

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

Case: **Cr. Appeal No.02/2012 c/w Confirmation  
No.07/2012**

Date of Decision: 17.04.2013

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**Brij Lal S/o Kantha Ram Vs. State of Jammu & Kashmir  
R/o Indralla, Teh. Thathri  
District Doda**

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Coram:

***Hon'ble Mr. Justice Virender Singh, Judge  
Hon'ble Mr. Justice Bansi Lal Bhat, Judge***

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Appearing counsel:

For appellant(s) : Mr. B. S. Soodan, Advocate.  
For respondent(s): Mr. H. A. Siddiqui, AAG.

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- i) Whether approved for reporting  
in Press/Journal/Media : Yes/No
  - ii) Whether to be reported in  
Digest/Journal : Yes/No
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**Per: Virender Singh-J**

1. This appeal has been preferred against the judgment dated 27.12.2011 of learned Additional Sessions Judge, Doda, whereby appellant-Brij Lal S/o Kantha Ram R/o Indralla, Tehsil Thathri, District Doda, (hereinafter to be referred to as '**accused**') stands convicted and sentenced for the offences punishable under Sections 302 RPC and 309 RPC; the sentence awarded under Section 302 RPC is life imprisonment and also a fine of Rs.10,000/- and for Section 309 RPC simple imprisonment for six months. Both the sentences, however, have been ordered to run concurrently.

The sentence of life imprisonment awarded is kept subject to the confirmation of this Court in terms of Section 374 Cr.P.C. Hence, **Confirmation No.07/2012**.

2. The accused is a retired Army personnel and was working as Village Defence Committee (VDC) member of village Indralla, as such, allotted one Rifle .303 and some ammunition by the District Administration. The allegation against him is that he has allegedly killed his wife **Prakasho Devi** with the said Rifle on the night of 06.11.2002 in his house, where his other family members were also staying.

3. **Brief facts of the present case are:-**

On 07.11.2002, **PW Suresh Kumar**- the son of the accused, lodged a written report **EXPW-SK** in Police Station Thathri to the effect that he is resident of Indralla, Tehsil Thathri, District Doda, and posted as SPO with STF Thathri. **PW Amar Chand** S/o Chotu Ram, his maternal uncle and **PW Girdhari Lal** S/o Nek Singh, his paternal uncle, passed a message to him that his mother Prakasho Devi was shot dead by the accused during the previous night. It is then alleged that the accused used to beat up his mother. On this, written report a case FIR No.28/2002 came to be registered in Police Station Thathri for the offence punishable under Section 302 RPC and investigation commenced.

**PW Swami Raj SI** inspected the spot, prepared the Site Plan, took dead body of Prakasho Devi in police custody and got the autopsy conducted. He also lifted samples of plain and blood stained clay, seized one .303 Rifle, one bed sheet and clothes. All these articles were sealed. Three (3) empty cartridges were also lifted from the spot. Sixty seven (67) live cartridges of 7.62 mm from the trunk of the accused were also taken into custody. Some documents pertaining to a case filed by Prakasho Devi in the Court at Thathri were also seized. Since the accused had also received injury near his chest from where the blood was oozing out, he was medically examined. The blood stained sweater worn by him was also taken into possession.

During the investigation, it revealed that the accused, who had retired as Naib Subedar from Army in year 1982, was keeping strained relations with his wife and was not providing any maintenance to her and the children, which constrained the deceased to file a petition at Thathri Court in the month of August, 2002. The date fixed in the said case was 07.11.2002 and the accused in order to avoid the consequences of the petition filed by the deceased, on the night of 06-07.11.2002 shot her dead. At that relevant time, her two children namely **PWs Shakuntla Devi & Mst. Reena Devi**, were sleeping in a room on a different floor and **PWs**

**Naresh Kumar** and **Ravi Kumar** (minors) in the same room.

It further revealed that after killing his wife, the accused tried to kill himself also and fired two shots from the same Rifle, one hit the wall whereas the other hit him below the chest on his rib, as such, he too sustained injury. On this count, 309 RPC was also added along with 302 RPC by the police while submitting the challan against him. He was, accordingly, charged for the commission of offences punishable under Sections 302 & 309 RPC.

