

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

Cr.Appeal No.8/2012  
c/w  
Confirm No.4/2012

Date of Judgment:24.03.2014

**Joginder Pal**

**Versus**

**State of J&K**

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**Coram:**

**Hon'ble Mr. Justice Hasnain Massodi, Judge**  
**Hon'ble Mr. Justice Bansri Lal Bhat, Judge**

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**Appearing counsel:**

For the Appellant(s) : Mr. Harbans Lal, Advocate  
For the Respondent(s): Mr.Gagan Basotra, Sr.AAG

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1. Whether to be reported in Press/Journal/Media : **Yes/No/Optional**
  2. Whether to be reported in Digest/Journal : **Yes/No**
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**Per Bansri Lal Bhat, J.**

1. This appeal is directed against the judgment of conviction dated 05.01.2012 and order of sentence dated 06.01.2012 formulated by learned Sessions Judge, Rajouri in Sessions Case File No. 25-A/Session titled "**State Vs. Joginder Pal**" by virtue whereof the appellant (hereinafter to be referred to as accused) has been convicted of offence under Section 302 RPC and sentenced to simple imprisonment for life and a fine of Rs.5000/-, in default to undergo further imprisonment for one month. Aggrieved of his conviction and sentence, the accused has preferred the instant appeal.

Reference has also been made by the learned Sessions Judge for confirmation of life sentence slapped on the accused. Appeal and the Confirmation Reference were heard together.

2. Prosecution version is as follows:-

(i) On 15.04.2008, at around 8.15 AM, PW-Lok Nath made a telephone call to Police Station Sunderbani laying information that one Bishamber Nath S/o Mohan Lal R/o Kalideh (hereinafter to be referred to as the deceased) had committed suicide by hanging . A report to this effect was recorded in daily diary under report No.5 dated 15.04.2008. Inquest proceedings for ascertaining cause of death were initiated by ASI-Mahatam Singh. Dead body of the deceased was taken for post-mortem examination. Viscera were sent to Chemical Examiner for recording his opinion in respect of cause of death. It was revealed that the deceased had a dispute in regard to land with his brother Joginder Pal *alias* Kuku – the accused, which led to frequent quarrels. It was further revealed that on 14.04.2008 the accused had invited the deceased to his house on the occasion of Mundan Ceremony

of his son where the accused offered liquor to the deceased. There was some altercation between the two. The deceased did not return to his home at night. It was further revealed that the news about death of deceased was conveyed to the local inhabitants by the accused in the morning. It was revealed that the accused had committed murder of deceased under a plan and removed his body to the nearby forest. The accused was interrogated and he confessed his guilt. On the basis of material collected, a case for offence under Section 302 RPC was registered against the accused under FIR No.26/2008 of Police Station Sunderbani.

- (ii) During the course of investigation, weapon of offence in the form of a stone was recovered at the instance of accused pursuant to a disclosure statement made by him. Statements of witnesses were recorded. The facts emerging from material assembled during investigation revealed that the deceased had two brothers including the accused and after passing away of the second brother his share was grabbed by accused.

Since the deceased was demanding a share out of excess land held by the accused, the dispute was referred to Panchayat which advised the accused to surrender excess land in favour of deceased. However, the accused declined to abide by the directive of Panchayat and turned inimical towards the deceased. The investigation further revealed that the accused had previously also made murderous assault on the deceased who was rescued by his family. It was on the intervening night of 14/15<sup>th</sup> April, 2008 that the accused found an opportune time to whisk away the deceased to the forest located in the vicinity of his house, felled him on the ground and repeatedly struck his head with a stone causing serious injuries. The deceased succumbed to these injuries. Further in order to mislead the people into believing that the deceased had committed suicide, the accused tore the towel and designed a noose. The body of deceased was hanged by the noose from a tree to create an impression that the deceased had committed suicide. This was a cover up attempt on the part of the accused.

The material assembled during investigation established complicity of accused in committing the crime of murder of deceased.

(iii) The charge-sheet was laid before Competent Court for judicial determination which, after going through the ritual of committal proceedings, landed in the Court of Sessions where accused pleaded not guilty and claimed to be tried. It was on the basis of evidence produced by prosecution at the trial that the accused was convicted and sentenced as aforesaid.

3. Brief resume of prosecution evidence is reproduced herein below:-

(i) **PW-Ashok Kumar**, a Police Constable posted at Police Station Sunderbani at the relevant time, deposed in regard to the seizure memos relating to seizure of body of deceased and its delivery to next of kin after post-mortem examination. He supported the seizure marked EXPW – AK bearing his signatures which was prepared during proceedings conducted by ASI Mahatam Singh under Section 174 CrPC. He identified the papers prepared during inquest proceedings. No

question was put to witness in cross-examination.

(ii) **Pw-Anjali Sharma** is the daughter of deceased. She deposed that her grandfather Mohan Lal had divided his estate. Her father had also got a share. Later, her grandmother and her uncle Shindey had taken some land back from her father on the plea that he was holding land in excess of his share. However, her father was contented with whatever was in his possession. Previously also accused had assaulted his father with an axe and she had intervened to save her father. She had sustained injury on her left hand in the process of intervention. A Panchayat was convened by her father for restoration of land which the accused had taken from her father. The accused did not restore the land to her father. Her whole family including her father had attended the Mundan Ceremony of son of accused on 13<sup>th</sup> and 14<sup>th</sup> April, 2008 and stayed in the house of accused. However, she and her brother returned to her home in the evening of 14<sup>th</sup> April. The deceased had advised her to carry food so that they could

have the same in their house. However, she did not carry the food from there. The deceased, accompanied by a villager namely, Prem Parkash also reached their home after fifteen-twenty minutes. Prem Parkash inquired about the witness and her brother who were sleeping. She feigned being asleep as she thought that her father may ask her to prepare tea. At that time, her mother was in the house of accused. Thereafter, Prem Parkash left for his home. It was at about 8 P.M. Her father again went to the house of accused. Her mother came back and told that the deceased had asked her to ready the meals. However, deceased did not return to his home. Her mother went out and gave a call in the name of her brother which was meant for her father. Hearing the same, her grandfather – Mohan Lal arrived there. He told her mother to go to bed as the deceased would be coming home in the morning. Thereafter, they went to bed. The witness further deposed that she had prepared tea in the morning and after having tea, her mother went to the house of accused to call the

