

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: May 03, 2010*
Judgment Delivered On: May 25, 2010

+ **CRL.APPEAL No.362/2008**

HARPAL SINGH Appellant
Through: Mr.Siddharth Luthra, Senior Advocate
Mr.Satya Narayan Vashisht,
Mr.Shri Singh, Mr.Vijay Sansanwal &
Mr.Yudhvir Singh Chauhan, Advocates.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Appellant Harpal Singh faced trial for the offence of having murdered his wife Sushila and son Harshit on 24.06.2003 at around 9.00 PM in the residence of the parties, being flat bearing Municipal No.A1/183-B, Paschim Vihar, Delhi.

2. Vide impugned judgment and order dated 13.02.2008, the appellant has been held guilty of murder(s) for which offence he has been sentenced to undergo imprisonment for life and pay fine in sum of Rs.10,000/-; in

default of payment of fine to undergo simple imprisonment for a period of six months.

3. Case of the prosecution was that on 25.06.2003 at about 8.15 AM the appellant came to PS Paschim Vihar and informed HC Subhash PW-23, that along with his wife Sushila and son Harshit, he resides at flat bearing Municipal No.A1/183-B, Paschim Vihar, Delhi. That there used to be domestic quarrels since a considerable period due to which he got hassled and thus murdered his wife and son by strangulating them. That thereafter he consumed '*All Out*' to commit suicide but nothing untoward happened to him. That he had also written a letter detailing the aforesaid facts, which letter is lying in his residence. That after locking the main door of his residence he has come to the police station to admit his guilt. HC Subhash PW-23, recorded the aforementioned information given by the appellant in DD No.2A, Ex.PW-23/A.

4. DD No.2A was assigned to SI Jagdish Meena PW-22 for inquiry, who left the police station in the company of the appellant and took along with him Const.Dalbir Singh PW-17, Const.Sukhvir Singh PW-19 and SI Randhir Singh PW-20. On reaching the flat the police officers saw Sushila and Harshit lying dead on a bed with a telephone wire tied around the neck of Sushila. The police officers further saw two empty bottles of mosquito repellent '*All Out*' in the room adjacent to the room where the dead bodies were found. The same were seized. Thereafter, the appellant took out a notebook, tore four pages from the same and stated that the said pages Ex.P-1 to Ex.P-4 contain the suicide note written by him before consuming '*All Out*'. SI Jagdish Meena seized the said four pages Ex.P-1 to Ex.P-4

vide memo Ex.PW-2/A. The four pages record that the appellant was committing suicide by consuming poison after murdering his wife and son.

5. Inspector Jagdish Meena made an endorsement beneath copy of the DD No.2A, and at around 10.20 AM handed over the same to Const.Sukhvir Singh PW-19 for FIR to be registered. Const.Sukhvir Singh took the aforesaid endorsement to the police station and handed over the same to ASI Vinod PW-1, who recorded FIR No.294/03, Ex.PW-1/A.

6. In view of the confession made by the appellant, Inspector Jagdish Meena arrested the appellant on 25.06.2003 as recorded in the arrest memo Ex.PW-20/A. On the same day i.e. 25.06.2003 at about 09.50 P.M. the appellant was taken to Sanjay Gandhi Memorial Hospital for his medical examination where as recorded on the MLC Ex.PW-8/A the appellant was found fully conscious and oriented. As recorded in the MLC, the appellant was to be medically examined as he had consumed 'All Out' anti mosquito repellent. It was recorded in the MLC that the appellant refused to undergo gastric lavage test. The appellant was examined by another doctor who advised the appellant to be produced before a psychiatrist as per report Ex.PW-7/A penned on the MLC.

7. Inspector Jagdish Meena seized the dead bodies and sent the same to the mortuary along with the inquest papers. On 25.06.2003 at about 3.30 PM Dr.V.K.Jha PW-9 conducted the post-mortem on the dead body of Sushila and prepared the post-mortem report Ex.PW-9/B recording therein that a ligature mark was found on the neck of Sushila. The cause of death of Sushila was opined to be

asphyxia resulting from strangulation and that it was possible that Sushila was strangled with the telephone wire found tied around her neck. He opined that the death of Sushila had taken place about 18 hours prior to the conduct of post-mortem.

8. On the same day i.e. 25.06.2003 at about 04.30 PM Dr.V.K.Jha PW-9 conducted the post-mortem on the dead body of Harshit and prepared the post-mortem report Ex.PW-9/A recording therein that a ligature mark was found on the neck of Harshit. The cause of death of Harshit was opined to be asphyxia resulting from strangulation and that the death of Harshit had taken place about 18 hours prior to the conduct of post-mortem.

9. During the investigation, the police recorded the respective statements Ex.PW-2/DA and Ex.PW-4/DA of Ram Kumar PW-2 and Kuldeep Singh PW-4, the father and brother of Sushila under Section 161 Cr.P.C. wherein they stated that the relations between the appellant and Sushila were strained as the appellant was having illicit relations with another woman.

10. On 27.06.2003, Inspector Jagdish Meena PW-22, recorded the statement Ex.PW-3/DA of Laxmi Devi PW-3, the mother of Sushila under Section 161 Cr.P.C. wherein she reiterated that the relations between the appellant and Sushila were strained as the appellant was having illicit relations with another woman. She further stated that in the year 2002 the appellant left Sushila and started residing with a woman named Beena and her son in a house at PappanKalan. In November 2002 she and her family members forced the appellant to leave the company of Beena due to which reason the appellant was angry with

Sushila and wanted to do away with her. On 23.06.2003 the appellant forcibly took Sushila and Harshit to a rented flat at Dwarka however they along with the appellant returned to their residence in Paschim Vihar on 24.06.2003. On 24.06.2003 at about 8.00 PM when she was returning from her evening walk she noted the light in the flat of the appellant was switched on. On seeing the same she went to the flat where she met Sushila, Harshit and the appellant and noted that the atmosphere was very tensed. Appellant said that Sushila would have to pay a price for returning to the flat from Dwarka.

11. During further investigation, the investigating officer recorded the statements Mark PW-10/A, Mark PW-12/A and Mark PW-13/A of Ravinder PW-10, Manohar Khan PW-12 and B.K.Gupta PW-13, respectively under Section 161 Cr.P.C.