4. The prosecution has produced as many as twenty (20) witnesses namely **PWs Suresh Kumar, Shakuntla Devi, Mst. Reena Devi, Naresh Kumar, Ravi Kumar, Ram Nath, Swami Raj S/o Prem Chand, Swami Raj S/o Kantha Ram, Prabhu Lal, Rajinder Kumar, Amar Chand, Girdhari Lal, Ashok Kumar, Aijaz Ahmed, Farooq Ahmed, Chuni Lal, Dr. Imtiyaz Ahmed, Swami Raj SI- the Investigating Officer, S. H. Bhukhari-Ballistic Expert, K. K. Raina- Scientific Officer.**

5. It needs to be mentioned here that there are three prosecution witnesses by the name of Swami Raj. **PW-7 Swami Raj** is the son of **Prem Chand**. **PW-8 Swami Raj S/o Kantha Ram** is a VDC member and on the night of occurrence, he was on duty in the village near the place of

occurrence. **PW-18 Swami Raj SI** is the **Investigating Officer** of the present case.

6. It would also be pertinent to mention here that the prosecution evidence was closed by the order of the Court, but subsequently Public Prosecutor moved an application under Section 540 Cr.P.C. for summoning S.H. Bhukhari-Ballistic Expert & K. K. Raina-Scientific officer from FSL. The said application was allowed, as such, the aforesaid two witnesses were produced.

7. The accused, on the incriminating evidence being put to him in terms of Section 342 Cr.P.C., denied all the allegations and pleaded his false implication in this case at the instance of his in-laws. His specific case is that it was firing from outside by certain militants due to which the deceased died and he also sustained bullet injury. He further pleaded that he too had fired from his Rifle. He, however, admitted the seizure of cartridges and the Rifle from the spot. In his defence, the accused produced one **DW Gulab Chand**, who stated that on the night intervening 06-07.11.2002 at about 12.01 O' Clock, a cross-firing took place between Village Defence Committee members and militants, and the shots hit accused house also. He further stated that on the day of occurrence he had stayed in the house of the accused over night and after hearing the noise of cross-firing, he came from

upper storey down to lower storey and found that the accused had received a bullet injury, whereas his wife had died. He further stated that 3<sup>rd</sup> /4<sup>th</sup> day of the occurrence, he had seen the outer walls of the accused bearing bullet marks.

8. The accused now stands convicted and sentenced as stated hereinabove.

9. We have heard Mr. Soodan appearing for the appellant and Mr. Siddiqui representing the State. We have also rescanned the prosecution evidence from the trial Court record.

**Submissions by appellant's counsel**

10. Mr. Soodan submits that the prosecution on every vital aspect has made an attempt to improve its case, but has miserably failed to connect the accused with the commission of alleged offence. Learned counsel submits that so far as 'dying declaration' is concerned, the learned trial Court has already disbelieved the case of the prosecution finding it to be not proved on account of certain vital flaws crept in it, but on circumstantial evidence also, the prosecution case is on very slippery footing as none of the planks of evidence on which the prosecution is banking upon is proved individually nor it completes the chain when taken collectively so as to hold beyond any shadow of reasonable doubt that it is the accused only who is the perpetrator of crime.

11. In order to strengthen his submissions, Mr. Soodan submits that the investigation carried out in this case is of such a shoddy character that it does not even link the Rifle allegedly recovered from the accused with three cartridges allegedly recovered from the place of occurrence during investigation. He submits that if one looks at the Rough Site Plan **EXPW-SR/I** prepared at the spot or even the recovery memo **EXPW-SR/II** vide which the gun and three cartridges were recovered by SI Swami Raj, the Rifle allegedly recovered is of .303 whereas the empty cartridges recovered are of 7.62 mm; whereas the cartridges sent to the Ballistic Expert are of different caliber i.e. .303. This goes to show that the empty cartridges were changed before it reached the office of FSL Expert on 21.11.2002, which are otherwise dispatched with considerable delay i.e. after two weeks of the alleged occurrence.

