

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

Cr. Appeal No. 74/2012  
CrMA Nos. 54/2013 & 106/2012  
c/w  
Confirm No. 23/2012

**Date of order: 13.06 .2014**

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Gian Singh & ors.                      Vs.                      State of J&K.

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**Coram:-**

**Mr. Justice Virender Singh, Judge  
Mr. Justice Bansi Lal Bhat, Judge.**

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Appearing counsel:

For the Appellant(s) : Mr. O. P. Thakur, Advocate.  
For the Respondent(s) : Mr. B. R. Chandan, Dy.AG.

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- i) Whether approved for reporting  
in Press/Journal/Media : Yes/No
- ii) Whether to be reported
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**PeBansi Lal Bhat J**

1. This appeal is directed against judgment dated 28.09.2012 convicting the appellants under Sections 302, 348 read with 34 of RPC and the order of sentence dated 29.09.2012 formulated by learned Sessions Judge Ramban in terms whereof appellants have been sentenced to imprisonment for life and fine of Rs.10,000/- ( Rupees Ten Thousand) for offence under Section 302/34 of RPC and rigorous imprisonment for a period of three years and a fine of Rs.1000/- (Rupees One Thousand) for commission of



offence under Section 348 of RPC. Substantive sentences have been directed to run concurrently. In default of payment of fine, the accused have been directed to undergo imprisonment for three months under Section 302 RPC and fifteen days under Section 348 of RPC. Confirmation Reference No. 23/2012 has been made by the learned Sessions Judge in terms of Section 374 of Cr.P.C. Conviction appeal and confirmation reference were heard together.

2. It is apt to refer to the facts leading to prosecution of appellants (hereinafter referred to as '**accused**') entailing their conviction and sentence.

3. On 19.09.2004 informant Dalip Singh walked into Police Station Ramban with PW(s)-Rano Devi, Ashu Devi and Babli Devi accompanying him. He lodged a written report alleging that on 18.09.2004 accused Gian Singh called his brother Bir Singh alias Munnu and took him along to the market; that Bir Singh did not return till late in the night; that at midnight his elder brother Chain Singh arrived there and informed that Gian Singh had taken Bir Singh to his house at **Fhalti** after accusing Bir Singh of having stolen Rs. 2300/- (Rupees Two Thousand Three Hundred); that accused Jasbir



Singh and Kasturi Lal were present there; that all the three accused had confined Bir Singh in a room and subjected Bir Singh to interrogation; that Bir Singh claimed to be innocent; that thereupon all the three accused brought out Bir Singh and tied him with a rope; that Gian Singh assaulted him with a stick while Jasbir Singh struck him with a *Tangru* (spade) causing injuries on his head and other vital parts of body with the intention of causing his death; that Bir Singh sustained critical injuries and succumbed to the same; that Gian Singh had recovered an amount of Rs.1400/- (Rupees Fourteen Hundred) from shoes worn by Bir Singh and made over the same to his son; and that the body of Bir Singh (hereinafter referred to as '**deceased**') was lying in the compound of Gian Singh.

4. Case under First Information Report (FIR) No. 94/2004 was registered for commission of offences under Section 302/348/34 of RPC. Police embarked upon investigation during the course of which dead body of deceased was seized, the site of occurrence and body of deceased were photographed, Fard-i-Surat-e- hal was prepared, injury report in respect of deceased was drawn up, plain and blood soaked



soil was lifted from the site and sealed, a pair of black shoes besides a plastic bag having blood stains and a rope were seized and sealed on spot, body of deceased was sent for Post Mortem examination, garments worn by deceased were seized and sealed, and after Post-Mortem of body of deceased, it was delivered to his relatives for last rites. Accused Gian Singh is said to have made a disclosure statement leading to recovery of a stick which was sealed on spot. Site-plan of place of recovery was drawn up and photographed. An amount of Rs. 1400/- (Rupees Fourteen Hundred) was recovered from personal search of accused Jasbir Singh. *Tangru*, used as weapon of offence, was recovered pursuant to Disclosure Statement made by accused Jasbir Singh. Site-plan of the place of recovery was drawn up and the seals were placed on Supurdnama. The seized articles were sent to FSI for chemical examination. After obtaining Post-Mortem Report, FSL Report and eliciting reply on a query from a Medical Expert, the investigation was concluded. It was found that on 18.09.2004 accused Jasbir Singh called the deceased at the instance of former's father. Accused Gian Singh and others brought him to Ramban



Market. In the evening deceased was taken to the home of Gian Singh where he was served with liquor. He was accused of having stolen cash amount of Rs. 2000/-. All the accused subjected the deceased to confinement in the house of Gian Sing and started interrogating him. The person of deceased was subjected to search. An amount of Rs.1400/- was recovered from the shoes of deceased. However, the deceased pleaded innocence. The accused removed him into the compound of the house, tied him with a rope and subjected him to physical violence. Accused Gian Singh is alleged to have struck the deceased with a *lathi* repeatedly while accused Jasbir Singh repeatedly assaulted him with a *Tangru* causing strikes on vital parts of his body. Accused Kasturi Lal was allegedly holding the deceased with a rope tied around his body. Deceased is said to have died in consequence of injuries sustained by him. It was alleged in the Charge-Sheet that on 18.09.2004 the three accused entered in to a conspiracy to teach a lesson to the deceased which ultimately culminated in his murder. Accused Gian Singh is alleged to be a habitual offender having criminal antecedents. Reference is made to cases registered under FIR



Nos. 127/1991, 20/1994 and 16/1997 against him. It is also alleged that accused Gian Singh was awarded seven years imprisonment in case registered under FIR No.117/1999 for offence under Section 302 of RPC. Accused Kasturi Lal is alleged to have been involved in a case of house-breaking and theft registered under FIR No.119/1999. Allegedly accused Gian Singh wanted to establish supremacy in the area and he considered the deceased as an impediment in his design. The investigation was concluded by filing Charge sheet against the accused for commission of offence under Section 302/348/34 of RPC.

5. After going through the committal proceedings conducted by learned Judicial Magistrate Ramban the case landed in the Court of Sessions where the accused pleaded not guilty to Charges framed against them for offence under Sections 302/348 read with 34 of RPC. The trial culminated in passing of judgment of conviction and order of sentence against the accused which have been impugned in the instant conviction appeal.

6. Resume of evidence adduced by prosecution at trial is summarized hereunder:-



**PW-1 Dalip Singh** who is also the informant and to whom the written report in regard to the alleged occurrence is attributed has not been examined at the trial.

