

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

Cr. Appeal No. 29/2012, Cr. MP No.37/2012

c/w

Cr. Appeal No. 22/2012, Cr. MP No.26/2012

Cr. Appeal No. 28/2012

& Confirmation No.11/2012

Date of Decision:30/12/2015

Karnail Singh & another	Vs.	State of J&K
Suresh Kumar	Vs.	State of J&K
Naresh Kumar & Ors.	Vs.	State of J&K
State	Vs.	Naresh Kumar & Ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For the Appellant(s)	:	Mr. Sakal Bhushan, Advocate. Mr. Rajnesh Oswal, Advocate. Mr. Anil Khajuria, Advocate.
For the Respondent(s)	:	Mr. L. K. Moza, AAG.

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| (i) | Whether to be reported in
Press, Journal/Media | : | Yes |
| (ii) | Whether to be reported in
Journal/Digest | : | Yes |
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Per Bansi Lal Bhat-J

1. This bunch of criminal appeals is directed against judgment of conviction dated 31.01.2012 and order of sentence dated 23.02.2012 by virtue whereof appellants (hereinafter referred to as **the accused**) - Karnail Singh and Ratno Devi stand convicted of offence under Section 302/120-B/109 of RPC and sentenced to suffer imprisonment for life and a fine of Rs. 10,000/- (Rupees Ten Thousand). Accused- Naresh Kumar, Sohan Singh, Jeet Kumar alias Jeeta, Jaimal Kumar alias Jeebu, Daleep Singh and Suresh Kumar have been convicted of

offences under Section 302/364/120-B of RPC and sentenced to imprisonment for life and a fine of Rs.10,000/- (Rupees Ten Thousand) each for conviction under Section 302/120-B of RPC. Besides they have also been sentenced to rigorous imprisonment for ten years and a fine of Rs. 10,000/- (Rupees Ten Thousand) each for suffering conviction under Section 364 of RPC. The convicts have been directed to suffer varying terms of imprisonment in default of payment of fine. Substantive sentences of imprisonment have been directed to run concurrently. These three appeals arising out of a common judgment following a joint trial have been heard together and are proposed to be disposed of by formulating a common judgment.

2. The sequence of events leading to the prosecution of accused, as emanating from the Charge-Sheet, may briefly be summarized as under:-

On 26.08.2005 at 10.30 a.m., a source information was received at Police Post Greater Kailash, Jammu that an unidentified dead body had been discovered in the Canal located near the fountain at Greater Kailash. This led to initiation of proceedings under Section 174 of Cr. P.C. Dead body was retrieved from the Canal. The hands of the deceased were found tied with a lace. A lace was found around the neck too. A plastic rope was also found tied to the dead body. Legal formalities were completed in regard to seizure of the dead body and the articles. The dead body was kept in mortuary room of the Government Medical College Jammu. Discovery of body of unidentified person was

publicized through print and electronic media. All Police Stations were informed of the recovery of unidentified dead body. It was on 27.08.2005 that one Vijay Mohan Sharma claiming to be the brother of deceased came forward to identify the dead body as that of Nitin Sharma S/o Surinder Mohan Sharma caste Brahmin resident of Ward No. 2 Nagri Parole District Kathua. The memo of identification was prepared and the statement of Vijay Mohan Sharma was recorded. In his statement recorded under Section 175 of Cr.P.C., Vijay Mohan Sharma stated that the deceased, who was working as a Matador driver and living in a rented accommodation at Sanjay Nagar, Jammu, had solemnized marriage with Neetu D/o SSP Karnail Singh on 31.03.2005 much to the disliking of Karnail Singh, who was extending threats to the deceased and other members of his family. Vijay Mohan Sharma alleged that accused Karnail Singh had lodged a false case against his brother Rajesh Kumar at Nagri Parole as a measure of harassment. He also alleged that the accused Karnail Singh had threatened to eliminate the entire family. He further stated that on 24.08.2005 some unknown person made a telephone call from Jammu informing him that some persons wearing plain clothes had lifted the deceased from Dogra Academy in an official Ambassador car sporting red beacon light and taken him to some unknown destination. He further stated that he and his family members were frantically searching for the deceased and he learnt about

discovery of a dead body from Canal at Greater Kailash which he identified to be that of the deceased in mortuary home. He alleged that the deceased had been murdered by Karnail Singh in conspiracy with other unknown persons. It was on the basis of statement emanating from Vijay Mohan Sharma that the proceedings under Section 174 of Cr. P.C. were terminated and a case under First Information Report (FIR) No. 79/2005 for offence under Sections 302/364/109 of RPC was registered at Police Station, Gangyal. Investigation ensued. Body of deceased was subjected to post-mortem examination. Statements of witnesses were recorded. Wearing apparel of Neetu Devi D/o Karnail Singh, copies of letters and documents relating to marriage of deceased with Neetu Devi were seized. Recoveries were affected in pursuance of Disclosure Statements made by accused Naresh Kumar, Sohan Lal alias Sonu alias Khind, Jeet Kumar alias Jeeta and Daleep Kumar alias Lucky. A Mobile Phone and Driving License of deceased and a pair of Jungle Shoes, laces of which were allegedly used in committing murder of deceased, were recovered pursuant to Disclosure Statement of accused Naresh Kumar. A SIM card belonging to deceased is said to have been recovered on the basis of Disclosure Statement attributed to accused Daleep Singh alias Lucky. Sports cap belonging to deceased is alleged to have been recovered on the basis of Disclosure Statement attributed to accused Sohan Lal alias Sonu alias Khind. A Base Ball bat is

alleged to have been recovered pursuant to Disclosure Statement attributed to accused Jeet Kumar alias Jeeta. Disclosure Statements and Recovery Memos together with site plan(s) were prepared and material evidence like stones, leaves, Jute bag and blood stained shirt of deceased were seized. Wearing apparel of deceased were sent for chemical examination to Forensic Science Laboratory (FSL) Jammu. Ambassador car bearing registration No. 1117-JK01F was seized. Log book, voucher book of the official Ambassador car and a copy of stock register produced by MTO were seized. It was found that the accused Karnail Singh had utilized the services of his driver for tampering with the registration number of his official Ambassador car to display it as 4117-JK01E. It was found that the official Ambassador car had been sent for service/ repairs from 20.07.2005 to 26.08.2005. The investigation revealed that accused Naresh Kumar had established contact with the deceased by making two phone calls on mobile No. 9906212436 of deceased from STD Phone No. 2454299 from Shastri Nagar and made last call from Bajwa STD Shastri Nagar Phone No.2452564 calling the deceased to Dogra Academy from where he was kidnapped. It was further revealed that the said accused had also contacted accused Ratno Devi on her landline No.2455183. It was also revealed that the deceased had made phone calls received by accused Karnail Singh on his mobile No.9419131835. These facts reveal that

the accused Karnail Singh and his wife Ratno Devi bore animosity against the deceased. The post-mortem report revealed that the deceased had been strangled to death. The investigation further revealed that the deceased was having illicit relations with Neetu Devi D/o Karnail Singh for the last 7/8 years and they had solemnized marriage on 31.03.2005 in Court against the wishes of parents of Neetu Devi. Accused Karnail Singh was very angry with this marriage and he had been extending threats to the deceased and his family by making telephone calls. The deceased was a driver by profession plying a matador on Gandhi Nagar-Shastri Nagar route and he had left his home and started living in a rented accommodation at Sanjay Nagar, Jammu. It was further revealed that the deceased and Neetu Devi had left Jammu for some time but subsequently returned. The investigation further revealed that the accused Karnail Singh was angry with his wife Ratno Devi as, according to him, Ratno Devi had failed to keep an eye on the activities of her daughter. Restrictions were imposed on movement of Neetu Devi, who had jumped down the roof-top of her house and sustained injuries rendering her immobile for some time. The investigation revealed that accused Karnail Singh and his wife Ratno Devi were desperate to get rid of the deceased and they hit a plan to eliminate the deceased. It was revealed that accused Ratno Devi engaged in conspiracy with accused Naresh Kumar, who had been recruited

by Karnail Singh as SPO and was looking after the under construction house of Karnail Singh at Langar. Naresh Kumar is alleged to have demanded an amount of Rs. 5.00 Lac for executing the plan. However, the transaction was settled at Rs.1.30 Lac besides regularizing the services of Naresh Kumar and throwing a grand party for him. On 24.08.2005 accused Naresh Kumar contacted the deceased by making call on his mobile phone. Call was made by the said accused from residence of his uncle at landline Phone No.2480656. The deceased told him that he was staying at his rented accommodation. It was further revealed that accused Naresh Kumar had earlier also been contacting the deceased and arranging his meeting with Neetu Devi. Accused Naresh Kumar informed accused Ratno Devi about the whereabouts of deceased and asked her to arrange some money as advance besides providing a vehicle. Accused Ratno Devi instructed accused Suresh Kumar driver of Ambassador car bearing registration No. 1117-JK01F to take the car to her under-construction Kothi at Langar. She also gave Rs.1000/- to him and asked him to act as per advice of Naresh Kumar and remain tight lipped. Accused Suresh Kumar drove the car to Langar and delivered Rs.1000/- to Naresh Kumar, who told him to move towards Sanjay Nagar as the deceased was to be lifted at the instance of Karnail Singh. Investigation further revealed that accused Karnail Singh had made several telephone calls to

parents of deceased threatening to eliminate the deceased. Accused Sohan Lal alias Sonu alias Khind, Jaimal Kumar alias Jeebu, Jeet Kumar alias Jeeta and Daleep Kumar alias Lucky who had already been roped in and were lying in wait at the residence of Karnail Singh, boarded the Ambassador car heading for Sanjay Nagar wherefrom Naresh Kumar made two phone calls from STD of Chib Sales Corporation on landline No.2454299 to deceased who received the phone calls on his Air Tel Mobile No. 9906212436 asking him to remain present near Dogra Academy. However, the deceased was not found present at the given spot. Accused Naresh Kumar again made a phone call from landline No.2451564 of Bajwa STD booth contacting deceased on his mobile phone and calling him to the lane near Dogra Academy. As the deceased reached there, these six accused forcibly lifted the deceased in the Ambassador car which was plied by accused Suresh Kumar. The deceased was whisked away to the under- construction Kothi of Karnail Singh at Langar. The investigation revealed that the deceased was subjected to physical violence with his hands tied with the laces of jungle shoes and body tied to an Almirah with a plastic rope. The accused lay in wait till evening. Accused Naresh Kumar made a telephone call on landline No.2480656 installed in the house of his uncle Prem Dass which was received by accused Ratno Devi on her landline No.2465183. Accused Naresh Kumar, while informing Ratno Devi that the deceased

had been brought to her Kothi, demanded some more money. Ratno Devi replied that if he had not changed the number plate of vehicle, he should do the same and bring the vehicle back to her official residence and take money himself. Naresh Kumar told her that he was short of time. Ratno Devi told him to eliminate the deceased and informed him that she was sending an amount of Rs.10,000/- through Constable Sukhchain Singh. The driver is said to have made a vain bid to change the number plate of the vehicle. However he removed the vehicle to the official residence of Karnail Singh. Accused Jaimal Kumar alias Jeebu also left for his home. At about 7.00 p.m. Constable Sukhchain Singh delivered Rs.10,000/- to accused Naresh Kumar outside the Kothi. It was at about 10.30 p.m. that accused Naresh Kumar, Sohan Lal alias Khind, Jeet Kumar alias Jeeta and Daleep Singh alias Lucky removed the deceased to Greater Kailash Canal. The deceased jumped into a ditch to save his life but the accused overpowered him in the ditch itself. Accused Naresh Kumar tied the shoe lace around the neck of the deceased and he along with accused Daleep Singh pulled at the two ends of the lace while accused Sohan Lal alias Khind and Jeet Kumar alias Jeeta had caught hold of the deceased and stuffed a cloth in his mouth. The accused subsequently hit the deceased with the base ball bat carried by accused Sonu. The body of deceased was thrown in the Canal near the fencing. The investigation revealed that these accused had committed murder

of deceased at the instance of accused Karnail Singh and in criminal conspiracy with Ratno Devi. Charge under Section 120-B of RPC was added to the charge-sheet. The investigation culminated in filing of charge sheet against the accused Naresh Kumar, Sohan Lal, Jeet Kumar and Daleep Singh for offence under Sections 302/364/120-B of RPC, against accused Jaimal Kumar and accused Suresh Kumar for offence under Sections 364/120-B of RPC, against accused Ratno Devi for offence under Section 302/120-B of RPC and against accused Karnail Singh for offence under Section 302/109 of RPC.

3. Trial Court framed charges against accused Naresh Kumar, Sohan Lal, Jeet Kumar, Jaimal Kumar, Daleep Singh and Suresh Kumar for offence under Sections 120-B/302/364 of RPC and against accused Ratno Devi and Karnail Singh for offence under Sections 120-B/302/109 of RPC. The accused pleaded not guilty and claimed to be tried. Prosecution adduced evidence at the trial. In their examination under Section 342 of Cr. P.C., the accused denied the incriminating circumstances emerging from prosecution evidence and pleaded that they have been implicated in a false case. No evidence was adduced in defence. On consideration of evidence brought on record by prosecution during trial, the Trial Court recorded conviction of accused and slapped sentences upon them in terms of the impugned judgment of conviction and order of sentence which have been assailed through the medium of the instant appeals.