12. According to Mr. Soodan, even in the report of Tehsildar (Executive Magistrate) dated 16.11.2002, there is no reference to the caliber of empty cartridges or for that matter even the live cartridges allegedly recovered from the place of occurrence, whereas all this material was produced before him for resealing before it was sent to the Ballistic Expert. Learned counsel submits that in this eventuality, the prosecution should have produced the Ballistic Expert in the

witness box as he was the only person, who could clarify this aspect, which otherwise turns out to be a major or a vital defect in the investigation, which is going to change the entire complexion of the prosecution case.

13. Learned counsel then submits that no doubt the accused has admitted his presence in the room along with his wife on the fateful day, but has also tendered his explanation as to how his wife and he received the injuries as it was a case of militant attack upon them, in which he also retaliated. Learned counsel submitted that the plea of the accused is strengthened from the evidence available on record as on the eastern side of the wall of the room where the alleged occurrence had taken place, SI Swami Raj-the Investigation Officer noticed certain marks of fire shots but did not bother to prepare a separate sketch in this regard. He then submits that the Investigating Officer when stepped into the witness box has also categorically stated that there were marks of bullet fire on the wooden strip of the window (in common parlance 'Khirki') and this window is fixed on the outer side of the room near the main door. From this all, the learned counsel wants to develop that some one had fired from outside and the accused had also released certain shots from his gun from inside, otherwise, there could not be any mark of fire shot(s) on the wooden strip of the outer window.



According to the learned counsel, this fully strengthens the plea of the accused, which he has taken in his statement recorded under Section 342 Cr.P.C. and further proved it by producing defence witness namely DW Gulab Chand.

14. Mr. Soodan, in order to demolish the case of the prosecution, has also taken the Court to the evidence of Doctor of autopsy who has stated that the deceased has received two injuries by two different fire arms.

15. In support of his submissions, Mr. Soodan relies upon the following judgments:-

- i) **‘Sukhwant Singh Versus State of Punjab’** reported in **1995 AIR (SC) 1601**, and
- ii) **‘Gotam Rai Versus State of Jammu and Kashmir’** reported in **1998 KLJ 608**.

16. Mr. Soodan, thus, submits that on one hand the prosecution is miserably failing to prove its case beyond any doubt, whereas on the other hand, the accused has totally discharged his burden to give cogent and reliable explanation vis-à-vis the fact as to how his wife died and he also sustained injury in firing by the militants from outside and thus, prays for acquittal of the accused by setting aside the impugned judgment of conviction and sentence.

#### **Submissions by State Counsel**

17. Per contra, Mr. Siddiqui learned AAG submitted that may be the case of the prosecution has been disbelieved by

the trial Court on 'oral dying declaration' allegedly made by the deceased immediately after the occurrence and rightly so as he is not in a position to support that aspect under the given set of circumstances, nonetheless, the case of the prosecution is otherwise proved beyond reasonable doubt on other set of evidence available on record and duly proved also to the hilt.

18. Mr. Siddiqui submits that so far as the presence of the witnesses who are from the family of the accused is concerned, it cannot be just doubted and this aspect, in fact, has been admitted also by the accused himself as he was present in the room along with his wife. Therefore, the only aspect which needs appreciation is, whether it was an attack upon the accused side from outside by some one or it is the accused only who had killed his wife and then made an attempt to kill himself also. Learned State counsel submits that if the prosecution evidence is tested along with medical evidence available on record, there remains no doubt that it could not be a case of firing from outside.