deceased. Meanwhile, there was a commotion in the forest located near her house. Her brother rushed towards the forest. After sometime, she heard the cries. She also went on spot and found the body of the deceased lying on the ground. There was no shirt on the body of deceased. He was wearing a pant. A torn towel was lying beside him in addition to a broken chappal. She inquired about the cause of death of her father and the accused told her that the deceased had hanged himself by the noose prepared from the towel. She found an injury on the neck of her father. The accused told her that he alone brought down the body from the tree. She claimed that the tree was shorter than her height and in her opinion the deceased could not have died of hanging from that tree. Meanwhile, her mother arrived there. Police also arrived there and removed the body of deceased for post-mortem examination. She further deposed that the accused had murdered her father on account of enmity in regard to dispute of land. On cross-examination, the witness

stated that she did not notice any mark of injury on the body of deceased other than the injury on his neck. The towel recovered from the spot was torn from the centre. Same was not made of a thick cloth. House of accused is separated from her house by some banana trees. Forest is at a closer distance from the house of accused. Her grand-parents lived separately. Her uncle Shindey had died a bachelor's death. Her father used to cultivate land and sell vegetables. Her father was an alcoholic but she was not aware whether he had consumed alcohol on the day of occurrence. She did not know why the deceased again visited the house of accused after he had returned to his house in the evening. She refuted the suggestion that the deceased had committed suicide.

(iii) **PW-Dr.Mohinder Pal Singh**, the then Medical Officer SDH Sunderbani, who conducted the post-mortem of deceased, proved the post-mortem report marked EXPW MPS, and certificate regarding opinion in respect of weapon of offence in the shape of towel marked EXPW MPS/1. He noticed

(a) Ecchymohsis on scalp **occipital** region about 2 inch/3inch in circular manner, (b) Ligature mark front of neck above thyroid extended backwards towards occipit on either side of the neck. Ecchymohsis and haemorrhoid parts were present in subcutaneous tissue of muscle beneath ligature mark. Congestion and haemorrhoid in lymph node above and below the ligature mark. Fracture of thyroid cartilage present. Viscera of deceased were sent to FSL for opinion. According to witness, the ligature mark on the neck was sufficient in the ordinary course to cause death of deceased. He opined that the towel and stone produced as weapons of offence before him could cause injury on the neck of deceased. After examining the report of FSL, he found that no poison was detected in viscera. In his opinion, the deceased had died due to sudden compression of carotid (a) and veins and sudden vagal inhibition leading to cardiac arrest and instantaneous death. Time since death was between 12 to 24 hours of the post-mortem examination. In Cross

examination stated that Ecchymohsis are not the injuries. These are blood clots beneath the skin. Same cannot cause grievous injury or death. Injury No.1 caused on occipital region could not have caused death in the instant case. Presence of Haemorrhage demonstrates that strangulation must have been during life time of deceased. Strangulation is possible by hanging.

- (iv) **PW-Kuldeep Raj** S/o Heer Chand lived in the neighbourhood of the deceased and the accused. He is a cousin of the deceased. The witness deposed that the deceased had attended the Mundan Ceremony of the son of accused. Shindey Kumar too was a brother of the deceased and the accused and after his death, accused and his father retained 3/4<sup>th</sup> of his land and gave only 1/4<sup>th</sup> to the deceased. This led to straining of relations between the accused and the deceased. Six months prior to death of deceased, there was an incident in which accused had barged into the house of deceased while armed with an axe but he left the spot when the family of deceased intervened. The witness was in his

home during the night of occurrence and he had left for Jammu to resume his duties in the morning. He got information about the death of deceased on receiving a telephone call. Om Parkash and Kuldeep Raj had told him that the accused had confessed his guilt before them. On cross-examination, he deposed that father of deceased was a refugee and forty eight kanals of land had been allotted to him. He had partitioned the land. Deceased had got 12 kanals of land in the partition. Production depended upon rain only and the land was not irrigated. The witness admitted that after his father's death, he did not pull on well with the accused and his father. The witness denied that he had constructed a house on the land allotted to the father of accused. He alleged that the accused had constructed house on his land. He also alleged that the father of accused had exchanged land with him but retained both lands which led to a dispute. However, he refuted the allegation that he was inimical towards the accused and had falsely implicated him. He maintained that he had

returned from his place of posting to his village four days after the death of deceased and it was on the day of his return to village that his cousin Master-Om Parkash and co-brother of accused namely Kuldeep Raj had disclosed about extra-judicial confession of accused. Accused had not been arrested by that time. However, the accused had not disclosed the details leading to death of deceased. No case was registered in regard to the assault by accused on deceased six months prior to the occurrence of murder. He had made statement before the Police four days after the occurrence.

(v) **PW-Bodh Raj**, an ex-serviceman hailing from the village of accused, deposed that he too had attended the Mundan Ceremony in the house of accused. Deceased was also there. However, he left at 4 PM before closing of function. In the morning of 15<sup>th</sup> April, 2008, he heard the sound of weeping and wailing coming from a distance of about 300 yards from the house of accused. He rushed to the spot and found the body of deceased lying on the ground with his neck leaning on one side.

A torn towel with a knot was lying nearby. About 30 people had assembled there. Meanwhile, Sarpanch arrived there and informed the Police which came on spot and seized the body of deceased. The witness proved the contents of seizure memo marked EXPW-BR. He maintained that the accused enjoyed good relations with the deceased. In cross-examination deposed that he lives about 250 yards away from the house of accused. Deceased had also attended *Jagrata* in the house of accused a day before Mundan Ceremony and he was working there. The deceased had collected milk from the house of witness. The deceased had also helped in preparing meals for around 500 people attending the Mundan Ceremony in the house of the accused. Deceased would always carry a towel on his shoulder. Same towel was seized by Police. He had not seen whether froth was coming out of the mouth of deceased as his body was covered by the wailing women. Sarpanch and others accompanying the body of deceased to

hospital were saying that the deceased was drunk.