12. Inspector Jagdish Meena PW-22, obtained the specimen handwriting Ex.PX-1 to Ex.PX-4 of the appellant and sent the same along with Ex.P-1 to Ex.P-4 recovered from the house of the appellant to the Forensic Science Laboratory for comparison of the handwriting. Vide FSL report Ex.PW-24/A it was opined that the writing Ex.P-1 to Ex.P-4 is in the same hand of he who has written Ex.PX-1 to Ex.PX-4.

13. Needless to state, the appellant was sent for trial. Charges were framed against the appellant for having committed offence punishable under Section 302 IPC.

14. At the trial the prosecution examined 23 witnesses.

15. Ram Kumar PW-2, the father of Sushila, deposed that the marriage of the appellant and Sushila was

solemnized on 11.07.1988. After few years of their marriage the relations between Sushila and the appellant got strained as the appellant developed illicit relations with other women. The appellant bought a house in Pappankalan and started residing there with the woman, named Beena. The appellant used to extend threats to him that he would murder his daughter Sushila and son Kuldeep. He and his family members persuaded the appellant to leave the company of Beena and brought him back to reside with Sushila at their residence in Paschim Vihar. However the appellant did not mend his ways and continued to be in touch with Beena. After sometime the appellant rented a flat at Pappankalan and he wanted that Sushila should reside with him at the said flat. On 23.06.2003 the appellant and Sushila went to reside at the aforesaid flat, however on the next day i.e. 24.06.2003 they came back to their flat in Paschim Vihar. On 25.06.2003 at about 09.00 AM he came to know that the appellant has murdered Sushila and Harshit, upon which he went to the residence of the appellant where he saw that the appellant along with some policemen was ascending the stairs leading to his house. The appellant took out keys from the pocket of his pant and opened the main door of his house. Inside the house the appellant picked up a notebook and tore four pages from the said notebook. The said four pages contained the handwriting of the appellant.

16. On being cross-examined about the assets of Sushila and cash transactions between him and Sushila, he stated that: *'It is correct that the sale deed of H.N.390/1, Sector I Rohtak is in the name of Sushila. Vol: But I purchased the said property in her name. Sushila had not*

purchased the property. Nobody has sold the property to Sushila. It is incorrect to suggest that on 8-2-03 Sushila lent a sum of Rs.50,000/- to me by way of cheque. Vol: Accused has taken money from me and amount represented the refund.'

17. It is significant to note that no suggestion was given to the witness in his cross-examination that the pages Ex.P-1 to Ex.P-4 do not contain the handwriting of the appellant or that he i.e. Ram Kumar had falsely stated that the writing in question was that of the appellant. No questions were put to him as to with reference to what fact he had deposed that the writing on the pages Ex.P-1 to Ex.P-4 was that of the appellant.

18. Laxmi Devi PW-3, the mother of Sushila, deposed that the relations between Sushila and the appellant were normal till about five years of their marriage. After the birth of the son Sushila and the appellant the relations between Sushila and the appellant were strained as the appellant developed illicit relations with other women. In the year 2002 the appellant left Sushila and started residing with a woman named Beena and her son in a house in Pappankalan. She and her family members persuaded the appellant to leave the company of Beena and brought him back to reside with Sushila at their residence in Paschim Vihar. However the appellant did not mend his ways and continued to be in touch with Beena. On one occasion she saw an injury mark on the hand of Sushila and her grandson told her that said injury was received by Sushila when she was beaten by the appellant. She apprised her husband with the aforesaid fact. When she and her husband questioned the appellant about the aforesaid injury on the person of

Sushila the appellant abused her husband and Sushila. On 23.06.2003 the appellant took Sushila to reside in a rented flat at Pappankalan however on the next day i.e. 24.06.2003 they came back to their house in Paschim Vihar. On 24.06.2003 at about '7.30 – 7.45 AM' when she was returning from park after a walk she saw that a light was on in the residence of Sushila and the appellant upon which she went to the said house where she saw that the appellant and Sushila were present there and that the atmosphere in the house was very tense. When she made enquiries about their return from the flat at Pappankalan, the appellant told her that Sushila would have to bear the consequences of her act of returning from the flat at Pappankalan. She tried to counsel the appellant and Sushila that they should make an effort to live happily together.

19. On being questioned during cross-examination about her relations with the appellant, she stated that: *'It is correct that I alongwith my daughter Susheela & son of another daughter went with the accused for excursion to Nepal. Vol. I had borne all my expenses...It is correct to suggest that from 14th December to 17th December my daughter Sushila and Harpal had gone for excursion to Goa leaving behind their child with me It is correct that in June, 1998 my son-in-law Mukesh and my daughter Anita went to Himachal Pradesh along with accused and Sushila and their son. It is correct that in Nov., 1998, my son in law Mukesh and my daughter Anita alongwith accused and his wife and child went to Agra to celebrate the marriage anniversary of my daughter Anita with Mukesh. It is correct that in the year 2000, myself Saroj her son Bittoo, her husband Balbir, Harpal, my daughter Sushila and her son Harshit had gone*

to Himachal Pradesh, UP etc for visiting the Seven Matas....It is correct that we all had gone there in car of Harpal....It is correct that in the year 1999 accused along with Sushila and their son and his friend Dabass went for excursion to Sri Nagar. It is correct that accused has taken Sushila to various places as abovementioned as they had good relations.' On being further questioned about the stay of son of her daughter Saroj in the house of the appellant, she stated that: *'It is correct that since the date of purchase of flat by the accused at Paschim Vihar, Bittoo the son of my another daughter Saroj used to live with the accused at that very flat. Vol. the accused had brought him as he had no child of his own.'* On being questioned about the return of the appellant from the flat at Pappankala, she stated that: *'So far as I know, he came back at 7.30/7.45 PM.'* On being questioned about the assets and income of Sushila, she stated that: *'It is correct that Sushila was housewife. It is incorrect to suggest that accused Harpal built a house in the name of Sushila at 390/1, Sector-I, Rohtak Haryana India. It is correct that the house is in the name of Sushila. Vol: We had given the house to Sushila.'* On being questioned about the relations of her son with the appellant, she stated that: *'It is correct that my son was an employee of the accused.'*

20. It is most significant to note that a suggestion was given to the witness in her cross-examination that she did not visit the residence of Sushila and the appellant at about 7.30-7.45 PM on 24.06.2003, which suggestion was categorically denied by the witness.