19. Mr. Siddiqui further submits that the investigation in this case, no doubt, is not carried out as it should have been done being a case of fire arm injury, but this, at the most, can be termed as failure on the part of the Investigating Officer and any omission on his part may not be considered as a

ground for acquitting the accused against whom the prosecution, otherwise, has been able to put forth cogent evidence to prove the charges. Learned State Counsel, thus, prays for dismissal of the appeal and confirmation of the conviction and the sentence already slapped upon the accused.

**Our discussion:-**

20. The prosecution case is hinging upon two sets of evidence viz; i) 'Oral Dying Declaration', and ii) Circumstantial Evidence. With regard to Oral Dying Declaration, the prosecution has produced PWs Shakuntla Devi and Mst. Reena Devi, who have stated that after hearing the noise of gun shots, they came out of their room and immediately reached at the scene of occurrence and in the meantime their brothers PWs Naresh Kumar and Ravi Kumar, who were also sleeping in the same room also, woke up and they found that the deceased was struggling on her bed and on seeing them, she disclosed that their father (accused) had fired at her. These witnesses stated that immediately thereafter their mother died. The learned trial Court, however, has not believed the 'oral dying declaration' allegedly made by the deceased immediately after the occurrence, finding certain basic flaws in it; the vital flaw noticed by the learned trial Court is that aforesaid PWs have deposed with regard to the

‘dying declaration’ for the first time in the Court during the course of trial and there is no reference to it in the statement recorded by the police under Section 161 Cr.P.C. coupled with the fact that it was never the case set up by the prosecution that the deceased had ever made any ‘oral dying declaration’ with respect to cause of her death. The learned trial Court, in order to disbelieve the ‘oral dying declaration’ has also referred to the medical evidence wherein the doctor has stated that the gun shot wound of entry on the left side of the occipital region and a wound of exit on the left side of temporal region with fracture of temporal bone etc., had ruptured and exposed brain substance, therefore, the declarant could not utter any word, the death being instant.

21. The learned trial Court, however, has believed the prosecution case vis-à-vis other planks of evidence produced by it in order to prove its case. We will also confine ourselves in discussing those planks of evidence only in our judgment.

Those are as under:-

- i) Motive with the accused in killing his wife on account of filing of a petition against him for grant of maintenance in the Court at Thathri coupled with the fact that the deceased had also filed a petition for grant of interim maintenance having its**

**relevance with regard to the next date before the Court i.e. 07.11.2002;**

**ii) The occurrence has allegedly taken place in the room where the deceased and the accused were staying and the admission to this effect by the accused himself.**

**iii) Immediately after the occurrence, accused was seen standing and holding a rifle in his hand and the same subsequently recovered from his room coupled with the fact that three empty cartridges are also seized from the spot, which fact is also admitted by the accused in his statement recorded under Section 342 Cr.P.C.**

**iii) FSL report and the Medical evidence placed on record to prove the charge against the accused.**

**iv) Since the offence has allegedly been committed in secrecy inside the room, as such, in view of Section 106 of Indian Evidence Act, the burden is on the accused to give cogent and reliable explanation, non-explanation thereof to be taken as additional link in the chain of circumstantial evidence.**

**v) The defence plea taken by the accused is whether probable or not.**

**vi) Whether the investigation of the present case is defective and if so, the effect thereof on the prosecution case.**

22. So far as **PW Suresh Kumar**, the first informant, is concerned, he has proved the contents of the FIR. Besides this, he has also admitted that on reaching his house, he enquired from his sisters Shakuntla Devi and Mst. Reena Devi about the incident and they disclosed that during the night of occurrence, they were sleeping in the upper storey and when heard the sound of gun fire, they came down and found that their mother had received gun fire and was struggling for her life. These two witnesses also disclosed to their brother PW Suresh Kumar that the accused had also received gun shot and his clothes were in the pool of blood. PW Suresh Kumar also talks about the fact that the accused under the influence of liquor had thrashed his mother twice prior to the present occurrence. He also talks of a case filed for grant of maintenance at Thathri Court against the accused by his mother, in which, the next date fixed was 07.11.2002.