4. A brief resume of the prosecution evidence is reproduced hereunder:

Pw-Vijay Mohan Sharma is the brother of deceased Nitin Sharma. He deposed that the deceased was having relations with Neetu D/o accused Karnail Singh since 1998 and Karnail Singh had been threatening the deceased with elimination. The witness further stated that Karnail Singh had also threatened him and his father. On 24.08.2005 the witness made a telephone call to the deceased enquiring as to why he had not visited his home since one month. The deceased was in panic and stated that Karnail Singh had threatened him. It happened at 11.30 a.m. The witness claimed to have contacted the deceased on his mobile phone No. 9906212436. The witness further stated that the deceased had told him that he would reach Kathua at 8.30 p.m. and from there he will go home in the company of witness. The witness claimed that he again made a phone call to deceased at 2.30 p.m. but the call was not answered. Same thing happened at 9 p.m. The deceased did not reach Kathua at 8.30 p.m. The witness further deposed that at 9.30 p.m., he received a call at Nagri that the deceased had been kidnapped by 5/6 people and removed in a white coloured Ambassador car having red beacon light. The number of car communicated to him was 1117-JK01F and 'Police' was inscribed on the car. He rushed to his home where he found one Ravinder alias Rinku resident of Nagri Parole informing his parents about kidnapping of deceased. He and his two brothers set out for Jammu in the morning and enquired about the deceased at all Police Stations. However, the deceased was untraced. The witness further deposed that on 25th August, 2005 he visited his office at Lakhanpur and made a call on Phone No.9419131835 to accused Karnail Singh accusing him of murdering the deceased. He deposed that accused Karnail

Singh had told him that he had good relations with his family and he had been a student of his grand-father. Therefore, there was no question of committing murder of deceased. On 27th August, 2005, he learnt about the recovery of an unidentified dead body from a Canal at Greater Kailash published in Daily Kashmir Times. In the evening he visited the mortuary in Government Medical College and identified the body as that of deceased. The face of deceased had been mutilated and his hands and feet were tied with laces of jungle shoes. The witness deposed that he lodged a report which was recorded by Police. He testified to contents of identification memo marked ExPW- VM and his statement marked ExPW-VM/1. Body was delivered to him vide ExPW-VM/2. The witness also testified to seizure memo of clothes, rings of deceased marked ExPW-VM/3 and ExPW-VM/4 respectively. On 1st September, 2005, he again visited Police Station, Gangyal where accused Jeet Kumar alias Jeeta disclosed that he had concealed the base ball bat used as weapon of offence on the roof of newly constructed Kothi of Karnail Singh at Langar. The base ball bat was recovered at the instance of accused above named. The witness testified to the contents of Disclosure Memo marked ExPW-VM/5 and Recovery Memo marked ExPW-VM/6. The witness also deposed about Disclosure Statement of accused Sohan Lal who claimed to have tortured the deceased and concealed his sports cap in the bathroom of Kothi of Karnail Singh at Langar. He testified to contents of Disclosure Memo and Recovery Memo respectively marked as ExPW-VM/7 and ExPW-VM/8. He identified the seized cap. The witness also proved the Disclosure Statement in respect of SIM card of deceased emanating from accused Daleep Kumar which had been concealed in the field at the rear side of Kothi of Karnail Singh. He testified to Disclosure Memo and Recovery Memo respectively marked as ExPW-VM/9 and ExPW-VM/10. The

witness further deposed that on 21.08.2005 accused Karnail Singh got a false case registered against his brother Rajesh Kumar at Nagri Parole Police Post and repeatedly telephoned SHO to frame Rajesh Kumar in offence under Section 376 of RPC. However, Police arrested Rajesh Kumar on allegation of commission of offence under Section 354 of RPC. Charge sheet was filed against Rajesh Kumar on the date of murder of deceased Nitin. Trial Court allowed learned Public Prosecutor to produce Marriage Agreement in original, copy whereof formed part of the Challan. The witness identified the seized clothes of deceased as also the seized SIM card recovered from seized packets. He also identified the base ball bat seized by Police.

On cross examination, the witness stated that the accused Karnail Singh had asked him to prevail upon the deceased to desist from solemnizing marriage with his daughter. However, he had not stated it before the Police. One Sarwan Kumar had lodged compliant with Nagri Police Post alleging that Rajesh Kumar had outraged modesty of his wife Neelam. Charge sheet had been filed against Rajesh Kumar in that case. He had told the Police that the deceased had informed him about threats emanating from Karnail Singh. However, same was not reflected in his statement recorded by Police. He had told the Police that Nitin was returning to Kathua leaving Jammu for good. However, same did not find mention in his statement recorded by Police. It was also not recorded in his statement before Police that when he again called up Nitin, there was no reply. He had made phone call to deceased using his mobile Phone No. 990607107. Nitin had also contacted him on same phone number. He had received call from unidentified person on his office landline No.285341. The office is a Transport and Journalism Unit owned by him. He had provided this phone number to Police for tracing the call. The unknown caller had

not disclosed his identity. The factum of the Ambassador car being inscribed with letters 'Police' does not find mention in his statement recorded by Police. He had not talked to Ratno Devi. He had been talking to Karnail Singh earlier also, as both hailed from the same village. The witness admitted that in terms of Disinheritance Deed dated 12.04.2005, his father had disinherited deceased Nitin. Dy.SP had interrogated the accused in his presence at about 2.30 p.m. on 1st September, 2005. SSP and SHO were also present there. The Disclosure Statements of accused were recorded and thereafter the accused were taken for effecting recovery. Accused made statements in Dogri. Recovery Memos were drawn up at Langar. Bobby, Narinder Sharma and Vicky were accompanying him to the place of recovery. Accused were taken inside the Kothi. Jeeta took lead in effecting of recovery from the roof of the house. The witness and his companions also were on the roof of the house. Jeeta had taken out the base ball bat himself. Main gate of the Kothi was locked and the same was opened by Jeeta. He learnt about kidnapping of deceased on 24th August, 2005 when he got the phone call. He learnt about the registration number of the vehicle used in kidnapping also the same day. Since accused Karnail Singh had been threatening him, he suspected involvement of Karnail Singh in the kidnapping of his brother. However, he did not inform Police on 24th, 25th and 26th of August, 2005 that he suspected involvement of Karnail Singh. He did not also publish the same in his newspaper. Accused Suresh Kumar was not known to him previously and he had seen Suresh Kumar for the first time in Gangyal Police Station.

Pw-Ravi Verma running a Bags' shop at Shastri Nagar deposed that about eight months before recording of his deposition in May 2006 he was present in his shop. At about 2.00 p.m., he heard the voice of deceased enquiring about his

welfare. He had installed sun-shade to prevent sunlight entering his shop. Meanwhile, he heard a noise emanating from the lane adjacent to Dogra Academy. He did not emerge out of his shop. The adjacent shopkeeper Jeet Raj told him that the boy generally visiting his shop had a fight outside. The witness claimed that it took him around 3/4 minutes to come out and when he was out of his shop, he found some people assembled on spot who told him that some people had lifted the deceased in a white colored Ambassador car. Meanwhile, Ravinder Sharma, resident of Nagri, who is a Policeman arrived there. The witness claims to have narrated the incident to him. At this stage, learned Public Prosecutor declared the witness hostile and cross-examined him.

On his cross-examination by learned Public Prosecutor, the witness deposed that the deceased visited his shop every now and then. Confronted with his statement recorded by Police on 28.08.2005 under Section 161 of Cr. P.C., the witness denied having made such statement from Mark A to A-1 wherein it was attributed to him that he had seen 4/5 persons forcibly lifting the deceased in a car. He also denied having been told by the deceased that he had married daughter of Karnail Singh.

On cross-examination by learned defence counsel stated that he had not seen the Ambassador car on spot. He did not know the people who informed him about kidnapping of deceased. They had not informed him of the registration number of the vehicle.

Pw-Ravinder Kumar Sharma alias Rinku has been given up by learned Public Prosecutor on the basis of application filed by the witness claiming therein that he had no knowledge about the alleged occurrence. Statement of learned Public Prosecutor declaring the witness hostile has been taken on record.

Pw-Bobby Sharma is the elder brother of deceased. He deposed that the deceased had a love affair with the daughter of Karnail Singh since his school days and Karnail Singh was extending threats by making telephone calls. The witness claimed that his family had tried to persuade the deceased to refrain from such relationship but daughter of Karnail Singh used to visit their residence. The witness claimed that his family members had taken the daughter of Karnail Singh before her father and told him that since the boy and the girl belonged to different castes, their marriage could not be solemnized. However, daughter of Karnail Singh wanted inter-caste marriage to be solemnized. Karnail Singh shifted with his family to Jammu but his daughter started making phone calls to the deceased. The witness claimed that they got their telephone disconnected. However, the deceased purchased a mobile phone and the conversation between him and daughter of Karnail Singh resumed. The witness claimed to have snatched mobile phone of deceased when the conversation was going on. Daughter of Karnail Singh told him that she would not survive without deceased and would marry him at all costs. The witness claimed to have brought the incident to the notice of Karnail Singh, who started extending threats. Karnail Singh used the services of his bodyguard to manhandle the witness and his younger brother Rajesh. The witness further deposed that Karnail Singh had called his father to the telephone booth and extended threats telephonically warning him to rein in the deceased, otherwise he would be eliminated. Thereafter the deceased shifted to Jammu and started his career as a matador driver. The witness learnt that the deceased had solemnized marriage with the daughter of Karnail Singh on 31.03.2005. In the evening of 24th August, 2005, Ravinder Sharma landed in his house at 9.00 p.m. and told him that the deceased had been

kidnapped and removed in vehicle No. 1117-JK01F. He and his brothers rushed to Jammu in the morning on following day and visited many Police stations but found no clue of deceased. On 26th August, 2005, they learnt about recovery of a dead body through Daily Excelsior Newspaper. The witness claims to have identified the dead body of the deceased lying in Government Medical College Jammu. After conducting last rites of deceased he visited Police Station, Gangyal. Accused Naresh Kumar was in Police custody and the accused took the Police party and witnesses to the place of occurrence. It happened on 29th August, 2005. Some articles including the clothes of accused Naresh Kumar and a blood stained wood were lying in the bushes. Same were seized vide ExPW-BS bearing signatures of witness. Thereafter, Police went to the hired accommodation of deceased located near Dogra Academy. Police seized wearing apparel of daughter of Karnail Singh and letters written by her to deceased from there vide ExPW-BS/1. Marriage Agreement and copies of letters had been seized by Police. The witness produced the original letters consisting of seven leaves. Same were placed on record. The witness proved seizure of wearing apparel of deceased and shirt of accused Naresh Kumar vide ExPW-BS/2 and ExPW-BS/3 respectively. The witness claimed to have visited Police Station again on 1st September, 2005 where accused Jeeta made a Disclosure Statement to the effect that he had concealed the base ball bat in the kothi of Karnail Singh at Langar. He proved the Disclosure Memo marked ExPW-VM/5. Similarly, accused Daleep Singh disclosed that he had thrown the SIM card on the rear side of kothi. Accused Sonu disclosed that he had concealed the sports cap in bathroom of the kothi at Langar. The witness testified to contents of Disclosure Memos marked ExPW-VM/7 and ExPW-VM/9 and Recovery Memos marked ExPW-VM/6, ExPW-VM/8 and ExPW-VM/10.

On his cross-examination, the witness stated that the deceased was an under-matric. His statement before Police makes no mention of the fact that the deceased was having love affair with the daughter of Karnail Singh since the days of his studentship of 9th standard and that the daughter of Karnail Singh insisted on inter-caste marriage despite the father of deceased disapproving of such marriage. His statement recorded by Police makes no mention of daughter of Karnail Singh insisting on marriage, manhandling of the witness and his brother by bodyguard of Karnail Singh, extending of threats by Karnail Singh to his father telephonically and the fact that Pw-Ravinder Sharma alias Rinku had visited his house to inform that the deceased had been forcibly lifted in a vehicle. Police had seized the clothes of daughter of Karnail Singh and letters from the hired accommodation of deceased on 25th August, 2005 and sealed the room on 26th/27th August, 2005. The witness did not participate in the marriage of deceased solemnized on 31.03.2005. He had seen accused Jeeta, Daleep Singh and Sohan Lal for the first time on 29th August, 2005 in Police Station, Gangyal. They were not previously known to him. When he visited Police Station on 29th August, 2005 his brother Vijay Mohan was with him. It was on that day that the accused had confessed their crime and pleaded that they had eliminated the deceased at the bidding of Karnail Singh, who has promised to provide them permanent employment. On 30th August, 2005 the accused provided details of crime and disclosed the *modus operandi* in executing murder of deceased. The statements of accused were recorded by Police and same bore signatures of accused. The witness further stated that he had accompanied the Police Party when recoveries were effected at the instance of accused. Nobody lived in the Kothi of Karnail Singh at Langar, as his family had shifted to Jammu. The gate was closed and Police had opened the gate from

inside. They had scaled the compound wall to go inside before opening the gate. SIM card was lying on the back side of kothi in an open space whereas base ball bat was lying in an open space on rooftop of first floor. The sports cap was found lying in the ground floor bathroom. The witness further stated that he had learnt about kidnapping of deceased, the vehicle used in kidnapping and the person behind the kidnapping on 24th August, 2005 at 9.30 p.m., but he had not lodged report in this regard at the Police Station.

Pw-Narinder Kumar Sharma deposed that the deceased and accused Karnail Singh belonged to his village. Deceased had a love affair with Neetu daughter of Karnail Singh. On 27th August 2005, Rajesh Kumar came to his residence and stated that his father Master Surinder Mohan had called him. The witness went there. Surinder Mohan and his elder son Vijay Mohan told the witness that the deceased has been kidnapped on 24th and taken in Ambassador car bearing registration No.1117/ JK01F having a red beacon light. They further told him that since the deceased had solemnized marriage with Neetu, they suspected involvement of Karnail Singh. Meanwhile, brother of deceased informed them that he had read in the morning newspaper that an unidentified dead body has been recovered and is lying in Government Medical College, Jammu. Vijay Mohan said that he had sent his brother and Rinku to Jammu in this connection. After more than one hour a phone call was received by Vijay Mohan. Rinku informed him that the dead body has been identified as that of Nitin. Thereafter the witness and others rushed to mortuary of Government Medical College, Jammu where they found the body of deceased. The witness testified to contents of Identification Memo of dead body marked ExPW-BM, Seizure Memos marked ExPW-BM/2, 3 and 4. The witness further

deposed that on 30th August, 2005 he again visited Police Station, Gangyal with Vijay Mohan, Baldev and Lucky accompanying him. Rs.2160/- were recovered from Naresh Kumar along with a purse vide ExPW-NK. The witness further claimed that accused Naresh Kumar had made Disclosure Statement in regard to Driving Licence and mobile phone of deceased which he claimed to have kept above the almirah in the kothi of Karnail Singh. The witness also testified in regard to Disclosure Statement made by the aforesaid accused in respect of jungle shoes. He proved the disclosure statement marked ExPW-NK/1. The witness also proved recovery of jungle shoes from a room and recovery of Driving License and Mobile phone lying on the top of almirah in the kothi of Karnail Singh. He proved ExPW-NK/2 in this regard. The kothi was sealed thereafter.

On cross-examination, the witness stated that the police made an enquiry from him on 27th, 28th and 30th of August, 2005. However, on 27th August, he did not disclose before Police what happened in the house of deceased when Surinder Mohan had called him there. Accused Naresh was not previously known to him. Accused Naresh had made disclosure statement in the office room of SHO. Police Officers besides Baldev Raj, Lucky and Bobby Sharma were also present at that time. The Disclosure Statement was made in Dogri but the same was recorded in Urdu. They had reached the place of recovery within fifteen minutes of making of Disclosure Statement. Recovery was effected from the ground floor room of double storey kothi located at Langar. Recovery Memo in respect of jungle shoes was prepared in Police Station. Same was case in respect of Recovery Memos in regard to mobile phone and licence. Disclosure Memo and Recovery Memo were prepared simultaneously after effecting recovery.

Pw-Baldev Raj deposed that the deceased was having a love affair with the daughter of Karnail Singh since 4/5 years and they solemnized marriage on 31st March 2005. Karnail Singh was unhappy with it and he had threatened the father of deceased several times. The witness further deposed that Karnail Singh had also set Police after the deceased. The deceased was kidnapped on 24th August, 2005 from Dogra Academy and removed in an Ambassador car to some place. Same day at 10.00 p.m., brother of deceased had received a phone call that the deceased had been taken by Police. This fact was told to witness by the brother of deceased. On 25th August, the witness and the relatives of deceased started searching for deceased in different Police Stations but there was no trace of accused. On 26th August, they learnt about discovery of a dead body at Greater Kailash from Kashmir Times and JK Channel. Body was recognized as that of deceased in Hospital. The witness testified to Identification Memo marked ExPW-BM. He also proved receipt of dead body marked ExPW-BM/2, Seizure Memo relating to marriage certificate and documents marked ExPW-BS/1, Seizure Memo of wearing apparel of deceased and a ring marked ExPW-BS/2. The witness also deposed in regard to confession of accused Naresh Kumar, who is claimed to have told to Police that Karnail Singh and his wife had promised to pay him Rs.1,20,000/- to eliminate the deceased and he had received Rs.10,000/- as advance and eliminated the deceased in the kothi of Karnail Singh at Langar and dumped his dead body in a gunny bag and thrown the same in Greater Kailash Canal. The witness further deposed that accused Naresh Kumar had led the Police to the Canal from where a gunny bag soaked with blood, a stone, a stick and two leaves of a tree stained with blood were recovered and seized vide ExPW-BS. Shirt of accused Naresh Kumar soaked in blood was also recovered nearby. The witness testified to

Seizure Memo marked ExPW-BS/3 in this regard. He also proved the Supurdnama marked ExPW-BR in respect of wearing apparel of Neetu and documents including love letters and marriage certificate.