21. Kuldeep PW-4, the brother of Sushila, deposed that after few years of their marriage the relations between Sushila and the appellant got strained as the appellant

developed illicit relations with other women. In the year 2002 the appellant left Sushila and started residing with a woman named Beena and her son in a house in Pappankalan. He and his family members persuaded the appellant to leave the company of Beena and brought him back to reside with Sushila at their residence in Paschim Vihar. After the said incident the appellant resented Sushila and wanted to do away with her. In February 2003 the appellant took Sushila to a temple at Balaji and got her attacked by some unknown persons. However Sushila was saved as his another sister and her husband were present with Sushila at the time of the attack. On 23.06.2003 the appellant took Sushila to reside in a rented flat at Pappankalan however on the next day i.e. 24.06.2003 they came back to their house in Paschim Vihar.

22. On being questioned during cross-examination about the assets of Sushila, he stated that: *'It is correct that H.N.390/1, Sector-1, Rohtak is registered in the name of Sushila and the sale deed is in her name. It is correct that before the court of MM Sukhvinder Kaur, an application was moved by the accused for handing over H.N. A-1/83B Paschim Vihar, Janta Flats to his brother Navrang Pal. It is correct that we had objected to the same....It is correct that the said house at the relevant time was in the name of Sushila. It is correct that after the death of Sushila, my mother filed a civil suit at Rohtak against the accused and his brother Navrang pal claiming the property at Rohtak to be of her own...It is correct that the Id MM had handed over the possession of flat at Paschim Vihar to Navrang Pal. On being questioned about the telephone installed at his residence, he stated that: 'It is correct that in June 2003, the*

number of telephone installed at my house was 25282803. It is correct that the said phone was in the name of Harpal. Vol.: But the bills were paid by us.'

23. Saroj Devi PW-5, the sister of Sushila, deposed that on 25.06.2003 at about 08.00 AM when she called the appellant on his mobile phone having number 9810155414 to talk to him about building material, the appellant told her that he has murdered Sushila and Harshit. She immediately apprised her husband Balbir with the aforesaid fact. Thereafter at about 09.00 AM she and her husband went to the residence of the appellant and Sushila where she saw that Sushila and Harshit were lying dead on a bed.

24. Savita PW-6, the sister of Sushila, deposed on lines similar to Kuldeep PW-4.

25. Ravinder PW-10, deposed that he knew the appellant as he was working with him since last two years prior to the incident. On 24.06.2003 at about 10.30 – 11.00 AM he came to his office in Dwarka and that he and the appellant remained there throughout the day. In the evening he and the appellant had to go to CD Park at Jahangir Puri where an underground tank had to be dug and that their machines had already been installed there. At about 08.00 or 09.00 PM he and the appellant left the office in a car to go to Jahangir Puri. At about 10.30 PM he and the appellant reached Jahangir Puri and remained there for about 3-4 hours. Thereafter he and the appellant went to Singhu Border and Dwarka and Kakrola Mod. At about 05.00 or 05.30 AM the appellant dropped him at Najafgarh and went in the direction of his house at Paschim Vihar. After about one and half hour he received a telephonic call from the appellant informing him that someone has murdered his

i.e. the appellant's wife and son and that he is going to PS Paschim Vihar. The appellant told him to come at PS Paschim Vihar. He denied having stated to the police, as recorded in his statement Ex.PW-10/A that in the month of February-March 2003 the appellant bought a flat at Pappankala and started residing there with a woman named Beena or that on 25.06.2003 at about 06.30 AM the appellant gave him a telephonic call and informed him that he has committed the murder of his wife and son.

26. Ms.Bhawna Babbar PW-11, Principal, MR Vivekanand Model School, Dwarka, deposed that on 08.10.2002 a child named Raj Singh s/o Harpal Singh and Veena Singh was admitted in her school and that she has not met the parents of the said child.

27. Manohar Khan PW-12, and B.K. Gupta PW-13, turned hostile and denied having made statements Mark PW-12/A and Mark PW-13/A to the police, Manohar Khan PW-12 denied having stated before the IO that the appellant along with his wife Veena Singh and son Raj Singh used to reside in a flat in a society complex. B.K.Gupta PW-13 denied having told the investigating officer that he let out a flat to the appellant who used to reside in the same with a lady named Veena Singh and a child.

28. Inspector Jagdish Meena PW-22, deposed that the present case was investigated by him. During the investigation, he obtained the specimen signatures of the appellant and that he did not take the permission of the court in said regard. On being questioned about the presence of Kuldeep and Ram Chander in the police station on 25.06.2003, he stated that: *'Kuldeep and Ram Chander were present at the PS when I alongwith the police party left*

the PS but I cannot say whether they arrived at the PS before the arrival of the accused or after the arrival of the accused.'

29. In his examination under Section 313 Cr.P.C. the appellant stated that he was married to Sushila and that they were leading a happy marital life. He used to give financial help to his in-laws as they were very poor and had no source of income to meet their daily expenses. Ram Chander Hooda, a relative of Sushila, used to wield lot of influence in the family of Sushila because of his closeness to his mother-in-law. The son of sister of Sushila, Deepak @ Bittu used to reside with him and Sushila as the relations between her sister-in-law and her husband were strained. He bought a flat bearing Municipal No.A1/86B, DDA Janta Flats, Paschim Vihar in the name of her mother-in-law and got a telephone installed in the said flat. He employed Kuldeep, the brother of his wife, in his firm at the instance of his wife. He gave loan in sum of Rs.50,000/- and Rs.3,50,000/- to his sister-in-law Savita and his mother-in-law respectively, but they did not return the said amount. His brother-in-law Kuldeep committed forgery and fraudulently withdrew sums of Rs.3,85,000/-, Rs.1,50,000/- and Rs.5,35,000/- from his various bank accounts. His in-laws admitted the factum of forgery committed by Kuldeep and that his father-in-law issued two cheques in sum of Rs.1,65,000/- and Rs.1,41,000/- respectively in his favour in lieu of the amounts fraudulently withdrawn by Kuldeep from his bank accounts and assured to pay the balance amount within a reasonable time. When he and Sushila demanded the balance money from his in-laws, Kuldeep and Ram Chander Hooda threatened Sushila that they would kill all