23. So far as **PWs Shakuntla Devi and Mst. Reena Devi**, the daughters of the accused and **PWs Naresh Kumar and Ravi Kumar**, the sons of the accused, are concerned, their presence in the house is not disputed by the accused as they are his children. These witnesses have otherwise not seen the

accused actually firing from his gun. PW Shakuntla Devi and Reena Devi were on a different floor of the house and PWs Naresh Kumar and Ravi Kumar, although were sleeping in the same room in which the accused and their mother were sleeping, but they woke up after hearing the fire sound and saw the accused holding a Rifle and standing by the side of their mother. This virtually is the evidence of PWs Shakuntla Devi and Reena Devi also, who came from upstairs and opened the door and started weeping after seeking the condition of their mother.

24. Let us now advert to the motive part. To prove the factum of motive, the prosecution has placed on record certified copies of the maintenance petition as well as orders passed by the learned Magistrate Thathri. The seizure memos with regard to the same has also been proved vide **EXPW-AK**. It has also come in the statement of PW Suresh Kumar, the son of the deceased, PWs Shakuntla Devi and Reena Devi that their parents were quarrelling for many years and their maternal uncle was pursuing the case. The occurrence has taken place on the night intervening 06-07.11.2002 and the next date at Thathri Court was 07.11.2002 only. From all this, it is established beyond any doubt that Prakasho Devi-deceased and the accused were not having good terms, rather developed strained relations over maintenance and this was

the motive in the bosom of the accused. In the village, it is commonly noticed that despite having strained relation, the husband and the wife stay under one roof and the case at hand is of that type. Even otherwise, there is no denial from the side of the accused that he and the deceased were not staying in the same house or for that matter in the room where the occurrence has actually taken place. Viewed thus, the motive in the bosom of the accused as projected by the prosecution coupled with the fact that the aforesaid four children saw the accused standing by the side of the cot of his wife (deceased) holding rifle in his hand immediately after the occurrence, turn out to be very material circumstances pointing towards the accused.

25. No doubt, we have noticed certain discrepancies in the statement of aforesaid witnesses when appreciated along with the statement of other witnesses and even the Investigating Officer with regard to placement of gun as to whether it was in the hands of the accused or lying on one side of the room, but in our considered view, that aspect would pale into insignificance in the light of other material evidence available on record.

26. Having said so, we, without entering into the minutest details of the prosecution case so as to make our judgment unnecessarily weighty, would like to straightway appreciate



the case at hand vis-à-vis the defence taken by the accused in his statement recorded under Section 342 Cr.P.C; lifting of three empty cartridges and recovery of .303 Rifle provided to him as VDC member.

27. In order to absolve himself of the charge of Section 302 RPC and for that matter even Section 309 RPC, the plea of defence taken by the accused is that the shots were fired from outside by some militants due to which the deceased had died and he too had sustained bullet injury. He further stated that he had also opened fire from inside in defence. Being that the fact position in the case at hand, where the deceased and the accused admittedly in one room only, one found dead and the other (accused) injured, Section 106 of the Evidence Act shall be attracted, which contemplates such facts, which are such as to be within the knowledge of the accused only and nobody else, there shall be a corresponding burden on the accused to give reliable explanation. Non convincing explanation thereof, by itself, would be taken as one of the very vital circumstances pointing towards the guilt of the accused. The present case is to be appreciated in that context also on the basis of the evidence available on record.

