

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-355-DB-2011 (O&M)
Date of decision : February 27, 2015**

Ajay Kumar alias Mintu

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present : Mr. Ashok Saini, Advocate,
for the appellant.

Mr. Rajni Gupta, Addl. A.G. Punjab.

GURMIT RAM, J.

1. This appeal is preferred by appellant-Ajay Kumar alias Mintu against the judgment / order dated 1.2.2011 passed by the Court of learned Additional Sessions Judge, Gurdaspur vide which the appellant was held guilty for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ("IPC" in short) and sentenced accordingly, whereas his co-accused Kanta was acquitted in this case vide this judgment.

2. The case of prosecution in brief was that on 16.03.2005, Police party of SI/SHO Sulakhan Singh of Police Station Division No.1, Pathankot

was present at the turning of Indira Colony, Pathankot in connection with patrolling. There came to him complainant-Lal Singh along with his brother Kamal Singh resident of Gandhla Lahri and made his statement before him, the gist of which is as under:-

“That they are three brothers. One of his brothers namely Subhash Singh has been residing abroad in Greece since the last 5/6 years. His Bhabi (wife of his brother namely Sarita) had been residing in a rental accommodation at Mohalla Shastri Nagar, Pathankot for the last about 7/8 months along with her son Navdeep Singh and her younger daughter Mehak. Her said son Navdeep Singh is studying in 8th class at M.C.S. School, Defence road, Pathankot and is putting up in the school hostel. Her younger daughter namely Mehak aged about 12/13 years has been studying in 7th Class in Saint Chirst King's Covent School, Sujanpur. The said Sarita along with her daughter came to village Gandhla Lehri on 05.03.2005 and stayed in their house for the entire day and came back in the evening. Dixit son of Raju resident of the neighbouring village Jhumber is also studying in the same school and is putting up in the hostel of abovesaid M.C.S. School. The said Dixit came to the house on 14.03.2005 due to vacation in the school. His nephew apprized him telephonically that his mother had not come to pick him up nor her mobile is being contacted. Upon this he came to M.C.S.

School after some time and learnt that Navdeep Singh has been taken by his Massi Poonam (mother's sister) wife of Parveen Singh and had dropped him in the house of her younger sister namely Asha Rani at Kathlour. Then on the next day he came to Shashtri Nagar and found outer gate of the house of his said Bhabi (brother's wife) locked. Today again at about 6:00 PM he along with his brother Kamal Singh and nephew Bharat Singh reached at Shastri Nagar in order to see his Bhabi, but the gate was locked and foul smell was coming out of the house. They went inside after scaling over the wall. The main door was found bolted from outside and when they went inside after opening the bolt, then they found inside that two room in which his Bhabi was residing were locked and foul smell was coming out in abundance. Then they came out immediately and saw through the window that dead body of his niece Mehak was lying in the bathroom and whereas dead body of his Bhabi namely Sarita was lying inside on the floor of second room. Some unknown persons had murdered said Sarita and Mehak in a gruesome manner. After leaving his nephew Bharat Singh at the spot, he along with Kamal Singh proceeded towards the Police Station for giving information about this incident. After recording this statement of complainant-Lal Singh, SI Sulakhan Singh read out the same to him who had signed the same after admitting it to be correct.”

On the abovesaid statement of complainant, SI Sulakhan Singh made his own endorsement on the basis of which instant case was registered. Then SI Sulakhan Singh reached at the spot along with complainant and initiated the preliminary investigation. Site plan was prepared after the spot inspection. All the evidence pertaining to the commission of murder was taken into police possession. Postmortem on the dead bodies of deceased was got conducted from civil hospital, Pathankot. Inquest proceedings with regard to the dead bodies of deceased were also prepared prior to post-mortem.

3. During investigation, it came to the surface that murder of Sarita and Mehak has been committed by Ajay Kumar alias Mintu (*Tantrik*), who is resident of Rajasthan in connivance with his colleagues. Call details of Mobile phone No.9872338661 of Sarita were obtained. From their perusal, it was found that calls on the mobile of Sarita were received from Mobile phone No.9872170402. Then the name and address of the owner of mobile No.9872170402 were ascertained and it was found that this mobile phone is belonging to abovesaid Ajay Kumar alias Mintu son of Banwari Lal resident of Kot, Rajasthan. He was apprehended in this case on 02.05.2005 by the Police of Police Station Division No.1, Pathankot from Fazilka. During his interrogation, it was found that this double murder has been committed by him in connivance with Sonu son of Jagdish Raj and Sunil son of Pawan Kumar resident of Kot, Police Station Udhaipur Wati, Rajasthan. It was also found that when they were absconding, then Kanta wife of Parveen Kumar resident of Kot, Rajasthan at present resident of

Mohalla Ramgarhia, Kalanaur, had helped in harbouring them. She was apprehended in this case on 02.05.2005 for the offences under Sections 212/216 of the IPC. Accused Ajay Kumar alias Mintu got recovered the cloth of red colour which was used in the murder of abovesaid Sarita and Mehak and keys on 08.05.2005 on his demarcation. He also got recovered the mobile phone of Sarita (since deceased) on 13.05.2005 which was taken by them after committing the murder. Then he also got recovered the gold ornaments on 15.05.2005 which were peculated by them after the commission of the crime. Since accused Sunil and Sonu abovesaid could not be arrested in this case, so proceedings for declaring them proclaimed persons were initiated. Blood-stained clothes and cooked vegetable lying in the frypan recovered from the spot were sent to the office of Forensic Laboratory Punjab Chandigarh. Visceras of deceased Sarita and Mehak were sent to chemical examiner, Patiala, Punjab. Statements of witnesses were recorded. On the completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, who after making compliance of the provisions of Section 207 Cr.P.C. committed this case to the Court of learned Sessions Judge, Gurdaspur for its trial.

4. Finding a prima facie case under Section 302 read with Section 34, IPC, against the accused Ajay Kumar alias Mintu and Kanta, they were charge-sheeted accordingly. Accused Kanta was also charge-sheeted for the offence under Section 212 of the IPC. They pleaded not guilty to the said charges and claimed trial. .

5. The prosecution in order to establish its case against the

accused examined twenty seven prosecution witnesses in total.