**PW-2 Babli Devi** is the sister of deceased Bir Singh. She deposed that while she was asleep in her house, her brother Chain Singh cried that the accused were beating the deceased in their house. She claims to have rushed to the house of accused Gian Singh while being accompanied by Rano Devi, Dalip Singh and Ashu Devi. On their arrival in the compound of house of accused Gian Singh they found the deceased lying at the veranda of house in an injured state. He was breathing at that time. She enquired about the incident but the deceased was unable to speak. The accused were present on spot and it is because of their fear that the witnesses and others accompanying her escaped from the spot and lodged a verbal report at the Police Station in the morning. Police seized the body of deceased and got Post Mortem Examination conducted in Hospital. She further deposed that accused Gian



Singh had taken the deceased along from Ramban market and alleged that the deceased had stolen his money to the tune of Rs. 1400/-. On Cross-examination she stated that when she visited the market for treatment of her daughter in the hospital, she came across the deceased who was in the company of accused Gian Singh. She had talked to deceased in the shop of Narayan Singh. PW- Chain Singh was crying, while standing in the land, that the accused had committed murder of deceased. Nobody visited her house though some houses were located nearby. Electricity was not available in the house of accused. There was a dry *Nallah* separating her house from the houses of Chain Singh and Dalip Singh. Winter was about to set in. Deceased had not met him before going to market. He met her in the market and told her to ask other brothers to keep *Anardana* ready as he would be collecting the same in the evening. Deceased was accompanied by accused Gian Singh and Jasbir Singh at that time.

**PW 3 –Asho Devi** deposed that about three years back on a day at about 2.30 AM she heard a noise.



Accompanied by Babli Devi, Rano Devi and Dalip Singh, she rushed to the house of accused Gian Singh where they found the deceased was laying dead on a bed. They escaped from the spot and left for Police Station Ramban, where they reached in the morning. They again went on spot in the company of Police and found that ears of the deceased had been pulled (twisted) and there were injuries on his head and other parts of the body.

On cross-examination she stated that Chain Singh had narrated about the incident at 2.30 AM during night. Chain Singh is her brother-in-law. House of Gian Singh is at a distance of one kilometer from her house. When she reached on spot at night, there was none else other than the accused present on spot.

**PW-4 Rano Devi** wife of PW Chain Singh deposed that her husband Chain Singh had cried at night and on hearing his cries, she along with Babli Devi, Dalip Singh and Asho Devi ran towards the house of accused- Gian Singh, where they found deceased struggling for his life while lying on a bed. Babli Devi collapsed on



seeing the body of deceased. Then they escaped from there, and left for Police Station, Ramban where they reached in the morning. The deceased had sustained injuries on his head and his arm was fractured.

On cross-examination she stated that PW Babli Devi resides adjacent to her house. She had not seen the deceased moving with the accused. The house of accused was situated at a short distance from her house. There were about 10 houses lying in between. Babli Devi was her sister-in-law. Babli Devi was staying with her on the date of occurrence. There was no dispute regarding the land between the deceased and the accused. House of Gian Singh did not have an electricity connection. PW's 1 to 6 belonged to the same family. Accused were sitting in Veranda when the witness and her companions had reached there. Deceased lived at a short distance from her house. She had no knowledge about the dealings of deceased.

**PW-5 Chain Singh** is the brother of deceased-Bir Singh. He deposed that it was in the month of October, three years back, that accused Gian Singh had called the



deceased to his house. Later he saw the deceased in the company of accused in Ramban Town. At 7 PM he reached near the house of accused Gian Singh. All accused were present there. The deceased was also there. He found the accused leveling allegations of theft of cash amount of Rs. 2300/- by the deceased. The deceased, at the instance of accused Gian Singh, was tied with a rope while he was in a drunken state. At the instance of accused Gian Singh person of deceased was subjected to search which yielded a cash amount of Rupees three besides a cigarette packet. Accused Gian Singh started beating the deceased with a stick while deceased was pleading innocence. PW Paramjeet Singh was present on spot at that time. Accused did not allow PW Paramjeet Singh to go, but he made pretension of going to urinal and escaped from there. Witness claimed that the accused did not also allow him to leave the place. At 11 PM accused cut-off the electric wires and started beating the deceased. Accused Gian Singh was beating the deceased with a stick (*lathi*) while Kasturi Lal was assaulting him with a Spade (Tangru).



Accused locked the witness inside a room which was bolted from outside. However, he made good his escape through a window. He reached the house of Chairman Ghulam Nabi and called his name several times. But nobody came out from the house. Accused had chased him till there. The witness claimed that he rushed to his house after the accused had left and informed his family about the incident. His wife Rano Devi besides Dalip Singh, Jeevan Singh, Babli Devi, and Asho Devi accompanied him to the house of accused Gian Singh where they found the accused except Gian Singh who was hiding somewhere. They found that the rope, with which deceased was tied, had been untied and deceased had been laid on a bed. PWs Babli Devi, Rano Devi and Dalip Singh went to Police Station while others stayed back. At 4:00 AM Police arrived there. Accused Jasbir Singh and Kasturi Lal were arrested. Accused Gian Singh was found hiding in a heap of grass. He too was arrested. The deceased had expired in the meantime. His body was seized. Witness identified the



stick, *Tangru* (spade) and wearing apparel of the deceased.

On cross examination he stated that accused were his cousins. He had no animosity with the accused. He denied that he had animosity with Kasturi Lal in regard to land gifted to the accused by his in-laws. He denied that accused Gian Singh had filed an FIR regarding theft against him. None except him was there when the accused were beating the deceased. The deceased was an alcoholic but had not consumed alcohol with him at Ramban on that day. The deceased was on visiting terms with the accused. The deceased had no animosity with the accused. The witness claimed that he had made the statement before police on the very day of the incident. He had stated before police that he could not rescue his brother because accused were three in number. The deceased was in senses when accused were interrogating him. The witness denied the suggestion that the deceased had a fall from the roof of house of accused as he was drunk and that he died in consequence of fall. The witness also denied suggestion



that he was not on spot. His house was at a distance of 80 feet from the house of accused Gian Singh. He did not cry as he was frightened. Paramjeet Singh had escaped from the house of accused at 8:00 PM while witness himself escaped at 11:00 PM. Accused Kasturi Lal had no house to live in. He could not say as to how many times deceased was given strikes by the stick and the *Tangru* (spade). He could not escape earlier due to fear. The accused started subjecting the deceased to assaults from 11:00 PM. He had only called his family who accompanied him to the spot and after noticing body of deceased they went to Police Station. He had escaped through a window which had no grills. Deceased lived separately from him. Accused had purchased liquor from the liquor vend in his presence. When he met the deceased at Ramban, deceased had not told him that the accused were demanding Rs. 2300/- from him. Lambardar and Chowkidar had reached on spot with the police. Chairman Ghulam Nabi was not present in the village on that day. Police Station Ramban was at a distance of about 2 kms from



the place of occurrence. The deceased was wearing pant shirt besides shoes of No. 9. These articles were seized by the police when it reached on spot. The blood was splashed on earth at only one place. The witness claimed that he had gone to the house of accused on his own. He had left Ramban Town at 6 PM. Accused Kasturi Lal was with him. Ghulam Nabi resides near the house of accused Gian Singh.

**PW-6 Paramjeet Singh** deposed that on 18.09.2004 at 6.30 PM he visited the house of accused Gian Singh for purchasing vegetables. He found deceased-Bir Singh sitting with accused Gian Singh in Veranda of the house. Accused Gian Singh asked him to sit down but when he disclosed the purpose of his visit, accused Gian Singh asked him to collect vegetables from Jasbir Singh who was in the fields. While returning back he found that Chain Singh and Kasturi Lal were also there. The witness claimed that accused Gian Singh told him that deceased Bir Singh had committed theft in his house. The deceased denied such accusation and got up to leave the place. However, just after taking two steps,



deceased was about to fall. Accused Gian Singh caught hold of his arm while deceased wanted to lie down on the ground and he laid himself on floor of the compound. Accused Kasturi Lal wanted the person of deceased to be searched. Chain Singh searched the person of deceased. A currency note of rupees five hundred was recovered from one shoe of deceased while the other shoe yielded nine currency notes of rupees one hundred each. Deceased was under the influence of liquor. Witness had advised accused Gian Singh to settle the dispute amicably and then he left the place as it was getting dark.