(vi) **PW-Vipin Raina** is the son of deceased. He testified that the deceased had a dispute with the accused as the deceased complained of having been allotted land short of what he deserved. Accused had earlier also made a bid on the life of deceased but timely intervention by people saved him. On 14.04.2008, the deceased with all family members visited the house of accused on the occasion of Mundan Ceremony of his son. While all family members returned, the deceased stayed back. The witness claimed that his mother had gone to call the deceased but the father of deceased sent her back with assurance that the deceased would return later. There was a commotion in the nearby forest when his mother was preparing tea in the morning. He rushed to the spot and found dead body of deceased lying on the ground. The deceased was putting on chappal while a cloth was hanging from the pine tree. On inquiry, the accused told him that the deceased had committed suicide.

Sarpanch – Alok Nath rang up the Police Station. Police arrived and seized the body of deceased. After port-mortem, body of deceased was brought home and later cremated. Accused had confessed his guilt before Om Parkash and Yog Raj. In cross-examination, he stated that his grand parents were alive. His grand father had divided his estate allotting one share each to the deceased and the accused besides retaining one share for himself. Land given to the deceased was taken back on the very following day of division of the estate. Accused had previously made murderous assault on deceased two years before his murder. No FIR was lodged in regard to that incident. The deceased would consume liquor whenever a party was arranged. Accused had not made extra-judicial confession in his presence.

- (vii) **PW-Prem Nath** lived at a distance of 150 feet away from the house of accused. He deposed that he too had attended the Mundan Ceremony in the house of accused. He saw the deceased in the function. The lunch was

over at 3.30 PM and he went back to his home. The following day he heard a noise emanating from the forest. He rushed there and found the body of deceased lying on the ground. Police arrived there and removed the body of deceased to Sunderbani for Post-mortem. A Panchayat was convened in respect of the land belonging to Shindey about eight years before the occurrence. In Cross Examination, he stated that the land was divided in three shares, on each allotted to the deceased, the accused and the parents of deceased. Deceased was actively participating in the function organized in the house of accused. He was serving meals to guests. The deceased was an alcoholic, used to extract country liquor and after consuming alcohol he would quarrel with his wife and go towards the forest.

(viii) **PW-Shashi Pal** deposed that the deceased was his brother-in-law. The witness, while deposing about the dispute between the deceased and the accused, claimed that the Panchayat had worked out a settlement between them and advised the accused to

restore the land situated behind the house of deceased to the deceased. However, the accused declined to do so. He further deposed that the accused used to beat the wife of deceased. On 14.04.2008, the deceased had attended Mundan Ceremony of son of accused. The witness claimed to have learnt in the morning of 15<sup>th</sup> April that the deceased had committed suicide. He along with his relatives rushed to the scene of offence and found a towel which had been fastened around the neck of deceased. He noticed a ligature mark on the neck of the deceased. The body of deceased was lying on the ground with a tree standing nearby which was lesser in height than that of the deceased. It indicated that the claim of accused that the deceased had committed suicide was false. The accused had murdered the deceased. Police arrived on spot and seized the shirt of deceased besides the towel. In cross examination he stated that the disputed land was an evacuee land. It had been partitioned by the father of deceased, who had given one each share to

the deceased and the accused and retained a share himself. The witness did not know as to what extent the land had been settled on the deceased short of his share.

(ix) **PW-Babu Ram** is the brother-in-law of the deceased. He claims to have learnt about death of deceased when he visited Sunderbani Market for delivering milk. He rushed to hospital where post-mortem was conducted on the body of the deceased. The witness testified to contents of seizure memos relating to towel, wearing apparel of deceased and chappal of deceased besides the receipt in regard to delivery of body of deceased to the next of his kin. In cross examination, the witness stated that the deceased enjoyed good relations with the accused. The witness claimed that he had not attended the Mundan Ceremony of son of accused but his wife and children had attended the same.

(x) **PW-Asha Sharma** is the widow of deceased. She deposed that parents of deceased were living separately. Shindey and accused were brothers of her husband. Shindey had died earlier. She further deposed that her family

including the deceased had attended Mundan Ceremony in the house of accused. However, in the evening, she and her children returned to their house. She again visited house of accused where the deceased asked her to carry food and he would be returning home soon. She carried the food home and readied it for eating. However, she had to again visit the house of the accused to call the deceased. Her father-in-law advised her to go back to her home as the deceased would be returning home in the morning. She went back to her house and slept. In the morning, her children asked for tea. While they were having tea, they heard cries coming from a distant place. It appeared that somebody was weeping. They went towards the forest wherfrom the cries were emanating. They found the body of deceased suspended from a tree with a rope. However the body was touching the ground. The accused untied the rope and made the body to lie on the ground. The deceased had breathed his last. The deceased was wearing a pent but there was no shirt on his body. He was wearing the

chappal in his feet. He was wearing the chappal in his feet. Police arrived there and removed the dead body to hospital. Body of deceased bore an injury mark on backside of head. Deceased had been allotted land short of his share and that led to a dispute. A Panchayat had been convened to settle the dispute. The accused had committed murder of deceased on account of enmity and he had confessed his guilt before the villagers. In Cross Examination, she stated that she and her family stayed in the house of accused from 8 AM to 7 PM. They had been helping the accused in arranging the function. They had good relations with the accused. The deceased stayed back for the night and his father had told her that the deceased would return to his house in the morning. It was so because all brothers and sisters of deceased had stayed there. The deceased was not an alcoholic. The land had been allotted to her father-in-law and he had divided the same between himself and his two sons including the deceased. She had heard cries of mother of deceased coming from the forest. Villagers

had already collected there. The deceased had his neck leaning towards one side while a rope was tied to his neck. She was not aware about seizure of the rope. The accused had confessed his guilt before the villagers on that very day. Police was present at that time.