6. Then during examination of the accused under the provisions of Section 313 of the Cr.P.C., the entire incriminating evidence as brought on the file against the accused by the prosecution was put to them, which was denied by them in toto. Accused Ajay Kumar alias Mintu also took the plea that Kanta wife of his brother had moved to the Hon'ble High Court through criminal writ against the SHO-Sulakhan Singh who was then in-charge of Police Station Division No.1 of Pathankot. Earlier she also moved an application to SSP, Gurdaspur for the release of the Alto Maruti Car alleging therein that his son Sunil Kumar was illegally detained in Police Station, Division No.1, Pathankot and the car was also in the possession of the Police. Then she also filed another criminal writ petition dated 21.03.2005 and subsequent to this writ petition, the police had concocted the false evidence against him and the brother of the husband of Kanta Devi. It is also his plea that on this petition, raid of the Hon'ble High Court was conducted through warrant officer. He is innocent. He never visited the house of the deceased nor he got recovered any telephone. Present case was planted against him by the Police and he was ensnared in this case falsely. Similar plea was also taken by accused-Kanta in her defence in her statement under Section 313, Cr.P.C.

7. The learned trial Court after hearing the learned counsel for both parties and going through the record as well held accused Ajay Kumar alias Mintu guilty for the offence punishable under Section 302 read with Section 34 of the IPC and sentenced him thereunder vide the impugned

judgment and order.

8. Feeling aggrieved from this judgment and order of sentence, appellant Ajay Kumar alias Mintu has come up with the instant appeal. Notice of this appeal was given to the learned State Counsel, record of the learned trial Court was also requisitioned.

9. We have heard learned counsel for both the parties, and made appraisal of the record with their valuable assistance.

10. Before dealing with the contentions of both the parties we deem it necessary to discuss the evidence of both the parties in some brief.

Statement of PW-2 Lal Singh-Complainant is on the same line as per his statement Ex.PC made by him before the Police on 16.03.2005. In addition to this, it is also in his statement that he accompanied the Police Party and reached at the house of Sarita and then they entered inside her house after breaking the locks of main gate as well as of doors of this house. Then, he also stated about the preparing of the inquest reports of dead bodies of Sarita and Mehak. One gold chain along with golden locket engraved with Mehak in English, one bangle and one gold ring on which word 'M' in English was engraved, which his niece-Mehak used to wear were not found on her body nor same were present in the house. Mobile phone Nokia 3610 of Sarita having SIM No.9872338661 was also found missing. There was no cash or other valuables in the house. In the room where dead body of Sarita was lying, some items which are usually used in performing Hawan as per Hindu Rites were lying. The entire house was ransacked. On seeing the abovesaid items, it struck to his mind that Sarita

was to get a *Pooja* conducted on the night of Shivratri on 9/10th March, 2005 in her house from the accused present in the Court. Then it is also in his statement that Sarita (since deceased) had also informed him that the accused used to get the problems of people solved through the Pooja and their *Tantrik* knowledge. On one occasion Sarita took him to shop of the accused, which earlier he was running in the area of Salaria Gate Abrol Nagar and at present Dalhousie Road Pathankot. He identified the accused present in the Court and deposed that he had a firm belief that Sarita and Mehak were murdered by the accused present in the Court in connivance with his co-accused. Further he produced the receipt Mark-A and Mark-B with regard to gold ornaments before the Police on 25.07.2005 (wrongly typed as 25.07.2007), which were taken into police possession vide memo Ex.PD. Mark 'C' is the receipt of mobile produced by him before the police which was taken into possession vide memo Ex.PE. Then he also produced before the Police, another receipt mark 'D' and two receipts of the locks mark 'E' and mark 'F', which were taken into police possession vide memo Ex.PF, Ex.PG and Ex.PH respectively.

11. PW-3 (wrongly mentioned as PW-2) Asha Rani is the sister of Sarita (since deceased). Her statement in nut-shell is to the effect that on receipt of information with regard to murder of her sister Sarita and her daughter Mehak on 16.03.2005, she reached Shastri Nagar in the rental house of her sister Sarita. Lal Singh and Kamal Singh reached at the spot along with the Police after sometime. They entered into the house of Sarita after breaking the locks of outer gate as well as of the inner doors. Dead

body of Mehak was lying in the bathroom of a bedroom and dead body of Sarita was lying in the second room and some articles of Pooja were found scattered near dead body. Two pillows with cover having blood-stains and one *Khes* were lying near dead body of Mehak and whereas one blanket bloodstained along with one pillow bloodstained was lying near the dead body of Sarita, besides, spectacles in a cover, one *Chakla* and one glass. Investigating Officer prepared parcel of spectacles in a cover, one wooden *Chakla*, one blood-stained pillow, one blanket blood-stained and one glass and took the same into police possession vide memo Ex.PW2/A. Further Police also converted one small pillow, one big pillow bloodstained and one *Khes* of green colour into an another parcel and same was taken into possession vide memo Ex.PW2/B. Then it is also in her statement that on 24/25.01.2005 she went to the abovesaid house of Sarita for staying there for 5/6 days. One man *Tantrik* aged about 26/27 years came from Sarita's home, the accused today present in the Court namely Ajay Kumar @ Mintu. Her sister also told her that she knows *Tantrik*-Ajay Kumar @ Mintu resident of Rajasthan, who is running a shop near Abrol Nagar, Salaria Gate and subsequently at Dalhousie road, Pathankot. She further told her that he (Ajay Kumar @ Minto) is her brother by religion and at that time Mehak daughter of Sarita was also present in the house. On that day the accused had visited the house of Sarita twice i.e. at 5:15 PM and at 6:00 PM. Then this witness also stated that in her presence accused Ajay Kumar alias Mintu handed over one Mobile Phone Nokia 3610 to her sister Sarita, which she earlier had given to him for repair. Her said sister handed over one chip to

said Ajay Kumar alias Mintu bearing No.9872338661, who fixed the same in the said mobile and left Sarita's house. Her sister came to her village Kathlour on 04.03.2005 and demanded her jewellery on the plea that she had to see the function in the relatives and her own jewellery was in a bank-locker, the number of which she does not remember. She handed over one golden necklace, two golden bangles and two ear-rings weighing thirty seven tollas in total to Sarita. On 9/10th March, 2005 her Chacha ji came to her village Kathlour and disclosed to her that Sarita had obtained ₹4 lacs from a financier Tej Singh by mortgaging ten acres of land and thirty seven tollas gold. She had a firm belief that accused Ajay Kumar alias Mintu along with his co-accused had murdered her sister-Sarita and her daughter Mehak and had thereafter looted the said ₹4 lacs and gold ornaments. On 26.07.2007 she visited the Police Station where some articles were shown to her out of which she identified one Nokia-Mobile phone-3610, one locket having golden chain on which name 'Mehak' was engraved, one golden bangle and one ring, both having 'M' engraved on the same and one meter red cloth vide identification memo Ex.PW2/C. Further she also identified dead body of deceased Sarita as well as of Mehak at the time of the preparation of their inquest reports. Further she proved the abovesaid Mobile phone 3610, golden chain with locket, golden bangle and one golden ring as Ex. Nos.P1 to P4 respectively and deposed that her statement was recorded by the Police.