On cross-examination he stated that deceased, being under the influence of liquor, was unconscious. Police had not recorded his statement. PW Chain Singh is an alcoholic. The witness stated that he could not say whether the deceased was killed or he had died a natural death. However the deceased was not subjected to assault in his presence. Chain Singh lived at a distance of about 2 kilometer from the house of accused



Gian Singh. He had not seen PW Chain Singh visiting the house of accused Gian Singh.

**PW-7 Nizam-ud-Din** deposed that on 18<sup>th</sup>/19<sup>th</sup> of September, 2004 he was celebrating wedding of his daughter. Police told him about the murder of deceased. He found body of the deceased lying in the Veranda of house of accused Gian Singh. The witness deposed about disclosure statement made by the accused Gian Singh which led to recovery of a stick. He testified to contents of disclosure memo Ext.P-7, seizure memo of body of the deceased marked as Ext. P 7/1, and Supurdnama in respect of a ring used as seal given to Lambardar Kishan Singh, marked as Ext.P-7/II, bearing his signatures.

On cross-examination he stated that he lived at a distance of 2-3 jareeb from the house of accused Gian Singh. He bore no animosity against the accused Gian Singh. Police has taken him along. The ring was placed on Supurdnama of Lambardar Kishan Singh. Accused Gian Singh was in custody at that time. The recovered stick was blood-stained on one end. Deceased had



injuries on his head. Accused Gian Singh was in hand-cuffs when he made disclosure statement. The witness admitted that he was an employee and had been convicted in a case of misappropriation against which he had filed appeal. Accused Gian Singh held land lying adjacent to his land. Accused had pointed out place from where the stick was recovered.

**PW-8 Waziru Ram** was the Chowkidar of village Maitra. He deposed that he had no knowledge in regard to the circumstances attending death of deceased. He supported the seizure memo regarding shoes of deceased marked as Ext-P-6, seizure memo of body of the deceased, Supurdnama in respect of ring marked as Ext-P-6/I and personal search-memo in respect of accused Gian Singh marked as Ext. p-6/II.

On cross-examination he stated that he was not aware of number of documents signed by him. He was an illiterate. Nothing was placed on his Supurdnama. Accused Gian Singh was arrested in his presence.

**PW-9 Sansar Singh** deposed about seizure of blood-stained soil and plain soil from the house of accused.



He testified to documents marked as Ext.P-8 and Ext.P-8/ I , in this regard.

On cross-examination he stated that the aforesaid seizure memos were prepared in his presence but same were not read over to him.

**PW-10 Baldev Singh** deposed that when he learnt about the murder of deceased, he went on spot where Police had already reached. He had signed the memo in regard to seizure of plain soil.

On cross-examination he stated that plain soil was seized in his presence but sample of blood-stained soil was not seized in his presence.

**PW-11 Liaqat Ali** deposed that on learning about murder of deceased he went to the house of accused Gian Singh where he found body of deceased lying on a bed. The accused Gian Singh was present there. Police had seized a rope and plastic shoes. The witness testified to contents of seizure-memo marked as Ext.P-6 bearing his signatures. He identified the seized articles.



On cross-examination he stated that shoes, rope and a bag were seized in his presence. Rope and shoes were lying besides the feet of the deceased.

**PW-12 Onkar Singh** is the brother of deceased. He deposed that he was not present in his house on the date of incident. When he reached home, he found police in the house of accused Gian Singh. When he reached there, he found body of the deceased lying on a bed. Witness testified to contents of memos relating to seizure of wearing apparel of the deceased, sample of blood taken during post-mortem examination, disclosure statement of accused Jasbir Singh, arrest-memo of Kasturi Lal and Supurdnama respectively marked as Ext.P-12/1, Ext.P-13, Ext.P-13/I, Ext.P.12/II, Ext.P-12/II, Ext.P-12/3, Ext.P-12/C , Ext.P-12/IV and mark 'A'.

On cross-examination he stated that when he reached on spot, he found injury on the arm of the deceased. *Tangru* (spade) and stick were not seized in his presence. Accused Kasturi Lal and Jasbir Singh had not made any statement to the police in his presence.



No recovery was affected at their instance in his presence. He had not met Jasbir Singh and deceased at Ramban on 18.09.2004. He denied that the deceased had already fractured his arm before occurrence.

**PW-13 Vijay Singh** deposed that deceased was his real brother. Police had shifted the body of the deceased to hospital for Post-mortem examination, whereafter it was delivered to the family for last rites. He supported the receipt marked as Ext.P-12. Police had recovered a stick and a small *Tangru* (spade) at the instance of the accused Gian Singh.

On cross-examination he stated that police had taken his signatures on a single document.

**PW-14 Krishan Singh** (Lumberdar) deposed that on 19<sup>th</sup> September, 2004 he learnt about the murder of deceased from a woman. He went to the house of accused Gian Singh and found body of the deceased lying in the compound of house of accused Gian Singh. Accused Gian Singh had been arrested and he made disclosure statement regarding concealment of a stick under the fore-wall of the house. He testified to the



contents of disclosure-memo marked as Ext.P-7 and recovery memo marked Ext.P-11.

On cross-examination he stated that he is an illiterate. Police had taken his signatures at the police station. The deceased was an alcoholic.

**PW-15 Jeewan Singh** deposed that on learning about the murder of the deceased he went on spot and found the body of the deceased, with his ear slashed, lying on a bed in the compound of accused Gian Singh. Dead Body of the deceased was shifted to Ramban Hospital for Post-mortem examination. Accused made disclosure statement regarding stick and *Tangru* (spade).The witness testified to disclosure statement marked as Ext.P-13 and recovery memo marked Exr.P-13/I.

On cross-examination he stated that his signatures were taken on the documents at the Police Station. Chain Singh had told him about the occurrence. However, he was not under the influence of liquor at that time. The witness stated that he is an illiterate and his statement was not read over to him.



**PW-16 Kapoor Singh** deposed that he had visited the house of accused Gian Singh. Body of deceased was lying on a bed in the compound of house of accused Gian Singh. Brother of deceased had told him that accused Gian Singh had committed murder of the deceased.

On cross-examination he stated that the deceased was his cousin. The deceased was an alcoholic. Deceased was on visiting terms with the accused.

**PW-17 Shib Saran** deposed that on 19.09.2004, PW Vijay Singh came to his house and informed about the murder of the deceased. He went to the house of accused Gian Singh where he found dead body of the deceased lying in the compound of the house of accused Gian Singh. Police had reached there and accused Gian Singh had been taken into custody. The witness testified to contents of memo relating to seizure of dead body of the deceased besides recovery and seizure memos.

On cross-examination he stated that when he reached on spot, around 200 people were present there.



Accused were not having any previous enmity with the deceased. Recovery-memo was not read over to him.

