

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 15.09.2015

CRA-D No.999-DB of 2009

Pankaj Sharma ...Appellant

Versus

State of Haryana ...Respondent

Present: Mr. J.S.Cooner, Advocate, for the appellant.

Mr. Vivek Saini, AAG, Haryana, for the respondent.

CRA-S No.1776-SB of 2009

Mukesh Gupta @ Sonu ...Appellant

Versus

State of Haryana ...Respondent

Present: Mr. Manoj Bajaj, Advocate, as Amicus Curiae for the appellant.

Mr. Vivek Saini, AAG, Haryana, for the respondent.

CRR No.210 of 2010

Vijay Kumar ...Petitioner

Versus

Pankaj Sharma & others ...Respondents

Present: Mr. Malkeet Singh, Advocate, for the petitioner.

Mr. J.S. Cooner, Advocate, for respondent No.1.

Mr. Manoj Bajaj, Advocate, as Amicus Curiae for respondent No.2.

Mr. Vivek Saini, AAG, Haryana, for respondent No.3.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

HEMANT GUPTA, J.

This order shall dispose of two appeals i.e. CRA-D No.999-DB of 2009 preferred by Pankaj Sharma and CRA-S No.1776-SB of 2009 preferred by Mukesh Gupta aggrieved against the judgment of conviction and order of sentence dated 04.07.2009 and 06.07.2009 respectively rendered by learned Additional Sessions Judge, Ambala, whereby appellants Pankaj Sharma has been convicted under Sections 302 & 201 IPC as well as 25 of the Arms Act, whereas appellant Mukesh Gupta has been convicted under Section 201 IPC and sentenced to undergo imprisonment for varying terms as mentioned in the order of sentence.

This order shall also dispose of CRR No.210 of 2010 filed by Vijay Kumar – complainant/petitioner seeking capital punishment for respondent Nos.1 & 2 on the ground that the offence committed falls under the ambit of rarest of the rare case.

As per prosecution, on 18.11.2004, when ASI Baldev Singh alongwith other police officials was present at Tanduran Bazar, Ambala City in connection with patrolling, he received information to the effect that dead bodies of two females in the gunny bags are lying in Labhuwala Pond (*Talab*). Pursuant to such information, he alongwith other police officials reached at the spot, where Vijay Kumar son of Sheetal Parkash resident of H.No.40, Aarti Market, Ambala City – complainant met him and got recorded his statement. In

his statement (Ex.PA), Vijay Kumar, Property Dealer, stated that he has two sons and three daughters out of which youngest is his daughter Aarti, who is 18 years old and is doing the course of Stenography. He stated that yesterday i.e. 17.11.2004 at about 11.00 AM, his wife Usha Rani and daughter Aarti had gone to the market for shopping, as there was marriage of his niece namely Suman, which was fixed for 21.11.2004. Apart from giving the description of apparels worn by her daughter, he stated that they had taken a Rexene bag of red colour with them. He stated that since both of them did not come back till evening, they started search for them, but no clue was found. He stated that today i.e. 18.11.2004 at about 10.00 AM, he came to know that on the back side of Labhuwala pond, dead bodies of two ladies are lying in the gunny bags. Upon this, he and his son Sujesh Kumar reached Labhuwala pond, where many persons were standing. On opening the gunny bags one by one, he found the dead bodies smeared with blood of his wife and daughter. He stated that there were deep wounds of the sharp edged weapon on their necks and that the clothes of his daughter were in torn condition. On the basis of such statement, ruqa (Ex.PA/1) was sent to the Police Station for registration of an FIR. On receipt of ruqa, FIR (Ex.PA/2) was recorded by SI Baljeet Singh.

Thereafter, ASI Baldev Singh summoned a photographer, who took the photographs of the dead bodies. He also prepared rough site plan Ex.PN. After conducting the inquest proceedings (Exs.PH & PK), he sent the dead bodies of Usha and Aarti for post mortem examination vide applications Exs.PL and PM. He also took into possession both the gunny bags vide recovery memo Ex.PB. The post-mortem examinations on the dead bodies of Usha and Aarti were conducted by PW-3 Dr. Veenu, Medical Officer, General Hospital, Ambala City, on the same day at about 4.15 PM and 5.15 PM respectively.