12. PW-18 Inspector Sulakhan Singh was posted as SI/SHO of Police Station Division No.1, Pathankot on the relevant date. He partly

conducted the investigation of this case. It is in his statement that on 16.03.2005, he recorded statement Ex.PC of Lal Singh on which he made his own endorsement on the basis of which the formal FIR Ex.PC/2 was registered. Then he went to the spot along with complainant and Kamal Singh, which was a kothi type house, the main gate of which was locked. He along with the complainant and members of police party entered into the said kothi, after breaking the lock. Further they also entered into the room of this house after breaking the locks and found that dead body of Mehak was lying in the bathroom of one room and whereas dead body of Sarita was lying in the second room on the floor. Both the dead bodies were decomposed, which were identified by Kamal Singh and Asha Rani. He prepared the inquest report Ex.PD regarding dead body of Sarita and recorded the statement of Kamal Singh and Asha Rani in this connection which are Ex.PW2/D and Ex.PD/2. Near the dead body of Sarita one spectacle lying in the box along with wooden *Chakla* (meant for preparing food), one pillow blood-stained with cover, one blanket bloodstained and one glass tumbler were lying, which were converted into two parcels with the seal of 'SS' and the same were taken into police possession vide memo Ex.PW2/A. On opening of these parcels one was found to contain one spectacle in box Ex.MO/10, one pillow Ex.MO/11, one blanket Ex.MO/12 and the second parcel was found to contain round piece of wood Ex.MO/13 and one tumbler Glass Ex.MO/14. Then he also prepared the inquest report Ex.PW2/F with regard to the dead body of Mehak and recorded the statements of Kamal Singh and Asha Rani in this regard, who identified her

dead body. Near dead body of Mehak, one small pillow, one big pillow and one bed-sheet (*Khes*) all blood-stained were found which were taken into police possession vide memo Ex.PW18/A after preparing a parcel. On opening this parcel it was found to contain one small pillow Ex.MO/15, big pillow Ex.MO/16, and one bed-sheet (*Khes*) Ex.MO/17. Then blood stained swabs were taken from both the dead bodies which were sealed with the seal of 'SS' and same were taken into police possession vide memo Ex.PW5/B and Ex.PW5/C. Both the said sealed parcels MO/18 and MO/19 were opened on the request of learned Public Prosecutor for the State. Further this witness had proved the photographs Ex.MO/20 to Ex.MO/28 of both the dead bodies. Then a cooked vegetable from the spot was also taken into police possession after making it into a parcel with the seal of 'SS', which is Ex.MO/29. This witness also proved the memo Ex.PW5/A vide which four locks i.e. two of Harrison and two of Ujala respectively were taken into police possession after preparing parcels thereof with the seal of 'SS'. The said locks were produced in the Court during trial as Ex.MO/32 to Ex.MO/35 and their covers as Ex.MO/36 and Ex.MO/37. Ex.PW18/E is the site plan of the place of occurrence prepared by this witness on the same day Ex.PC and Ex.PW18/D are police requests for conducting postmortem examination on the dead body of Sarita and Mehak respectively. Their dead bodies were sent for postmortem through HC Balwinder Kumar and two lady Constables. He recorded the statements of witnesses and deposited the case property with the MHC on the same day. On 17.03.2005 Yash Pal Singh, Transporter produced before him two photographs qua accused Ajay

Kumar and Mohinder Kumar, which were taken into police possession vide memo Ex.PW9/A. After postmortem, clothes of deceased-Sarita were converted into a parcel which was taken into police possession vide memo Ex.PW4/B. The said parcel on opening in the Court was found to contain one lady *Salwar* Ex.MO/38, lady shirt Ex.MO/39 both blood-stained, one gold *Gajra* Ex.MO/40, one bangle red colour Ex.MO/41, glass bangles Ex.MO/42 and a pair of ear-rings gold Ex.MO/43. Similarly after the postmortem of deceased-Mehak, her clothes were also converted into a parcel, which was also taken into police possession vide memo Ex.PW4/C. This parcel on opening in the Court was found to contain one lady shirt blood-stained Ex.MO/43, one lady *Pajami* Ex.MO/44, underwear Ex.MO/45, one undershirt Ex.MO/46 and one black *Paranda* Ex.MO/47. On returning to Police station case property was deposited with MHC. Further investigation of the case was entrusted to some other Police official, since this witness was transferred to other police station.

13. Abovesaid HC Balwinder Pal appeared as PW-4. He was deputed to get conducted postmortem on the dead bodies of deceased-Sarita and Mehak. He corroborated in this regard with the abovesaid statement of PW-18, SI Sulakhan Singh and proved the memos Ex.PW4/B & Ex.PW4/C.

14. PW-5 SI Yash Pal was posted as Incharge CIA Staff, Pathankot on the date of alleged occurrence. He joined the investigation of this case in the police party of SI/IO Sulakhan Singh and proved the memos Ex.PW2/A and Ex.PW5/A to Ex.PW5/D. Then it is further in his statement that on 02.05.2005 he joined the police party headed by Inspector Harpal Singh.

Accused Kanta present in the Court was arrested from the area of police station Giddharwaha vide her arrest and information memo Ex.PW5/E. Her personal search was conducted vide memo Ex.PW5/F. Then it is also in his statement that accused Ajay Kumar alias Mintu present in the Court was arrested from the area of Police Station City Fazilka vide his arrest memo Ex.PW5/G and memo prepared with regard to his personal search was Ex.PW5/H.