**PW-18 Amrit Varsha** deposed that on hearing about the murder of deceased, she went to the house of accused Gian Singh where she found body of the deceased lying in the compound of the house of accused Gian Singh. Sisters of the accused were crying that the accused Gian Singh and others had committed murder of the deceased.

On cross-examination she stated that she resides at a distance of 1 ½ km from the place of occurrence. She went on spot as the niece of deceased worked with her. She did not know as to who had committed murder of deceased.

**PW-19 Sajad Ahmad** is a photographer by profession. He deposed that police had taken him along to Maitra where he had clicked photographs in the compound of the house of accused Gian Singh. Negatives had been provided to police along with photographs.



On cross-examination he stated that he went on spot in the company of SHO and Deputy Superintendent of Police.

**PW-20 Patwari Abdul Jabar** was posted as Patwari Halqa Maitra Govindpura at that time. He deposed that he had issued extract of Khasra Girdawari regarding Khasra No. 430/67 of village Maitra at the instance of police. He testified to its contents. It was marked as Ext.P-14. He had also prepared site-plan of the house of accused Gian Singh marked as Ext.P-14/I. The house was located in the aforesaid survey number.

On cross-examination he stated that he had not witnessed the occurrence.

**PW-21 Mushtaq Ahmad Bhat** deposed that he received seven sealed packets marked as 'A to G' from Deputy Director FSL Jammu which had been forwarded to him for examination by SP Ramban. The packets, on opening, were found containing a sample of blood-stained soil, a sample of plain soil, Blood-stained polythene bag, a piece of gauze-cloth blood-stained, a torn shirt, a torn underwear stained with blood, a Blood-



stained wooden stick and a *Tangru* (spade) with wooden handle, respectively marked as Exhibit Nos. M-1120/04 to M-1127/04 by him.

On cross-examination he stated that he found human blood-stains on all exhibits except a sample of plain soil. Blood stains on exhibit Nos. M-1120/04, M-1123/04, M-1124/04, M-1125/04 were found to be of “A’ Group, while in other two exhibits Group of blood could not be determined. Witness issued certificate marked as Ext.P 12 regarding his opinion.

On cross-examination he stated that use of weapon could not be ruled out since the blood was of human origin.

**PW-22 Dr. O. P. Bhagat** deposed that on 19.09.2004 he conducted the post-mortem on the dead body of deceased-Bir Singh. He noticed injuries mentioned in post-mortem report. There was parietal bone fracture right side occipital bone fracture 4” abrasion on forehead, Left parietal side bone fracture, deep bone fracture, membranes rupture, Neck free side to side, Cervical bone fracture 3” and 4” level. In his opinion



death was caused due to internal cerebral artery hemorrhage, respiratory failure, cardiac arrest. Police elicited his opinion in regard to weapons of offence and he had opined that both weapons seized in the case and produced before him for his opinion could cause the injuries noticed in the post-mortem report. He proved the certificate in this regard which has been marked as Ext.P 15/I. He identified the weapon shown to him in the Court. In his opinion the injuries mentioned in post-mortem report were sufficient to cause death of the deceased.

On cross-examination he stated that the injuries noticed in postmortem report could be possible due to fall from a height of 8 or 10 feet. No sample was taken from the dead body of deceased. Duration of injuries was not mentioned in the post-mortem report. Weapons, when produced before him, were not blood-stained.

**PW-23- Inspector Anil Kumar Raina**, the then SHO Police Station Ramban, deposed that he had conducted the investigation in the case. During the course of investigation he prepared the site-plan, recovery



memos, seizure memos of the dead body of deceased, lifted blood-stained and plain soil from the site of crime, seized shoes which were blood-stained besides a plastic bag having blood stains and a rope from the spot. He also seized a blood-stained wearing apparel of the deceased and obtained sample of blood from the dead body. He recorded the disclosure statement of accused Gian Singh and Jasbir Singh respectively marked as Ext.P 7 and Ext. P-13 and recovered a stick and a *Tangru* (spade) in pursuance of disclosure statements made by Gian Singh and Jasbir Singh respectively. He prepared the personal search memo of accused, effected arrest of accused, prepared the imprints of weapon of offence and also prepared Supurdnama in respect of ring used as seal given on Supurdnama to Kishan Singh. Sample seal was given on Supurdnama to Waziru Ram. He prepared the receipt of body of deceased which was delivered to the relatives of the deceased for last rites. He also prepared Form No. 20 in respect of dead body of the deceased and obtained pos-mortem report and opinion of FSL.



He got the photographs of deceased clicked and examined the witnesses after registration of the case. He proved the FIR marked as Ext.P 23/1. The case was registered on the basis of a written report lodged by Dalip Singh. The investigation revealed commission of offences under Sections 302/34 RPC by the accused. He filed the charge-sheet against the accused.

On cross-examination he stated that the case was registered on the basis of a written report. He visited the scene of offence where body of the deceased was lying on the ground. Accused Gian Singh and Jasbir Singh had made disclosure statements immediately upon their arrest. He had examined the witnesses on spot.

That concludes the summary of evidence adduced at the trial by Prosecution.

Circumstances incriminating the accused, as emerging from the prosecution evidence, have been put to accused for their explanation. The accused pleaded false implication and denied having made any disclosure statements leading to recovery of weapons of offence. No specific plea was



adopted in defense by the accused and no evidence has been adduced in defense.

Heard rival sides and perused the record.

It is contended on behalf of the accused that the trial Court has failed to appreciate the evidence led by the prosecution in right perspective; that the trial Court has ignored the material contradictions in the testimonies of PW's Chain Singh and Paramjeet Singh cited as eye-witnesses as their testimonies contradict each other on material aspects of the case. It is pointed out that most of the prosecution witnesses are close relatives of the deceased and they have made improvements over their previous statements. It is, therefore, contended that in view of the prosecution witnesses deposition that the deceased was an alcoholic and the Expert Opinion of Doctor that injuries present on the person of the deceased could be possible due to fall, no case was made out against the accused.

*Per contra* Mr. Chandan, learned Dy. AG submitted that the testimonies of two eye-witnesses coupled with proof of circumstances in which the accused was called and taken to the house of accused Gian Singh, further supported by



recovery of body of the deceased from the house of the accused Gian Singh with fatal injuries inflicted on him which in the opinion of Medical Expert were sufficient to cause death and failure of accused to explain the incriminating circumstances emerging from the prosecution evidence were sufficient to record conviction of accused for offences under Sections 302/34 RPC.

We have gone through the record including the evidence of material witnesses very carefully and given our thoughtful consideration to the arguments advanced at the Bar.

The instant case, apart from direct evidence and recovery of weapons of offence pursuant to disclosure statements attributed to accused Gian Singh and Jasbir Singh, rests on the proof of a strong circumstance which, in the absence of an explanation from accused, would justify presuming of facts compatible only with culpability of accused for causing homicidal death of the deceased.