It was on 25.12.2004, Inder Pal and Raghbir Singh produced the accused Pankaj before Inspector Ram Kumar, P.S. Ambala City. Both narrated the confessional statement suffered by Pankaj Sharma and handed over the confessional statement (Ex.PQ) written by Pankaj Sharma himself in his own hand to Inspector Ram Kumar. After recording statements of Inder Pal and Raghbir Singh, Inspector Ram Kumar took into possession the confessional statement (Ex.PQ) vide memo Ex.PO and arrested the accused. Thereafter, during interrogation, accused – Pankaj Sharma suffered a disclosure statement Ex.PR. In his disclosure statement, accused – Pankaj Sharma apart from disclosing the manner in which Usha and Aarti were killed and the manner in which their dead bodies were disposed of after consulting Sonu (Mukesh Gupta) stated that the apparels and sandals of Aarti and that of Usha and the bag containing some articles, have been burnt by him behind his house and that he left the cycle of Sanjeev, which was used by him in carrying the dead bodies, at his house. He also stated that he concealed the knife used in the commission of crime and his own clothes on the bank of Ganga, Haridwar under the stones in a polythene, where he stayed after the incident. He also stated with regard to the confessional statement made by him to Inder Pal @ Pammi, Municipal Commissioner and Raghbir Singh. Pursuant to such disclosure statement, accused led the police party to the place of occurrence from where blood stains were lifted through swabs and taken into possession vide memo Ex.PC. Thereafter, the accused led the police party to Bhatia Provisional Store from where he had purchased the gunny bags and the place where the dead bodies had been thrown. Demarcation memos Exs.PT and PB in this regard have been prepared. The accused also led the police party to the place where the clothes, sandals, purse and others belongings of the deceased had been burnt. From the

said place, the burnt ash was taken into possession. It was on 27.12.2004, accused Pankaj Sharma suffered another disclosure statement Ex.PD to the effect that his earlier statement was not correct regarding concealment of knife. He stated that the knife used in the commission of crime had been concealed by him behind under the water and mud behind his house. Pursuant to such statement, he got recovered knife Ex.P4, which was taken into possession. Thereafter, on completion of necessary formalities and after the arrest of accused Mukesh Gupta, report under Section 173 Cr.P.C. was filed against the present appellants.

To prove its case, apart from tendering reports of the Forensic Science Laboratory Exs.PZ, PZ/1& PZ/2, the prosecution examined as many as 15 witnesses. PW-2 Vijay Kumar, while appearing in the witness-box, has reiterated his earlier version. He also deposed with the regard to the investigations carried out by the police after associating him. He deposed that accused Pankaj Sharma was on visiting terms being the Purohit of his family and that he had performed the *Phera* ceremony of his other daughters and sons.

PW-3 Dr. Veenu Arora, Medical Officer, General Hospital, Ambala City, gave the description of the clothes worn by the deceased and also deposed with regard to the injuries found by her on the person of Usha and Aarti. She deposed that the injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. She opined that the cause of death in this case was shock and hemorrhage due to injuries to vital structure and organs. She also proved the post mortem reports of Usha and Aarti as Exs.PG & PJ respectively.

PW-7 Rakesh Bhatia deposed that he is running a shop under the name and style of M/s Bhatia Kiryana Store at Ganour Road, Moti Nagar,

Ambala and that he used to sell empty jute bags and plastic bags to kabaries and other needy persons. He identified the jute bags and plastic bag, which were sold by him to Pankaj Sharma on 17.12.2004.

PW-8 ASI Baldev Singh and PW-9 Inspector Ram Kumar deposed with regard to the respective investigations carried out by them.