(xi) **PW Ram Pal** was a vegetable vendor at Sunderbani at the relevant time. He deposed that deceased too was a vegetable vendor. He had visited the house of deceased and attended 4<sup>th</sup> day ceremony of deceased. Police had seized a shirt in his presence. Accused had not confessed his guilt before the villagers. The witness was **declared hostile to prosecution** and on cross examination, he deposed that the shirt of deceased had been identified by Shashi Pal. He was not aware whether accused had confessed his guilt before the villagers. He denied that he had been won over by the accused. He did not know wherfrom the shirt had been recovered by the Police.

(xii) **PW Om Parkash** deposed that he knew the accused and the deceased who were at dispute regarding land. Deceased had

complained before village elders that the land given to him was deficient. Parents lived with the accused while deceased lived separately. Panchayat had advised the accused to make good the deficiency of land held by the deceased. However, the accused did not act on the advice of Panchayat. This led to tension between the two brothers. On 14.04.2008, the deceased and his family attended Mundan Ceremony in the house of accused. Body of deceased was found lying in the forest area in the morning of 15<sup>th</sup> April. He also visited the scene of offence and found the body of deceased lying on the ground. None accept the accused was on inimical terms with the deceased. The witness admitted having made a statement under Section 164-A CrPC before a Court at Sunderbani. He supported the statement marked EXPW OP. In cross examination, stated that he was a Law Graduate and had practised as a lawyer for one year. Possibly 48 kanals of land had been allotted to the father of deceased. He had not attended the Panchayat. However, his father had attended

the Panchayat. He had not also attended the Mundan Ceremony in the house of accused. However, his family had attended the Mundan Ceremony and he learnt from them about participation of deceased and his family in the ceremony. Deceased was the eldest son of his parents and he had separated from his parents after his marriage. Accused lived with his parents. Another brother who was younger to deceased but elder to accused had died. He had attended the 4<sup>th</sup> day as also the 13<sup>th</sup> day Ceremony of deceased. His statement was recorded in Sunderbani Court after four and a half months of the occurrence. There was an injury mark on right side of neck of deceased but the same was not bleeding. His neck was leaning towards one side. The clothes of deceased and the soil at the scene of offence did not bear any blood stains. He could not explain the delay in recording of his statement before the Court. That must be known to Police. Accused was arrested at least a fortnight after the occurrence. He had

made the same statement before the Magistrate.

(xiii) **PW-Prem Parkash** deposed that the deceased complained of having been allotted deficient land in the private partition. The witness further stated that the accused was his sister's son. Since he had attended to his job on the day of Mundan Ceremony in the house of accused, so he went to the house of accused in the evening but left the place only after a few minutes. He had seen the deceased when he went to second house of accused to deliver gift money to him. He had kept the books of his child in the house of deceased. He went there and collected his books. At that time, wife of deceased was in the house. The deceased had seen him off. In the morning, he learnt about death of deceased. The deceased had told him once that he had an altercation with the accused in regard to dispute of land. In Cross Examination stated that the deceased had told him about the altercation around eight months before his death. The deceased used to consume alcohol in small measure. He

was not drunk when the witness visited the house of accused during Mundan Ceremony. The witness further stated that the deceased was in a good mood at that time and did not display symptoms of tension. He was relaxed and had been rendering service in Mundan Ceremony.

(xiv) **PW - Kuldeep Dutt** deposed that on 15.04.2008 at 7.30 AM, he got a phone call that the deceased has been murdered. He rushed to the house of deceased and from there he went to the nearby forest where body of deceased had been found. On reaching there he learnt that the body had been removed to hospital. He went to Sunderbani Hospital where he found the dead body of the deceased. The deceased was clad in pant only. Post-mortem was conducted on the body of deceased. Thereafter, the dead body was brought to the village and last rites were conducted. It was discovered that the deceased had been murdered. When villagers tried to persuade the accused to disclose true facts attending upon the death of deceased, he did not yield but **after last rites of**

**deceased the accused told him that the deceased had demanded liquor but he had declined to provide the same which led to a quarrel; that the deceased fled towards the forest; that the accused followed him and on the way they fought with each other and then the accused hit him with a stone resulting in his death. The witness further maintained that the accused had also told him that he had designed a noose of the towel and suspended the body of the deceased from a pine tree.** About two months thereafter, Police brought the accused to the site of crime and there also, accused swore by his children providing the same information as he had provided to the witness. The accused was inimical towards the deceased on account of dispute relating to land and he had earlier also made two attempts on the life of deceased. Accused had recovered the stone used as weapon of offence from the bushes and produced the same before Police. The witness testified to the contents of recovery memo marked EXPW KD bearing his signatures. In Cross

Examination he stated that he lived about three and a half kilometres away from the house of accused. The deceased was his co-brother. The witness admitted that he had not attended the Mundan Ceremony in the house of accused. The accused was interrogated after 17th day of deceased. The accused had confessed his guilt before him 3/4 days thereafter. The witness claimed that he had informed the Police about disclosure statement made by accused. PW-Om Parkash S/o Yog Raj was present at that time in the house of deceased when accused confessed his guilt. The investigation was underway at that time but the accused was not under any pressure. Accused had made confession after his arrest. He was in handcuffs at that time. The deceased had told him about previous assaults on his life by the accused. He had never seen the deceased in a drunken state.

(xv) **PW-Madan Lal** deposed that he had no knowledge about the alleged occurrence. He was **declared hostile to prosecution** and in cross examination, he stated that there was a

Panchayat meeting in regard to dispute of land between the deceased and the accused. The witness admitted that he was a Panch and had attended the Panchayat but he did not know anything about the decision taken. The witness stated that he had not attended the Mundan Ceremony in the house of accused.

(xvi) **PW-Yog Raj** S/o Hari Chand deposed that he had seen the dead body of deceased when the same was discovered. However, he had not attended the Mundan Ceremony in the house of accused. Since the witness denied knowledge about the occurrence, he was **declared hostile to prosecution.** He deposed in cross examination that one of the brothers of deceased had died 5-6 years before. He admitted that the deceased had been allotted 1/4<sup>th</sup> share of land in private partition while three shares were held by the accused. It led to a dispute between the deceased and the accused. The witness denied having attended the committee constituted to resolve the dispute. He was not present at the time of partition of land.