The first circumstance in this regard would be the calling of the deceased by accused Gian Singh to his house immediately before dead body of the deceased was recovered



from his house. PW Chain Singh is the real brother of the deceased. It is in his testimony that accused Gian Singh had called the deceased to his house. He claimed that he had seen the deceased in the company of accused in Ramban town. It is in his cross-examination that accused had purchased liquor from the liquor vend in his presence. He further claimed that from Ramban market he had gone to the house of accused. Accused Kasturi Lal was with him. Witness claims to have seen the deceased in the house of accused Gian Singh. All the accused were present there and they were alleging commission of theft of Rs. 2300/- by deceased. PW Chain Singh claimed that he had left Ramban market at 6:00 PM and noticed presence of deceased in the house of accused Gian Singh at 7:00 PM. PW Babli Devi is the sister of deceased. She claimed that the accused Gian Singh had taken the deceased along from Ramban market. It is in her cross-examination that she had met the deceased when she visited the market. They had some conversation in the shop of Narayan Singh. PW Babli Devi claims that she had taken her infant daughter to hospital. She admitted that the deceased had not previously told her that he was going to Ramban



market but when she went to hospital with her daughter, she came across the deceased in the market where deceased told her to tell another brother to keep the stock of Anardana ready as he would be coming home in the evening. She claims that accused Gian Singh and Jasbir Singh were accompanying the deceased at that time. It was 11:00 AM. The testimony of this witness clearly fits in with the version of PW Chain Singh who claimed that accused Kasturi Lal was in his company when he went back from Ramban market and landed in the house of accused Gian Singh where he found deceased sitting with accused Gian Singh and Jasbir Singh.

This also finds reflection in FIR marked as Ext.P-23/1 which has been lodged on the basis of a written report filed by Dalip Singh- real brother of the deceased. The testimonies of these witnesses have not been assailed in regard to factum of deceased being called and taken to the house of Gian Singh from Ramban market on 18.09.2004. Ext. P/7/I is the seizure-memo relating to dead body of deceased. PWs' Nizam-ud-din and Shib Saran besides Inspector Anil Kumar Raina have proved the same which establishes that the body



of deceased was seized from the compound of house of accused Gian Singh immediately after registration of case. There is overwhelming evidence on record to establish that the dead body of deceased was recovered from the compound of house of the accused Gian Singh and then shifted to Ramban Hospital for post-mortem examination. The veracity of prosecution witnesses on this vital aspect of the case goes without challenge.

PW Dr. O. P. Bhagat has proved the post-mortem report Ext.P-15. He noticed multiple injuries on various parts of body of the deceased which include parietal bone fracture, occipital bone fracture 4" abrasion on forehead, left parietal side bone fracture and deep bone fracture. He also noticed neck free side to side besides cervical bone fracture 3<sup>rd</sup> and 4<sup>th</sup> level. In his opinion death was caused due to internal cerebral artery hemorrhage, respiratory failure, cardiac arrest. The testimony of doctor established that the injuries sustained by the deceased were sufficient in ordinary course of nature to cause his death. The effect of his testimony is that the deceased is proved to have died an unnatural death, the death



being caused in consequence of injuries found on vital parts of the body including head of the deceased.

The evidence brought on record by the prosecution establishes following circumstances:-

- i) that the accused Gian Singh had called the deceased to his house. The deceased was taken along by accused Gian Singh and Jasbir Singh from Ramban market on 18.09.2004 in the evening;
- ii) that PW Chain Singh noticed the deceased sitting in the company of accused Gian Singh and Jasbir Singh in the house of accused Gian Singh, while on his way to his house from Ramban market;
- iii) that the body of deceased with multiple injuries was found lying in the compound of accused Gian Singh and recovered from there by the Police on 19.09.2004;
- iv) that the deceased died on account of serious injuries sustained on vital parts of body including head.



The accused have neither assailed the prosecution evidence establishing the aforesaid circumstances nor raised any plea in defense to explain the circumstances attending upon the death of deceased in the premises of accused Gian Singh. In these circumstances, when the accused are not forthcoming with an explanation to explain the incriminating circumstances regarding cause of death of the deceased, Court is justified in presuming existence of facts which is incompatible with the innocence of accused. In the given circumstances it was for the accused to come up with an explanation regarding the circumstances in which fatal injuries were sustained by the deceased while he was staying in the company of accused in the house of accused Gian Singh. Since the facts attending upon the death of deceased would be only within the special knowledge of accused, burden of offering a reasonable explanation lies on them. It is so because the circumstances indicated hereinabove may point towards their culpability. The absence of an explanation from the accused in regard to such circumstances or a false explanation on their behalf may not justify guilt, but the same



in itself establishes circumstances which may turn the scales against them.

In *Amit alias Ammu Vs. State of Maharashtra* reported in AIR 2003 SC 3131 the Hon'ble Apex Court, while dealing with the aspect of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death with no explanation given by accused in regard to circumstances in which the victim suffered death, relying upon a judgment rendered by it in *Mohibur Rahman and Another Vs. State of Assam* reported in (2002) 6 SCC 715 held:-

*“The circumstance of last seen does not, by itself, necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. In the decision relied upon it has been observed that there may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.”*

The Hon'ble Apex Court, dealing with the aspect of recovery of dead body of the deceased from the rented room of accused, held in *“Rajendra Kumar Vs. State of Rajasthan”* reported in AIR 2003, Supreme Court 3196:-

*“Based on this evidence, we find that Vimla had visited the room occupied by the appellant on 18<sup>th</sup>*



*December 1994, was found dead in the same room on 20<sup>th</sup> morning though her coming again on 19<sup>th</sup> was not seen by anybody. The fact remains that as per the evidence of P.W.3 the appellant and other accused were in occupation of that room on the 19<sup>th</sup> December, 1994 but immediately after the recovery of the body none of them was traceable and no explanation whatsoever has come from any one of these accused including the appellant how and in what manner they left the room or how and in what manner the dead body of Vimla was found in that room. It has also come in evidence which is admitted that appellant had his own house in Sriganganagar. If so, appellant has not given any explanation why he came to occupy that room. Bearing in mind the fact that Vimla had visited the room in the company of appellant and A-2 on 18.12.1994, we can presume that the appellant was acquainted with her hence there was an obligation on the part of appellant to explain how her body came to be in the room because accused were in the exclusive possession of the room. In the absence of any such explanation from the appellant, we think the Courts below were justified in concluding that the appellant was involved in the murder of Vimla.”*

Now coming to the reappraisal of evidence, be it seen that prosecution relied upon direct evidence and recovery of weapon of offence in pursuance to disclosure statement attributed to accused Gian Singh and Jasbir Singh. In so far as the direct evidence is concerned, it is Chain Singh who claimed to have met the deceased in the company of accused in Ramban market as he deposed that while on way back to his home he visited the house of accused Gian Singh where he found deceased sitting in the company of accused. According to his account the accused were alleging



commission of theft of Rs. 2300/- by the deceased. It is in his testimony that the deceased was drunk and at the instance of accused Gian Singh, deceased was tied to a bed with a rope by other accused. He claimed that the personal search of deceased had yielded a cash amount of three rupee and a cigarette packet. Accused Gian Singh started beating the deceased with a stick while deceased was pleading innocence. It is in his testimony that PW Paramjeet Singh was present there, but he made good his escape on the pretext of going to urinal as the accused would not let him go. The witness claimed that while accused Gian Singh was beating the deceased with a stick, accused Kasturi Lal was hitting him with a *Tangru* (spade). The witness claimed that he was locked in a room, but he escaped through a window. He claims to have repeatedly called Gh. Nabi, but there was no response from his house. Then he went to his house and informed his family. Dalip Singh, Jeevan Singh, Babli Devi, Asho Devi and Rano Devi came along with him to the house of accused Gian Singh, where they found the deceased lying on a wooden bed. He claimed that Babli Devi, Rano Devi and Dalip Singh had gone to police station. Police arrived there at