members of his family. On 22.12.2002 he and Sushila lodged a complaint with the police against his in-laws. After the said incident, the relations between him, Sushila and his in-laws got very strained. On 26.12.2002 Kuldeep fraudulently transferred a sum of Rs.1,77,000/- from his bank account to the account of his father-in-law Ram Kumar. On 08.02.2003 his father-in-law Ram Kumar took a loan of Rs.50,000/- from Sushila. On 24.06.2003 at about 10.30 A.M. he went to his office at Dwarka to attend to his business. At about 06.00 PM, he gave a telephonic call to his wife Sushila and instructed her to hand over a sum of Rs.50,000/- to Balwan and also informed that he would not come home at night as he was very busy. At about 10.30 PM he reached CD Park Jahangir Puri to oversee arrangements of digging up of an underground tank at the said park. Thereafter he along with Ravinder went to Singhu Border and Dwarka. At about 05.30 AM he dropped Ravinder at Najafgarh and went to his house. On entering his house he was shocked to see that his wife and son were lying dead on the bed. He immediately gave a telephonic call to Ravinder and apprised him of the said fact. He further told Ravinder that he is going to PS Paschim Vihar and that he should also come there. On reaching the police station he was shocked to see that Kuldeep and Ram Chander Hooda were already present there. The police in connivance with Kuldeep and Ram Chander Hooda falsely implicated him and obtained his signatures on various blank papers. He does not know any lady named Beena or Veena. He denied having spoken to Saroj on the morning of 25.06.2003. He said that taking advantage of his absence from his house, Kuldeep and Ram Chander Hooda murdered Sushila and Harshit in the night of

24.06.2003. The family members of Sushila have falsely implicated him in the present case as they wanted to usurp his properties and avoid returning the balance amount owed by them to him. He stated that he refused to undergo gastric lavage test at the hospital as he was humiliated and maltreated by Dr.Shireen who conducted his medical examination at the instance of his sister-in-law Anita who was employed as a nurse in the said hospital. He denied having authored Ex.P-1 to Ex.P-4 i.e. the suicide note.

30. In defence, the appellant examined 10 witnesses.

31. Gajender Singh DW-1, Assistant Manager Andhra Bank, Dwarka Branch, deposed that the document Ex.DW-1/A is the copy of the statement of the account of the appellant in his bank.

32. The document Ex.DW-1/A records that the appellant had issued a cheque dated 29.11.2002 in sum of Rs.3,85,000/- in favour of Kuldeep.

33. Arun Bahri DW-2, Assistant Manager ICICI Bank, Palam Branch, deposed that the documents Ex.DW-2/A and Ex.DW-2/B are the certified copies of the statement of the account of the appellant in his bank.

34. The document Ex.DW-2/A records that the appellant had issued a cheque dated 29.11.2002 in sum of Rs.1,50,000/- in favour of Kuldeep. The document Ex.DW-2/B records that the appellant had issued a cheque dated 20.08.1998 in sum of Rs.50,000/- in favour of Savita.

35. Satish Kachhwha DW-3, Senior Assistant SBI, Mundka, deposed that the cheque Ex.DW-3/A dated 23.12.2002 in sum of Rs.50,000/- was issued by Sushila in favour of Ram Kumar Dahiya. The statement Ex.DW-3/B of the account of Sushila in his bank records that a sum of

Rs.50,000/- was withdrawn from the account of Sushila by means of the aforesaid cheque.

36. Bhim Sain DW-4, Messenger, SBI, Paschim Vihar deposed that the document Ex.DW-4/C is the copy of the statement of the account of Ram Kumar in his bank.

37. The document Ex.DW-4/C records that the cheque Ex.DW-3/A was credited in the account of Ram Kumar.

38. Balwan Singh DW-5, deposed that he had business relations with the appellant since last 7-8 years prior to the incident. In the evening of 24.06.2003, he went to the house of the appellant where he met the wife of the appellant and took a sum of Rs.50,000/- from her. Besides the wife of the appellant, a boy aged about 5 years and a boy aged about 20-21 years were present there. The boy aged about 20 years was addressing the wife of the appellant as 'Mausi'. Thereafter he went to the office of the appellant. At about 8.00 PM he and the appellant went to the site at Jahangir Puri where his JCB machine was working and remained there till about 11.00 PM, the appellant was present in Jahangir Puri till the time he remained there.

39. Rajeev Mehta DW-6, deposed that he had business dealings with the appellant. He has been giving his JCB machine and dumper to the appellant on rent since the year 1992. In the year 2002 the appellant had taken his JCB machine and dumper on rent. In the intervening night of 24/25.06.2003 he met the appellant at the site at Jahangir Puri.

40. Navrang Pal DW-7, the brother of the appellant, deposed that the brother-in-law of the appellant Kuldeep fraudulently withdrew amounts from the various bank

accounts of the appellant. The in-laws of the appellant admitted the factum of forgery committed by Kuldeep and that his father-in-law issued two cheques in sum of Rs.1,65,000/- and Rs.1,41,000/- respectively in his favour in lieu of the amounts fraudulently withdrawn by Kuldeep from his bank accounts and assured to pay the balance amount of Rs.27,00,000/- within a reasonable time. However, the in-laws of the appellant failed to keep their promise and did not make the payment of the balance amount. They used to extend threats to Sushila, upon which Sushila lodged a complaint against them with the police. On 25.06.2003 he received a telephonic call from a policeman informing him that the appellant has been arrested in the present case. On reaching the police station he was shocked to see that Kuldeep, Ram Chander Hooda and other family members of Sushila were present there. All the aforesaid persons attempted to murder him at the police station.

41. Santram DW-9, Assistant Manager South Indian Bank, Rohini Branch, deposed that the document Ex.DW-9/A is the certified copy of the statement of the account of M/s Susheel Associates in his bank.

42. The document Ex.DW-9/A records that on 23.05.2001 a sum of Rs.3,00,000/- was withdrawn by one Laxmi Devi from the account of M/s Susheel Associates.

43. As already noted hereinabove, the learned Trial Judge has convicted the appellant. The reasons which led the learned Trial Judge to come to the said conclusion are that:- (i) the appellant had a motive to commit the murder(s) inasmuch as (a) the testimony of family members of Sushila when coupled with the evidence of Bhawna Babbar PW-11, Principal, MR Vivekanand School, that a