He had no personal knowledge about the affairs of deceased and the accused as he never visited their houses.

(xvii) **PW-Tilak Raj** deposed that it was at about 7.30 AM on 15.04.2008, when Master *alias* Vishu called him telephonically to inform that his brother-in -law Bishamber Nath had died. He took Seema – daughter of deceased, along. Seema had been brought up by him since her childhood. Other family members also accompanied him. He found the body of deceased lying on the ground. The deceased was clad in a pant and was wearing only one chappal. A towel with knots was lying besides his dead body. The accused who was present on spot told him that the deceased had committed suicide. The accused also claimed to have brought down the body of deceased. He further deposed that there was a dispute relating to land between the deceased and the accused and the accused had earlier also made an attempt on the life of deceased in which Anjali - daughter of deceased had sustained an injury on her hand. The witness testified to the contents of

his statement recorded under Section 164 CrPC which has been marked EXPW – TR. In cross-examination he stated that he had not attended the Mundan Ceremony in the house of accused. He had not also witnessed the assault made by accused in which Anjali had sustained injury on her hand. He did not know the extent of land held by the deceased and the accused.

(xviii) **PW-Lok Nath** deposed that on a day in April early in the morning while he had gone for morning walk with 4-5 people, he came to know that the deceased had committed suicide in the forest. He went on spot along with Madan Lal and Arun Kumar. **The body of deceased was suspended from a pine tree at that time.** Family of deceased arrived later. The witness claims to have made a telephone call to Police Station. Police arrived there within fifteen minutes. The witness maintained that the accused and the deceased were on good terms and it was the deceased who looked after the arrangements for Mundan Ceremony in the house of accused. The witness deposed that

he too had attended the Mundan Ceremony.

He had also visited the hospital when body of

deceased was taken there. A chappal was

lying on spot. A towel used as a noose was

also lying on spot. Accused had not made any

confession before him. The witness was

**declared hostile to prosecution** and on

cross examination, he denied that the

accused had made a statement before him

that he had caused death of deceased by

hitting the deceased on his head with a stone.

The witness admitted his signatures on

disclosure statement bearing mark-L but did

not support its contents. Likewise, he

admitted his signatures on the recovery

memo marked EXPW-KD but did not support

its contents. His signatures were marked as

L/1. The witness admitted that he was an

educated man having studied up to 12<sup>th</sup>

Standard and had served as Sarpanch. He

had signed blank papers later converted into

memos. No pressure was exerted on him by

Police to sign the memos. The witness,

however, testified to the contents of his

statement recorded in Court under Section

164-A CrPC. The statement marked EXPW LN bears his signatures. In cross examination, he denied that there was a dispute between the deceased and the accused in regard to land. He maintained that the father of deceased had partitioned the land allotting 1/3<sup>rd</sup> share each to himself, the deceased and the accused. The deceased was economically weak. He was an alcoholic and used to extract liquor himself. He would consume liquor and administer beating to his wife. Infact, it was the accused who used to look after the family of the deceased. The deceased had consumed liquor. His body was suspended from a branch of the tree with noose designed out of a towel with knots. His neck was leaning towards one side. Police had told him to direct the family of deceased to plant a stone on the place of recovery and he had conveyed the same to the family of deceased. The accused was considered to be innocent till he (the witness) made statement before the Court.

(xix) **PW-Raghbir Singh** deposed that he too had visited the scene of offence and found the

body of deceased lying on the ground under a tree. Deceased was wearing a pant but there was not shirt on his body. A chappal and a towel were also lying on the spot. Body was removed to Sunderbani Hospital for conducting Post-mortem examination. The witness denied the fact that the accused had made a confession before him. He was **declared hostile to prosecution** and cross examined wherein he deposed that the father of deceased had partitioned his land in three shares and allotted a share to the deceased. He was not aware of any complaint made by the deceased in regard to deficiency of land. He denied that the accused had stated before him that he had hit the deceased with a stone causing his death. The witness admitted his signatures on disclosure memo and recovery memo but denied their contents. He claimed to have signed blank papers though no pressure was exerted on him in this regard.

(xx) **PW-Seema Sharma** is the daughter of deceased. She deposed that the deceased had got deficient land which gave rise to a dispute. As the deceased wanted deficiency

to be made good by the accused, the accused became inimical and made a bid on the life of deceased with an axe. Her sister-Anjali had intervened and sustained an injury on her finger. It was about one or two years before the death of deceased when this occurrence took place. The witness claimed that she had been brought up in the parental home of her mother since her childhood. She had rushed to her father's home on getting information telephonically. Since she reached there at 9/10 AM, she did not visit the site of occurrence. She had also attended the Mundan Ceremony in the house of accused but left for her village – Bajabain at 4 PM. In Cross Examination, she stated that her uncle-Shindey had died earlier. She did not know as to how much land her father possessed. Her grandfather – Mohan Lal had partitioned the land. She has been living in the house of her maternal grandmother since she was one and a half years old. However, she had visited her parental home when the accused had made a bid on the life of deceased. No case was lodged in regard to

that incident as the accused had sought forgiveness.

(xxi) **PW-Parshottam Singh**, the then Girdawar holding charge of Patwari, Bajwal proved the extract of Girdawari and site plan prepared at the instance of Police. The site plan was marked EXPW-PS. On cross examination, he stated that the place where the deceased was hanged was lying in Survey No.2173 and the place where the body of deceased had been kept on the ground was lying in Survey No.623.

(xxii) That concludes the resume of prosecution evidence adduced at the trial.