4:00 AM and arrested the accused. Witness has been subjected to lengthy cross-examination, wherein he has stated that none other than him and the accused were present in the house of Gian Singh when deceased was subjected to assault. He admitted that there was no previous animosity between the deceased and the accused. He claimed that though the deceased was drunk when accused were interrogating him, but he was in senses. He refuted the suggestion put to him in the cross-examination that deceased had a fall from roof top of the house of accused Gian Singh on account of being under the influence of liquor and died in consequence of injuries sustained due to fall. According to his account PW Paramjeet Singh had left the house of accused at 8:00 PM while he himself managed his escape at 11:00 PM. It is in his cross-examination that the deceased was subjected to physical violence at 11:00 PM. The cross examination of this witness would further reveal that he had left Ramban at 6:00 PM. He was accompanied by accused Kasturi Lal and he had reached the house of accused Gian Singh at 7:00 PM. He claimed that the deceased was tied with a wooden bed after being accusing of theft and accused Gian Singh started



beating him with a stick while PW Paramjeet Singh was present on spot. On a close look at his testimony it emerges that interrogation of deceased had started immediately after PW Chain Singh reached the house of accused Gian Singh at 7:00 PM.

PW Paramjeet Singh is said to have made good his escape at 8:00 PM, while the deceased was subjected to assault by accused Gian Singh, and Kasturi Lal at 11:00 PM after the accused cut off electric wires. Appraisal of the testimony of PW Chain Singh from this angle would exclude the presence of PW Paramjeet Singh when the deceased was subjected to physical violence by the accused at 11 PM. Looking for corroboration from the testimony of Paramjeet Singh, it comes to fore that PW Paramjeet Singh has come up with a version that on 18.09.2004 he went to the house of accused Gian Singh at 6.30 PM for purchasing vegetables. Accused Gian Singh was sitting in the Verandah of the house with deceased. On enquiry by the witness, accused Gian Singh told him that Jasbir Singh is working in the fields. The witness claims to have purchased vegetables from accused-Jasbir Singh. On returning from the fields he found



PW Chain Singh and accused Kasturi Lal also sitting in the Verandah of the house of accused Gian Singh. He claimed that accused Gian Singh had told him that the deceased had committed theft which was seriously resented by the deceased who got up to leave, but was about to fall just after taking two steps when accused Gian Singh caught hold of his arm. The witness claimed that PW Chain Singh had searched the person of deceased at the instance of accused Kasturi Lal and recovered cash amount of Rs. 500/- from one shoe and nine currency notes of Rs. 100/- each from other shoe of the deceased. He also claimed that the deceased was under the influence of liquor. The witness further claimed that he had advised the accused Gian Singh to settle the dispute amicably and then he left for his house. Cross-examination of this witness reveals that PW Chain Singh was a drunkard. He admitted that deceased was not subjected to physical violence in his presence. He claimed that he had not seen PW Chain Singh reaching the house of Gian Singh, but Chain Singh was there when he returned after purchasing vegetables. His cross-examination further reveals that five houses intervened between his house and the house of



accused Gian Singh. Testimony of PW Paramjeet Singh has not been assailed in so far as his presence on spot is concerned. It is nowhere suggested in his cross-examination that the witness has been planted. In absence of his testimony being assailed and it not being shown that PW Paramjeet Singh had a motive to falsely implicate the accused, his testimony has to be accepted. From his account it appears that witness reached the house of accused Gian Singh at about 6.30 PM. He was told that accused Jasbir Singh is working in the fields. He went there and purchased vegetables. He had seen deceased sitting in the company of accused Gian Singh in the Veranda of house of accused Gian Singh when he reached there to get vegetables. However, he found PW Chain Singh and accused Kasturi Lal also there when he returned from the fields after purchasing vegetables. This satisfactorily established presence of Chain Singh in the house of accused Gian Singh at the relevant point of time. However, PW Paramjeet Singh has not supported the version of PW Chain Singh to the extent of the deceased being tied with a rope to a wooden bed and being subjected to beating with a stick by accused Gian Singh though PW Paramjeet



Singh has stated in unambiguous terms that accused Gian Singh had alleged commission of theft by the deceased and search of shoes of deceased yielded cash amount of Rs.1400/- . It is thus clear that testimony of PW Paramjeet Singh corroborates the version of PW Chain Singh only as regards his presence in the house of accused Gian Singh at about 7:00 PM; that the deceased was sitting with accused Gian Singh and Gian Singh had alleged commission of theft by him. Testimony of PW Paramjeet Singh is of no assistance beyond proof of these facts.

PW Chain Singh claimed that while at 11:00 PM accused started beating the deceased after cutting off electric wires, he was pushed inside a room which was bolted from outside by the accused. He claimed that he had made good his escape through the window and when his frantic cries did not evoke any response from the near by house of Ghulam Nabi, he rushed to his house and informed his family. According to his account Dalip Singh, Jeevan Singh, Babli Devi and Asho Devi besides his wife Rano Devi joined him and all of them went to the house of accused Gian Singh where they found the deceased lying on a wooden cot. It is in



his testimony that accused Gian Singh had concealed his presence while other accused were on spot. He claimed that Babli Devi, Rano Devi and Dalip Singh left for Ramban to inform the police while others stayed back. The testimony of PW Chain Singh would thus exclude the presence of PWs' Dalip Singh, Jeevan Singh, Babli Devi, Asho Devi and Rano Devi from the scene of occurrence when the deceased was subjected to physical violence. PW Jeevan Singh deposed that he learnt about the occurrence on the following day at 7:00 PM. He claimed to have derived knowledge from PW Chain Singh whom he met in the morning. Thus he excluded his presence from the scene of offence at the time of alleged occurrence. PW Rano Devi is the wife of PW Chain Singh. She has corroborated the version of PW Chain Singh. It is in her deposition that on hearing the cries of her husband she along with Babli Devi, Dalip Singh and Asho Devi rushed to the house of accused Gian Singh where they found the deceased lying on the bed and battling for life. She claimed that Babli Devi had fainted on noticing the condition of deceased. Thereafter she alongwith Dalip Singh and Babli



Devi left for Ramban to inform the police. She too has not seen the accused assaulting and beating the deceased.