15. The abovesaid Yashpal Singh, Transporter as PW-13 deposed that he is running transport business under the name of Thakur Goods Carrier Dalhousie Road, Pathankot. He has two shops in front of Jasbir Patrol Pump, Dalhousie Road, Pathankot. In December, 2004 Ajay Kumar alias Mintu, Mohinder along with one Pawan had requested him to give his said shops to them on rent. He accordingly let out his said both the shops to them on a monthly rent of ₹1500/- who had occupied the same and started the business of *Tantrik Vidya and Jyotish* therein. Before giving his shops on rent, he took their (Ajay Kumar alias Mintu and Mohinder Singh) photographs for the purpose of identification. They vacated his shops in February, 2005. Accused Pawan Kumar, Ajay Kumar alias Mintu, Sonu and Sunil came to him in his office at Dalhousie Road on 20.04.2005 and requested him to have a talk with him in private. Accordingly, he directed all the persons present in office to go outside and thereafter accused Ajay Kumar alias Mintu told him that on the night of 9/10.03.2005 they had murdered Sarita and her daughter in the area of Shastri Nagar Pathankot in their house. Besides this, they also took ₹4 lacs in cash along with gold

ornaments and one mobile phone, along with them. Accused Sonu and Sunil also repeated the same one by one. They further stated that police is looking for them and requested him to produce them before the Police. He perplexed at that time and directed them to come to him tomorrow, but thereafter they did not turn up and his statement was recorded by the Police. Further he also proved the memo Ex.PW9/A vide which the abovesaid photographs of Ajay Kumar alias Mintu and Mohinder Singh were taken into Police Possession.

16. PW-9 Rakesh Kumar was one of the attesting witnesses of this memo Ex.PW9/A and deposed about taking into police possession of two photographs of accused Ajay Kumar alias Mintu and Mohinder Singh which were produced before the Police by PW-13 (Yashpal Singh) transporter.

17. PW-19 Inspector Harpal Singh was posted as SHO Police Station Division No.1, Pathankot on 30.03.2005 and he also conducted the further investigation of this case. In his investigation, it had come that mobile phone No.98723-38661 which was being used by Sarita (since deceased) was taken by the accused after committing her murder. On 10.03.2005 at about 6:00 PM the mobile which was being used by the accused was bearing IMEI No.353377001553580, which belonged to the accused. Charanjit Singh resident of Abrol Nagar, Pathankot and Jaspal Singh resident of Kanshi Nagar, Pathankot made their statements before him on 03.04.2005 and 22.04.2005 respectively. On 2.05.2005 accused Ajay Kumar alias Mintu was arrested and during his search one mobile phone make Nokia-1100 bearing Sim No.9815557218 of white colour with IMEI No.353377001553580 was recovered and the previous Sim number used by

the accused was 9872170402 and the same was taken into police possession vide memo Ex.PW5/H. During interrogation, he also disclosed that before committing the murder of Sarita, he committed rape upon her. His co-accused Kanta had been harbouring him and other accused and as such offence under Sections 376, 216 and 212 IPC was added in this case. Accused was formally arrested in this case on the same day vide arrest-cum-information memo Ex.PW5/G. On his disclosure, her co-accused namely Kanta wife of Kamal Kumar was arrested from the house of Hans Raj resident of Gidharwaha vide memo Ex.PW5/E. Her personal search was also conducted and memo Ex.PW5/F in this regard was prepared. On reaching at Pathankot, the abovesaid both the accused were handed over to SI Sukhjinder Singh with applications Ex.PW19/A and Ex.PW19/B to conduct their medical examination. Accused Kanta was released on bail. Accused Ajay Kumar alias Mintu during interrogation on 04.05.2005 suffered disclosure statement Ex.PW9/C to the effect that on the intervening night of 9/10-03.2005, after committing murder of Sarita and Mehak by him, Sunil Kumar and Sonu, he had kept concealed one Mobile of Sarita and ₹1.5 lacs of his share in his house at village Kot Rajasthan, which he could get the same recovered. On reaching at Sithal, Rajasthan, he resiled from his statement. He was got medically examined at Civil Hospital Jhunchun vide application Ex.PW19/D. On reaching Pathankot on 08.05.2005 the accused was again interrogated and he suffered disclosure statement Ex.PW6/A to the effect that a red cloth which was used in the crime and keys of the locks which were used after the murder of both Sarita

and Mehak for locking the house are kept concealed by him in the bushes near Golf ground in the area of Abrol Nagar, Pathankot. Thereafter he got recovered the said cloth and bunch of keys eight in number as per his disclosure statement which were converted into two parcels with the seal bearing impression 'HS' and the same were taken into police possession vide memo Ex.PW6/B. Said cloth and keys were placed on record as Ex.PW6/B1 and Ex.PW6/B1 to Ex.PW6/B9. Site plan Ex.PW19/H with regard to spot of recovery was prepared and on returning to police station, case property was deposited with the MHC. Then this accused was again interrogated on 09.05.2005 and during interrogation he suffered disclosure statement Ex.PW10/A that out of the money, the amount of ₹1.5 lacs pertaining to his share he had paid to his Advocate and the remaining amount had been kept concealed by him in the bushes along with mobile phone of Sarita in the area of Town Saria District Raigarh, State Chattishgarh. When the Police Party was taking him to the above disclosed State then he again resiled from his statement near Phillour and was taken back. Then on 13.05.2005 he suffered an another disclosure statement Ex.PW15/A with regard to Mobile Phone bearing No.9872338661 of Sarita (since deceased). In this regard, he stated that after breaking the same, he had thrown away the Sim and the mobile phone was concealed by him in the house of his brother in the area of Ali Mohalla near Andhra Bank at Jalandhar. Thereafter he led the police to the said disclosed place and got recovered the mobile phone Nokia Ex.PW19/J and the same was taken into police possession after preparing its parcel with the seal of 'HS'. Ex.PW19/K is site plan prepared with regard

to the place of recovery. Then on 15.05.2005 this accused suffered another disclosure statement Ex.PW15/C to the effect that a SIM of mobile No.9872170402 belonging to him and other gold articles, i.e. one gold chain, ring of deceased Mehak which were taken away after the murder of Mehak and Sarita had been concealed by him in the house of his brother at Mohali, Phase V. When he was being taken to Mohali in Police Custody, he resiled from his statement. Then during his further interrogation, he suffered another disclosure statement Ex.PW15/D to the effect that one gold chain, one ring and one bangle had been concealed by him at the house of his another brother Pawan Kumar at Kalanaur. Thereafter he led the Police party to the said disclosed place and got recovered gold articles Ex.PI to Ex.P4 from the house of his brother which were taken into police possession vide memo Ex.PW15/E. Site plan Ex.PW19/L with regard to the place of recovery was also prepared. Statements of witnesses were recorded. On returning to Police Station, case property was deposited with MHC.

PW-14 Balbir Singh who was one of the attesting witnesses of the recovery memo Ex.PW6/B had proved the same. Further he also proved the abovesaid red cloth and keys as Ex.MO/1 and Ex.MO/2 to Ex.MO/9.