4. Examined under Section 342 CrPC, the accused simply denied the allegations emanating from the mouths of prosecution witnesses in respect of his involvement in the alleged crime. No specific Defence plea has been raised and no evidence has been adduced by the accused in his defence.
5. It is argued on behalf of the accused that the instant case, depending upon proof of circumstances, does not warrant conviction of accused as all modes of proof relied upon by prosecution have failed to link the accused with the

alleged murder of deceased. In regard to extra-judicial confession of accused it is submitted that there is no cogent and reliable proof to establish that the accused voluntarily made an extra-judicial confession. It is further submitted that the circumstances brought on record by prosecution do not conclusively establish authorship of crime by the accused.

6. *Per contra*, learned Senior Additional Advocate General submitted that the evidence brought on record leaves no scope for doubt that only the accused and none else is the author of the crime. He strongly relied upon the extra-judicial confession of accused which, according to him, was made voluntarily. He also banked upon the last seen theory. It is submitted that it is a case of cold-blood murder committed by accused under a well thought plan, which deserved the penalty imposed upon him.
7. We have gone through the Record and given our anxious consideration to the arguments advanced at the Bar. Before wading through the evidence brought on record by prosecution, be it seen that according to prosecution version the deceased and the accused, who were real brothers, had a dispute

with regard to land allotted to their father. Panchayat was approached to resolve the dispute which directed the accused to surrender excess land in favour of accused. As the accused was reluctant to part with the land held in excess of his share, the dispute lingered on. However, the deceased and his family members attended the Mundan ceremony observed in the house of accused on 14.04.2008. While the family members of deceased returned to their abode in the evening, the deceased stayed back in the house of accused for the night. Dead body of deceased was found in a forest located adjacent to the house of accused in the morning of the following day. The case entirely depends upon proof of circumstances as there is no eye-witness to the alleged occurrence. As per charge-sheet, the accused made a confessional statement during the course of investigation but no such confessional statement has been recorded. We accordingly proceed to reappraise the prosecution evidence to arrive at a finding whether the circumstances relied upon by prosecution are proved by cogent evidence and unerringly point towards the guilt of the accused and none else.

8. PW-Anjali Sharma is the daughter of deceased. Her testimony brings it to fore that apart from the accused, the deceased had another brother namely Shindey, who was a bachelor and died issueless. Father of deceased divided the family property between the deceased and the accused but took back some property from the deceased leaving land in the hands of accused in excess of his share. It is in her testimony that around nine months prior to murder of deceased, the accused had barged into the house of deceased while armed with an Axe and made a bid on the life of deceased. However, she had intervened warding off the assault on the deceased but in the process of intervention she sustained an injury on her left hand. Panchayat, convened to resolve the dispute between the deceased and the accused, directed surrender of excess share by accused in favour of deceased but the accused did not accept the verdict of Panchayat. Her testimony further establishes that the deceased alongwith his family attended the Mundan ceremony in the house of accused on 14.04.2008. While the family of deceased returned to their house in the evening, the deceased stayed back for the night though he paid a brief visit to his house in the

evening in company of Prem Parkash. It is in her testimony that the deceased again went to the house of accused at about 8.00 PM. Wife of deceased went to the house of accused to call the deceased but the father of deceased insisted that the deceased would stay there and assured his return in the morning. Her testimony further establishes that a noise emanating from the nearby forest next day in the early morning attracted her to the scene of crime. She found her father lying dead on the ground without the shirt on his body. A torn towel was lying besides the body. The witness noticed a wound on the neck of the deceased. Accused was standing there and he stated that the deceased had committed suicide by hanging from a nearby tree. According to the witness, the tree pointed out by the accused was short in height rendering it improbable for the deceased to have hanged himself from that tree. The witness established the presence of deceased in the house of accused and the factum of his staying back in the house of accused during night intervening between 14<sup>th</sup> and 15<sup>th</sup> of April, 2008. Subsequently, early in the morning of 15<sup>th</sup> of April 2008, she noticed the dead body of deceased with a wound on the neck

lying in the forest adjacent to the house of accused. The accused was projecting the death of deceased as a case of suicide. Her testimony also establishes a previous attempt on the life of deceased by accused barely nine months before the death of deceased. PW-Kuldeep Raj – a neighbour of deceased has deposed about the dispute between the deceased and the accused as also of convening of Panchayat to resolve the dispute. He also deposed about murderous assault launched previously by accused upon the deceased. This witness corroborates version of PW-Anjali Sharma on these aspects. PW-Bodh Raj confirmed presence of deceased in the house of accused on the occasion of Mundan ceremony. However, he left the function at 4 PM and found the body of deceased lying in the forest in the morning of 15<sup>th</sup> April, 2008. A torn towel with a knot tied was noticed by him lying near the dead body. PW- Vipin Raina is the son of deceased. He also deposed about the land dispute between the deceased and the accused besides the incident occurring previously in which the accused made a bid on the life of deceased in the latter's house. His testimony further establishes that all members of family except the deceased returned to

their house in the evening and efforts of his mother to bring the deceased back did not materialize. He found the dead body of deceased lying in the nearby forest in the morning. According to his testimony, accused was present at the site of occurrence and telling people that the deceased had committed suicide. PW-Prem Nath who visited the house of accused to attend the Mundan ceremony establishes the presence of deceased in the house of accused on 14.04.2008 at 3.30 PM. He found the body of deceased in the nearby forest when he went there on 15<sup>th</sup> April, 2008. PW-Shashi Pal has deposed on identical lines. He further added that the accused had projected the death of deceased as a case of suicide but the tree from which the accused was said to have hanged himself was barely four feet in height. PW-Babu Ram proved the seizure of towel, clothes and chappal of deceased which were recovered beside his body. PW-Asha Sharma – the wife of deceased testified in respect of the dispute between the accused and deceased regarding land. She had attended the Mundan ceremony in the house of accused. She claimed that the deceased and other members of family had attended the Mundan ceremony and while all