On cross-examination deposed that the deceased was not related to him and he lived around 800 mts away from his house. In 2004 deceased had shifted to Jammu where he worked as a matador driver. He had never visited the residence of deceased at Jammu. Neetu was not known to him. The witness admitted that he learnt about marriage of deceased with Neetu after deceased's death. Karnail Singh was posted as SSP, Rajouri at the time of occurrence. He spoke about marriage of deceased on the basis of marriage certificate which he had seen in Police Station. In March 2003, Karnail Singh had abused and slapped the deceased. He learnt about it from the deceased. The witness stated that he was running a shop at Nagri about 750 mts away from the place where the incident of abusing and slapping took place. He did not disclose the incident to the family of deceased. He could guess that Police was following the deceased at the instance of Karnail Singh. He had not himself witnessed the incident of kidnapping of deceased on 24th August, 2005. Vijay Mohan had told him about the information received on telephone, but he had not disclosed the identity of caller. No report was lodged on 25th August, 2005. On 26th August, he learnt about recovery of dead body from newspaper report and also watched the news/ the evening news in JK Channel. However, he did not inform the family of the deceased. On 27th August, he set out for Jammu at 5.00 p.m. Brothers of deceased, namely, Bobby Sharma and Vijay Mohan, were accompanying him. Police guided them to mortuary where only body of deceased was lying. Bobby Sharma had produced the letters and wearing apparel before Police on 29th

August, 2005. He had seen accused Naresh Kumar in Police Station on 30th August. He was not previously known to the witness. He has never visited the kothi of Karnail Singh at Langar. The witness denied the suggestion that his father was the real brother of father of deceased. Accused were interrogated in his presence. Recovery was effected from an open space near Canal as the articles were lying under the bushes.

PW-Bijander Kumar has deposed that a purse containing cash amount of Rs.2160/- was recovered from personal search of accused Naresh Kumar. He testified to the search memo marked EXPW-NK in this regard. He further deposed that accused Naresh Kumar disclosed before Police that he had concealed the mobile phone and driving licence of deceased and a jungle shoe belonging to him in kothi of Karnail Singh. He testified to disclosure memo marked EXPW-NK/1 in this regard. He along with Bobby, Narinder and Baldev accompanied Police to the kothi of Karnail Singh where from the mobile phone, driving licence and jungle shoes were recovered at the instance of accused Naresh Kumar. He proved the recovery memo marked EXPW-NK/2 in this regard. He also identified the recovered articles marked BS-I to BS-III. He identified the recovered purse marked BS-IV.

On cross-examination, the witness stated that he belongs to village Nagri. He had been going to Jammu to inquire about Nitin Sharma, who had gone missing. Deceased was not related to him. He saw accused Naresh Kumar for the first time in Police Station, Gangyal. The accused was subjected to personal search in his presence. Thereafter, the accused made a disclosure statement in presence of Dy.SP Chouhan. Some Police Personnel were present at that time. Accused had stated that the mobile phone was of SPICE brand. Licence was in the

name of deceased Nitin Sharma. He had not seen anybody residing in the kothi. Accused had himself led the Police party to the venues of recovery. Mobile phone was recovered from an almirah kept in the room on 1st floor. The jungle shoes were recovered from beneath a wooden table in a room on the ground floor. Recovery memo was prepared there.

PW-Sukhchain Singh deposed that in August, 2005, he was posted as Constable in Police Station, R.S. Pura. Accused Karnail Singh had attached him to his residence for teaching his children. He used to teach the children and also attend to other domestic chores. Ratno Devi had given him Rs.10,000/- for delivering the same to accused Naresh Kumar, who was instructed to deliver the same to mistri Rashpal working in her house at Langar. The witness stated that he went to Langar and knocked at the gate. Naresh came out of gate and asked him to enter from the other entrance. The witness delivered the money to Naresh at the other gate and left the place.

On cross-examination, the witness stated that while delivering money to accused Naresh, he told Naresh that Ratno Devi had given the money for making payment to mistri Rashpal, who was undertaking construction work of the house. The witness further stated that the money was delivered in August outside the gate of the house.

PW Sarla Kumari has been given up by learned Public Prosecutor on the ground that she was hostile to prosecution.

PW-Raj Kumari deposed that the deceased was a tenant and he lived for a brief period of two months and eight days as tenant in her house bearing No.172, Sanjay Nagar, Jammu. It was sometime in middle of year 2005 that the deceased received a phone call to which he responded and told the caller to wait

for him at Dogra Academy. The witness could not say whether the deceased had gone there, as she left for the temple. Police arrived there after about three days and told her that the deceased was dead. Police unlocked the room occupied by the deceased, inspected the same, but did not seize anything. No question was put to witness in cross-examination.

PW Vijay Lakshmi has been given up by learned PP on the ground that she was hostile to prosecution.

PW-Amarjeet Kour deposed that there was a commotion near Dogra Academy. However, she did not leave her house. A police man had visited her house and inquired about her name. At this stage, the witness was declared hostile to prosecution and on cross-examination by learned PP, the witness deposed that her house is located at a distance of four houses from Dogra Academy chowk. She had not heard any noise herself, but her neighbour had advised her not to come out of house, as there was a commotion. Her grand children were in school at that time. Police had visited her house after 3/4 days, but she told the police that she had not seen anything. The witness disowned the statement recorded under Section 161 Cr.PC from Mark-A to Mark A-1 attributed to her.

PW-Joginder Lal has been given up by prosecution as being an unnecessary witness.

PW-Constable Lekh Raj deposed that on 26.08.2005, he was posted at Police Post, Greater Kailash. An unidentified body was recovered from Fountain Chowk Canal at Greater Kailash. He proved the recovery memo marked EXPW-LR. He further deposed that the officer incharge of Police Post, Greater Kailash had seized the pair of shoe laces used in tying the neck and

hands of deceased besides a plastic rope of 22 feet length tied with the dead body vide seizure memo marked EXPW-LR/1.

On cross-examination, the witness stated that he did not know the person whose dead body had been recovered.

PW-Sudarshan Kumar working as Beldar in Irrigation Department and posted as Beldar Canal at Greater Kailash, deposed that on 26.08.2005, while conducting cleaning operation of canal at 11.00 a.m. found a human body lying in the canal near Fountain Chowk. Police retrieved the dead body which had its hands tied with the shoe lace and a rope tied to his neck. The body could not be identified on spot.

On cross-examination, the witness stated that he reported on duty at 8.00 a.m.

PW-Surinder Mohan Sharma deposed that the deceased was his son and he was murdered on 24th August, 2005 at the instance of Karnail Singh posted as SSP. The deceased was having a love affair with Neetu Devi-daughter of Karnail Singh since eight years and Neetu Devi had been visiting his house frequently. The witness claims to have advised Neetu Devi to refrain from having relationship with the deceased, but she maintained that inter-caste marriages are permissible. It was after death of deceased that he learnt about Court marriage between the deceased and Neetu Devi. It was around 2/3 months before the occurrence that Karnail Singh sent for the witness but he could not go to Police Post, Nagri on account of his illness. However, he accompanied the brother of Karnail Singh working as a Constable at Police Post, Nagri to a PCO from where he talked to Karnail Singh on Phone. The witness further deposed that Karnail Singh had threatened to shoot the deceased or get him eliminated. A fortnight thereafter the deceased visited his house and the witness claims to have

advised the deceased not to go back to Jammu as his life was in danger. However, the deceased did not heed his advice and left for Jammu. Deceased had to return to his home on 24th August, 2005, but he did not reach there till evening. The phone call by elder brother of deceased, namely, Rajesh went unanswered. At about 9 p.m. Rinku *alias* Ravinder Kumar visited the house of witness and informed him that the deceased has been removed by some people in a Police vehicle fitted with the beacon light. The witness claims to have advised his son Rajesh to search for Nitin. The witness further deposed that he made a phone call to Karnail Singh from a PCO to inquire about the deceased, but Karnail Singh expressed ignorance about the incident. There was no trace of the deceased. On 27.07.2005, Daily Excelsior reported that an unidentified dead body was lying in Bakshi Nagar Hospital. His three sons visited the hospital and identified the dead body as that of the deceased, who was working as a Matador Driver in Jammu and living in Sanjay Nagar.

On cross-examination, the witness deposed that he did not know the owner of Matador which the deceased was driving at that time. He had visited the rented accommodation of deceased at Jammu once or twice. He had disinherited the deceased 4/5 months before his death. This was done to protect the family from any onslaught. The deceased had previously told him that he would be visiting his house on 24th August, 2005. He would inform about the intended visit to his home as and when he chose to visit his family. He further stated that the deceased had shifted to Jammu about nine months before. The rented house was single storied. He was not aware of the friends and companions of deceased at Jammu. Accused Karnail Singh belongs to his village and has been a student of his father. However, the two families were not on visiting terms to each other. The houses of two families were separated by a

distance of half a kilometer. He did not know when Karnail Singh shifted to Jammu. He denied that he had heard about the marriage of deceased with Neetu Devi for the first time on 24.08.2005 from Rinku. He had not told his sons to lodge a report with Police on the basis of information derived from Rinku that the deceased had been kidnapped in a Police vehicle. No report was lodged with Police about disappearance or kidnapping of deceased till 27.08.2005.

PW-Rajesh Kumar is the brother of deceased. He deposed that the deceased was working as a Matador driver on Gandhi Nagar route and lived in a rented accommodation at Sanjay Nagar, Jammu. The deceased had a love affair with Neetu Devi for about eight years. On 24.08.2005 at 9.30 a.m., the witness made a phone call on the mobile phone No.9906212436 of deceased which was responded by the deceased who told the witness in a frightened tone that he has contracted Court marriage with Neetu Devi, who has informed him that her parents have planned his murder and that he should return to his village within 2/3 days. The deceased told him that he would be returning home in the evening. However, he did not return. The witness claims to have made a phone call to deceased from STD but his phone was switched off. The witness talked to his parents. At about 9.00 p.m. Ravinder Kumar alias Rinku serving in IRP visited his house and informed that 5/6 people had kidnapped the deceased and removed him in a Police car fitted with beacon light bearing registration No.JK01F-1117. This created a panic in the family. Searches were made for deceased on 25th and 26th August, 2005. On 27th August, he learnt about recovery of an unidentified dead body from Greater Kailash Canal from a newspaper report. He along with others visited GMC Jammu where the recovered dead body was found to be that of the deceased.

On cross-examination, the witness stated that he had joined the Office of RTO, Lakhanpur as a temporary employee on 29th March, 2004. He did not know the owner of the Matador which the deceased was driving. He had never visited the rented room of deceased at Sanjay Nagar. The deceased would sit in the company of Vicky and Mahender hailing from his village besides Ricky son of the land lady. The witness admitted that the deceased had been disinherited by his parents but denied that the deceased had left the house on account of the same. The deceased had told him that he had solemnized Court marriage with Neetu Devi on 31.03.2005. From 31st March, 2005 to 24th August, 2005, deceased visited his family at Nagri Parol 3/4 times, but Neetu Devi had never visited his house at Nagri during the aforesaid period. She was residing with her parents at Jammu. Ravinder Kumar alias Rinku was the first person to break the news of kidnapping of deceased. The witness further stated that his statement was recorded by Police on 04.09.2005 and he had told the Police that Ravinder Kumar had visited his house in the evening and informed about kidnapping of deceased. However, there is no mention of time, registration number of vehicle used in kidnapping of deceased and the venue of crime in his statement recorded under Section 161 Cr. PC. Same is true about the cell phone number of deceased. He and his brothers had visited Jammu on 25th August, 2005 after learning about kidnapping of deceased and reported at Police Station, Gandhi Nagar. However, no report was lodged with Police. They had only inquired from Police Station, Gandhi Nagar about the deceased. He does not know whether brothers had visited the rented accommodation of deceased. Gandhi Nagar Police had not recorded the information provided by the witness on the basis of information given by Rinku. Accused Karnail Singh is not permanently residing in Jammu. He continues to maintain his residence at

Nagri also. About three months before the occurrence, brother of Karnail Singh had taken the father of deceased to PCO for having conversation with Karnail Singh. However, this fact does not find mention in his statement under Section 161 Cr. PC. His brother Vijay Mohan was a Correspondent of State Times. However, no missing report in respect of deceased was published in any newspaper. The witness denied the suggestion that there was no clue about the deceased till he and his brothers had seen the dead body of deceased.

PW-Ghulam Mohd. Ganai posted as Sub-Inspector in 6th Bn. of IRP based at Rajouri since November, 2004 and discharging duties as MTO deposed that car bearing registration No.1117–JK01F belonged to his Bn. and had been allotted to SSP Karnail Singh, the then Commandant. This vehicle had been stationed at the residence of Karnail Singh at Jammu for use of his family. The witness proved the seizure of log book and voucher book relating to this vehicle by Police vide EXPW-GM. The vehicle had been seized and placed on Supurdnama of the witness vide EXPW-GM/1. The witness identified the seized log book and voucher book respectively marked as GM and GM/1 on last page of each book.

PW-Ghulam Mohd. SGC working as MT Clerk in 6th Bn. IRP based at Rajouri deposed that he had accompanied PW-Ghulam Mohd. Sub Inspector – the then MTO, carrying record in respect of the seized car which had been seized by SDPO, Gandhi Nagar vide EXPW-GM.

On cross-examination, the witness stated that original record of stock book was lying in the custody of Battalion. The seized record was not shown to him in Court.

PW-Mohd. Razaq Head Constable also posted in IRP 6th Bn.

at the relevant time too claimed to have accompanied MTO Sub Inspector Ghulam Mohd. to the Office of SDPO, Gandhi Nagar when the record was produced before SDPO who seized the same vide EXPW-GM. He identified the seized record marked LB and VB on 1st page of log book and voucher book. He further deposed that the car bearing registration No.1117-JK01F was allotted to Karnail Singh, SSP and Constable Suresh Kumar was the driver of the car.

On cross-examination, the witness stated that he had not seen the allotment order of car in the name of Karnail Singh.

PW-Mohd. Amin Head Constable also posted in IRP 6th Bn. at Rajouri, deposed that he worked as Moharir of the Unit and maintained record of vehicles in Roznamcha. He proved the seizure of extracts of Roznamcha bearing his signatures marked EXPW-MA/1 to EXPW-MA/3. According to EXPW-MA/2, the vehicle in question had been dispatched to Police Transport Work Shop, Jammu on 20.07.2005 vide letter dated 19.07.2005. It was returned on 26.08.2005.