PW Asho Devi claimed that on hearing a noise, she alongwith Babli Devi, Rano Devi and Dalip Singh rushed to the house of accused Gian Singh where they noticed the deceased lying on a bed. She also claimed to have accompanied others to police station. It is in her testimony that PW Chain Singh had informed her and others at 2.30 AM in the night about the occurrence. It is apparently clear that the witness has not seen the deceased being subjected to beating or assault by the accused. PW Babli Devi is the sister of deceased. She also claimed to have woken up on hearing the cries of PW Chain Singh at night. It is in her testimony that she alongwith Rano Devi, Dalip Singh and Asho Devi went to the house of accused where they found the deceased lying in injured condition on the Verandah. According to her account, the condition of deceased was critical and he did not respond when she enquired about the incident. However the witnesses had to leave the place fearing for their lives as the accused were around. Her deposition also reveals that the wife of accused Gian Singh was holding a lamp in her hand



when the witness approached the deceased, but the witnesses had to leave the place as the accused tried to surround them. The wife of accused Kasturi Lal was related to her as her sister's daughter (niece). PW Dalip Singh has not been examined at the trial. Testimonies of these witnesses corroborate the version of PW Chain Singh to the extent of their being attracted to the site of occurrence on hearing the cries of PW Chain Singh, but they have not seen the accused hurting or giving strikes to the deceased. However, they found the deceased lying on the Verandah of accused Gian Singh with critical injuries. Thus it is a foregone conclusion that PW Chain Singh is the only eye witness.

It is well settled that where the prosecution case rests on the testimony of sole eye- witness, the same must be wholly reliable. This statement of law has been further elaborated in judgment reported in AIR 1991 SC 1735. It was laid down that where the prosecution case rests on sole testimony of an eye-witness, same should be wholly reliable. However, it does not mean that each and every type of infirmity or minor discrepancy would render the evidence of such witness unreliable. The credibility of the witness should be tested



with reference to the quality of his evidence which must be above board, unblemished and beyond suspicion. The testimony of solitary eye-witness must impress the Court as being natural, fully truthful and convincing. Such testimony must inspire confidence of such a degree that the Court finds no hesitation in recording the conviction solely on his uncorroborated testimony. This exposition of law was enunciated by the Hon'ble Apex Court in ***Thimoepa Chandappa vs. State of Karnataka*** reported in (2006) 11 SCC 323. In ***Ria Singh and ors. Vs State of Punjab*** reported in AIR 1965 SC 328 the Hon'ble Apex Court held:-

“Evidence of an eye witness who is a near relative of the victim should be closely scrutinized but no corroboration is necessary for acceptance of his evidence”

The Hon'ble Apex Court reiterated this legal position in ***State of Rajasthan vs. Om Parkash*** reported in 2007 (12) SCC 381 as follows:-

“The deposition of a solitary witness who is also related to the deceased can be relied on without corroboration, if the evidence is cogent and not shaken by the defense and same can be the basis for conviction of the accused.”



The Hon'ble Apex Court reiterated this legal position in *Jarnail Singh vs. State of Punjab* reported in 2009 (1) Supreme 224 as under:-

“Conviction could be based on the sole testimony of a solitary witness provided his presence at the place of occurrence was natural and his testimony should be strong, reliable and free from any blemish.”

Testimony of the sole eye-witness Chain Singh, whose presence in the house of accused Gian Singh at the relevant time is established by the testimony of independent witness Paramjeet Singh and corroborated by PW's Jeevan Singh, Babli Devi, Asho Devi and Rano Devi, is found to be natural, truthful and capable of faith being reposed therein. He has no axe to grind. Being the brother of deceased he cannot be expected to spare the real culprits and rope in the innocent. No motive for false implication is either attributed to him. No infirmity is pointed out by the accused to justify discarding of his testimony. His evidence establishes culpability of accused for causing homicidal death of deceased and the same is found acceptable.

Prosecution further relied upon the disclosure statements made by the accused during the course of investigation leading to recovery of weapons of offence at their instance. Ext. P-7 is the disclosure statement attributed to accused-Gian Singh. Same has been proved by PW Nizam-ud-din who lived in neighborhood of accused Gian Singh. He also deposed in regard to recovery of a stick at the instance of



accused Gian Singh who led the police party to the place of its recovery. Witness has stated in unambiguous terms that accused Gian Singh was in handcuffs when he made the disclosure statement. PW Krishan Singh –Lumberdar who visited the house of accused Gian Singh after coming to know about the murder of deceased claims that accused Gian Singh had made disclosure statement in his presence and undertaken to effect its recovery from beneath the wall of the house. He has proved the disclosure memo Ext.P-7 and the recovery memo Ext.P-11. PW Shib Saran who too claimed to have visited the house of accused Gian Singh after learning about the murder of deceased from Vijay Singh - brother of the deceased, has also supported the recovery of seized stick. PWs' Onkar Singh and Jeevan Singh have deposed in regard to disclosure statement made by accused Jasbir Singh leading to recovery of a *Tangru* (spade) at his instance from the bottom of his house. They have testified to contents of disclosure memo Ext.P-13 and recovery memo Ext.P-13/1 in this regard. In absence of testimonies of these witnesses having been assailed in cross-examination by imputing any motive for false implication to them, their testimonies cannot



be discarded. It is, thus, established that the stick and *Tangru* (spade) used as weapons of offence by accused Gian Singh and Jasbir Singh respectively were recovered at their instance, only they having the exclusive knowledge in regard to concealment of these weapon of offences. There is not even a faint suggestion put to this witness that these articles were planted by the prosecution witnesses to falsely implicate the accused. It has to be borne in mind that place of occurrence is the house of accused Gian Singh which lies at a distance from the house of deceased and prosecution witnesses belonging to his family. The crime was committed away from public gaze in the house of accused Gian Singh and weapons of offences were recovered at the instance of accused Gian Singh and his son accused-Jasbir Singh from beneath the house site of accused Gian Singh.

Prosecution has adduced evidence to prove the FSL Report Ext. P-21, according to which human blood stains were found on the seized stick and *Tangru* (spade), but the blood group could not be determined. Dr. O. P. Bhagat, who conducted the Postmortem examination on the body of the deceased found Parietal bone fracture right side occipital



bone fracture 4'' abrasion on forehead, left parietal side bone fracture, deep bone fracture, membranes ruptured, Neck free side to side, Cervical bone fracture 3rd and 4<sup>th</sup> level, 2 to 7 ribs fracture in addition to multiple injuries on various parts of the body. In his opinion death was caused due to internal cerebral artery hemorrhage, respiratory failure and cardiac arrest. He proved the postmortem report Ext.P-15. In his opinion both weapons i.e. Stick (Lathi) and *Tangru* (spade) produced before him could have caused the injuries mentioned in the postmortem certificate. He proved Ext.P-15/1 in this regard and identified the seized weapons bearing mark 1 and 2. The injuries mentioned in the postmortem report, in his opinion, were sufficient to cause death of the deceased.

The recovery of weapon of offences pursuant to disclosure of accused Gian Singh and Jasbir Singh read together with the report of Serologist, who noticed human blood on the weapons and the opinion of medical expert establish that these weapons could have caused the injuries noticed on the person of deceased, such injuries being sufficient in the ordinary course of nature to cause death.