PW-15 SI Ravinder Singh was also present along with Inspector SHO Harpal Singh on 13.05.2005 when accused Ajay Kumar alias Mintu was interrogated and suffered disclosure statement Ex.PW15/A. He was also one of the attesting witnesses of the recovery memo Ex.PW15/B vide which one mobile make Nokia got recovered by the accused as per his abovesaid disclosure statement was taken into police possession. Further he also proved the disclosure statements Ex.PW15/C and Ex.PW15/D suffered

by the said accused on 15.05.2005 and also proved the recovery memo Ex.PW15/E vide which one gold chain with locket, one gold ring and one bangle gold which were got recovered by the accused as per his disclosure statement Ex.PW15/D were taken into police possession.

PW-20 Dalip Singh was also one of the attesting witnesses of the disclosure statement Ex.PW15/A suffered by accused Ajay Kumar alias Mintu and of the recovery memo Ex.PW15/B.

18. PW-6 ASI Naresh Kumar was accompanying the Police Party of Inspector Harpal Singh on 08.05.2005. He also proved the disclosure statement Ex.PW6/A suffered by accused Ajay Kumar alias Mintu, during interrogation and the recovery memo Ex.PW6/B vide which the articles which were got recovered by the accused as per his said disclosure statement were taken into police possession.

19. PW-11 HC Balkar Singh proved the disclosure statement Ex.PW10/A suffered by accused Ajay Kumar during interrogation on 09.05.2005.

20. PW-15 SI Ravinder Singh was also present in the Police Party of Inspector Harpal Singh on 13.05.2005. Accused Ajay Kumar alias Mintu suffered disclosure statement in his presence Ex.PW15/A. Further he also proved the memo Ex.PW15/B vide which the Nokia phone got recovered by the accused as per his disclosure was taken into police possession after converting it into a parcel.

21. Statement of PW-8 Chain Singh was to the effect that he owned four shops in the area of Abrol Nagar, Pathankot. In the year 2003 accused

Ajay Kumar alias Mintu took his shop on rent wherein he remained as a tenant for one year and was running the work of astrology and *tantrik*.

22. PW-12 Tej Singh as per his statement was running finance business under the name of Nishan Finance Company at Pathankot. Sarita Devi (since deceased) had come to him and demand ₹4 lacs to get some *pooja* done. He advanced her a sum of ₹4 lacs after she deposited the documents of the land measuring 8/10 acres. Then after 5/6 days he learnt that said Sarita Devi and her daughter had been murdered. He made his statement in this regard before the Police.

23. PW-15/A Charanjit Singh deposed that on 10.03.2005 accused Ajay Kumar alias Mintu present in the Court along with two other persons met him near Public School Shastri Nagar, Pathankot at about 5:00 AM, when he was going for a morning walk from his residence towards Anandpur road. Accused Ajay Kumar alias Mintu was earlier known to him since he was running a *tantrik* shop in the area of Abrol Nagar in some rental accommodation. On his asking accused Ajay Kumar alias Mintu told him that they are coming after performing a *Havan-Yag* near the adjoining house. Then he went to Ludhiana and when he came back, then he came to know that one lady and her daughter had been murdered who were residing in a house near the said school.

24. PW-20A Amit Nayyar was running a mobile repair shop at Pathankot and on 06.12.2004, a mobile phone make Nokia 3610 was brought to him by Sarita Devi for repairing having IMEI No.350884404411608. He repaired this mobile and charged ₹450/- against

receipt Ex.PW20/A of the said date.

25. PW-21 Amit Verma, gold smith deposed that Sarita Devi got prepared from him one lady chain, one gold ring lady and one gold bangle on 14.05.2003. After preparing these ornaments, he delivered the same to her against receipt Ex.PW21/A. The abovesaid articles were proved in his statement as Ex.P1 to Ex.P4.

26. PW-22 Sumit Mahajan was running a hardware store in Municipal Bazar, Pathankot. Sarita Devi purchased from him two Harison locks for ₹50/- on 15.04.2004 against receipt Ex.PW22/A. The abovesaid locks were proved in his statement as EX.MO/30 and Ex.MO/31 along with their keys as Ex.MO/32 to Ex.MO/35.

27. PW-25 Anil Kumar was also running a hardware shop at Adda Sunder Chack, Pathankot. Sarita Devi had purchased from him two locks make Ujala for ₹40/- on 04.01.2005 against receipt Ex.PW25/A.

28. PW-26 Joginder Pal, cloth merchant at Sujanpur stated that Sarita Devi had purchased from him one meter cloth of red colour on 05.03.2005 for ₹20/- against receipt Ex.PW26/A.

29. PW-27 Jatinder Singh, Nodal Officer for Bharti Airtel Ltd. proved the call details of mobile phone NO.98723-38661 and mobile No.98721-70402 for the period 1st March 2005 to 17th March, 2005 as Ex.PW27/A. These call details were issued by the company on the request Ex.PW27/B of SSP, Gurdaspur.

30. Statements of PW23 SI Surinder Pal Singh and PW24 Joginder Pal Singh, M.C. pertained to the identification of the articles which were

allegedly got recovered by the accused for the purpose of releasing the case property of this case on Superdari on the application of complainant-Lal Singh.

31. Statements of PW-3 PHC Tarsem Lal and PW-7 Jabarjit Singh were formal in nature. They tendered in their respective statements their duly sworn affidavits Ex.PW3/A and Ex.PW7/A.

32. PW-17 Harinder Singh Salaria Draftsman proved the scaled site plan Ex.PW17/A which was drawn by him.

33. PW-1 Dr. Vinay Sharma, Medical Officer, Civil Hospital, Pathankot was one of the members of the Board of Doctors constituted for conducting postmortem on the dead bodies of Sarita and Mehak (since deceased) vide endorsement Ex.PC/1 of the SMO made on the police request Ex.PC. He along with Dr. Indu Mahajan and Dr. Rajinder Parshad conducted postmortem on the dead bodies of abovesaid Sarita and Mehak. During examination with regard to dead body of Sarita, it was observed as under:-

“It was a dead body of female 5 feet 2 inches decomposed and found smelling. A cloth was found tied around her neck. It was red coloured salwar around her neck and a torn shirt red coloured (blood stained) she was wearing. Left arm was having gold coloured bangle and right arm was having glass bangles. Ears were wearing ear rings.