members returned to their home, the deceased stayed back. Though she went to call him, her father in law sent her back saying that the deceased would return to his home in the morning. She deposed that in the morning, dead body of deceased was found hanging from a tree. The accused had brought down the dead body. According to her account, body of deceased bearing a wound on the neck was seized by Police when people gathered on spot. She also deposed about admission of guilt by the accused before villagers. PW-Om Parkash has deposed about the issue raised by deceased before Panchayat with regard to land and the factum of Panchayat having asked the accused to surrender land in excess of his share in favour of deceased. He too established factum of attending of Mundan ceremony in the house of accused by deceased alongwith his family members and the factum of dead body of deceased being found in the forest in the morning of following day. It is in his deposition that none except the accused bore animosity against the deceased. He proved his statement recorded under Section164-A CrPC. PW-Kuldeep Dutt, who attended the cremation of deceased, has deposed that the accused denied having knowledge

of the circumstances in which the death of deceased occurred. However, after cremation, the accused admitted his guilt before him. According to his account, accused had disclosed before him that the deceased had asked for liquor but he refused to oblige him which led to a scuffle. While the deceased was rushing towards forest; the accused gave him a chase. A scuffle ensued in the forest also where the accused hit the deceased in his head with a stone and the deceased died. The accused admitted that he had hanged the body of deceased from a tree after making a noose of the towel of deceased. He also spoke about the confession of accused when police took the accused to the scene of crime two months thereafter. The witness also deposed about the bid made by accused on the life of deceased earlier. He has also testified in regard to recovery of stone from the bushes by accused which was seized. The witness, besides establishing dispute in regard to land *inter se* the deceased and the accused, proved the factum of extra judicial confession made by accused before him. He also established the recovery of stone used as weapon of offence by the accused in pursuance of disclosure statement made by the accused. It is proved by his

testimony that the accused made confession in presence of PW-Kuldeep Dutt and Om Parkash while in the house of deceased, such extra judicial confession having been made voluntarily and free from Police pressure. PW-Tilak Raj rushed to the house of deceased when he learnt about the death of deceased in the morning of 15<sup>th</sup> April, 2008. His wife and mother accompanied him. On reaching the scene of crime, he found his brother Shashi Pal and wife of deceased Asha Sharma there. It is in his deposition that the accused had projected the death of deceased as an act of suicide. The witness also deposed in respect of previous attempt made by accused on the life of deceased. He proved his statement recorded under Section 164-A CrPC. The witness is the brother in law of deceased and he has brought up the youngest daughter of deceased namely Seema from her childhood. PW-Lok Nath admitted having made a statement before Magistrate regarding recovery of stone at the instance of accused but he did not support making of confession by accused in his presence. PW-Seema Sharma deposed about the dispute *inter se* the deceased and the accused regarding land and

the factum of attempt at murder made by accused on the life of deceased previously.

9. Scanning through the entire evidence brought on record by prosecution, it emerges that there was a dispute between the deceased and the accused in regard to land and the dispute was resolved by the Panchayat which directed the accused to surrender land in excess of his share in favour of deceased but the accused disobeyed the direction of Panchayat.

**The enmity harboured by accused on account of being held as the grabber of share of deceased is proved to be the motive behind the murder of deceased.** The evidence relied upon by prosecution establishes beyond any shadow of doubt that the deceased had stayed back in the house of accused during the night while his family returned to their home after attending Mundan ceremony in the house of accused. It is further established that the wife of deceased was sent back by father of deceased/accused when she went in the evening to the house of accused to call her husband. Wife of deceased was told by her father-in-law that the deceased would return home in the morning.

**These facts established by evidence, which is unanimous, cogent and reliable and which has**

**not been assailed by attributing any motive for false implication, prove that the deceased was last seen alive in the house of accused in the evening of 14<sup>th</sup> April, 2008 and his dead body was discovered in the forest lying adjacent to the house of accused in the morning of following day.** Credibility of the witnesses establishing these facts has not been impeached. There is no defence plea of false implication by prosecution witnesses on the ground of personal enmity of accused. In absence of any motive for false implication and there being no parallel version either in defence or in cross examination of prosecution witnesses, the evidence brought on record by prosecution has to be termed as evidence of unimpeachable character and reliable.

10. The evidence brought on record by prosecution satisfactorily establishes that the accused made an extra judicial confession, before witnesses as well as Police that he committed murder of deceased by hitting him with a stone after there was a scuffle between them and to screen himself from punishment he falsely projected it as a case of suicide by hanging. Four prosecution witnesses namely Kuldeep Dutt, Tilak Raj, Lok Nath and Om

Parkash have, in their statements recorded by a Judicial Magistrate under Section 164-A CrPC, deposed about the extra judicial confession emanating from the accused. It is not disputed that the statements recorded under Section 164-A CrPC, if proved, are subject of appreciation during trial and stand at a better footing than statements recorded under Section 161 CrPC which can be used for a limited purpose. In the instant case, the extra judicial confession was made by accused before the witnesses prior to his arrest by Police and in absence of any motive for false implication by these witnesses, same has to be treated as being voluntary. **It is well settled that an extra judicial confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom there is nothing to indicate that they may have a motive for attributing a false statement to the accused. The extra judicial confession can be accepted and made the basis of conviction if it satisfies the test of credibility of witnesses from whose mouth it emanates.** In “*Podyami Sukada*

**vs. State of M.P.”** (now Chhattisgarh) reported in AIR 2010 Supreme Court 2977, the Hon’ble Apex Court held as under:-

**“Evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extrajudicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case.”**

11. The extra judicial confession in the instant case is voluntary in character and does not proceed from the mouth of accused due to any threat, inducement, coercion or promise. The witnesses attributing such extra judicial confession to accused have nothing to gain by obtaining conviction of accused. No motive for false implication has been attributed to them. There being no legal impediment in relying upon these witnesses, it is found safe to act upon their testimony, more particularly, as the same is substantiated by the oral evidence brought on record by prosecution.
12. **PW-Dr.Mohinder Pal Singh**, who conducted autopsy on the deceased, found two injuries on the person of deceased. There was echymosis on scalp occipital region about 2” X 2” inch in circular