28. We have appreciated the prosecution case vis-à-vis the medical evidence available on record and the attack launched by Mr. Soodan, learned counsel for the accused, in order to

demolish the case of the prosecution finding some weaknesses in the statement of PW Dr. Syed Imtiyaz Ahmed, who conducted the post mortem on the dead body of the deceased and examined the accused as well. Dr. Ahmed when stepped into the witness box stated that during the course of autopsy, he found two injuries on the person of the deceased; Injury No.1 was a gun shot wound of entry on the left side of the occipital region and a wound of exit on left side of temporal region with fracture of temporal bone. In his cross examination, he has stated that the lacerated wound on the Injury No.2 has also been caused by gun shot and according to him there were two gun shot injuries noticed on the person of the deceased as the lacerated wound was smaller in size than the first one. Mr. Soodan, taking advantage from the cross examination of the doctor, in fact, made an attempt to show that there were two different weapons used in this case.

29. We do not find any force in the submissions advanced by Mr. Soodan. It appears that the doctor of autopsy has made a very casual statement in this regard. Injury No.1, which admittedly, is a gun shot wound was found on the left occipital region. It was a wound of entry and there was also wound of exit on the left side of the temporal region fracturing the temporal bone leading into massive haemorrhage, inasmuch as it ruptured the membrane and the brain

substances. Injury No.2, which is a lacerated wound on the left side of the forehead, has also resulted into fracture of temporal bone. There appears to be no separate exit wound on the forehead or any wound of entry on the forehead. This, in fact, is the after effect of the gun shot injury found on the left side of the occipital region, creating a wound of exit and fracturing the temporal region. It appears to us that the doctor of autopsy has confused himself by stating in the cross examination that Injury No.2, which is lacerated wound on the left side of the forehead is by another gun describing it to be smaller in size than the first one, whereas in the original post mortem report, he does not give any description with regard to the size of the injury. In fact, it is a case of one shot only and that too from a very close range causing grave damage to the skull as the bullet entered from occipital area and made its exit after fracturing the temporal bone. This injury is not possible from a shot released from outside as in that situation, there could be damage to that extent only. We, therefore, are not going to dislodge the prosecution case on this count so as to lend any advantage to the plea of defence taken by the accused that it was a case of cross firing by the militants from outside and, accordingly, reject the arguments advanced by Mr. Soodan in this regard.

30. No doubt, we do find that the investigation of the present case is somewhat defective as admittedly the Investigating Officer has not seized the bullet(s) from the place of occurrence so as to establish that the deceased had died due to bullet of Rifle .303 seized from the spot and that the accused also sustained injury because of the shot released from the said Rifle only. We are also conscious of the fact that the Investigating Officer, when stepped into the witness box, has also gone to state in his cross examination that when he visited the spot of occurrence, he noticed certain marks of fire shots outside the house. Undoubtedly, these aspects can be said to be flaws in the investigation, but cannot be made a ground for dislodging the prosecution case in its totality. Of course, it would certainly have been better for the prosecution, if such steps were taken by the Investigating Officer. However, what is stated by the Investigating Officer in his cross-examination vis-à-vis the fact of noticing certain marks of gun shot on the wooden planks of window, but he did not bother to indicate the same in the rough site plan, cannot be just acceptable to us as we cannot appreciate as to how the investigating officer could remember this fact even after 3 ½ years of the occurrence. It appears that either he was too casual in making the statement or it was designed one. It puts us on guards.

31. We have noticed that with regard to cartridges, there is an ambiguity in the Recovery Memo, Rough Site Plan prepared at the spot by the Investigating Officer and the Ballistic Report placed on record inasmuch as the Recovery Memo and Rough Site Plan talk of lifting of 7.62 mm empty cartridges, whereas in the report of Ballistic Expert, he had received 7.62 mm cartridges empty or live and based his opinion on that aspect only. No doubt, this aspect could be made clear by the prosecution as in a case of fire arm injury, such type of defect should not usually occur. But it depends upon an individual case and in the case at hand, in our considered view, it would not demolish the prosecution case out-rightly, more so when the accused after admitting his presence at the scene is not in a position to establish that his fire arm is not used. He rather admits that he too released the shots from his Rifle. It appears to the Court that the Investigating Officer of this case had been very negligent in conducting the investigation.