Maggots was present in her anus and Vagina. The body was bloated, blisters were present, marbling of skin was

present. Eyes were protruding, Tongue was clinched between the teeth and teeth were loosened. The ligature mark was present on the body around the neck. The neck was swollen. Legature mark was situated at the level of thuroid cartilage. It was encircling the neck missing on left side of the neck. On dissection ecchymosis was present in the subcutaneous tissue. The neck muscles and laryngeal cartilages showed laceration. Haemotoma was present. Underlying traches rings were damaged. The stomach, small intestine, large intestine, liver and kidney were sent for chemical examination. The uterus was healthy, anus and vagina were protruding. Swab from Vagina sent for chemical examination. No loose hair was present.

Ex.PA is the copy of the postmortem report.

Then postmortem of deceased Mehak was conducted and it was observed as detailed below:-

“She was alleged to have died of strangulation. The body was 4 feed 9 inches. It was highly decomposed and foul smelling. She was wearing a greenish bluish coloured shirt, a blood stained pyjama and underwear, a white banian, Maggots were present in the anus/vagina canal. Whole of the body was bloated with blisters present at places. Marbling of skin was present. Eyes were protruding out. Tougne was clinched between teeth and teeth were loosen.

The neck was swollen and shown blackish discolorisation, underlying subcutaneous ecchymosis was present above the thyroid cartilage. Underlying muscles were damaged. Subcutaneous haematoma was present. Hyoid bone was fractured. The stomach, small intestine, large intestine, liver, spleen, kidneys were sent for chemical examination. Swab from vagina sent for chemical examination. No loose hair was present. Uterus was healthy.

Ex.PB is the copy of postmortem report in this regard. Viscera of both the deceased as well as vaginal swabs were sent for chemical examination. After getting the report from chemical examiner Ex.PW1/AA and Ex.PW1/BB, the cause of death was ascertained as due to asphyxia caused by strangulation and supplementary opinion in this regard was Ex.PW1/CC and Ex.PW1/DD.

34. Learned counsel for the appellant has argued that there is a basic flaw in this case for the reason that prosecution failed to establish on the record the exact date of death of both Sarita and Mehak (since deceased). Herein he has submitted that in the FIR Ex.PC/2 the time of alleged occurrence is recorded to be in between 14th March to 16th March of 2005. Then as per the statement of PW-1 Lal Singh complainant and PW-2 Asha Rani, the sister of deceased Sarita, the said Sarita was to perform some havan / pooja at her residence on the night of Shivratri falling on 8/9th March, 2005 in order to save her family from the bad effect of the planets from accused Ajay Kumar alias Mintu, who was allegedly doing the work of

astrology and *Tantrik*. In order to supplement his above contention, further he has submitted that as per the opinion of PW-1 Dr. Vijay Sharma who had conducted the postmortem on the deadbody of both Sarita and Mahek, their death had occurred in between 4 to 7 days prior to the postmortem, which was held on 17.03.2005.

35. In the case in hand the entire case of prosecution is based on the circumstantial evidence, since there is no eye-witness to depose about the occurrence concerning this case. On the relevant dates, the said Sarita had been residing with her daughter Mehak (both deceased) in rental accommodation in the area of Shastri Nagar, Pathankot separate from her in-laws, who were residing in village Gandla Lehri, Teshil Pathankot. Her husband Subhash Singh had been residing in Greece during these days. Her son Navdeep was studying in 8th class in MCS school, defence road, Pathankot and had been putting up in the school hostel. As per the calender of year 2005 Shiv Ratri festival fell on 8th March, in this year. Neither there was any evidence nor anybody had come forward to depose that he had seen said Sarita and Mehak alive in between 09.03.2005 to 16.03.2005, on which date the matter with regard to their murder had come to the notice of complainant Lal Singh and others. As per the above discussed medical opinion, the time elapsed between death and postmortem of both the deceased could be between 4 to 7 days prior to the postmortem. Postmortem in this case was conducted on 17th March, 2005. So as per this medical opinion, death of both the deceased could have been caused in between 10th March, 2005 to 14th March, 2005. Since the entire matter with

regard to the date of death of the deceased is based on approximations, probabilities etc. etc., so exact date of their death cannot be ascertained with any mathematically correct calculations. Then in this case there is no dispute with regard to the death of both the deceased. Their dead bodies were identified by Kamal Singh and Asha Rani at the time of preparing the inquest reports and also as well as at the time of conducting postmortem on their dead bodies, on 16.03.2005 and 17.03.2005 respectively. Then as abovesaid nobody had seen both the deceased alive in between 10.03.2005 to 14.03.2005 or after that on 15.03.2005 and 16.03.2005. PW-1 Lal Singh-Complainant and PW-2-Asha Rani had nowhere stated that death of both the deceased had occurred on 10.03.2005. They had simply stated that Sarita (since deceased) was to perform *Havan / pooja* at her residence on the night of Shiv Ratri on 9/10.03.2005. So in these circumstances, the appellant is not to get any benefit if it is not ascertained as to when deceased had died in between 10.03.2005 to 16.03.2005. So this contention of learned counsel for the appellant is disposed of accordingly.

36. Learned counsel for the appellant has further contended that the alleged recovery of ornaments got made by the accused as per his disclosure statement Ex.PW15/D, is planted upon him in order to create false evidence for securing his conviction in this case. Herein he has contended that all the ornaments on the dead body of Sarita at the time of preparing her inquest report Ex.PD on dated 16.3.2005 were found intact and the same were handed over to the police after her post-mortem examination. The said very ornaments are subsequently used by the police in order to show the recovery

thereof as per disclosure statement Ex.PW15/D of accused Ajay Kumar @ Mintu which is absolutely wrong being against the record and facts on the file. As per the inquest report Ex.PD of deceased Sarita, one gold *gajra*, one red colour bangle, one glass bangle and two small ear rings were found to be worn on her body when her inquest report was prepared. Then the articles which were got recovered by the accused as per his said disclosure statement Ex.PW15/D are one gold chain, one ring and one bangle which were allegedly taken away by him from the dead body of Mehak (since deceased) after committing her murder. The said articles after their recovery were taken into police possession vide memo Ex.PW15/E and the same were produced in the Court during the trial as Ex.P1 to Ex.P4.

Now let us see the inquest report Ex.PW2/F prepared with regard to the dead body of Mehak (since deceased). As per this report, no ornaments were found on her dead body at the time of preparing of this report except her wearing apparels. So, the ornaments which were got recovered by the accused Ajay Kumar @ Mintu are pertaining to Mehak. These are different from the ornaments alleged to be recovered from the dead body of Sarita (since deceased) at the time of preparing her inquest report Ex.PD. So the recovery of the ornaments which had been got effected by the accused as per his disclosure statement Ex.PW15/D cannot be said to be fabricated or planted one in order to create false evidence in this case. So for this reason, the above contention of learned counsel for the appellant is held to be misconceived and the same is declined and disposed of accordingly.