manner. There was also a ligature mark in the front of the neck about thyroid extending towards occiput on either side of the neck. In his opinion, recorded in Post mortem report marked EXPW-MPS, the deceased died due to sudden compression of carotid and veins and sudden vagal inhibition leading to cardiac arrest and instant death; time since death being 12 to 24 hours. According to his account, injury No.1, i.e. echymosis of scalp was not sufficient to cause death which means that the death occurred due to strangulation. Prima facie, it appears that the opinion of Doctor is not compatible with the ocular version of the witnesses. However, it has to be noticed that besides injury found on the occipital region of his head, the deceased bore a ligature mark around his neck. The cause of death, according to Medical Expert is sudden compression of carotid and vagal inhibition leading to his cardiac arrest. The opinion of the Doctor has to be appreciated in the backdrop of extra judicial confession of accused wherein the accused admitted that he had killed the deceased with a stone and thereafter hanged him from a tree to screen himself from punishment. This would indicate that in consequence of being hit with a stone on his head

the deceased may have only lost consciousness but died on account of strangulation caused by the noose of the towel leading to fracture of the cartilage bone causing a ligature mark around his neck. Viewed in this background, the theory of deceased having committed suicide by hanging from a tree is nothing but a manipulation aimed at misleading. Death, as per evidence of Medical Expert, is not attributed to hanging but to strangulation which fits in with the observations made above that the accused tied the noose around the neck of deceased after hitting him with a stone which produced unconsciousness. This falsifies the representation of accused at the time of discovery of body of deceased in the forest lying adjacent to the house of accused that the deceased had committed suicide by hanging.

13. Now coming to the last seen theory, be it noticed that there is overwhelming evidence on record to hold that the deceased was last seen alive in the house of accused on the occasion of Mundan Ceremony of latter's son. While his family members returned to their house, the deceased stayed back. Efforts of wife of deceased to get him back home late in the evening did not materialize as the father of

deceased sent her back assuring that he will return to his home in the morning. Thus the deceased was last seen alive in the house of accused. Thereafter, his dead body was discovered in the forest lying adjacent to the house of accused in the early morning of 15<sup>th</sup> April, 2008. The evidence brought on record brings it to fore that when the body was discovered, accused was standing near the dead body of deceased and he came up with the explanation that the deceased had committed suicide. The evidence brought on record further reveals that the tree from which the deceased was said to have hanged himself was short in stature and height to support the body of deceased for committing self-murder. Nobody saw the body of deceased hanging from the tree. It was the accused who represented that he had brought down the body from the tree which was not tall enough for hanging of the body of deceased. On appreciation of oral evidence brought on record by prosecution and on its evaluation in the backdrop of cause of death analysed in the context of medical evidence hereinabove, there is absolutely no doubt in arriving at the conclusion that it is the accused and accused alone who is the author of murder of

deceased. The evidence brought on record by prosecution establishes beyond doubt that there existed a dispute between the deceased and the accused in regard to land which was referred to Panchayat for adjudication but the accused declined to obey the verdict of Panchayat. This led to acrimony between the deceased and the accused, and the accused made a bid on the life of deceased by barging into his house while being armed with an axe. This happened prior to this occurrence. The deceased had a providential escape as his family members intervened. His daughter sustained an injury on her hand during intervention. These circumstances establish the motive for the crime and that the accused harboured ill-will against the deceased and wanted to eliminate him. The evidence further unfolds that the deceased joined the Mundan Ceremony in the house of accused together with his family on 14.04.2008, lent a helping hand to accused in arranging the function and stayed back while his family members returned to their home in the evening. The very next morning, dead body of deceased was found in the forest located adjacent to the house of accused with accused standing near the body and coming with an

explanation that the deceased had committed suicide by hanging from a tree standing nearby which was not tall enough to render it possible to commit suicide by hanging. The evidence establishes beyond doubt that the accused made an extra-judicial confession before some witnesses voluntarily well before his arrest by Police and such extra-judicial confession explains the manner and methodology used by accused in eliminating the deceased which otherwise was within his exclusive knowledge. The seized stone allegedly used as a weapon of offence by the accused has been recovered at his instance while the torn towel used in strangulation of deceased was recovered from the site of occurrence. Accused has not been able to explain his presence in the forest near the dead body of deceased in the early hours of 15<sup>th</sup> April, 2008. He has also not been able to explain why the deceased, staying in his house as a guest, should have committed suicide without any rhyme or reason. These circumstances, cumulatively, form a complete chain of events which manifested in murder of deceased exclusively pointing out that it is the accused and accused alone who has committed murder of deceased – Bishamber Nath.

14. Learned counsel for appellant has pointed out contradictions in prosecution evidence in regard to certain aspects but the same are insignificant and not on material particulars of alleged occurrence. Imperfect truth is acceptable as proof, not perfect concoction. In absence of any material contradiction or inconsistency in prosecution evidence, the testimony of witnesses cannot be discarded. The argument is accordingly rejected.
15. On reappraisal of evidence, we are of the considered opinion that the conclusions deducible from the circumstances proved at the trial are compatible only with the guilt of accused, the evidence brought on record unerringly pointing out that it is the accused and accused alone, who is the author of crime. The chain of events emerging from prosecution evidence altogether excludes probability of any person other than the accused being the real culprit. In our considered opinion, the conclusions drawn on appreciation of evidence by learned Sessions Judge are perfectly justified. We agree with his finding that the chain of events proved by the circumstances emanating from prosecution evidence is compatible only with the guilt of accused and incompatible with his innocence. We find no

legal infirmity or factual frailty in the finding of guilt recorded by the learned Sessions Judge and accordingly uphold the judgment of conviction of accused for commission of offence under Section 302 RPC and the life sentence together with fine of Rs.5,000/- imposed on him.

16. There being no merit in the instant criminal appeal, the same is **dismissed**. Confirmation Reference is accordingly accepted. The result of this appeal/confirmation proceeding be certified to the Trial Court in terms of provisions of Section 425 CrPC for taking appropriate steps for execution of sentence awarded. Record of appeal/confirmation proceedings be consigned to records.

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

**(Hasnain Massodi)**  
**Judge**

**Jammu**  
**24.03.2014**  
Varun Bedi

This judgment is pronounced by me today in terms of Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.

**(Tashi Rabstan)**  
**Judge**

Jammu  
24.03.2014