On cross-examination, the witness stated that the car had been sent to workshop for repairs.

PW-Sudesh Raj Head Constable deposed that in August, 2005 he was posted as Guard Commander at the residential quarter of SSP Karnail Singh. He was posted there since a year and he along with his subordinate officials Raj Kumar, Bikram Singh and Subash Chander - Constables was on the roll of District Police, Border District Jammu, as Karnail Singh was earlier posted as SSP Border. In August, 2005, Karnail Singh was transferred and posted as Commandant IRP 6th Bn. based at Rajouri. Ambassador car bearing registration No.1117-JK01F belonging to IRP was used at the residential quarter of Karnail Singh and accused Suresh Kumar was working as his driver.

The witness further deposed that he had no knowledge about the alleged occurrence. On 27th August, 2005, the wife and daughter of Karnail Singh had left in the aforesaid car for Rajouri as told to him by the driver and the car had returned on 2nd September, 2005 bringing back Karnail Singh and his family. Accused Suresh was driving the car. The witness further deposed that he had not given attention to the number plate of the car. At this stage, Court permitted learned PP to cross-examine the witness taking into account statement of witness recorded under Section 161 Cr. PC. The witness denied having told the Police that when the car returned, its number plate bore its registration number as 4117-JK01E instead of its correct registration No.1117-JK01F. He also denied making a false statement under pressure emanating from accused Karnail Singh, who served as his Officer.

On cross-examination, the witness stated that this vehicle would frequently travel between Jammu and Rajouri. However, he did not remember the dates.

PW Raj Kumar Constable deposed that in Aug/Sept, 2005 he was posted on guard duty at the official residential quarter of Karnail Singh at Chhanni Himmat. He was there for the past one year. Karnail Singh was posted as Commandant IRP 6th Bn. at that time. On 27.08.2005, Ratno Devi and her daughter Neetu Devi boarded Ambassador car bearing No.JK01F-1117 driven by Suresh Kumar on their way to Rajouri. He learnt from a newspaper report that a boy had been killed at the venue of newly constructed house of Karnail Singh. On 02.09.2005, Karnail Singh and his family returned from Rajouri in the same Ambassador car driven by Suresh Kumar. At that time the vehicle was having the registration no. plate marked as 4117-JK01E. Karnail Singh dropped his wife and daughter at his official residence and himself left along with the driver but

returned after some time.

On cross-examination, the witness stated that the aforesaid vehicle would visit Rajouri at times and would also remain stationed at Chhanni Himmat for some time. It was used for taking the children to school also. The Ambassador car was of white colour. The number plate of the vehicle was painted. He did not know whether there was any police car bearing registration number as 4117-JKO1E. He had not made any complaint to superior police officers regarding change in registration number of the vehicle. His statement was recorded at the residence of Karnail Singh. When the car left the residence of Karnail Singh on 02.09.2005, it bore the same number plate as it was bearing when it had arrived there.

Pw- Subash Chander Constable deposed that in August 2005, he was posted on Guard duty at Chhanni Himmat residence of Karnail Singh. Pw-Sudesh Raj Head Constable and two more constables too were posted there. On 27.08.2005, wife and daughter of Karnail Singh boarded official Ambassador car of Karnail Singh bearing registration number JK01F-1117. The car was driven by Suresh Kumar. On 02.09.2005 the Ambassador car returned back with Karnail Singh and his family traveling therein. However, he did not notice anything special. The witness was declared hostile to prosecution and on cross-examination by learned Public Prosecutor the witness denied having stated before Police that when the car returned back on 02.09.2005, its number plate bore registration number 4117-JK01E instead of 1117-JK01F. He denied having succumbed to pressure emanating from Karnail Singh.

On cross-examination by defence counsel, the witness stated that the Ambassador car would frequently travel between Jammu and Rajouri, but he did not remember other dates.

Pw-Vikram Jeet Singh Constable deposed that on 27.08.2005, he too was posted on Guard duty at the official residence of Karnail Singh. It was probably on 27th or 28th of August, 2005 that the wife and daughter of Karnail Singh left in the official car of Karnail Singh bearing registration number JK01F-1117. The car returned after a few days. The witness was declared hostile to prosecution and on cross-examination by learned Public Prosecutor the witness claimed that he did not remember having told the Police that the car was driven by Suresh Kumar when it left on 27.08.2005 and he had driven back the vehicle on 02.09.2005. He also denied having told the Police that when the car was brought back, it bore changed number plate displaying registration Number as JK01E-4117.

On cross-examination by learned defence counsel, the witness stated that he had told the Police that the guard on duty informed him that the car was going to Rajouri.

Pw-Subash Chander resident of Langar deposed that he did not know anything except that Naresh Kumar was in Jail facing murder charges. He denied that Naresh Kumar had purchased a gunny bag from his shop. The witness was declared hostile by the prosecution and on cross-examination by learned Public Prosecutor, he disowned the statement attributed to him under Section 161 of Cr. PC. He denied that he had succumbed to pressure emanating from the accused.

Pw-Prem Dass resident of Langar deposed that after his retirement from service, he had engaged in business of empty gunny bags and containers. Karnail Singh was constructing house at a distance of 250 yards from his house. Naresh Kumar was supervising the construction work. The witness denied that Naresh Kumar had been making and receiving phone calls at landline phone No. 2480656 installed in his house. The witness

was declared hostile to prosecution and on cross-examination by learned Public Prosecutor, he deposed that Karnail Singh was not related to him. He had not seen other accused visiting Naresh Kumar. He disowned statement under Section 161 of Cr. PC to that effect. He disowned the other part of his statement under Section 161 of Cr. PC and maintained that he was not making a false statement by resiling from earlier version under influence of Karnail Singh on account of relationship.

Pw- Subash Chander-Patwari halqa chowadi deposed that he was posted as Patwari in September 2005, but he was attached to the office of Tehsildar Jammu. Charge of Patwari was held by Girdawar Manzoor Hussain. Site plan and extract of Girdawari shown to him were prepared by Manzoor Hussain.

No question was put to witness in cross-examination.

Pw- Suleman Salaria deposed that in September 2005, he was posted as Incharge DIG armed Jammu. He proved the wireless message dated 01.09.2005 marked EXTP-SS bearing his signatures sent to SSP, Jammu, copies whereof were sent to ADG (AP), IGP, Jammu, DIG Jammu-Kathua Range, adjutant Incharge Commandant IRP 6th Bn. Rajouri and SDPO, City-South Jammu.

On cross-examination the witness stated that on 29.08.2005, Karnail Singh had sent a wireless message to ADGP Armed and other authorities regarding clarification of a news item published in Daily Excelsior issue dated 28.08.2005 in respect of case registered under FIR No. 79/2005 under Section 302 of RPC at Police Station, Gangyal, but Karnail Singh did not appear before IGP, Jammu till 02.09.2005.

PW- Amarjeet Singh deposed that on 14.09.2005, he was posted as SP of Police Transport Workshop. He proved letter

dated 14.09.2005 bearing his signatures which he wrote to SDPO, City-South, Jammu. It was marked EXTP-AS.

No question was put to witness in cross examination.

Pw-Narinder Kour-Advocate deposed that she had been appointed as Notary Public in April 2000. Marriage Agreement dated 31.03.2005 executed between Nitin Sharma and Neetu Rani had been attested by her. It was marked EXT-NK. She further deposed that the parties to the marriage agreement and the witnesses had signed the document after admitting its execution and contents. The document bore photographs of the couple. She also deposed that Nitin Sharma and Neetu Rani had sworn affidavits before her on the same day. These were respectively marked as EXT-NK/1 and EXT-NK/2.

On cross-examination the witness stated that these documents were type written under her personal supervision. Executants were not previously known to her. Police had not recorded her statement. These documents were not reflected or registered in Notarial register. There is no provision of agreement under Hindu Marriage Act. She attested the document as an Agreement.

Pw-Kudeep Raj deposed that he was running photography studio near fountain chowk at Greater Kailash. At the instance of Police, he clicked photograph of body of deceased at the Canal. He also clicked photographs at the kothi of Karnail Singh at Langar. He identified the photographs marked 1 to 22.

On cross-examination, the witness stated that the Police had tied rope to the body of deceased before he was asked to click photographs of dead body.

Pw- Babu Ram is the father of accused Suresh Kumar. He deposed that in August /September, 2005, he was posted as

Peon in Higher Secondary School, Purmandal. Suresh Kumar was posted as Constable in IRP which had been transferred from Srinagar to Rajouri. He denied that Suresh Kumar had visited his house 2/3 days before his arrest and Karnail Singh and his family were with him and they stayed in his house at Purmandal for the night. The witness was declared hostile to the prosecution and cross-examined by learned Public Prosecutor wherein he stated that he was not aware that Suresh Kumar used to drive the Ambassador car of Karnail Singh. He disowned statement attributed to him under Section 161 of Cr. PC. He also denied compromising with truth, as his son was involved in the case.

No question was put to witness in cross examination by the prosecution.

Pw-Prem Pal is the brother of accused Suresh Kumar. He deposed that Police had inquired about Suresh Kumar and he had denied any knowledge about the case. The witness was declared hostile to prosecution and on his cross-examination by learned Public Prosecutor, the witness disowned the statement attributed to him under Section 161 of Cr. PC. He denied that Karnail Singh and his family visited his house in Ambassador car bearing registration Number 4417-JK01E in the evening of 29.08.2005 and stayed there for the night and left for Jammu in the morning of 30.08.2005. He denied that he was making a false statement to save his brother.

Pw-Surinder Kour deposed that she was working as private employee in STD shop of Chib Sales Corporation at Shastri Nagar, Jammu. The STD was operating 5/6 telephone numbers including 2454909, 2454992, 2454299. Police had noted down all telephone numbers which were operational. The witness was asked to identify accused Naresh Kumar but the witness

stated that Naresh Kumar was not known to her. The witness was declared hostile by the prosecution and on cross-examination by the learned Public Prosecutor, the witness stated that she had not told the Police that accused Naresh Kumar had made two phone calls from STD on 24th of August 2005 on AIRTEL Mobile No. 9906212436 from STD Phone number 2454299. She also denied having told to Police that Naresh Kumar had asked the recipient of the call to reach near Dogra Academy.

Pw-Shinda Kumar: deposed that in August 2005, he was running Bajwa STD booth at Shastri Nagar, Jammu which had three phone lines installed under numbers 2454240, 2451564 and 9906350294 having their own monitors. He denied that Police had made enquiry from him in regard to any phone call. The witness was declared hostile to prosecution and on cross-examination by learned Public Prosecutor, he disowned the statement made before the Police under Section 161 of Cr. PC bearing mark A to A/1. He denied that he was making a false statement under pressure from the accused.

PW-Sat Pal is a cousin of Karnail Singh. He deposed that on 06.09.2005, Police inquired from him whether Karnail Singh had visited him. He replied in negative. The witness was declared hostile to prosecution and on cross-examination, he disowned the statement bearing Mark A to A-1 attributed to him under Section 161 Cr. PC. He denied that he was making a false statement on account of relationship with the accused.

PW-Krishna Rani is the wife of PW-Sat Pal. She denied that the accused Karnail Singh and his wife Ratno Devi had visited her house at Sujampur. The witness was declared hostile and on cross-examination by learned PP, she stated that during her married life of 35 years, the accused never visited her house.

She disowned the statement attributed to her under Section 161 Cr. PC and denied the suggestion that on 01.09.2005, Karnail Singh, his wife and daughter had visited her house with driver Suresh Kumar driving his Ambassador car and stayed there for the night. She denied that she was making a false statement on account of relationship with the accused.

PW-Kamla Devi resident of Ganderwan and serving in NHPC, Jyotipuram as Clerk deposed that her husband M.L. Dogra had retired from NHPC and during his stay at Jyotipuram, he had picked up acquaintance with Karnail Singh who was posted there as SDPO. However, she did not know Karnail Singh. She further deposed that a lady Police Officer had inquired about the visit of accused to her house, but she had denied that the accused had visited her residence. The witness was declared hostile and on cross-examination by learned PP, the witness deposed that she did not know whether her husband used to visit the residence of Karnail Singh. She further stated that wife of Karnail Singh had never visited her residence. She disowned the statement attributed to her under Section 161 Cr. PC bearing Mark A to A-1. She denied the suggestion that she was making false statement to save the accused.

PW-Rakesh Hangloo Incharge Scientific Officer – Documents FSL, Jammu deposed that SDPO, CP-South, Jammu had forwarded documents of case FIR No.79/2005 of Police Station, Gangyal, the FSL vide his letter dated 14.09.2005. After examining the documents, he was of the opinion that the person who wrote the blue enclosed writings stamped and marked S-1 also wrote the red enclosed writings similarly stamped and marked Q-1, Q-1/1, Q-2, Q-2/1, Q-3, Q-3/1, Q-4, and Q-4/1. The report was marked EXTP-RH. He produced the documents on the basis of which opinion was framed.

On cross-examination the witness stated that his opinion was on the basis of Photostat copies of questioned documents. He agreed with the suggestion that for comparison of the documents, the originals are best standards.

PW-Mool Raj Scientific Officer, FSL, Jammu deposed that on 05.09.2005, he received four sealed packets through Constable Jassa Singh which related to FIR No.79/2005 of Police Station, Gangyal. The contents were subjected to examination and the opinion was recorded in report No.817 dated 14.09.2005. He proved the report marked EXPW-MR.

On cross-examination, he stated that only few seals tallied with the specimen seal. The report was inconclusive.

PW-Dr. Sangeeta Chowdhary, Demonstrator in Forensic Medicine Department, GMC, Jammu deposed that she conducted autopsy on the body of Nitin Sharma on 28.08.2005 and found a ligature mark present over neck below thyroid cartilage horizontally placed. The ligature mark was 0.5 cm in width and dark brown in colour. Fracture of hyoid bone present. There was massive bruising under the ligature mark in subcutaneous tissue, muscle present under the entire ligature mark. There was fracture of mandible present in the middle. There were multiple ligature marks of 0.25 cm to 0.5 cm on hands at wrist, bluish discoloration. Viscera was preserved and sealed and handed over to IO for chemical analysis at FSL. As per FSL report and postmortem findings, it was opined that the deceased could have died due to asphyxia as a result of strangulation. She proved the report marked as EXTP-SC. She further deposed that on 19.05.2005, SDPO, City-South, Jammu sent baseball bat, nylon rope red in colour, and black shoe laces (5 pieces) with three knots for his opinion. She replied to questions. As per her reply, the fracture injury in mandible could be possible by baseball bat. She further opined that the

ligature marks present over neck and wrist were consistent with shoe laces if tied around neck and wrist. Drowning was post-mortem. The witness proved the report marked EXTP-SC/1.

On cross-examination, the witness stated that all injuries except fracture mandible were strangulation injuries. Fracture mandible could be caused even with blunt weapon. Ligature mark was higher in width than the shoe lace shown to the witness. Dimension of fracture mandible was not mentioned with reference to area of skin covered. There was no injury on the skin over fracture mandible, as the body was highly decomposed.

PW-Ajit Singh Sub-Inspector, posted as Officer Incharge, PP Greater Kailash, deposed that dead body was recovered from canal near fountain chowk Greater Kailash. It was seized vide Memo marked EXPW-LR. He also testified to contents of seizure memo relating to rope, shoe lace besides site plan inquest report and statement of Vijay Mohan recorded under Section 175 Cr.PC respectively marked as EXPW-LR/1, EXTP-AS/1, EXPW-VM and EXPW-VM/1.