37. Then the learned counsel for the appellant has pointed out towards the improvements allegedly made by material PWs while deposing in the Court. In this regard he has referred to the cross-examination of PW2 - Lal Singh (complainant) wherein he has stated that he has not got recorded in his statement Ex.PC that police had broken the locks of main gate and doors and then entered inside the house. He had also not got recorded in his said statement that the experts had taken the finger prints and photographs of the spot. Then he had also not got mentioned in his said statement the gold ornaments which his niece was usually wearing. Then he had also not got mentioned in his said statement that there was no gold ornaments on the dead body of Mehak. Then he also did not state in his said statement that mobile phone Nokia-3610 having a sim card No.98723-38661 was missing from the spot. But it is a fact that statement Ex.PC of complainant Lal Singh (PW2) was recorded before entering into the house of Sarita (since deceased) after breaking the locks of main gate as well as of the doors of the rooms. Since the above said facts were not in the knowledge of complainant Lal Singh while making his statement Ex.PC before the police, so naturally these facts were not to be recorded by him in his said statement being unaware of the same at that time. So these cannot be termed as the improvements in the statement of PW2 Lal Singh made in the Court.

38. Then the learned counsel for the appellant has further pointed out some other improvements in the statement of PW2 Lal Singh, while confronting him with his supplementary statement Ex.DA. It is a fact that supplementary statement Ex.DA of PW2 Lal Singh was

recorded on 16.3.2005 after the recording of his statement Ex.PC. In his statement Ex.DA, he stated about the ornaments missing from the dead body of Mehak (since deceased) i.e. one gold chain along with locket, one ring and one bangle gold. On the locket name Mehak was inscribed in English and whereas on the bangle and ring word 'M' in English was inscribed. With regard to the improvements in the statement of PW2 Lal Singh qua his supplementary statement Ex.DA, the learned counsel for the appellant has further referred to his cross- examination. The points he has highlighted in this regard are detailed as under:-

- (i) that he has got recorded in his supplementary statement Ex.DA regarding missing of valuable and cash from the house;
- (ii) that he had also told regarding the articles of *pooja* lying in the room of Sarita;
- (iii) that he had also told to the police that on seeing the articles of *havan* and *pooja*, it struck to his mind that Sarita was to get a *pooja* conducted on the night of *Shivratri* i.e. on 9/10.3.2005 from accused present in the Court;
- (iv) that he also disclosed to the police in his said statement that he used to leave Sarita and his daughter Mehak to her house in Shashtri Nagar from village Ghandra Lari and that on the way near Salaria Gate at Abrol Nagar, the accused Ajay Kumar and his co-accused Sunil Kumar

and Sonu were running a *Tantrik* shop;

(v) that he also got mentioned in his said statement that Sarita had told him that the accused used to get the problems of the people solved through *pooja* and their *tantrik* knowledge. She also informed him that she knows the said accused and often visits them; and,

(vi) that he also got recorded in his said statement that he had firm belief that Sarita and Mehak are murdered by accused Ajay Kumar and his above-said co-accused.

But when this witness was confronted with his supplementary statement Ex.DA, then all these facts were not found mentioned in it. Then this witness at the same time in his cross-examination also stated that he disclosed all these facts to the police and it was for the police to record or not to record the same. Then it is also a fact that this case is based on circumstantial evidence pertaining to double murder. Then it is also found mentioned in supplementary statement Ex.DA that complainant became perplexed and confused on coming to know about this incident concerning murder of Sarita and Mehak. It is probable that in case of circumstantial evidence some new facts may come to the knowledge of the witness concerned after the recording of his statement before the police either as a complainant or under Section 161 Cr.P.C. So as such the remedy available to him is to depose about the same in the Court while appearing as witness. Same is the position with regard to the alleged improvements made by PW-3 Asha

Rani while appearing in the Court. The matter would have been different if the case of the prosecution is based on the eye-witness count, who had seen the alleged occurrence and had narrated the same before the police during investigation. In that case if he deposed something in addition to his earlier statement while appearing in the Court as a witness then that part of his additional statement, if not found natural and reasonable, could be treated as an improvement. So as a result thereof, the above contention of learned counsel for the appellant is also declined and disposed of accordingly.

40. Then it is also contended by the learned counsel for the appellant that appellant had been involved in this case falsely for the reason that Kanta wife of Pawan Kumar had filed a criminal writ petition bearing No.205 of 2005 under Article 226 of the Constitution of India against SSP Gurdaspur, Balbir Singh SHO Police Station CIA Staff Prem Nagar, Gurdaspur and Sulakhan Singh SHO Police Station Division No.1, Pathankot for securing release of detainee namely Sunil Kumar son of Pawan Kumar and Pawan Kumar son of Banwari Lal. Copy of the writ petition and of the orders passed on it by the Hon'ble High Court are placed on the file as Ex.DX dated 21.03.2005, Ex.DX/1 dated 21.05.2005, Ex.DX/3, dated 30.08.2005, Ex.DX/5 dated 14.02.2006 and Ex.DX/7 dated 21.03.2006 along with report of warrants officer, Ex.DX/2 dated 22.03.2005. As per record, this writ petition was filed before the Hon'ble High Court on 21.03.2005. The warrant officer searched all the premises as directed by the Hon'ble High Court to secure the release of detainees from their alleged unlawful custody who were not found from any premises

and as such this writ petition was dismissed having been become infructuous vide order Ex.DX/7. In the case in hand, the alleged occurrence took place in between 10.03.2005 to 14.03.2005, i.e. prior to the filing of the abovesaid writ petition before the Hon'ble High Court. So these documents do not help the appellant in order to establish his plea that he has been involved in this case falsely due to filing of this writ petition against the police officials. Moreover later on during investigation of this case it was also found that the petitioner Kanta Rani was one of the co-accused who had harboured the accused while they were absconding after alleged occurrence in her residence at Kalanaur. So this contention of learned counsel for the appellant is also declined and disposed of accordingly.

41. So far the record of call details Ex.PW27/A is concerned, there is no need to discuss the same in detail as it is not established on the file that mobile phone bearing No.9872170402 which the accused was allegedly using on and around the period of alleged occurrence was belonging to him. In this regard the prosecution had failed to bring on file the relevant record of the mobile company concerned in order to show that this mobile phone number was issued to accused Ajay Kumar @ Mintu on his request application.