child named Raj Singh s/o Harpal Singh and Veena Singh was admitted in her school gives rise to a suspicion that the appellant had some illicit relations with a lady named Veena Singh; (b) there is also evidence on record to suggest that the appellant was fed up with his wife because of the behaviour of his in-laws; (ii) the evidence of Laxmi Devi PW-3, the mother of Sushila, establishes that Sushila and Harshit were last seen alive in the company of the appellant; (iii) the fact that the time gap between the point of time when Sushila and Harshit were last seen alive in the company of the appellant and when they were murdered is small, coupled with the fact that the appellant had extended a threat to the life of Sushila at the time when she was last seen alive in the company of the appellant conclusively establishes that the appellant is the perpetrator of the crime (s); (iv) the conduct of the appellant in going to the police station on coming to know of the murder of his wife and child is most unnatural and negates the defence taken by him for in a case where husband comes to know about the murder of his wife and child his normal conduct would be to raise hue and cry and not to go to the police station in a cool manner; (v) the defence taken by the appellant that the family members of Sushila particularly her brother Kuldeep and relative Ram Chander Hooda murdered Sushila and Harshit in order to grab the properties of the appellant and to avoid the payment of Rs.27,00,000/- owed by them to the appellant is most untenable; (vi) the plea of alibi taken by the appellant that he was not present in his house in the intervening night of 24/25.06.2003 i.e. the time of the murder of Sushila and Harshit is false for the reason neither any question was put nor any suggestion was given by the

defence to the family members of Sushila that the appellant was not present in his house in the intervening night of 24/25.06.2003; (vii) even though no permission was taken by Inspector Jagdish Meena from the court before obtaining the specimen handwriting of the appellant the same in no way dents the opinion contained in the FSL report Ex.PW-24/A that the suicide note Ex.P1 to Ex.P4 is in the handwriting of the appellant in view of the dictum of law laid down by Supreme Court in the decision reported as State of Haryana vs. Jagbir Singh AIR 2003 SC 4377 that pendency of some proceedings in the court is a sine qua non before a court can give direction to an accused to give his specimen handwriting under Section 73 of the Evidence Act and that such a direction can be given by the court only for enabling the court to compare the handwriting of the accused and not for the purpose of the investigating or any other agency to compare the same and the fact that the appellant did not raise any dispute in the trial that the suicide note was not in his handwriting or that the police did not obtain his specimen handwriting and (viii) the fact that the suicide note Ex.P1 to Ex.P4 was written by the appellant establishes beyond any doubt that the appellant murdered his wife and son.

44. From the narratives stated above, it is apparent that the following incriminating circumstances have been pressed into service by the prosecution to infer the guilt of the appellant:-

I The confessional statement contained in the suicide note Ex.P1 to Ex.P4 written by the appellant.

II Sushila and Harshit were last seen alive in the company of the appellant and that there was tension between Sushila and the appellant at that time.

III Extra-judicial confession made by the appellant to Saroj PW-5.

IV Strained relations between Sushila and the appellant.

45. At the hearing of the appeal, following six arguments were advanced by the learned senior counsel for the appellant:-

A. That no permission being taken from the Court of Competent Jurisdiction and Section 5 of the Identification of Prisoners Act 1920 being not complied with, the report Ex.PW-24/A could not be relied upon by the learned Trial Judge.

B. It was secondly urged that the statement of Sushila recorded by the investigating officer under Section 161 Cr.P.C. was interpolated into the record i.e. the case diary and even the case diary was changed. To bring home the point, it was urged that when the challan/charge-sheet was sent to the learned Additional Public Prosecutor, on 9.9.2003 the Senior Public Prosecutor gave a written note that the case appeared to be weak inasmuch as it appears to be a case where the prosecution was relying upon the confessional statement made by the appellant and as entered in DD No.2A. In response thereto, the investigating officer, vide note dated 12.9.2003 justified the admissibility of the contents of DD Entry No.2A and did not make any mention to the evidence in the form of appellant being in

the company of his wife and son in the early hours of the night of 23.6.2003. In response thereto, the Senior Additional Public Prosecutor wrote a note on 12.9.2003 itself, once again highlighting that there was no admissible evidence and specifically noting that there was no evidence of last seen. Further in response, on 17.9.2003 the investigating officer emphasized that the charge-sheet should be filed and drew notice to the incriminating evidence which had been gathered, but made no reference to Sushila's statement. Thus, it was urged that only after 17.9.2003, the investigating officer interpolated the record.

C. The third argument advanced by the learned senior counsel was predicated upon the FIR Ex.PW-1/A registered in the present case. Counsel submitted that the police received first information about the crime in question at about 08.15 AM on 25.06.2003 as recorded in the DD No.2A and that the FIR Ex.PW-1/A was registered at about 10.20 A.M. on 25.06.2003. According to the counsel, the time gap of nearly two hours in the receipt of first information about the crime and the registration of the FIR Ex.PW-1/A probablizes the defence of the appellant that the police in connivance with the family members of Sushila had falsely implicated him in the present case.

D. The fourth argument advanced by the learned senior counsel pertained to the evidence of Laxmi Devi PW-3. Counsel submitted that the learned Trial Court had erroneously held that Laxmi Devi had seen Sushila and Harshit alive in the company of the appellant at about 07.30-07.45 PM on 24.06.2003 unmindful of the testimony of Laxmi Devi that she had Sushila and Harshit alive in the

company of the appellant at about 07.30-07.45 AM on 24.06.2003. In the backdrop of the said fact, counsel drew attention of the court to the recordings contained in the post-mortem reports Ex.PW-9/A and Ex.PW-9/B of Harshit and Sushila that Harshit and Sushila had died around 09.30 – 10.30 PM on 24.04.2003. Counsel submitted that the time gap between the time when Laxmi Devi had seen Sushila and Harshit alive in the company of the appellant and the time of the death of Sushila and Harshit is so large that nothing turns upon the fact that Laxmi Devi had seen Sushila and Harshit alive in the company of the appellant.

E. The fifth submission made by the learned counsel for the appellant pertained to the evidence of Saroj PW-5, the sister of Sushila. Counsel submitted that it is settled legal position that extra-judicial confession is a very weak piece of evidence and cannot form the basis of conviction unless the prosecution leads evidence corroborating the same. Counsel pointed out that in the instant case the prosecution could have easily proved the claim of Saroj that the appellant had made an extra-judicial confession to her over telephone by producing the call records of the mobile number of Saroj and the appellant however the prosecution failed to do so. Counsel argued that an adverse inference should be drawn against the prosecution for its failure to produce the call records of the mobile number of Saroj and the appellant.

F. The last submission advanced by the learned counsel for the appellant was that the evidence led by the defence establishes the facts that the appellant had bought houses in the favour of his wife and mother-in-law; that he had

given money to various family members of his wife; that he had taken his wife and her family members for holiday on various occasions and that he had given employment to the brother of his wife in his firm. Counsel submitted that aforesaid facts completely demolish the theory set up by the prosecution that the relations between the appellant and Sushila were strained, on the contrary, they establish that the relations between them were very cordial. Learned counsel urged that there was no evidence of the appellant having any extra-marital relationship with any woman, much less Veena or Beena.