PW-12 Raghbir Singh, before whom accused Pankaj Sharma has suffered the extra judicial confession, deposed that on 25.12.2004, he had gone to the house of Inder Pal @ Pammi, Municipal Commissioner of Ward No.19. He deposed that accused Pankaj Sharma came there and suffered his confession. The entire story was written by Pankaj Sharma on a paper in his own writing and handed over the same to Inder Pal. He proved the extra judicial confession (Ex.PQ) written by the accused in his presence. He also deposed that the confession was written by the accused in his own hand. He deposed that after the arrest of the accused Pankaj Sharma, accused told the whole story word by word to the police, as told to him and Inder Pal. Inder Pal could not be examined, as he died.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded under Section 313 Cr.P.C. However, both the accused pleaded false implication. In their defence, they examined DW-1 Pawan Kumar and DW-2 Inspector Rajnish Kumar.

After considering the entire evidence on record, the learned trial Court convicted and sentenced the present appellants, as mentioned above.

Before this Court, learned counsel for the appellant Pankaj Sharma has vehemently argued that the confessional statement (Ex.PQ) is self-inculpatory statement and, therefore, hit by Article 20 (3) of the Constitution.

Such statement cannot be relied upon to maintain conviction of the appellant. It

is also argued that the prosecution has not produced any hand-writing expert to prove that the extra judicial confession is in fact in the hand-writing of the accused. Still further, the confessional statement was recorded in the presence of Police Officials, therefore, it is hit by Section 25 of the Evidence Act. It is also argued that there is no corroborative evidence to corroborate the averments made in the confessional statement. The confessional statement was made on 25.12.2004 i.e. after 40 days, therefore, it will be impossible to have any blood available in the room from where blood swabs could be prepared. It is also argued that PW-1 Vijay Pal, a witness of last seen, has been examined by the prosecution, but his testimony is that of unreliable witness, as he has not disclosed the factum of the appellant lastly seen in the company of the deceased soon before the occurrence.

On the other hand, Mr. Manoj Bajaj, learned Amicus Curiae appearing on behalf of Mukesh Gupta, has argued that the appellant has been convicted for an offence under Section 201 IPC, but there is no evidence of any overt or covert act played by the appellant except the confessional statement of Pankaj Sharma, which statement cannot be read against the appellant – Mukesh Gupta. PW-7 Rakesh Bhatia has deposed that it was Pankaj Sharma, who has purchased the gunny bags, but there is no reference to the appellant in his statement. There is no eye-witness, who has deposed that they have seen appellant Mukesh Gupta in the company of Pankaj Sharma around the time of occurrence.

We have heard learned counsel for the parties at length and gone through the entire record with their assistance. Before dealing with the arguments raised, we wish to extract the alleged confessional statement (Ex.PQ)

stated to be written by appellant – Pankaj Sharma in his own hand-writing. The true translation of the same reads as under:

“On 17.11.2004 Wednesday at 10.00 AM, I called Usha wife of Vijay Kumar, who was my aunt and her daughter Aarti for performing *Shanti Path* and promised them to meet me at Meera Chowk at 11.00 AM. Accordingly, they met me at Meera Chowk at 11.00 AM. I took both of them on foot to Sonu’s house situated at Village Layalpur, who is my friend and whose upper room was taken by me two days’ before for performing this *Path* and regarding this I had talked to Sonu. When I reached Sonu’s house alongwith them, Sonu’s parents enquired from me about their particulars. I told them that they were my relatives from my village and somebody in their house is ill and for that *Shanti Path* is to be performed. I made Aarti to sit with the mother and Mosi of Sonu on the ground floor and took Aunti to the upper storey room. I made Aunti to sit in *Pooja* and started chanting *Mantras* of Kali Devi. According to the *Mantras*, blood was to be taken from the neck of Aunti. I made the eyes of Aunti closed and touched all her limbs as per *Mantras*. When I started taking blood from the neck, I put my hand on her mouth and put the knife on neck under the chin. I started revolving the knife slowly, which struck deep in the neck and the blood started oozing. Aunti was restless and I was frightened and I thought that there would be noise and I will be in problem. I thought it proper to kill Aunti and again I struck twice and thrice with the knife on the neck at the same place and Aunti was dead. I put the dead body of Aunti in the corner of a small room built in the room and covered the dead body with a Chuni. Then I thought that if Aarti, who had come alongwith Aunti, asks about her mother, I would be again in trouble. I planned to kill Aarti also. I called Aarti up-stairs, who asked me about her mother. I told her that the *Pooja* of Mammi is finished and she is sitting inside the room at her *Pooja*. Now your *Pooja* is to be performed. You should also sit down and she sat before me for *Pooja*. I got the eyes of Aarti closed and put my one hand on her mouth and started chanting *Mantras* so that I could delude her and thereafter, I struck the same knife twice/ thrice at the neck of Aarti in the lower portion and side of the neck. Aarti also succumbed. Much blood had spread in the room here and there. In order to twist the matter, I had put off the salwar of Aarti and also torn her clothes, so that

