and after sometime, she has gone near the apple tree, where appellant has committed sexual intercourse with her consent. Thus, the sexual intercourse committed by appellant Jagdish Lal with Smt. Chandri Devi was with her consent as both of them had illicit relations from last five years and both were major. Smt. Chandri Devi was about 40 years of age and appellant Jagdish Lal was 25 years of age at the time of incident. For the above said reason, the sexual intercourse was committed with the consent of both the parties i.e. deceased Smt. Chandri Devi and the appellant. When Smt. Chandri Devi insisted him to keep her in his house and asked to cry, then the appellant

Jagdish Lal murdered her. Hence, on the basis of this evidence, the offence u/s 376 IPC is not made out against the appellant.

37. For the above said evidence and on the basis of the judgments quoted above, the extra judicial confession and the last seen evidence and the other circumstances discussed above, it is well established and proved that he is the only appellant who has committed the murder of the deceased Smt. Chandri Devi. From the circumstances narrated above, the only inference is that the guilt of the appellant is cogent and firmly established against the appellant and the circumstances are of a definite tendency unerringly pointing towards the guilt of the appellant and taking the circumstances cumulatively, it forms a chain so complete that there is no escape from the conclusion that within all human probabilities, the crime was committed by the appellant and none else.

38. On the basis of the evidence discussed above, we are of the considered view that the prosecution has been able to prove its case against the appellant u/s 302 IPC. However, the offence u/s 376 IPC is not made out against the appellant for the reasons mentioned above. Therefore, we confirm the conviction and sentence of the appellant u/s 302 IPC for life term imprisonment and set aside the conviction and sentence of the appellant u/s 376 IPC for 10 years.

39. For the reasons recorded above, the appeal is accordingly partly allowed. The judgment and order dated 04.09.1990 passed by trial court stands modified accordingly.

(Dharam Veer, J.)

(J.C.S. Rawat, J.)

June 29, 2007

Rajeev Dang