46. The testimony of Inspector Jagdish Meena PW-22, contents whereof have been noted in foregoing paras, makes it abundantly clear that the specimen writings of the appellant were obtained by Inspector Jagdish Meena when the appellant was in custody. The identification of the appellant as required by the Identification of Prisoner's Act 1920 was not got done. Nor was the permission taken from a court of competent jurisdiction to obtain the specimen writings of the appellant.

47. In a decision dated 5.3.2009 disposing of Crl. Appeal No. 682/2008 'Santosh @Bhure v. State' and Crl. Appeal No. 316.2008 'Neeraj v. State', noting the decision of the Constitution Bench of Supreme Court reported as 1961CriLJ856 State of Bombay v. Kathi Kalu Oghad and Ors. as also the decisions of Supreme Court reported as [1980]2SCR1067 State of U.P. v. Rambabu Mishra and [1994]3SCR1061 Sukhwinder Singh and Ors. v. State of Punjab; in relation to the said decisions, the Division Bench

of which, one of us namely Pradeep Nandrajog, J. was a member, opined as under:

“18. Unfortunately, for the prosecution, the charge against Neeraj has to fail for the simple reason Neeraj's specimen handwriting was obtained by the police when he was in their custody. No permission was taken from the Court concerned to obtain his specimen handwriting.

19. Learned Counsel for the State urges that a Constitution Bench of 11 Judges of the Supreme Court, in the decision reported as 1961 Cri.L.J. 856 State of Bombay vs. Kathi Kalu Oghad & Ors. has upheld the constitutional validity of compelling an accused to give specimen handwritings. It has been held that the same does not contravene Article 20(3) of the Constitution of India and thus the fact that the police obtained the specimen handwriting of Neeraj when he was in their custody does not invalidate the said act. Learned Counsel was at pains to point out that the Constitution Bench of the Supreme Court was considering three references pertaining to three views taken by the High Court of Bombay, Punjab and West Bengal pertaining to compelling an accused to give his specimen handwriting, fingerprints and specimen signatures respectively and that in the latter two cases the palm and finger print impressions as also the specimen signatures were obtained with the permission of the magistrate concerned but in the first case pertaining to the Bombay High Court the specimen handwritings were taken when the accused was in police custody. Thus, learned Counsel urged that the Constitution Bench upheld the action of taking specimen handwriting by the police when the accused was in police custody.

20. It may be noted that the Constitution Bench of the Supreme Court was dealing with the issue whether to compel an accused to give his blood sample, palm and fingerprints impressions, signatures and handwriting etc. would or would

not be violative of Article 20(3) of the Constitution of India which made it unconstitutional for a person to be a witness against himself. The Constitution Bench held that to be a witness means to give evidence. It was held that giving handwriting samples or fingerprints or palm impressions did not tantamount to giving evidence and that when a handwriting sample or a fingerprint or a palm impression was obtained by the police it did not amount to compelling an accused to be a witness against himself.

21. In the decision reported reference to the decision of the Constitution Bench in Kathi Kalu Oghad's case (supra) in para 7 it was observed as under:

7. Section 73 of the Evidence Act was considered by us in State (Delhi Administration) vs. Pali Ram 1979 Cri.L.J. 17 where we held that a Court holding an enquiry under the Criminal Procedure Code was entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under Section 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question was also not considered in State of Bombay v. Kathi Kalu Oghad 1961 Cri.L.J. 856, where the question which was actually decided was that no testimonial compulsion under Article 20(3) of the Constitution was involved in a direction to give specimen signature and handwriting for the purpose of comparison.

22. In para 3 to 6 and para 8 of the decision in Rambabu Mishra's case (supra) it was observed as under:

3. Section 73 of the Evidence Act is as follows:

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications to finger-impressions.

4. The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings "for the purpose of enabling the Court to compare" such writings with writings alleged to have been written by such person. The clear implication of the words "for the purpose of enabling the Court to compare" is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be

open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under Section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should it make any difference if the investigating agency seeks the assistance of the Court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?

5. We may also refer here to Section 5 of the Identification of Prisoners Act, 1920, which provides:

5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the CrPC, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

Section 2(a) of the Act defines "measurements" as including "finger impressions and foot print impressions.

6. There are two things to be noticed here. First, signature and writing are excluded from the range of Section 5 of the Identification of Prisoners Act and, second, 'finger impressions' are included in both Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of investigation and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of Section 73 of the Evidence Act.

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8. The view expressed by us in the earlier paragraphs, on the construction of Section 73, Evidence Act was the view taken by the Madras High Court in *T. Subbiah v. S.K.D. Ramaswamy Nadar* AIR 1970 Mad. 85, the Calcutta High Court in *Farid Ahmed v. the State* AIR1960Cal32 (Mitter J., at page 32). and *Priti Ranjan Ghosh and Ors. v. The State* (1973) 77 CWN 865, the High Court of Punjab and Haryana in *Dharamvir Singh v. State*, the High Court of Madhya Pradesh in *Brij Bhushan Raghunandan Prasad v. The State* : AIR1957MP106, the Orissa High Court in *Srikant Rout v. State of Orissa* 1972 (2) CWR 1332 and the Allahabad High Court in the judgment under appeal. A contrary view was taken by the Patna High Court in *Gulzar Khan and Ors. v. State* AIR1962Pat255 and the High Court of Andhra Pradesh in *B. Rami Reddy and Ors. v. State of Andhra Pradesh*. We do not agree with the latter view. We accordingly dismiss the appeal and while doing so we would suggest that suitable legislation may be made on the analogy of Section 5 of the Identification of Prisoners Act and provide for the investiture of Magistrates with the power to

issue directions to any person, including an accused person, to give specimen signatures and writings.

23. In the decision reported as [1994] 3 SCR 1061 Sukhvinder Singh and Ors. v. State of Punjab, noting that the specimen writing of Sukhvinder Singh was obtained by the police when he was in police custody, notwithstanding the fact that Sukhvinder Singh had admitted in his statement under Section 313 Cr.P.C. that he gave the specimen handwriting it was held that the opinion of the handwriting expert had to be excluded while considering the evidence against Sukhvinder Singh. We note that the said evidence brought on record inculpatory evidence against Sukhvinder Singh in respect of ransom letters Ex.P-A and Ex.P-C alleged by the prosecution to be in the handwriting of Sukhvinder Singh.

24. Thus, excluding the opinion of the handwriting expert pertaining to the letter recovered by the police from the left pocket of the deceased, we are left with only one piece of evidence against Neeraj. The same is the recovery of a knife at his instance.”