the police may think that there was a rape with Aarti. Thereafter, I planned to remove the dead bodies. I consulted Sonu about the same, who had by then also reached home. But the matter was not disclosed to the family members of Sonu. I made a call to my friend Sanjeev on his mobile No.9315114406 from my mobile phone and asked him to bring his cycle. But he told me that he could not come to Sonu's house and I should come in market and take the cycle. I left Sonu at home and went to bring the cycle. On way in the street Sanjeev met me coming on cycle and he left after handing over me his cycle. I arranged two gunny bags and one plastic bag from the market because Aarti was naked. Thereafter, she was put in the plastic bag, which was put into the gunny bag and the dead body of Aunti was put in another gunny bag. I closed the mouths of both the gunny bags. As during those days, earth was being dug in Kali Mata Mandir, Labhuwala Talab and the pond was being filled with earth, I thought it proper to throw the dead bodies into the pond in the back side, so that the dead bodies could drawn in some pit of the pond and the same be covered with mud and got buried and nobody could know about it. I with the help of Sonu took the dead bodies one by one on cycle and threw the same behind Kali Mata Mandir from the side of MDSD College over the wall in the pond. I picked up a tube from the courtyard of Sonu to tie the gunny bags containing dead bodies on the carrier of the cycle. Thereafter, I got too much tired because night had already fallen and it took 12.00/1.00 o'clock for me to throw the dead bodies into the pond. Thereafter, I locked the upper room and after reaching my home, I slept. Next day, I woke up at 4.00 AM and went Kali Mata temple so as to hide the dead bodies in some pit. It was about 5.00 AM. I asked for match-box from Kanti pandit in the presence of Parkash Pandit and reached near the dead bodies on the pretext of burning the rags. I dragged the dead body of Aarti from dry place to water side, but in absence of any pit, I could not hide the dead body and came back. Thereafter, I reached in the upper room of the Sonu's house directly at 6.30 AM to 7.00 AM. The keys of lock were with me. I opened the room and washed the same with water, broom and duster. Thereafter, after taking with me, Salwar and underwear of Aarti and sandals of Aarti and Aunti as well as bag containing some articles related to Aunti, I burnt the same behind my house and parked the cycle of Sanjeev at his house. The knife, which was used in committing

murder of both, was thrown by me into the *Ganda Nala*, which is near Inder Puri. I have committed grave sin and also committed a blunder. I may be pardoned, if possible, or may be punished for my sin.

25.12.2004

Pankaj Sharma
 29, Shalimar Vihar,
 Ambala City”

The argument that the confessional statement Ex.PQ, as reproduced above, is not admissible in evidence being hit by Article 20(3) of the Constitution is not tenable. A confession made before the Magistrate is a judicial confession, whereas confession made to any other person is extra judicial confession. In State of Gujarat Vs. Vinaya Chandra Chhota Lal Pathi AIR 1967 SC 778, the prosecution relied upon a document i.e. slip on which the accused noted down the various amounts, which he had misappropriated, after he had perused the counterfoils of the cheques. The trial Judge considered the document as inadmissible, but the Hon’ble Supreme Court observed as under:

“13.A statement of the complainant about the circumstances in which this document was written and what is purposed to indicate, is admissible. What is relevant for the case is what is ultimately proved and what is proved would depend on the statement of the complainant. His statement, if believed, establishes that the particulars noted on this slip relate to sums which were admitted by the respondent to have been misappropriated by him. The very fact that the details of the three cheques, the amounts drawn on which are said to have been misappropriated in this case, find a place in this list, bears out the statement of the complainant. The entries in this list, together with the statement of the complainant, make out a confession of the respondent to the effect that he had withdrawn the amounts of the cheques mentioned in the list and that he misappropriated them. This document, therefore, was admissible in evidence. In fact, the learned Judge himself, after observing that the document could not be admitted in evidence even if it be in the handwriting of the respondent, observed:

“that document can however be admitted as part of the extra-judicial confession said to have been made to the complainant”.”