On cross-examination, the witness stated that the identity of the dead body was not known at the time of its recovery. Inquest report was prepared before postmortem. The dead body was identified by brother of deceased next day.

PW-Sunil Koul posted as Scientific Assistant at FSL, Jammu proved the report No.807 dated 13.09.2005 signed by him relating to viscera of deceased Nitin Sharma. It was marked EXTP-SK. No question was put to witness in cross-examination.

PW-Dev Raj Sharma, the then Naib Tehsildar (Executive Magistrate) 1st Class Digiana, Tehsil Jammu deposed that on

13.09.2005, he accompanied IO to Police Quarters at Chhanni Himmat, Jammu and obtained specimen handwriting and signatures of Neetu Rani - daughter of accused Karnail Singh. He attested the same. These were marked EXTP-Dr, EXTP-Dr/1 and EXTP-Dr/2. On cross-examination, he stated that he did not remember the name of IO. He had received a written request from IO but the letter was not shown to him in Court. He had carried the official seal with him. He had dictated the specimen writing to the girl. Karnail Singh was known to him and he had satisfied himself that she was the daughter of Karnail Singh. Another daughter of Karnail Singh was also present there.

PW-Munish Bindra, Nodal Officer, Bharti Airtel deposed that in July/August 2005, Mr. Parshant Tripathi was posted as Nodal Officer of Bharti Televenture Limited – Airtel. He could identify signatures of Mr. Tripathi. Mr. Tripathi had provided record to SSP –South, Jammu in respect of Mobile phone numbers 9906212436 and 9906277144. The witness identified the computer generated data record from page No. 165 to 179 forming part of the Challan. The accompanying letter was marked ExTPW-MB. Mobile telephone No. 9906212436 as per record of August 2005 stood in the name of Naresh Kumar S/o Hans Raj R/o Langar Kaluchak, while Mobile Phone No.9906277144 was recorded in name of Vicky Kumar S/o Balak Ram R/o House No. 28, Gujjar Nagar, Jammu. The Computer generated record was true as per the original record.

On cross-examination, the witness stated that he had been posted in Jammu in January 2008. Mr. Tripathi was acting as Nodal Officer Bharti Air Tel Jammu till 2006, but he had left before the witness joined there. The witness could not identify the signatures of Parshant Bharti on the CDR Details, as he had

never seen him appending his signatures.

Pw- K. K. Thakur deposed that he was posted as General Manager Mobile Services since 02.08.2010. In response to letter dated 30.08.2005 from SDPO, City- South, Jammu, BSNL had provided call details in respect of mobile phone No.9419131835 from 19.07.2005 to 15.09.2005. This phone number had been issued in the name of Karnail Singh resident of quarter No.4, Police Colony, Chhanni Himmat, Jammu in August 2005. The witness proved the mechanically prepared call data record in respect of outgoing calls which was true as per original record.

On cross-examination, the witness stated that the record produced by him before Court was the photocopy of record, as the originals were deleted after one year.

PW-Sandeep Sawarkar posted as General Manager, BSNL, Jammu since 30.10.2009. He deposed that Mr. Ravi Koul was posted as General Manager in August 2005. BSNL had provided call record of outgoing calls in respect of phone No.2465183 for the period covering 01.06.2005 to 29.07.2005 to SDPO, City-South, Jammu in response to his letter dated 30.08.2005. This phone was installed at the residence of Karnail Singh in Police Colony, Chhanni Himmat, Jammu between June to August 2005. The record was true as per the original one.

On cross-examination, the witness stated that he has not checked the original call record, as the same has not been preserved beyond one year.

PW-Basanti Bhat deposed that in August 2005, she was posted in Women Cell, Jammu. She was included in Special Team investigating the instant case. On 02.09.2005, the Special Team visited the Police Quarter of Karnail Singh between 5 to 6 p.m.

and seized the official Ambassador car of accused bearing registration Number JK02E-4117. She testified to contents of Seizure Memo marked EXTP/51 which bears her name, but the paper bearing her signatures was torn. The car was brought to Police Station, Gangyal. She had conducted personal search of wife of Karnail Singh, but same did not yield anything. Karnail Singh, his wife and driver were taken to Police Station. Subsequently, his wife was sent to Women Cell, Police Station. On 09.09.2005, she seized photocopy of register of the Guest House located near Jamia Masjid, Delhi vide memo marked EXTP/1/1. Karnail Singh had stayed in that Hotel.

On cross-examination, the witness stated that since the Hotel owner resisted her attempt to seize the original register, she obtained a photocopy and seized the same. Mr. Chouhan was leading the Special Team when it set out for the Police Quarters after recording *Rawangi*. Police driver had brought the car to Police Station.

PW-Shiv Kumar, the then SDPO, City-South, Jammu deposed that he had conducted investigation in the case. On 26.08.2005, Officer Incharge PP, Greater Kailash informed him that a dead body was lying in the Canal. He rushed to the spot. SHO, Police Station, Gangyal and the Chowki Officer were present there. Body was retrieved from the Canal and inquest proceedings were started by SHO. The body was removed to mortuary of GMC Hospital, Jammu, where it was subsequently identified as dead body of Nitin Sharma. After post-mortem of deceased, case was registered under FIR No. 79/2005. On 28.08.2005, the investigation was entrusted to him. He visited Shastri Nagar wherefrom near Dogra Academy, the deceased had been kidnapped. He examined some of the witnesses on spot. The witness proved the site plan marked EXTP/53 bearing his signatures. On 29.08.2005, Bobby Sharma

produced ladies garments and Marriage Agreement before him. Same were seized vide EXPW/BS/1. On 30.08.2005, he effected arrest of Naresh Kumar from the house of Karnail Singh at Langar. His personal search yielded Rs. 2160/-. The witness proved the Memo of Search marked EXPW-NR. He proved the Disclosure Statement emanating from Naresh Kumar marked EXPW-NK1. Accused Naresh Kumar led the Police party to the first floor of the house where from a corner of the almirah driving license and mobile were recovered. A jungle shoe was recovered without laces lying under table. The witness testifies to the contents of Recovery Memo. He further deposed that a site plan in respect of recovery of a baseball bat dated 01.09.2005 was drawn up. It was marked EXPT/53. A sports cap of red color was recovered from Bathroom pursuant to Disclosure Statement made by accused Sohan Lal alias Khind. Recovery Memo and site plan was prepared. The witness testified to contents of Disclosure Statement of accused Sohan Lal marked EXPW-VM7. He also proved the recovery and seizure of sports cap vide EXPW-VM8 and its site plan marked EXPW-53/4. SIM of mobile bearing No.9906212436 was recovered from an open space behind the house of Karnail Singh. It belonged to the deceased. The recovery was made pursuant to Disclosure Statement made by Dalip Singh alias Lucky. The witness proved his Disclosure Statement marked EXPW-VM9 and Seizure Memo of SIM marked EXPW-VM10, besides site plan of place of recovery marked EXTP-53/5. Karnail Singh, Ratno Devi and Suresh Kumar were arrested at Chhanni Himmat. Ambassdor car with false number plate displaying JK01E-4117 instead of the correct registration Number JK01F-1117 was seized vide EXPW-MK2. He proved the site plan EXTP/53/1. Naresh Kumar was taken to the Canal where the deceased had been murdered. Some articles including a piece of wood and a blood stained stone were seized

from there. Naresh Kumar recovered a shirt from the bushes which he was wearing at the time of occurrence. It was seized vide EXPW-BS/3. Seizure Memo of the recovered articles was marked EXPW/BS. The witness proved the site plan of the place of occurrence marked EXTP/53/2. On 31.08.2005, Jeet Kumar, Sohan Lal, Jai Mal and Dalip Kumar were arrested from a place near the Canal. On 01.09.2005, a baseball bat was recovered from the roof of house of Karnail Singh in pursuance of Disclosure Statement of Jeet Kumar. The witness proved the Disclosure Memo marked EXPW-VM/5, Recovery Memo marked EXPW/VM/6. Log book pertaining to vehicle No.1117-JK01F was seized from MTO of 6th Bn. IRP. He obtained record from BSNL and testified to contents of Seizure Memo relating to the documents of car marked EXPW-GM. Since the vehicle had been sent to workshop some days before, he wrote a letter to SP Incharge, Police Transport, Jammu. It was marked EXTP/53/6. As per reply received the car had left the workshop on 23.08.2005. Letter dated 30.08.2005 had been written by SP, City-South to General Manager Airtel regarding mobile phone No.9906212436. The relevant record was seized from SP Incharge, Police Transport and from BSNL. He had concluded the investigation and filed charge sheet against the accused. On cross-examination, the witness stated that FIR had been registered by Inspector Kamlesh Shoor. Pw- Vijay Sharma was not present at the time of Court marriage. He had not enquired about the notary, who had attested the Marriage Agreement. He could not say whether the same was reflected in the notarial register. He had not examined the Notary. Army vehicles used to pass through the area and it was not possible to change the registration number of vehicle. Ravi Verma was witness to the kidnapping of deceased. Sarla Devi, Vijay Lakshmi and Govind Kour were also witnesses of that event. Brother of deceased namely Vijay had disclosed the

name of Ravi Verma before him. He had not examined Vijay Mohan. There is no mention of Ravi Verma in the statement of Vijay Mohan. Statements of the ladies above named were recorded on 28.08.2003. There was no witness available to depose about the factum of Ratno Devi having engaged in conspiracy with other accused to commit murder of deceased. A clue was provided by co-accused Naresh Kumar, but the same could not be treated as evidence. No witness had alleged that Karnail Singh had hatched conspiracy with other accused. Father of deceased had made statement about threats emanating from Karnail Singh to the deceased. The witness admitted that he was Urdu knowing though he had not read Urdu as a subject. Inquest was commenced by Chowki Officer Ajit Singh and same was later handed over to SHO Police Station, Gangyal. Naresh Kumar was arrested on 30.08.2005 from the house of Karnail Singh. Personal Search Memo was prepared on spot, but the Arrest Memo was prepared at Police Station. He was alone in the house, however, Narinder Kumar Sharma and Vijender Sharma arrived on spot. People living around were called on spot. SI Durga Prashad had prepared the Disclosure and Recovery Memo(s) on his dictation. Naresh Kumar had made disclosure in Urdu. He had enquired about Ratno Devi, but came to know that she was not in Jammu. She was staying somewhere at Reasi Purmandal. Basanti Bhat was deputed to search for Ratno Devi. It was a verbal direction. Accused Sohan Lal, Dalip Singh and Jeet Kumar made Disclosure Statements at Police Station on 01.09.2005. The Disclosure Statements were made in presence of complainant and witnesses accompanying him. They had come on their own. The accused and the witnesses together boarded the vehicle and were taken to the place of recovery, i.e., house of Karnail Singh. Nobody was in the house at that time. The house was locked. Father of Naresh Kumar lived in the neighborhood of Karnail

Singh's house and the keys of the house were lying with him. The house was unlocked after obtaining keys from him. The lock and the keys were not seized. Impression of keys was not taken. There is only one door in the house which had three rooms on the ground floor and four rooms on the first floor. No finger prints were removed from the lock and the door. Neighbours of Karnail Singh had been summoned, but they stayed away. This fact has not been mentioned in case diaries. Durga Prashad ASI had written the Memo(s) on his instructions. Durga Prashad had been deputed with him as Reader as he could not write in Urdu. The witness denied that it was Durga Prashad who had conducted the proceedings on his own and the witness had merely signed the same. He had not conducted search in the house of Karnail Singh before recording Disclosure Statement(s) of accused. The house was under construction. Karnail Singh was posted at Rajouri at that time. Karnail Singh was interrogated on 02.09.2005. He had told the Police that he had engaged Naresh Kumar-PSO for guarding his kothi. Suresh Kumar was driving the car of Karnail Singh. Though the witnesses did not know the accused personally, no identification parade was conducted. The witness admitted that he had concluded the investigation after examining most of the witnesses.

PW-Kamlesh Shoor, the then SHO Police Station, Gangyal deposed that FIR No.79/2005 was recorded under his signatures and case was registered. It was marked EXTP KS 52. He recorded part statement of informant Vijay Mohan. Body of deceased was subjected to autopsy on 28.02.2005. He seized the garments found on the body of deceased and removed during post-mortem examination vide EXPW VM3. The witness proved seizure of two copper rings, a chhalla (circular ring) of iron and a chain of steel marked EXPW VM4 and

receipt of dead body marked EXPW VM2. Thereafter investigation was taken over by Dy. SP Mr. Chouhan. On 02.09.2005, Mr. Chouhan seized Ambassador car bearing tampered registration plate displaying its Number as 4117-JK01E instead of 1117-JK01F. He identified his signatures on seizure memo marked EXTP 51. He also examined the guards posted on duty at the official residence of Karnail Singh at Chhanni Himmat, namely, Sudesh Kumar, Raj Kumar, Subash Chander and Vikramjit.

On cross-examination, the witness stated that the informant arrived at the Police Station on 27.08.2005 at 9.00 p.m. with a written report recorded in Urdu and he verbally directed the Munshi to register FIR. The report was recorded in Roznamcha signed by the informant, who was accompanied by two/three persons. Statement of informant was recorded on 28.08.2005. There was delay in recording his statement, as he was disturbed when he lodged the report. Chowki Officer had removed the body to Mortuary room. On 28.08.2005, he went to hospital and got post-mortem conducted on the body of the deceased. The witness further stated that he had only registered the case and he had not conducted investigation. However, he had recorded statements initially as SHO. The case was being investigated by Mr. Chouhan right from its inception. The witness maintained that he was a member of the investigating team headed by Mr. Chouhan. The statements were scribed by a reader. He had seen the Ambassador car of SP for the first time. No separate number plate was recovered from kothi of accused. Seized rings and chain were of common description.

5. Evidence tendered by prosecution at the trial having been summarized, be it seen that the accused, when examined under Section 342 Cr. PC to explain the incriminating circumstances emerging from prosecution evidence, denied their complicity in the alleged crime and pleaded

false implication. No evidence has been adduced in defence.