48. Thus, the FSL report Ex.PW-24/A has to be excluded from the arena of admissible evidence in the present case, for the reason, no orders were obtained by the competent court to obtain the specimen writings of the appellants nor were the provisions of the Identification of Prisoner's Act 1920 complied with.

49. But it is important to note the deposition of Ram Kumar PW-2, the father of Sushila, as per which he could identify the handwriting of the appellant and that the suicide note Ex.P-1 to Ex.P-4 contains the handwriting of the appellant. Though Ram Kumar has not stated that he was familiar with the writing of the appellant, but we note that he was not cross-examined on the said point. In fact said

part of his testimony was just not challenged. Notwithstanding as aforementioned, we note that it was claimed by the appellant in his examination under Section 313 Cr.P.C. that he had business dealings with the family members of Sushila including her father. In that view of the matter, it can reasonably be expected that the father of Sushila would have been familiar with the handwriting of the appellant. It is also significant to note that no suggestion to the contrary was given to him by the defence.

50. In the decision reported as M/s. Chuni Lal Dwarka Nath vs. Hartford Fire Insurance Co. Ltd. & Anr. AIR 1958 Punjab 440(1) Punjab and Haryana High Court observed as under:-

“It is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness.

If no such questions are put, the Courts presume that the witness' account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation. In *Browne v. Dunn*, (1893) 6 R 67 (A), Lord Herschell observed :

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he

might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with the witnesses."

51. Furthermore, the response of appellant to the question pertaining to the suicide note Ex.P-1 to Ex.P-4 in his examination under Section 313 Cr.P.C. that he was forced to "sign" few blank pages of a notebook and not that he was forced to write blank pages lends credence to the evidence of Ram Kumar PW-2, that the suicide note Ex.P-1 to Ex.P-4 contains the handwriting of the appellant.

52. As already noted hereinabove, the suicide note Ex.P-1 to Ex.P-4 records that the appellant is committing suicide by consuming poison. There are two facts which lend corroboration to the aforesaid recording contained in the suicide note Ex.P-1 to Ex.P-4. The first fact is that two empty bottles of mosquito repellent '*All Out*' were found in the place of the occurrence. The second fact is that the MLC Ex.PW-8/A of the appellant records that the appellant refused to undergo the gastric lavage test, which test could have revealed that whether the appellant had consumed some poison or not. The claim of the appellant that he refused to undergo gastric lavage test because he was maltreated by Dr.Shireen at the instance of his sister-in-law Anita is clearly untenable. Dr.Shireen PW-8, had no animus

against the appellant. It is highly improbable that at an instance of a mere nurse she would have maltreated the appellant who was her patient.

53. We hold that the prosecution has successfully established that the appellant had written the suicide note Ex.P-1 to Ex.P-4. In the same the appellant wrote that after having murdered his wife and son he is committing suicide by consuming poison. Indeed, two bottles of a mosquito repellent 'All Out' were recovered from the flat of the appellant. The conduct of the appellant in refusing to undergo gastric lavage test incriminates the appellant for the reason it would have revealed that the appellant had consumed some poisonous substance and would have corroborated the contents of the suicide note.

54. Whether Laxmi Devi PW-3, the mother of Sushila, is a truthful witness? If yes, what is the time at which she saw Sushila and Harshit alive in the company of the appellant on 24.06.2003? Was it 07.30 – 07.45 AM or 07.30 – 07.45 PM?

55. The defence had challenged the veracity of the evidence of Laxmi Devi PW-3, on the basis of the written communication between the learned Additional Public Prosecutor and the investigating officer.

56. We repel the arguments advanced on this issue for the reason we find from the record that Insp.Jagdish Meena PW-21, the scribe of Laxmi Devi's statement recorded under Section 161 Cr.P.C. was not questioned during cross-examination as regards the notes exchanged between him and the learned Additional Public Prosecutor. Insp.Jagdish Meena thus had no opportunity to render any explanation. In the decisions reported as Rahim Khan Vs.

Khurshid Ahmad AIR 1975 SC 290, State of UP Vs. Anil Singh 1988 (Supp) SCC 686 and Sunil Kumar Vs. State of Rajasthan (2005) 9 SCC 298 it was held that unless a witness is given an opportunity to explain what is held against him, the same cannot be held against the witness.

57. Laxmi Devi PW-3, was cross-examined at great length inasmuch as her cross-examination runs into nearly 15 pages. No suggestion has been given to Laxmi Devi that her statement was recorded by the police after 17.9.2003.

58. At what time Laxmi Devi saw Sushila and Harshit alive in the company of the appellant on 24.06.2003?

59. As already noted hereinabove, in her statement Ex.PW-3/DA Laxmi Devi stated that she met Sushila, Harshit and the appellant in their house in the evening of 24.06.2003. However, in her examination-in-chief, she deposed that On 24.06.2003 at about '7.30 – 7.45 AM' when she was returning from park after a walk she saw that light was on in the residence of Sushila and the appellant upon which she went to the said house where she saw that the appellant and Sushila were present there and that the atmosphere in the house was very tense. When she made enquiries about their return from the flat at Pappankalan the appellant told her that Sushila would have to bear the consequences of her act of returning from the flat at Pappankalan. She tried to counsel the appellant and Sushila that they should make an effort to happily live together in their residence.

60. Now, it appears to be a case where 'PM' got typed as 'AM'. We say so for the reason, in her statement recorded by the investigating officer under Section 161

Cr.P.C. she has used the expression 'in the evening'. Evening time can never be 'AM'. It has to be 'PM'.

61. It is most relevant to note that a suggestion was given to the witness in her cross-examination that she did not visit the residence of Sushila and the appellant at about 7.30-7.45 PM on 24.06.2003. The aforesaid suggestion given by defence to Laxmi Devi shows that the defence understood that Laxmi Devi claimed to have visited the residence in question at about 07.30 – 07.45 PM which in turn establishes that Laxmi Devi meant to depose that she visited the residence of the appellant and Sushila at about 07.30-07.45 PM on 24.06.2003.

62. There is yet another aspect of the matter. In the month of June, by 07.30 – 07.45 AM, there is sufficient sunshine and hence there is no requirement to switch on the light in the house. Even if it is taken that a light remained switched on in the residence of the appellant at about 07.30 – 07.45 AM it would not have been possible for Laxmi Devi who was standing outside, in bright sunshine, to notice the same. On the contrary, in the month of June, by 07.30 – 07.45 PM it gets dark enough for lights in the house to be switched on and hence noted by a person outside.