In State of A.P. Vs. Gangula Satya Murthy, (1997) 1 SCC 272, the confession was recorded by the witness before whom the confession was made. The Hon'ble Supreme Court found that inculpatory statement made to PW-6 and PW-7, who took him to Police Station, is admissible in evidence. The Court held to the following effect:

“20. But the confession made by the respondent to PW 6 and PW 7 was not made while he was anywhere near the precincts of the police station or during the surveillance of the police. Though Ext. P-7 would have been recorded inside the police station its contents were disclosed long before they were reduced to writing. We are only concerned with the inculpatory statement which the respondent had made to PW 6 and PW 7 before they took him to the police station. So the mere fact that the confession spoken to those witnesses was later put in black and white is no reason to cover it with the wrapper of inadmissibility. We find that the High Court has wrongly sidelined the extra-judicial confession.”

In Ajay Singh Vs. State of Maharashtra, (2007) 12 SCC 341, the Hon'ble Supreme Court considered as to what is meant by confession. It was found that the confession is a statement made by an accused, which must either admit the offence, or at any rate substantially all the facts which constitute the offence. Such statement includes oral and written statement. It was also found that note in writing is also a statement. If it is admission of guilt, it would amount to a confession. The Court observed as under:

“10. The expression “confession” is not defined in the Evidence Act. “Confession” is a statement made by an accused which must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. The dictionary meaning of the word “statement” is “act of stating; that which is stated; a formal account, declaration of facts, etc.” The word “statement” includes both oral and written statement. Communication to another is not however an essential component to constitute a “statement”. An accused might have been overheard uttering to himself or saying to his wife or any other person in

confidence. He might have also uttered something in soliloquy. He might also keep a note in writing. All the aforesaid nevertheless constitute a statement. If such statement is an admission of guilt, it would amount to a confession whether it is communicated to another or not. This very question came up for consideration before this Court in *Sahoo Vs. State of U.P. AIR 1966 SC 40*. After referring to some passages written by well-known authors on the “Law of Evidence” Subba Rao, J. (as he then was) held that “communication is not a necessary ingredient to constitute confession”. In para 5 of the judgment, this Court held as follows:

“5. ... Admissions and confessions are exceptions to the hearsay rule. The Evidence Act places them in the category of relevant evidence presumably on the ground that, as they are declarations against the interest of the person making them, they are probably true. The probative value of an admission or a confession does not depend upon its communication to another, though, just like any other piece of evidence, it can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who heard the admission or confession, as the case may be. ... If, as we have said, statement is the genus and confession is only a sub-species of that genus, we do not see any reason why the statement implied in the confession should be given a different meaning. We, therefore, hold that a statement, whether communicated or not, admitting guilt is a confession of guilt.”

In Dara Singh Vs. Republic of India, (2011) 2 SCC 490, an accused has communicated his confession in the crime to his sister-in-law vide letter Ex.49. The Hon’ble Supreme Court held as under:

“87. Though an objection was raised as to the manner in which the trial Judge questioned A-3 with reference to the contents of his letters dated 1.2.2002 and 2.2.2002, it is relevant to point out that when the person facing trial insisted to look into the contents of his letters, the Presiding Officer concerned has to meet his requirement subject to the procedure established. The learned trial Judge accepted the entire contents of the admission made by A-3 and affording reasonable opportunity and by following the appropriate procedure coupled with the

corroborative evidence of PW-23, upheld his involvement and participation in the crime along with A-1 which resulted in rioting, arson and murder of three persons. Though the learned Senior Counsel appearing for A-3 was critical on relying upon the letter, Ext.49 said to have been written by A-3 to his sister-in-law, PW-9, it shows that A-3 confessed to have participated in the incident along with A-1. It is seen that the entire contents of the letter were used by the trial Judge which was rightly accepted by the High Court.”