6. On appreciation of evidence brought on record by prosecution the trial Court found the respondents guilty in terms of the judgment of conviction and slapped sentences upon them in terms of order of sentence impugned in the instant appeals.
7. Finding of guilty and the ensuing sentences have been assailed on the ground that no direct evidence was available in the case, which rested on circumstantial evidence only. It is contended on behalf of appellants that the trial Court has failed to apply the principles deduced from various judicial pronouncements for appreciation of circumstantial evidence. It is further contended that the circumstances relied upon by prosecution have not been proved at all and further there is no link established between one circumstance and the other so as to form a chain of circumstances. It is contended that there is no credible proof on record to establish a love affair between Neetu Devi and deceased Nitin Sharma culminating in marriage. It is contended that the documentary evidence has not been forthcoming and the oral evidence is not at all acceptable. Even the opinion of hand-writing expert is worthless, as the same is not based on comparison of admitted writings with the original marriage agreement. With reference to testimonies of PWs Vijay Mohan, Bobby Sharma, Rajesh Kumar, Surinder Mohan and Baldev Raj, it is contended that the evidence in respect of alleged threats of killing extended to Nitin Sharma and his family members is shaky, vague and indefinite, and based on hearsay. It is further contended that the testimony of PW Vijay Mohan discredits the prosecution version that Karnail Singh had tried to falsely implicate brother of deceased, namely, Rajesh Kumar in rape case to exert pressure on the family of deceased. It is further contended that in regard to allegation of kidnapping of deceased on 24th August, 2005, the testimonies of brothers and father of deceased are a mere hearsay. While Ravi Verma has not supported the prosecution version, Rupinder Sharma @ Rinku has not been

examined at the trial. It is contended that in regard to circumstance that accused-Ratno Devi had sent Rs.10,000/- to accused Naresh Kumar in furtherance of criminal conspiracy to eliminate the deceased, the testimony of PW-Sukhchain Singh clearly establishes that the amount was sent for handing over the same to Naresh Kumar, SPO with the instructions to pay the same to Mason-Rashpal Singh working in kothi. It is further contended that there is no evidence regarding the circumstance that the accused waited for the night and then took the deceased to Fountain Chowk where he was done to death by strangulation and hitting with a baseball bat. Regarding disclosure statements attributed to accused Naresh Kumar, Sohan Lal, Jeet Kumar and Dilip Singh and the recoveries made pursuant thereto, it is contended that the same are inadmissible and the subsequent recoveries are inconsequential as the evidence regarding the same is extremely doubtful. It is further contended that the testimony of Munish Bindra regarding call detail record clearly establishes that mobile phone No.9906212436 belonged to accused Naresh Kumar and in view of the same, prosecution version regarding last few calls having been made from two PCOs situated near Dogra Academy to call the deceased at Dogra Academy for being kidnapped from there is unfounded. It is further contended that there is no evidence of disappearance of accused Karnail Singh after the alleged occurrence, as alleged by prosecution and testimony of PW-Suleman Salaria, the then Incharge DIG, Armed Jammu disproves the allegation. As regards the allegation of change of Registration Number of the official vehicle of accused Karnail Singh from JK01F- 1117 to JK01E-4117 after the occurrence, it is contended that the testimony of PW-Raj Kumar is in direct conflict with the testimonies of PWs Sudesh Raj, Subash Chander and Vikramjeet Singh. It is contended that otherwise also there is nothing incriminating in view of the said circumstance. Lastly, it is contended that the impugned judgment rendered by trial Court is based on misreading, wrong appreciation and false attribution of evidence; that the finding of guilty is perverse and the same cannot

be sustained.

8. *Per contra*, Mr. L.K. Moza, learned Additional Advocate General, contended that notwithstanding some witnesses having been given up or having turned hostile at the trial, there was sufficient evidence to warrant conviction of accused. It is contended that SSP-Karnail Singh and his wife hatched a conspiracy with the driver and bodyguards of Karnail Singh to eliminate the deceased and the conspiracy was executed with precision. It is contended that the prosecution has been successful in establishing that accused Karnail Singh had telephonically contacted the deceased many times. It is contended that the evidence brought on record also establishes that the father and brother of deceased had also being called by Karnail Singh and warned of dire consequences if the deceased continued to have liaison with his daughter. It is further contended that the communication on mobile phone of deceased had been one way only, i.e. the calls were made by SSP Karnail Singh only which revealed that these were threatening calls emanating from Karnail Singh. It is further contended that the testimony of PW-Raj Kumari – land lady of the deceased clearly establishes that the deceased had been called near Dogra Academy whereafter she learnt about his death. It is further contended that the testimony of PW-Ravi Verma clearly establishes that the deceased had been kidnapped in a white colored ambassador car from near his shop and his testimony could not be treated as hearsay. It is further contended that the disclosure statements made by accused Naresh Kumar, Jeet Kumar and Sohan Lal followed by recovery of incriminating articles are sufficient to nail them and further proof of tampering of the number plate of the white ambassador car of accused Karnail Singh establishes complicity of all accused in conspiracy of eliminating the deceased which was meticulously executed. Documentary and forensic evidence and factum of accused Karnail Singh having disappeared after commission of crime in addition to evidence regarding sending of Rs.10,000/- by

accused Ratno Devi to Naresh Kumar are said to be further links in the chain of circumstances. Regarding testimony of PW-Munish Bindra of Airtel Company that the mobile number 99062-12436 on which the deceased is said to have been contacted during the relevant period by accused, it is submitted that the said number (SIM) must have been loaned by Naresh Kumar to the deceased after befriending him.

9. Heard learned counsel for the parties at length and considered the oral and written submissions made during the course of hearing.
10. Allegedly the love affair between Neetu Devi and deceased Nitin Sharma said to have culminated in a Court marriage much against the wishes of parents of Neetu Devi led to the tragic murder of deceased Nitin Sharma. The factum of deceased having suffered unnatural death, homicidal in character, is established by corpus delicti, the nature of injuries sustained by deceased and cause of death established by testimony of Dr. Sangeeta Choudhary who conducted autopsy on the body of Nitin Sharma on 28.08.2005 and found a ligature mark present over neck below thyroid cartilage horizontally placed. The ligature mark was 0.5 cm in width and dark brown in colour. Fracture of hyoid bone was present. There was massive bruising under the ligature mark in subcutaneous tissue, muscle present under the entire ligature mark. There was fracture of mandible present in the middle. There were multiple ligature marks of 0.25 cm to 0.5 cm on hands at wrist, bluish discoloration. Viscera was preserved and sealed and handed over to IO for chemical analysis at FSL. As per FSL report and postmortem findings, it was opined that the deceased could have died due to asphyxia as a result of strangulation. She proved the report marked as EXTP-SC. She further deposed that on 19.05.2005, SDPO City South Jammu sent baseball bat, nylon rope red in colour, and black shoe laces (5 pieces) with three knots for her opinion. She replied to questions. As per her reply, the fracture injury in mandible could be possible by baseball bat. She further opined that the ligature marks present over neck and wrist were consistent with shoe laces if

tied around neck and wrist. Drowning was postmortem. The witness proved the report marked EXTP-SC/1. The testimony of medical Expert conducting postmortem examination on the body of deceased which is proved by IO Shiv Kumar to have been retrieved from canal at Fountain Chowk, Greater Kailash clinches the issue in so far as cause of death of deceased is concerned. The finding that the deceased died due to asphyxia as a result of strangulation and the drowning was postmortem justifies the finding that it was a case of gruesome murder and body of deceased was dumped in canal waters after causing his death.

According to prosecution version, Karnail Singh and Ratno Devi – parents of Neetu Devi found it hard to digest the amorous relationship between their daughter – Neetu Devi and deceased Nitin Sharma- a Brahmin boy and driver by profession, culminating in their surreptitious marriage followed by an attempt by Neetu Devi to jump from the roof top of her house in order to escape from her parental home to meet her husband resulting in injuries to her legs; that the parents of Neetu Devi hatched a conspiracy with other accused to eliminate the deceased. The genesis of crime lies in abhorrence of inter caste marriage and false ego of Karnail Singh standing in the way of acknowledging the right of his daughter to choose a life partner of her choice despite the fact that he happened to be well educated and was holding responsible position as Senior Superintendent of Police. Depravity of human mind, as alleged, led him to stoop low and rope in his subordinate officials with his wife Ratno Devi being privy to his evil designs. The criminal conspiracy, allegedly conceived and designed by accused Karnail Singh initially with his wife Ratno Devi enlarged its fold to rope in the other accused working as his driver and security staff to translate into action, the ugly motive of eliminating the deceased. Allegedly the conspiracy was hatched with allurements offered to co-accused in the form of regularization of services besides payment of bait money. Criminal conspiracies are hatched under the veil of secrecy and seldom do the

conspirators leave behind evidence to unveil such conspiracy which can only be established through inferences drawn from proved facts. As aptly put by an Urdu poet:

**“Qareeb hai yaro razo-e-mehsher, chhupay
ga kushtoon ka khoon kyunkar”
“Jo chup rahe gi zuban-e-khanjar, laho
pukaray ga aasteen ka”**

According to prosecution, the plan of elimination of deceased is the brain child of parents of Neetu Devi who found themselves pushed to the edge on account of defiance of the deceased, who was not prepared to snap relations with Neetu Devi. Perhaps the activity of love birds in engaging in wedlock without and against the consent of parents of Neetu Devi proved to be the flash point and accused Karnail Singh and Ratno Devi decided to avenge the humiliation caused by the defiant attitude of deceased. Admittedly, there is no oral or documentary proof of conspiracy hatched inter se the accused. Testimony of Investigating Officer Shiv Kumar Chouhan reveals that during investigation, no witness came forward to state that Ratno Devi and Karnail Singh had hatched conspiracy with other accused to eliminate the deceased. Only a lead was provided by accused Naresh Kumar and an allegation emanated from father of deceased that Karnail Singh had threatened the deceased. It is in these circumstances that motive assumes significance notwithstanding the fact that absence of motive would not justify throwing out of the prosecution case provided there is evidence bearing on the guilt of the accused. In this regard, it would be appropriate to refer to proposition of law enunciated by the Hon'ble Apex Court in ***“Vijay Shankar Vs. State of Haryana”*** reported in 2015 AIR SCW 5324:-

“In each and every case, it is not incumbent on the prosecution to prove the motive for the crime. Often, motive is indicated to heighten the probability of the offence that the accused was impelled by that motive to commit the offence. Proof of motive only adds to the weight and value of evidence adduced by the prosecution. If the

prosecution is able to prove its case on motive, it will be a corroborative piece of evidence. But even if the prosecution has not been able to prove its case on motive that will not be a ground to throw the prosecution case nor does it corrode the credibility of prosecution case. Absence of proof of motive only demands careful scrutiny of evidence adduced by the prosecution. In the present case, absence of convincing evidence as to motive makes the court to be circumspect in the matter of assessment of evidence and this aspect was not kept in view by the High Court and the trial court.”

11. The only mode of proof relied upon by prosecution to bring home guilt of the accused is proof of incriminating circumstances. Admittedly, there is no eye witness to the alleged occurrence. The case entirely rests upon circumstantial evidence. It is well settled that the circumstances from which the conclusion of guilt is sought to be drawn should be fully proved and such circumstances must be conclusive in nature. All circumstances should be complete and there should be no gap left in the chain of circumstances. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The Hon’ble Apex Court, while dealing with a case of circumstantial evidence in “*Chand Vs. State of HP*” reported in AIR 1990 SC 2140 laid down the following tests:

“...In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the case proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can

be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis.”

These principles were reiterated in “*Kirti Pal Vs. State of West Bengal*” reported in 2015 AIR SCW 3545:-

“It is well settled that in cases where the evidence is purely circumstantial in nature, the circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must form a complete chain unerringly pointing to the guilt of accused and the chain of circumstances must be established by the prosecution.”

Again in *Mustkeem alias Sirajudeen Vs. State of Rajasthan*” reported in AIR 2011 SC 2769, it was held as under:

“25. It is too well settled in law that where the case rests squarely on circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. No doubt, it is true that conviction can be based solely on circumstantial evidence but it should be decided on the touchstone of law relating to circumstantial evidence, which has been well settled by law by this Court.

26. In a most celebrated case of this Court reported in 1984 (4) SCC 116 : (AIR 1984 SC 1922 : 1984 Cri LJ 1738) Sharad Birdhichand Sarda v. State of Maharashtra in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under (Para 152 of AIR, Cr LJ):-

“(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established.

(ii) The facts so established should be consistent only with the hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that

the accused is guilty,

(iii)The circumstances should be of a conclusive nature and tendency,

(iv)They should exclude every possible hypothesis except the one to be proved, and

(v)There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”.”

12. The first circumstance relied upon by prosecution is the love affair between deceased and Neetu Devi culminating in their inter caste love marriage despite stiff opposition and restrictions imposed on movement of Neetu Devi by her parents. Adverting to evidence brought on record by prosecution during trial, be it seen that on the aspect of motive for crime, prosecution has relied upon the testimonies of PWs-Bobby Sharma, Baldev Raj and Narinder Kumar. PW-Bobby Sharma is the brother of deceased. His testimony reveals that the deceased had a love affair with the daughter of Karnail Singh since their school days. He claimed that he had tried to persuade the deceased not to pursue the relationship but daughter of Karnail Singh continued to visit their house. He even claimed to have caught hold of Neetu Devi when she visited their house and produced her before Karnail Singh. However, Neetu Devi did not snap relations with the deceased and continued to call him telephonically. It is in his testimony that Karnail Singh had called his father to the STD Booth from where his father had a telephonic conversation in which Karnail Singh is said to have threatened his father. His testimony further unfolds that Karnail Singh and his family had shifted to Jammu and the deceased had also shifted to Jammu where he started working as a Matador Driver. Though the witness claimed that the deceased had contracted marriage with Neetu Devi on 31st March, 2005 and Police had seized wearing apparel of Neetu Devi and letters written by her to deceased which were recovered from the rented room of deceased

Nitin Sharma at Jammu besides also seized marriage agreement marked EXPW BS/1, he admitted in cross examination that his statement to such effect did not find mention in his statement recorded under Section 161 Cr.PC. He also admitted that the marriage was not solemnized in his presence. The testimony of this witness, on meticulous evaluation, justifies the conclusion that there was a love affair between the deceased Nitin Sharma and Neetu Devi and despite persuasion none of the two gave up and continued with their relationship despite the families of both being reluctant to accept such relationship and signify consent to an inter caste marriage. PW-Narinder Kumar is a resident of Nagri. He too has deposed about the love affair between deceased Nitin Sharma and Neetu Devi. He also claims to have told the Police that the deceased had contracted marriage with Neetu Devi. PW- Baldev Raj too is a resident of village Nagri, Parole. He too has deposed that the deceased had a love affair with Neetu Devi since 4/5 years and they had contracted marriage on 31st March, 2005 much to the disliking of Karnail Singh who had threatened the father of deceased and also set Police after the deceased. This witness has testified to seizure memo marked EXPW BS/1 bearing his signatures by virtue whereof love letters written by Neetu Devi to deceased besides the marriage agreement and wearing apparel of Neetu Devi produced by PW- Bobby Sharma before Police came to be seized. He has also proved Supardnama marked EXPW-BR in respect of love letters. It appears from his cross-examination that the witness has deposed about marriage on the basis of marriage agreement and he had not personally attended the marriage. It further appears from his deposition that PW-Bobby Sharma had retained the original documents with himself and only produced photostat copies thereof before Police. This fact is corroborated by the testimony of PW-Bobby Sharma who produced the original documents before trial Court when his testimony was being recorded. The primary evidence in the form of marriage agreement marked EXT-NK, affidavits of the couple respectively marked EXT-NK1 and EXT-NK2 proved by PW-

Narinder Kour, Advocate Notary Public who has attested the same and the letters opined by the Handwriting Expert to be in the handwriting of Neetu Devi / Neetu Rani have been brought on record during trial. Evidence adduced on this aspect of the case is cogent and credible and nothing has been elicited in the cross examination of the witnesses to dislodge the prosecution version in regard to theory of love affair between the deceased and Neetu Devi culminating in their love marriage which, on account of it being an inter-caste marriage and the deceased not matching up to the social position of accused Karnail Singh became the motive for the crime. Prosecution evidence tendered by the aforesaid witnesses whose credibility has not been eroded, clearly establishes that the love affair between the deceased and Neetu Devi was seriously resented by the parents of Neetu Devi and all efforts to restrict the activities of deceased and Neetu Devi from continuing the affair proved abortive. This could be the motive for eliminating the deceased. On re-appraisal of evidence, it can safely be held that prosecution has succeeded in establishing this circumstance.