63. Now, as per Sushila her eye caught the light switched on inside the flat in question inasmuch as the appellant and her daughter with their son had shifted, at the insistence of the appellant, to a flat in Pappankalan and on seeing the light switched on she went to the flat. It was apparent that Laxmi Devi went to the flat only on seeing the light switched on inside the flat, for otherwise she had no purpose to visit the flat because as per her information and knowledge, the appellant and his wife and son had shifted

to Pappankalan. The surrounding circumstances enwombing the testimony of Laxmi Devi lend credence to her credibility.

64. We conclude by holding that the appellant was seen in the company of his wife and son at around 7:30-7:45 PM and his claim that he had left the house in the morning and never returned the same day; he returned at around 5:30 AM the next day is obviously false.

65. The post-mortem reports Ex.PW-9/A and Ex.PW-9/B of Harshit and Sushila respectively records that the two died about 18 hours prior to when the post-mortem was conducted and this means that the two died around 9:00 PM. Giving a margin of 2 hours plus or minus, the likely time of death has to be anywhere between 7:00 PM to 11:00 PM. It had to be towards 11:00 PM for the reason Laxmi Devi went to the flat at around 7:30-7:45 PM and as per her testimony, on seeing tension between the appellant and his wife, she counselled them. It is apparent that she stayed inside the flat for sometime and the crime was committed thereafter.

66. Thus, there is close proximity of time when the appellant was last seen in the company of his wife and his son and their death. The appellant knew that he had to render an explanation as to how his wife and son died. He chose the route of alibi, which we have already rejected.

67. What was the motive for the appellant to commit the crime?

68. The family members of Sushila deposed that the appellant had illicit relations with another woman and that he wanted to do away with Sushila in order to live with that woman. Nothing much turns on the evidence of Bhawna

Babbar PW-11, Principal, MR Vivekanand School, that a child named Raj Singh S/o Harpal Singh and Veena Singh was admitted in her school for there could be hundreds of persons named Harpal Singh in Delhi. Be that as it may, the categorical evidence of family members of Sushila that the appellant had illicit relations with another woman cannot be brushed aside on the ground that the family members of Sushila are interested witnesses and that their evidence does not receive corroboration from any other independent source. The family members of Sushila corroborate each other on material particulars and nothing could be elicited from their cross-examination which could cast a doubt on their testimony. It is always difficult to prove motive through external evidence, but as held in the decision reported as State of HP v Jeet Singh (1999) 4 SCC 370:-

“No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended....”

69. Whether the appellant made an extra-judicial confession to Saroj PW-5, the sister of Sushila as claimed by Saroj? And if yes, what is its evidentiary value?

70. There can be no quarrel with the proposition that extra-judicial confession is normally weak type of evidence and should not be acted upon unless it receives corroboration from some source. We may hasten to add that in an exceptional case the circumstances leading to an accused making an extra-judicial confession may be so strong that the circumstance of making an extra-judicial confession may inspire confidence. In the instant case it is no doubt true that the investigating officer has committed an error by not collecting the call records of the mobile number of Saroj and the appellant. But, it is settled legal position that any discrepancy or irregularity in investigation need not necessarily lead to the rejection of the case of the prosecution. (See the decision of Supreme Court reported as Visveswaran v State (2003) 6 SCC 73).

71. In the instant case, there is one circumstance which attaches a ring of truth to the evidence of Saroj PW-5. It has come on record that Kuldeep and Ram Chander Hooda, the brother and relative of Sushila respectively, came to the police station around the time when the appellant reached the police station. (See the testimony of Jagdish Meena) How did Kuldeep and Ram Chander Hooda get the information about the crime in question? They could not have got said information unless told by the appellant or by some person who got the information about the crime. When seen in this backdrop, there is some truth in the evidence of Saroj that she gave a telephonic call to the appellant in the morning of 25.06.2003, for she wanted some building material from the appellant who told her of having murdered his wife and his son. It is she who apparently passed on the information to her parents. We

hasten to add that none has so claimed, but there has to be some source for the father and the brother of Sushila to have learnt about the crime. The most probable source has to be Saroj. It does happen that a person who kills his wife and son, either out of repentance or remorse, to free the mind of the burden of guilt confesses to somebody known.

72. The submission pertaining to the FIR being registered belatedly had somewhat foxed us, for the reason no eye witness has been planted. There is no eye witness. The issue of FIR being either ante timed or registered belatedly has to be considered in the context of the question: whether an eye witness has been planted or an eye witness has been given time to think upon and then make a statement to the police and cocooned within this is somebody being falsely implicated.

73. The submission that the appellant was falsely implicated as the in-laws of the appellant owed money to him and by getting him ensnared would get away has hardly impressed us for the reason even as a convict the appellant can sue them for recovery of any money due to him. It is difficult to believe that parents would kill their daughter and their grandson or a brother would kill his sister and his nephew to falsely implicate the son-in-law/brother-in-law.

74. The net result of the above discussion is that following incriminating circumstances appear against the appellant:-

I Laxmi Devi PW-5, had seen Sushila and Harshit alive in the company of the appellant soon before their murder in the flat where they were murdered.

II The appellant has taken a false plea of alibi and thus has not been able to explain how his wife and son were put to death.

III The appellant had a motive to commit the crime(s).

IV The suicide note Ex.P-1 to Ex.P-4 in the handwriting of the appellant contains a recording that the appellant had murdered Sushila and Harshit.

V The conduct of the appellant in refusing to undergo gastric lavage test shows his guilt of having consumed some poisonous substance which would have been detected if the appellant undertook the test. Empty bottles of insecticide 'All Out' being recovered from the flat.

VI The appellant made an extra-judicial confession to Saroj PW-5.

75. The afore-noted six circumstances conclusively establish that the appellant is the perpetrator of the crime(s) in question. Add to this, the circumstance that a false defence was taken by the appellant. It is settled legal principle that the circumstance of false defence taken by an accused is a circumstance which, after the chain of the circumstances appearing an accused is complete, can be added to the said chain to reinforce the guilt of the accused. (See the decision of Supreme Court reported as Sharad Birdhichand Sarda v State of Maharashtra AIR 1984 SC 1622.)

76. In view of the above discussion, we do not find any merit in the present appeal. The same is dismissed.

77. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar for being supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

MAY 25, 2010
dk/mm

(SURESH KAIT)
JUDGE