In view of the aforesaid principles of law, a voluntary statement made by an accused to any person other than a judicial officer is extra judicial confession and is admissible in evidence. The memorandum of statement can be recorded by a witness or the witness may depose about the statement of an accused. Any inculpatory oral statement made by an accused or in a letter or in a separate writing is admissible in evidence.

In the present case, the confessional statement was written by the accused in his own hand-writing, when he went to the house of Inder Pal @ Pammi, Municipal Commissioner of Ward No.19, to confess his guilt. At that time, PW-12 Raghbir Singh was also present at the house of Inder Pal. Inder Pal has died before he could be examined as a witness before the trial Court, but PW-12 Raghbir Singh has categorically deposed that the appellant Pankaj Sharma has given his confessional statement in his own handwriting. He categorically deposed that the paper and the pen were also provided by Inder Pal. He was not cross-examined as to the said fact in the length cross-examination. We also find that the argument that hand-writing expert should have been examined to prove the hand-writing on the confessional statement Ex.PQ is not warranted, as the person, who has seen the accused writing such confessional statement has deposed in Court that the writing was of the accused Pankaj Sharma himself.

The argument that the confessional statement was recorded in the presence of the police officials is again not tenable. PW-12 Raghbir Singh deposed that after 15 minutes of his arrival at the house of Inder Pal Singh, accused Pankaj Sharma came there and confessed his guilt. He deposed that the entire story was written on a paper by accused Pankaj Sharma in his presence and that he handed over the same to Inder Pal Singh. Accused Pankaj Sharma requested Inder Pal Singh to produce him before the police. Thereafter, when he and Inderpal Singh alongwith accused Pankaj Sharma were going towards Police Station, they met a police party near Shiv Mandir. Inder Pal handed over the paper Ex.PQ to the accused. The accused was produced by them before the police after narrating the whole incident. The police took into possession the paper Ex.PQ vide memo Ex.PO, which was attested by him and Inder Singh @ Pammi. Similarly, PW-9 Inspector Ram Kumar – the Investigating Officer, deposed that when he was present near Civil Hospital, Ambala City, alongwith other police officials, Inder Pal, Rupali and Raghbir Singh met him. They produced accused Pankaj Sharma. He recorded the statements of Inder Pal and Raghbir Singh. He also took into possession confessional statement Ex.PQ consisting of two pages vide memo Ex.PO. On the basis of such statement, it is argued that handing over of the confessional statement by the accused proves that such statement was taken by the police.

We do not find any merit in the argument raised. The statement of PW-9 Ram Kumar – the Investigating Officer is that the accused, Inder Pal and Raghbir met him near the Civil Hospital, Ambala City. He recorded the statements of Inder Pal and Raghbir Singh obviously under Section 161 Cr.P.C. On the basis of such statements, he took into possession the extra judicial confession (Ex.PQ) made by the accused Pankaj Sharma. It is not the statement

of an accused given to the police officials, but a statement made to a witness prior to arrest on 25.11.2004.

We also do not find any merit in the argument that the testimony of PW-1 Vijay Pal is that of an unreliable witness, as he has not disclosed the factum of the appellant lastly seen in the company of the deceased soon before the occurrence. PW-1 Vijay Pal is working as a Document Writer in the Court compound. He has deposed that he knew Vijay Kumar, Property Dealer, as he used to come in the court for registration of documents and also for type work. He deposed that on 17.11.2004 at about 11.00/11.15 AM, he saw Usha Rani and Aarti alongwith Pankaj Sharma, the accused present in the Court. The statement of PW-1 Vijay Pal is criticized for the reason that the witness kept quiet for 20 days before he disclosed that he has seen the deceased in the company of Pankaj Sharma, but that fact alone will not doubt the veracity of the said witness. In isolation, this fact itself is not incriminating. It becomes relevant when the fact of missing of the deceased becomes public. Once the accused was arrested, the statement that the accused was lastly seen in the company of the deceased becomes relevant.