32. It is well settled that in the case of defective investigation, the Court has to be on the guards in evaluating the evidence, but it would not be proper to acquit the accused solely on account of defects crept therein as it would tantamount playing into the hands of investigating officer. In case **‘C. Muniappan and others Vs. State of Tamil Nadu’**

reported in **(2010) 3 Supreme Court Cases (Cri) 1402**, the Hon'ble Supreme Court has stated in para 55 as under:-

**“ .....The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. ....”**

33. According to the Ballistic report **EXPW-SH**, in his opinion, the spent cartridges have been found fired through the Rifle .303, which was found in working condition at the time of examination. The accused, may be, in a different context in order to project his defence has also admitted that he had released shots from his .303 Rifle. As stated above, the empties seized from the spot are also taken into possession in his presence and those are linked with his rifle. This material fact would certainly weigh in our mind when noticed and linked with other planks of evidence to hold that the prosecution case is proved.

34. To be fair to Mr. Soodan, the judgments cited by him, in our view, in the present set of circumstances, would be of no advantage to the accused.

35. In order to strengthen his defence, the accused has produced **DW Gulab Chand**, who happens to be a chance

witness as he had thought of staying over night in the house of the accused, when at about 12.01 O' Clock in the night, heard the sound of cross-firing between the VDC members and the militants. He further stated that he was sleeping in the upper storey of the house and when he came down on the lower storey, he found that the accused had sustained bullet injury whereas his wife had also died. In this regard, the evidence of VDC members would assume relevance. They have been produced as prosecution witnesses and have not whispered even a single word about the alleged cross-firing.

**PW-8 Swami Raj** (not Swami Raj IO), a VDC member, when stepped into the witness box has stated that on the night of 06-07.11.2002, he along with his brother was on VDC duty and on hearing sound of gun fire and crying of the children, they had gone towards the house of the accused where the wife of the accused was lying in the pool of blood and the accused was also there in the pool of blood. Even a suggestion has not been put to the VDC member(s) by the defence that cross-firing had taken place between the militants and the VDC members. Viewed thus, it can be comfortably held that on the fateful night, there was no cross firing between the militants and VDC members, and once it is ruled out, the defence of the accused as put forth, turns out to be an afterthought. Under normal circumstances, the

falsity of defence would not give any leverage to the prosecution, if it is otherwise failing, but in a case at hand where the accused has admitted his presence in the room along with his wife at the time of occurrence and has also come up with a particular explanation of a fact which is especially within his knowledge, the burden of proving the said fact was upon him only and once it is not proved, we do not find any difficulty in arriving at an irresistible conclusion that it is the accused only, who has committed the murder of his wife on the night intervening 06-07.11.2002.

36. In our view, no other material plank of evidence has been left by us untouched.

**Conclusion:-**

37. After churning the entire prosecution case very minutely once again, in our considered view, the evidence on record very convincingly demonstrates that the accused is the perpetrator of alleged offence, who, on account of his strained relations with his wife (deceased) caused her death with the Rifle .303 provided to him as VDC member. It is also established to the hilt that he, on the fateful night after killing his wife, made an attempt to kill himself also by using the same Rifle, as such, has been rightly convicted by the learned trial Court for the commission of the offences punishable under Sections 302 RPC and 309 RPC. We, therefore, uphold



his conviction and sentence as already slapped upon him vide impugned judgment.

38. The net result is that **Cr. Appeal No.02/2012** filed by the appellant-accused is hereby dismissed. **Confirmation No.07/2012** also stands answered accordingly.

39. Registrar Judicial of this Wing is directed to convey the outcome of the instant appeal and the reference to the learned trial Court without any delay so that the sentence awarded to the accused after being confirmed by this Court is executed in terms of Section 374 Cr.P.C.

( Bansi Lal Bhat )      ( Virender Singh )  
Judge                              Judge

JAMMU  
17.04.2013  
\*Narinder\*