13. The second circumstance is the threats of elimination of deceased allegedly extended by Karnail Singh to deceased and his family. Father and brothers of deceased besides Baldev Raj have deposed on this aspect. PW-Vijay Mohan is the brother of deceased. He has deposed that besides extending threats to the deceased and his father, accused Karnail Singh had extended threats to him on three or four occasions that all members of his family would be shot dead. He claimed that on 24th August, 2005 when he rang up the deceased to inquire the reason for not visiting his village since one month, the deceased appeared to be frightened and told him that Karnail Singh had extended threats to him. The witness claims to have held conversation with the deceased making call on mobile phone number 9906212436. The deceased is said to have told him that he would be reaching Kathua at 8.30 PM and the witness should wait for him there. He further deposed that the deceased had told him that he would not

go back to Jammu thereafter. He again claims to have tried to contact the deceased at 2.30 PM but there was no response. This is said to have happened just on the eve of alleged kidnapping of deceased. The witness also deposed in respect of case registered at Police Post Nagri on 21st August, 2005 allegedly at the behest of Karnail Singh in which Rajesh Kumar had been falsely implicated in a case for offence under Section 376 RPC. He claimed that the Police had, instead registered a case under Section 354 RPC. He admitted in cross examination that the case had been registered by one Sravan Kumar and his wife Neelam alleging that Rajesh Kumar had outraged modesty of Neelam and the investigation of the case culminated in filing of charge-sheet against Rajesh Kumar before competent Court. Since the then OIC of Police Post Nagri Parore had not been examined to substantiate his allegation that accused Karnail Singh had a hand in registration of aforesaid case against Rajesh Kumar, this allegation cannot be said to have been proved. The witness was confronted with his statement recorded under Section 161 Cr.PC which made no mention of any threats emanating from Karnail Singh. It appears that the witness had made improvements over his version disclosed before Investigating Officer under Section 161 Cr.PC. This is apart from the fact that the credibility of the witness in regard to his conversation with the deceased on 24th August, 2005 in which he claims to have been told by the deceased that Karnail Singh had threatened him depends upon factum of mobile phone number 9906212436 being in possession and user of deceased as according to PW-Munish Bindra – Nodal Officer, Bharti Airtel, the Airtel mobile phone number 9906212436, in month of August, 2005 was registered in the name of Naresh Kumar S/o Hans Raj resident of Langar-Kalu Chak who happens to be an accused in this case. This fact is of vital importance as the entire prosecution case regarding communication with the deceased before and at the time of alleged kidnapping of deceased followed by his murder hinges on the proposition that mobile telephone number 9906212436 belonged to the deceased. PW-Bobby Sharma is the elder brother of

deceased. He deposed that accused Karnail Singh used to make telephone calls to his family to persuade the deceased to keep off his daughter Neetu Devi or else he would be eliminated. He further deposed that after accused Karnail Singh shifted with his family to Jammu, Neetu Devi started contacting the deceased on the landline phone installed in his house. It is in his testimony that the landline phone was thereafter disconnected to discourage her from continuing relationship with the deceased but the deceased had purchased a mobile phone to maintain contact with Neetu Devi. The witness claimed to have snatched mobile phone of deceased and talked to Neetu Devi who told him that she would not live without the deceased and would contract marriage with him. The witness claimed that Karnail Singh had sent his brother to call his father to the STD booth where, on phone, Karnail Singh threatened to eliminate the deceased. The witness claimed to have accompanied his father to STD booth. From his cross-examination, it appears that the witness had made improvements over his statement recorded under Section 161 Cr.PC. He admitted that his statement in regard to threats extended by accused Karnail Singh to his father telephonically as also to the witness do not find mention in his statement recorded before Police. PW-Baldev Raj has deposed that accused Karnail Singh had been threatening the father of deceased and he had also set Police after the deceased. In his cross-examination, he admitted that he had not witnessed the occurrence in which the deceased had been thrashed by accused Karnail Singh. He had learnt about it from the deceased but did not inform his family. It was his guess work that Karnail Singh had set Police after the deceased. The testimony of this witness does not establish the allegation of threats emanating from Karnail Singh to deceased and his family. PW-Surinder Mohan is the father of deceased. He deposed that he had tried to persuade Neetu Devi to snap relations with the deceased but she was adamant to contract inter caste marriage with him. The witness spoke of the event when Karnail Singh had called him through his brother to STD booth where Karnail

Singh threatened him telephonically that in the event of his failure to persuade the deceased to leave Jammu, he would be eliminated. It appears from his testimony that the event in respect of which the witness spoke had occurred 2/3 months before the murder of deceased. The witness claimed that Karnail Singh had sent for him through his younger brother who was posted as a Constable at Nagri Police Post and the witness had been called to Police Post Nagri for having a telephonic conversation with Karnail Singh but on account of his illness he could not go there and instead talked to Karnail Singh from STD booth. It is in his cross-examination that initially a Constable at Nagri Police Post asked him to report at Police Post Nagri. The witness claims to have advised the deceased not to go to Jammu where he was working as a Matador Driver but the deceased did not act upon his advice. There is no reason to disbelieve the witness who happens to be father of the deceased and interested in his welfare notwithstanding the fact that he had disinherited the deceased. The threat emanating from Karnail Singh about 2/3 months before the murder of deceased may have been in the nature of a warning administered to the father of deceased to persuade the deceased to leave Jammu so as to snap relations with Neetu Devi. Whether the threat was intended to be translated into action and executed would depend upon the circumstances that prevailed immediately before and at the time of occurrence of murder of deceased. PW-Rajesh Kumar is the brother of deceased. He deposed that the deceased was having a love affair with Neetu Devi and he had shifted to Jammu where he lived in a rented room at Sanjay Nagar and worked as a Matador Driver. It is in his testimony that on 24.08.2005, he made a phone call from his office at Lakhanpur which was received by deceased on his mobile phone number 9906212436. He claimed that the deceased appeared to be frightened and he told the witness that he had contracted Court marriage with Neetu Devi who has informed him that her parents have conspired to kill him and she advised him to return to his home. He claims to have advised the deceased to return to

his home and the deceased had told him that he would return in the evening. The witness has corroborated testimony of his father to the effect that about three months before murder of deceased his father Surinder Mohan was called by accused Karnail Singh to PCO for having a conversation. However, this fact was not reflected in his statement under Section 161 Cr.PC. The evidence adduced by prosecution in regard to this circumstance, though emanating from the mouth of close relatives of deceased including his father and brothers, is not shown to be tainted. The testimony of father of deceased namely Surinder Mohan in regard to this circumstance stands corroborated and the same cannot be discarded merely because it has come from the mouth of close relatives who cannot be expected to spare the real culprit and rope in an innocent. This circumstance is accordingly held to have been proved by prosecution.

14. The third circumstance relied upon by prosecution is that on 24.08.2005, accused Naresh Kumar SPO with accused Suresh Kumar driver of official car of Karnail Singh bearing No.JK01F 1117 alongwith four other accused kidnapped the deceased in the afternoon in full public view near Dogra Academy and whisked him away to the under construction house of accused Karnail Singh at village Langar. Allegedly a plan was hatched *interse* the accused to eliminate the deceased. Accused Naresh Kumar who had been engaged by Karnail Singh – the then SSP Border, as SPO and deputed to his under construction house at Langar for watch and ward demanded Rs.5.00 lacs as *Supari* for committing murder of Nitin Sharma, however, the deal was settled at Rs.1.30 lacs. Allegedly on 24.08.2005, accused Naresh Kumar made a telephone call from the house of his uncle to deceased to inquire about his whereabouts and after ascertaining the same contacted accused Ratno Devi who deputed Suresh Kumar with the official Ambassador car to report at Langar and execute the work which Naresh Kumar may assign to him. Allegedly Suresh Kumar took the official vehicle to Langar and paid Rs.1, 000/- to Naresh Kumar who asked him to accompany him to Sanjay Nagar from where

the deceased Nitin was to be lifted. Other accused waiting at the Kothi at Langar accompanied them to Sanjay Nagar. Accused Naresh Kumar is alleged to have contacted the deceased on his mobile phone by making two phone calls from landline number 2454299 asking the deceased to reach near Dogra Academy. Since deceased did not reach there, accused Naresh Kumar is alleged to have made yet another phone call from landline number 2451564 of Bajwa STD, Shastri Nagar. All these calls are said to have been made on mobile phone number 9906212436 stated to be operational in the hands of deceased. Prosecution has examined Surinder Kour of Chib Sales Corporation and Shinda Kumar of Bajwa STD to prove this circumstance. PW-Surinder Kour working as employee of Chib Sales Corporation Shastri Nagar at the STD shop with 5/6 STD numbers installed there has proved the factum of the STD shop operating landline number 2454299 on the relevant date. The witness failed to identify accused Naresh Kumar. She has been declared hostile to prosecution. She denied having told the Police that accused Naresh Kumar had made two phone calls from her STD booth to mobile number 9906212436. She has disowned the statement attributed to her under Section 161 Cr.PC. PW-Shinda Kumar running Bajwa STD admitted that his STD booth was connected with various phone numbers including phone number 2451564. He denied the fact that Police had inquired from him in respect of some phone calls. The witness was declared hostile to prosecution. The witness disowned the statement attributed to him under section 161 Cr.PC and denied the suggestion that he had succumbed to influence emanating from the accused. While both witnesses have declined to support the prosecution on this vital aspect of the case in regard to calls emanating from their STD booths, prosecution has not adduced any evidence to prove that mobile phone number 9906212436 registered in the name of accused Naresh Kumar had been transferred to the deceased and the same was being used by deceased immediately before his murder. A reference has already been made to the testimony of PW-Munish Bindra of Bharti Airtel that

mobile phone number 9906212436 belonged to accused Naresh Kumar. In absence of proof of any deal relating to transfer of the aforesaid mobile phone number *interse* accused Naresh Kumar and the deceased before 24.08.2005, it would be absurd to hold that any calls made to mobile phone number 9906212436 on 24.08.2005 were received by the deceased. There is not even a whisper in the charge-sheet in regard to actual operation of mobile phone number 9906212436. How and when this phone number came to be delivered to the deceased for use despite its being registered in name of accused Naresh Kumar has not been explained in the charge-sheet. No evidence has also been adduced to establish proximity of such degree and intensity between the deceased and accused Naresh Kumar that accused Naresh Kumar would permit the user of said mobile phone number by the deceased. Though PW-Bobby Sharma has deposed that after the landline installed in the house was got disconnected, the deceased had purchased a mobile phone so as to stay in touch with Neetu Devi, he has not disclosed the source from which he had purchased the mobile phone. This is an area where the investigation has faltered. Despite ascertaining the factum of registration of aforesaid mobile phone number standing in the name of accused Naresh Kumar from the call data record of Bharti Airtel, the investigating agency did precious little to probe the aspect of actual user of aforesaid mobile phone number. It is in testimony of Investigating Officer Shiv Kumar that the SIM Card of mobile phone number 9906212436 was recovered from an open space situated at the rear side of kothi of Karnail Singh. In view of overwhelming evidence on record that accused Naresh Kumar was staying there to supervise the construction work of kothi, such recovery would not establish any nexus between the deceased and mobile phone number 9906212436. There is a big void left in the case and on this count, investigation can be held to be “shoddy” without any fear of contradiction.

Now coming to the aspect of receipt of phone call by deceased in response whereof he is said to have gone to a place near Dogra

Academy from where he was allegedly kidnapped, be it seen that the testimony of landlady of deceased is not of great significance inasmuch as she does not identify the caller and provide details of the phone used by the deceased. She has deposed that the deceased was her tenant for two months and eight days. The deceased received a phone call, in response whereof she heard the deceased telling the caller to wait at Dogra Academy and he would be reaching there. The witness could not say whether the deceased had gone there as she left for temple. It was after two or three days that Police arrived there and informed her that the deceased had died. Police inspected his room but made no seizure. The witness has not specified the date and time when the call was received by deceased, the identity of caller and the description of instrument on which the phone call was received. Her testimony does not help the prosecution in establishing that it was in response to the phone calls from accused Naresh Kumar that the deceased had left for Dogra Academy after receiving calls on mobile phone number 9906212436. Therefore, it cannot be held to be a proved fact that the deceased was operating mobile phone number 9906212436 at the relevant time and the phone calls emanating from accused Naresh Kumar were received by him immediately before his kidnapping at Dogra Academy.

Adverting to the alleged event of kidnapping of deceased allegedly by accused Naresh Kumar, Suresh Kumar and four others, namely, Sohan Lal, alias Sonu alias Khind, Jeet Kumar alias Jeeta, Jaimal Kumar alias Jeebu and Daleep Singh alias Lucky, be it seen that the prosecution relied upon testimonies of PW Vijay Mohan, Bobby Sharma and Rajesh Kumar (brothers of deceased), Surinder Mohan (father of the deceased) and Ravi Verma who was a shopkeeper running business near the rented accommodation of deceased in close vicinity of Dogra Academy Jammu. PWs Vijay Mohan, Bobby Sharma, Rajesh Kumar and Surinder Mohan, admittedly, have not witnessed the act of kidnapping of deceased. They attributed their knowledge in respect of factum of kidnapping to

one Rupinder Sharma, alias Rinku hailing from their native village Nagri and serving as constable in IRP at Jammu. PW Rupinder Sharma alias Rinku has not been examined by prosecution at the trial. He was a material witness to prove kidnapping of deceased and establish identity of the kidnappers. Unfortunately, he has been withheld. PW Vijay Mohan has deposed that on 24th August, 2005 at about 11.30 AM he made a telephone call to deceased on his Mobile phone No. 9906212436 and the deceased told him that he would be reaching Kathua at 8.20 PM and he should wait there. He claimed that later in the day he could not establish contact with the deceased. It was at 9.30 PM that he received a phone call informing him that the deceased had been kidnapped by five/six persons in an Ambassador Car with registration No. 1117/ JK01F having red beacon light with "Police" painted above it. As he entered his house, he found Ravinder alias Rinku son of Ramesh Chander resident of Nagri- Parole telling his parents that the deceased was kidnapped in a white Ambassador Car by five / six persons and taken to some unknown place. His two brothers left for Jammu in the morning and searched for the deceased at all Police Stations, but there was no trace of him. On 25th August, 2005 the witness visited his office at Lakhanpur and rang up Karnail Singh who denied the accusation of murder of deceased. On 27th August, 2005 he learnt about recovery of an unidentified dead body from a Canal at Greater-Kailash which had been removed to Government Medical College Mortuary. He went there and identified the body of deceased lying there. The witness has proved the identification memo marked EXPVM. He also proved the report lodged by him at Police Station marked ExPW-VM/1. It is in his cross-examination that the unidentified person who telephonically informed him of the kidnapping of deceased did not disclose his identity. However, same does not find reflection in his statement recorded under Section 161 CrPC. The witness further stated that the unidentified person had provided information to him telephonically in the evening of 24th August, 2005. However, he did not disclose or lay

such information before Police till 27th August, 2005. Even in such statement marked as ExPW-VM/1 he has not specified the registration number of the vehicle. Thus, his version before Court in this regard is an improvement and has to be viewed with suspicion. PW Bobby Sharma has deposed that on 26th August, 2005 Ravinder Sharma landed in his house at about 9.30 PM and informed that the deceased had been kidnapped in vehicle No.1117/JKO1F. Confronted with his statement under Section 161 CrPC the witness admitted that such statement did not make a mention of the information emanating from Ravinder Sharma alias Rinku. PW Surinder Mohan is the father of deceased. He has deposed that on 24.08.2005 the deceased did not reach home. At about 9.00PM Rinku alias Ravinder Kumar came to his house and informed him that the deceased had been kidnapped and taken away in a police vehicle fitted with beacon light. It is in his cross-examination that no report was lodged with police regarding kidnapping of deceased till 27.08.2005. It is intriguing that despite learning of kidnapping of deceased on 24th August, 2005 the father and brothers of deceased did not lodge any report with the police till 27.08.2005. This reflects upon the claim of the witness that information in regard to kidnapping had been provided by one Ravinder Kumar alias Rinku on 24.08.2005. PW Rajesh Kumar is the brother of the deceased. He too has stated that on 24.08.2005 Ravinder Kumar alias Rinku serving in IRP as Constable landed in his home at 8.30 PM and stated that an Ambassador Car bearing registration No. JKO1F/ 1117 fitted with red beacon light had been used for kidnapping of deceased at the hands of five/six persons. According to this witness Rinku was the first person to break news about kidnapping of deceased. Confronted with his statement recorded under Section 161 CrPC the witness admitted that his police statement does not make mention of information given by Ravinder Kumar alias Rinku on 24.08.2005 in respect of kidnapping of deceased. It is manifestly clear that the father and brothers of deceased have made improvements over their statements recorded under Section 161 CrPC.