Similarly, we do not find any merit in the argument that the blood stains would not be available at the place of occurrence after 40 days of the occurrence. PW-9 Inspector Ram Kumar – the Investigating Officer, while appearing in the witness-box, has deposed that in pursuance of the disclosure statement, the accused led the police party to the place of occurrence. He deposed that after inspecting the spot, he prepared the rough site plan Ex.PS. He also lifted blood stains from the floor of the room vide memo Ex.PC attested by SI Suresh Kumar and Vijay Kumar. He deposed that blood stained cotton was put in the box and sealed with the seal of RK. PW-9 Inspector Ram Kumar has

not been cross-examined about the said part on behalf of appellant – Pankaj Sharma. During cross-examination on behalf of accused – Mukesh Gupta, PW-9 Inspector Ram Kumar has stated that when he lifted the blood from the floor of the room, it was dry and that he lifted the same with the help of wet cotton. The blood was lying 2/3 feet inside the room from the door. Still further, as per the report of the Forensic Science Laboratory Ex.PZ, it received eight sealed parcels including parcel-I & parcel-II, each containing two cotton wool swabs stained with dark brown stains. On examination, Exhibit 1 (Wool Swabs) & Exhibit 2 (Wool swabs) were found to be stained with blood stains, however, the origin could not be detected during serological analysis (Ex.PZ/1), as the material has disintegrated. Thus, we find that the prosecution has proved that the blood stains were, in fact, available at the place of occurrence.

No doubt, it could not be confirmed that the ash recovered in pursuance of the disclosure statement of Pankaj Sharma is that of Rexene bag, but that will not be a circumstance to doubt the prosecution story. It only corroborates the act of burning of apparels of the deceased, sandals as well as the bag containing some articles. The gunny bags used for disposal of the dead bodies were purchased from PW-7 Rakesh Bhatia. He has identified the appellant Pankaj Sharma as the person, who purchased gunny bags from him on 17.02.2008. The knife used by the appellant has also been recovered on the basis of disclosure statement. If no blood stain could be found on such knife, it would not be adverse circumstances against the prosecution, as the knife was recovered after more than 40 days of the occurrence. Thus, the finding recorded by the learned trial Court holding the appellant guilty of causing death of Usha and Aarti cannot be suffering from any illegality.

Now coming to CRA-S No.1776-SB of 2009, we find that appellant – Mukesh Gupta has been convicted and sentenced for an offence punishable under Section 201 IPC for destroying the dead bodies of Usha Rani and Aarti. He is the owner of the house, the portion of which was granted to Pankaj Sharma for use. Except the said fact, the only other evidence is the confessional statement as given by the appellant Pankaj Sharma. There is no evidence that Mukesh Gupta was part of conspiracy of committing the offence of murder of Usha and Aarti. No recovery of any kind has been effected from Mukesh Gupta nor there is any evidence of having seen Mukesh Gupta in the company of Pankaj Sharma. PW-7 Rakesh Bhatia, while stepping into witness box, has categorically deposed that two jute bags and one plastic bag was purchased by Pankaj Sharma. Mukesh Gupta is not said to be in the company of the other accused. Thus, in the absence of any evidence in respect of any role played by Mukesh Gupta in the destruction of evidence, we find that the prosecution has failed to prove the charges leveled against Mukesh Gupta. Consequently, he should be entitled to the benefit of doubt.

Now coming to the revision petition filed by Vijay Kumar – complainant, husband and father of deceased Usha and Aarti respectively, for enhancement of sentence awarded to the accused, it may be noticed here that Pankaj Sharma - accused has already been convicted and sentenced to undergo life imprisonment for the offence punishable under Section 302 & 201 IPC as well as 25 of the Arms Act. Keeping in view the facts and circumstances of the present case, we are of the opinion that the case in hand is not of rarest of rare cases, which may warrant death sentence. Therefore, we do not find that any case is made out for enhancing the sentence upon Pankaj Sharma, whose appeal has been dismissed.

With the above observations, both appeal preferred by Pankaj Sharma as well as criminal revision preferred by Vijay Kumar – complainant stand dismissed, whereas the appeal preferred by Mukesh Gupta is allowed and he is acquitted of the charges levelled against him by granting benefit of doubt. He shall be set at liberty forthwith, if not required in any other case.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

15.09.2015
Vimal