Burden of proof resting upon prosecution to establish complicity of accused by linking them with the crime on the basis of information emanating in regard to concealment of weapons of offence stands discharged with subsequent confirmation of the discovered fact by recovery of these articles at the instance of the accused. Testimonies of other witnesses examined at the trial relate to proof of FIR marked Ext. P-23/1 on the basis of written report filed by Dalip Singh, site plan Ext.P-23, custody memo Ext. P-7/1 regarding dead body of the deceased, seizure memo relating to blood stained soil Ext.P-8, Plain soil marked Ext.P-8/1, seizure of rope, a bag and a pair of shoes from the site of occurrence marked Ext. P-6, seizure of clothes of deceased Ext.P-12, seizure of blood sample from the deceased Ext.P-12/1, disclosure statements of accused Gian Singh and Jasbir Singh, recovery memos, site plans of places of recovery, personal search memo, arrest memo of accused, impression of seizure of weapons of offence, extract of revenue record with site plan, receipt of dead body, postmortem report and the query put by I.O. to Medical Expert and other related documents which have been proved by I.O. and other



witnesses. Inquest report recording factum of deceased having died an unnatural death with multiple injuries apparently caused with a stick and a sharp edged weapon and the mode of proof relied upon by prosecution having been discharged, it is established that the death of deceased was caused by all the accused with common intention while accused Gian Singh and Jasbir Singh inflicted injuries upon him with the stick and *Tangru* (spade).

Now coming to the nature of offence committed by accused, it be seen that the deceased was taken along by accused to the house of accused Gian Singh, alleged to have stolen money of accused and subjected to assault with the help of a stick and a *Tangru* (Spade) which resulted in causing of fatal injuries. Having regard for the eye witness account of Chain Singh corroborated by other witnesses, testimony of Medical Expert and the report of Serologist and failure of accused to account for death of deceased in the house of accused-Gain Singh coupled with recovery of body of deceased with multiple injuries on the body, there can be no hesitation in arriving at the conclusion that the accused shared common intention to beat and hit the deceased to an



extent that he confessed his guilt in regard to accusation of theft. It is significant to notice that in FIR causing of injuries is not at all attributed to accused Kasturi Lal but the sole eye witness PW Chain Singh has attributed assault to him by deposing that he was armed with a *Tangru* (Spade) and he used the same in inflicting injuries on the person of deceased. In view of recovery of *Tangru* (Spade) at the instance of accused Jasbir Singh pursuant to his disclosure statement proved at the trial, it is difficult to attach any credit to the version of PW Chain Singh to the extent of role attributed to accused Kasturi Lal in the incident, though the evidence establishes it beyond doubt that he was present in the house of accused Gian Singh at the time of incident and shared common intention by inflicting injuries on the person of deceased which were sufficient in the ordinary courses of nature to cause his death. The testimony of Dr. O. P. Bhagat who proved the postmortem report established sustaining of parietal bone fracture, occipital bone fracture, deep bone fracture, cervical bone fracture, among others by deceased leading to cerebular-artery hemorrhage, respiratory failure and cardiac arrest. He opined that the seized Lathi and *Tangru*



(Spade) could have caused injuries noticed on the body of deceased. Having regard for the multiple fractures and nature of injuries sustained by the deceased on vital parts of the body and bearing in mind the fact that the accused had no motive for committing murder of deceased and the deceased sustained injuries while being subjected to assault perhaps as a measure of chastisement for the alleged theft of money in the house of accused, it can be safely held that the accused had no intention to cause death of deceased by inflicting injuries on his person but had the knowledge that by inflicting such injuries they were likely to cause death of the deceased.

Learned counsel for the appellants placed reliance upon the judgment of Hon'ble Apex Court titled *Dalip Singh and others v State of Haryana*, reported in AIR 1993 SC 2302 to buttress his argument that the accused could not be held guilty of offence punishable under Section 302 RPC. In the aforesaid case the accused including a Sub-Inspector of Police were charged for murder of one Kailash involved in a theft of a buffalo. Allegedly, the deceased, while in police custody, was subjected to beating by the four accused who



inflicted a number of injuries on his person. The deceased was removed from police lockup with multiple injuries on his person and thrown under a Bus to make it appear as an accident. Somebody noticed the body of injured lying under the Bus. He was removed to Hospital where he was found to be dead. The doctor opined that the deceased died due to shock and haemorrhage on account of injuries on the vital organs. The accused were tried on the charge of murder for causing custodial death. Sessions Judge found them guilty only under Section 323, 324 and 343 RPC and released them on probation. On appeal the Punjab and Haryana High Court convicted the accused under Section 304 Part I IPC and sentenced them to undergo rigorous imprisonment for ten years in addition to sentence imposed by Trial Court. The Hon'ble Apex Court, however, set aside the conviction of accused under Section 304 Part I IPC and the sentence of ten years rigorous imprisonment and convicted them under Section 304 Part II read with Section 34 RPC and sentenced each of them to five years rigorous imprisonment while maintaining convictions and sentences for offences under Sections 323, 324 and 343 RPC. The Hon'ble Apex Court,



while dealing with the nature of offence, in para 9 of the judgment held as under:-

“Learned counsel, on behalf of Dalip Singh, A-1, further submitted that even if the prosecution version is to be accepted he beat the deceased only on 13.9.86 and it cannot be said that he inflicted any of the serious injuries and consequently he can be convicted only under Section 323, I.P.C. We are unable to agree. Taking the evidence of these three witnesses as a whole it emerges that all these four accused inflicted injuries and without knowledge of A-1 the deceased could not have been detained in custody. Therefore no separate case can be made out so far A-1 is concerned. All the four accused shared the common intention to beat the deceased violently and they must have knowledge that by inflicting such injuries, they were likely to cause the death of the deceased. The High Court has convicted them under Section 304, Part I, I.P.C. as though they intentionally inflicted such injuries which are likely to cause death. Taking the case as a whole into consideration it must be held that the accused were responsible for inflicting those injuries and they must be attributed the knowledge only that by inflicting such injuries they were likely to cause the death in which case the offence would be punishable under Section 304 Part II I.P.C. Accordingly, we set aside the conviction of the accused under S. 304 Part I, I.P.C and sentence of 10 years R.I awarded thereunder. Instead we convict each of the accused under Section 304, Part, II read with Section 34, I.P.C and sentence each of them to undergo 5 years R.I. The other convictions and sentences are confirmed. The sentences are directed to run concurrently.”

In our considered opinion, the materials on record would justify the conclusion that the accused did not inflict injuries on the person of deceased with the intention of



causing death. In view of the scenario in which the accused are stated to have caused injuries on the person of deceased to extract his confession after accusing him of having committed theft of money from the house of accused, it is difficult for us to hold that the accused caused fatal injuries on the person of deceased with the intention of committing his murder or that they had the requisite knowledge that the death would otherwise be the inevitable result. In such a situation, we are constrained to hold that the accused did not commit offence under Section 302 read with 34 RPC, but under Section 304 Part II read with 34 RPC. We, accordingly, set aside the conviction of accused under Section 302 RPC and instead, convict them under Section 304 Part II read with 34 RPC. Since the incident is about a decade old and the accused convicts are in custody/ lodged in jail, since September, 2004 thus having spent more than nine and a half years in jail, the sentence undergone would be the appropriate sentence commensurate with the level of guilt established in this case. The accused convicts are sentenced, accordingly. Conviction and sentence under Section 348 RPC



is, however, maintained. The substantive sentences of imprisonment shall run concurrently.

The appeal is disposed of in the aforesaid terms. Reference is answered accordingly.

Result of appeal/reference be certified to the trial Court. Copy of this judgment be sent to Superintendent Central Jail, Jammu for information and compliance.

Record be remitted back to the trial Court.

***(Bansi Lal Bhat)***  
***Judge***

***(Virender Singh)***  
***Judge***

***Jammu***  
***13.06.2014***  
***Bir\****