Had they known that the official vehicle of Karnail Singh was used in kidnapping of deceased on 24.08.2005 itself, there was no reason for PW Vijay Mohan to hold back and wait till 27.08.2005 to make statement marked ExPW-VM/1 in this regard. Insofar Ravinder Kumar alias Rinku is concerned, he being the source of information was the most material witness from whom father and brothers of deceased claimed to have derived knowledge about kidnapping of deceased and use of official car of accused-Karnail Singh in kidnapping. From minutes of proceedings on record of trial Court it appears that learned PP gave up PW Ravinder Kumar Sharma alias Rinku in view of his statement recorded on 06.06.2006, on the ground that he had been won over. The best evidence thus stands withheld. PW Ravi Verma deposed that he was sitting in his shop at Shastri Nagar. It was about 2.00PM. He had covered the front of his shop with sunshade. Meanwhile, he recognized the voice of deceased who was enquiring about his welfare. About 15 minutes thereafter he heard a noise near Chandi Mata Mandir in the vicinity of Dogra Academy. His neighbor shopkeeper Jeet Raj came over to his shop and told him that there was a scuffle with the boy who used to visit him. The witness stated that as he came out of the shop, he found people having gathered there. He was told that the deceased has been taken away in a white Ambassador Car. The witness claimed to have informed Ravinder Sharma resident of Nagri working as Constable about the occurrence. The witness has been declared hostile to prosecution. He has disowned the statement made before police to the effect that he had seen five/six persons whisking away the deceased in a Car. He claimed that he had not seen the white color Ambassador Car on spot and he did not know the names of persons who had told about kidnapping of deceased. The investigating officer Shiv Kumar SDPO South has, in his deposition before the Trial Court, admitted that PW Ravi Verma was the only witness of kidnapping. With this witness turning a volte face, prosecution version on the aspect of kidnapping of the deceased remains unproved as PW Amar Jeet Kour cited as eye-

witness of occurrence has declined to support the prosecution version and has been declared hostile to prosecution whereas, other two eye-witnesses Sarla Kumari and Vijay Lakshmi have been given up by learned PP in terms of his statement recorded on 12.09.2006 on the ground that they have turned hostile to prosecution. Thus, on reappraisal of prosecution evidence recorded at the trial this circumstance is found to be not proved.

15. The fourth circumstance relied upon by prosecution is that accused Ratno Devi had sent Rs.10,000/- to accused Naresh Kumar, on his demand, after he had taken the deceased to the under construction house of Karnail Singh at Village Langar and confined him there. Prosecution has examined PW-Sukhchain Singh in this regard. The witness has deposed that accused Ratno Devi gave Rs.10, 000/- to him for delivering the same to accused Naresh Kumar with instructions to pay the same to Mason Rashpal Singh engaged for the construction of Kothi. The witness has not been declared hostile by prosecution. This statement, which goes un-assailed, does not help the prosecution. There is nothing incriminating in the circumstance to establish complicity of accused Ratno Devi as a character who took any step in furtherance of conspiracy and paid money to the alleged killers of deceased.
16. The fifth circumstance relied upon by prosecution is that the accused waited for the night and it was at night that they removed the deceased to Greater Kailash near Fountain Chowk where the deceased jumped into a trench near the canal in a bid to rescue himself but the accused pounced on him, strangled him with a shoe lace and hit him with a base ball bat resulting in his death where after his dead body was dumped in the canal. Prosecution has not been able to adduce evidence to prove this circumstance. Learned counsel for appellants vehemently argued that it was queer that the deceased who was allegedly abducted in full public view in broad day light from near Dogra Academy and secretly kept in confinement in the under construction kothi of accused Karnail Singh at Langar for about eight

hours would again be removed to be a public place at Greater Kailash which is comparatively much populated for being done to death when the deceased could have been eliminated in the under-construction Kothi of accused Karnail Singh at Langar itself. This argument is advanced to improbabilize the prosecution version regarding the manner and circumstances in which death of deceased is alleged to have been caused with human intervention. The argument, though appearing to be attractive, may not be of much substance as there is no evidence available on this aspect of the case and body of deceased has been recovered from a canal near Fountain Chowk, Greater Kailash. How and under which circumstances the deceased was taken there is an area in respect whereof evidence is lacking. Therefore, prosecution version cannot be said to be improbable merely because in the event of proof of kidnapping of deceased, the accused had an opportunity to commit murder of deceased in the under-construction kothi of accused Karnail Singh at Langar.

17. The sixth circumstance relied upon by prosecution is the alleged disclosure statements of accused Naresh Kumar, Sohan Lal, Jeet Kumar and Dalip Singh followed by recovery of a pair of jungle shoes, mobile phone and driving license of deceased, a red colour sports cap of deceased, a base ball bat and a SIM card from the under-construction Kothi of accused Karnail Singh at Langar. It is submitted by learned counsel for appellants that the alleged disclosure statements are inadmissible in evidence and the consequent recoveries are inconsequential; evidence in regard to such disclosures and recoveries is highly inconsistent and contradictory rendering it extremely doubtful; the articles recovered are of no consequence and have no incriminating value. EXPW NK-1 is the disclosure statement attributed to accused Naresh Kumar in respect of one set of mobile phone, driving license of Nitin Sharma-deceased and a pair of jungle shoes. This is proved by the testimony of IO Shiv Kumar. PWs Narinder Kumar and Bajinder Kumar have supported the contents of this disclosure memo. According to IO Shiv Kumar, a mobile set was

recovered from an Almirah placed in first floor of the under-construction Kothi of Karnail Singh at Langar whereas a pair of jungle shoes was recovered from bathroom and laces were recovered from beneath the table kept in the same house at the instance of accused Naresh Kumar. He has proved recovery memo marked EXPW NK-2 in this regard, contents whereof are supported by PWs-Narinder Kumar and Bijender Kumar. According to Narinder Kumar, no locks were placed on the doors of the said Kothi. EXPW-VM/5 is the disclosure statement in respect of baseball bat attributed to accused Jeet Kumar @ Jeeta. Besides IO, PWs Vijay Mohan and Bobby Sharma have supported contents thereof. EXPW-VM/6 is the recovery memo in terms whereof recovery of baseball bat is said to have been effected from a room of the Kothi of Karnail Singh at the instance of accused Jeeta. PWs Vijay Mohan Sharma and Bobby Sharma have supported its contents. EXPW-VM/9 is the disclosure statement in respect of SIM Card of mobile phone of deceased attributed to accused Dalip Singh @ Lucky which is proved by the IO and supported by PWs Vijay Mohan and Bobby Sharma. EXPW-VM/10 is the recovery memo in respect of SIM Card recovered at the instance of accused Dalip Singh @ Lucky effected from land adjacent to the wall of Kothi of Karnail Singh. Its contents are supported by PWs Vijay Mohan and Bobby Sharma. EXPW-VM/7 is the disclosure statement in respect of a sports cap of red colour of deceased attributed to accused Sohan Lal @ Khind which is proved by IO and supported by PWs Vijay Mohan and Bobby Sharma. Sports cap is said to have been recovered at the instance of accused Sohan Lal @ Khind from bathroom of Kothi of accused Karnail Singh in terms of EXPW-CM/8 - PWS Vijay Mohan and Bobby Sharma have supported the same. It is well settled that the information received from a person accused of an offence in custody of a Police Officer which distinctly relates to a fact thereby discovered is admissible under Section 27 of the Evidence Act and can be proved against him. However, any statement made to a Police Officer which connects the fact discovered

with the offence charged is inadmissible. The fact must be a relevant fact and must be discovered in consequence of information received from a person accused of an offence. It must be information of such kind which really helps to bring to light and which would otherwise be difficult to find out otherwise before it can be treated as of any substantial probative value. In the instant case, the recovered articles are said to have been recovered from the rooms of the under-construction house of accused Karnail Singh at Langar and from an open space at its rear side. There is nothing on record to connect these articles with the deceased or accused. The under construction house of accused Karnail Singh at Langar was not locked when recovery was effected. Thus, it was not inaccessible and such articles could be planted there. Moreover, the articles are said to have been lying either on Almirah, in the bathroom or under a table or in open space adjacent to the wall of the house which were not difficult to discover during investigation even without the disclosure statements having been made. It was not such a place of concealment about which exclusive knowledge could have been attributed to the accused. The place of recovery of incriminating articles must be a place of concealment which would be difficult or impossible for police to discover without assistance from the accused. In view thereof, the recovery of seized articles, said to have been recovered at the instance of the accused from the unlocked house of Karnail Singh at Langar, would not be relevant and shall have no probative value. Thus, no significance can be attached to it. This mode of proof also fails to take off to establish nexus of accused with the murder of deceased.

18. The seventh circumstance relied upon by prosecution is the change in registration number displayed on official vehicle of accused Karnail Singh from JK01F-1117 to JK01E-4117 after the occurrence. Testimony of PW Raj Kumar Constable posted on guard duty at the official residence of accused Karnail Singh is to the effect that Ratno Devi and Neetu Devi had left for Rajouri in the official Ambassador Car No.JK01F-1117 with accused Suresh Kumar in driving seat and

when they returned alongwith accused Karnail Singh, the number plate displayed registration Number of car as JK01E-4117. This version is not supported by his Guard Commander Sudesh Raj and fellow Constable Guards Subash Chander and Bikram Jeet Singh. Even otherwise, the testimony of this witness would not incriminate the accused as Ratno Devi and Neetu Devi are said to have left for Rajouri in the official car of Karnail Singh on 27-08-2005 and returned along with Karnail Singh on 02-09-2005. As per Ext.P-AS, the body of deceased was recovered from Greater Kailash canal on 26th of August, 2005 and same was identified by his brother Vijay Mohan on 27th August, 2005. Testimony of IO Shiv Kumar Chouhan establishes that the Ambassador car with altered number plate was seized from official residence of accused Karnail Singh on 02-09-2005 vide Ext.P-51 with original registration number JK01F-1117 tampered by sticking of black tape thereby falsely projecting it as JK01E-4117. PW Basanti Bhat Sub Inspector and Kamesh Shoor Inspector have supported the seizure memo in respect of the Ambassador car aforesaid. IO has also proved the seizure of its Log Book and other documents subsequently on 5th of September, 2005. This may be a post-occurrence event and unless there is proof of use of this car in the kidnapping of deceased with alteration in number plate to screen the offence and such alteration is traceable to accused, same cannot be read as an incriminating circumstance. Unfortunately, evidence in this regard is not forthcoming from record. Recovery of the Ambassador car with tampered registration number from official residence of accused Karnail Singh, undoubtedly, raises a suspicion about complicity of accused in the alleged crime but such suspicion cannot be a substitute for legal proof.

19. The eighth circumstance relied upon by prosecution is that accused Karnail Singh had disappeared after the occurrence, which happened on 24-08-2005. Suleman Salaria, the then Incharge DIG Armed Jammu deposed that on 29-08-2005 Karnail Singh had sent wireless messages to higher authority and though he did not report in his office

between 29-08-2005 and 02-09-2005 but he had appeared before him. There is no evidence to hold that Karnail Singh was not attending his office till 28-08-2005. This circumstance is thus held as not proved.

20. On reappraisal of evidence adduced by prosecution at the trial, we are of the considered opinion that the circumstances from which conclusion of guilt is sought to be drawn against the accused, have not been fully established. The facts emerging from the circumstantial evidence adduced do not form a complete chain of evidence to justify the inference that the murder of deceased was committed by accused in pursuance of a criminal conspiracy hatched inter se the accused to eliminate the deceased. Legal proof in regard to alleged kidnapping of deceased at the hands of accused Naresh Kumar, Sohan Lal, Jeet Kumar, Jamail Kumar, Daleep Singh and Suresh Kumar is woefully lacking. Finding of guilty recorded against accused by trial court is perverse and cannot be supported. It is unfortunate that the Investigating Officers have overlooked the most material aspect of the case in so far as communication between alleged perpetrators of crime and the victim was concerned. Had the Investigating Officers been alive to the fact that Mobile Phone No.9906212436 was registered in the name of accused Naresh Kumar and in absence of evidence in regard to its purchase by deceased from accused Naresh Kumar or its acquisition through some other mode at the relevant time, it would not have come with the improbable version of deceased having been communicated on the said mobile phone number. It is a case of shoddy investigation and the accused have been able to escape penal consequences on account of flaws in investigation. Investigating Agency has faltered and justice has become a casualty due to faulty investigation. They must be made accountable for it. We say so because the evidence brought on record at trial raises strong suspicion about complicity of accused in murder of deceased. However, suspicion, howsoever strong, cannot be a substitute for legal proof.
21. The result is that the impugned judgment of conviction and order of sentence cannot be sustained. Same are, accordingly, set aside and

finding of guilty recorded against accused by trial court is reversed. The appeals are allowed and as a sequel thereto, reference made by the trial court for confirmation of sentence of life imprisonment is rejected. Accused be set at liberty forthwith unless wanted in some other case. Result of these appeals and the fate of criminal reference be certified to the trial court in terms of provisions of Section 425 Cr. PC. Superintendent of Central Jail, Kot Balwal, Jammu be also informed of this judgment.

(Janak Raj Kotwal)
Judge

(Bansi Lal Bhat)
Judge

Jammu:
30/12/2015
Sunita/SS/Varun

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

(Bansi Lal Bhat)
Judge

Jammu:
30/12/2015