Learned counsel for the appellant has failed to raise any other contention, while arguing in this appeal.

42. Now let us see the circumstantial evidence which the prosecution had brought on the record during the trial of the case in order to hold whether it is sufficient to complete the chain of events or not for

determining the involvement of the appellant or his innocence in this case.

PW2 Lal Singh and PW3 Asha Rani as above discussed have stated in so many words that Sarita (since deceased) was in the contact of accused Ajay Kumar @ Mintu under the belief that he is an astrologist and also well-versed with *tantrik* knowledge. Both were on visiting terms with each other for this reason. Then it has also come in the statement of these witnesses that Sarita was to get performed some *havan* and *pooja* in her house on the eve of *Shivratri* since her family as stated to her by the accused was under the bad effect of the stars and to save her family from any calamity thereof.

PW8 Chain Singh has stated that in the year 2003 he rented out one of his shops to accused Ajay Kumar @ Mintu in the area of Abrol Nagar, Pathankot, where he started the shop of Astrology and *tantrik*.

Statement of PW13 Yashpal Singh is to the effect that in the month of December, 2004, accused Ajay Kumar @ Mintu along with Mohinder Singh and Pawan Kumar had come to him and that on their request he rented out one of his shops situated in front of Jasbir Petrol Pump, Dalhousie Road, Pathankot to them where they started the business of *tantrik* vidya and *jyotish*. This witness also obtained their photographs for the purpose of identification before letting out the shop to them. He produced these photographs before the police after the alleged occurrence.

PW15/A Charanjit Singh had seen the appellant along with his co-accused on 10.3.2005 at about 5:00 a.m. in the area of Public School, Shashtri Nagar, Pathankot when he was going for a morning walk. On his

inquiry accused Ajay Kumar who was earlier known to him disclosed him that they are coming from a house after performing a *havan yag* near the adjoining house.

PW12 Tej Singh was running a finance company at the time of alleged occurrence. His statement was to the effect that Sarita Rani had come to him for money for performing a *pooja*. He advanced a sum of Rs.4 lacs to her on her depositing documents of land measuring about 8/10 killas.

Then statement of PW13 Yash Pal Singh is also to the effect that on 20.4.2005, accused Pawan Kumar, Ajay Kumar @ Mintu, Sonu and Sunil Kumar had come to him and made their extra judicial confession before him while he was alone that they had murdered Sarita and her daughter on the night of 9/10.3.2005 in the area of Shashtri Nagar, Pathankot in their house and took away a sum of Rs.4 lacs in cash along with gold ornaments and one mobile phone. This extra judicial confession on their part before this witness is held to be natural as well as believable for the reason that the accused persons were acquainted with him earlier and that he was also running the business of the transport at Pathankot at that time. The accused had also remained as tenant under him.

PW22 Sumit Mahajan who was running a hardware store at Municipal Bazar, Pathakot has proved the receipt Ex.PW22/A vide which he had sold two Harrison Locks to Sarita Devi for a sum of Rs.50/-.

PW25 Anil Kumar was also running a hardware shop at Adda Sunder Chack, Pathankot. He has proved receipt Ex.PW25/A vide which Sarita Devi had purchased two locks of Ujala Company from him for a sum

of Rs.40/-.

PW26 Joginder Pal who was a cloth merchant at Sujanpur had proved the receipt Ex.PW26/A vide which he had sold one meter cloth of red colour on 5.3.2005 to Sarita Devi for a sum of Rs.20/-.

43. Now let us see the recovery which had been got effected by the police during investigation of this case. On 8.5.2005 accused Ajay Kumar @ Mintu got recovered a cloth of red colour Ex.MO/1 and one bunch of 8 keys Ex.MO/2 to Ex.MO/9 make Harrison etc. as per his disclosure statement Ex.PW6/A. Then on 13.5.2005 accused Ajay Kumar @ Mintu got recovered a mobile phone Ex.PW19/J bearing No.98723-38661 of Sarita from the area of Ali Mohalla near Andhra Bank, Jalandhar as per his disclosure statement Ex.PW15/A. Then on 15.5.2005 this accused got recovered the gold ornaments Ex.P1 to Ex.P4 from the area of Kalanaur belonging to Mehak (since deceased) as per his disclosure statement Ex.PW15/D. Then PW22 Sumit Mahajan had proved the locks which were allegedly purchased by Sarita Devi from him along with their keys Ex.MO/30 to Ex.MO/31 and Ex.MO/32 to Ex.MO/35.

44. The evidence pertaining to the abovesaid recoveries is admissible under Section 27 of the Indian Evidence Act and the same can be used against the appellant for adjudging his criminality in this case. Then it was also established on the file that husband of Sarita Devi was residing abroad in Greece at the time of alleged occurrence since the last 5-6 years and she was residing alone along with her daughter Mehak in some rental accommodation in the area of Shashtri Nagar, Pathankot at the time of occurrence.

45. Now let us see the legal position with regard to the circumstantial evidence, its appreciation and consideration. In the case law **Sharad Biridhichand Sarda Versus State of Maharashtra, 1984(4) SCC 116**, the Hon'ble Apex Court enunciated the following five principles for the appreciation of the circumstantial evidence:-

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) The circumstances should be of a conclusive nature and tendency.
- (4) They should exclude every possible hypothesis except the one to be proved and
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

The principles laid down in this case law are further followed in the case law titled as **Sangili @ Sanganathan Versus State of Tamil**

Nadu, 2014 (5) Recent Apex Judgments (R.A.J.) 545 and by our High Court in Gora Singh and others Versus State of Punjab, 2015(1) R.C.R.(Criminal) 603.

46. Then in this case, the motive to rob the ornaments of deceased, after their murder is also proved on the file since the gold ornaments belonging to deceased Mehak were got recovered by accused Ajay Kumar @ Mintu during investigation of this case by suffering his disclosure statement. In a case based on circumstantial evidence motive plays an important role in order to prove the implication of the accused in the alleged case. Herein the principles as laid down in the case law Mahamadkhan Nathekhan Versus State of Gujarat, 2014(5) Recent Apex Judgments (R.A.J.) 502 are followed wherein it has been laid down that it is well settled law that when the prosecution case rests purely on circumstantial evidence, motive plays an important part in order to tilt the scale against the accused.

47. If the above discussed circumstantial evidence and the recoveries got made by the accused are to be considered as a whole then it could be safely concluded that it completes a chain of events in order to reach at an irresistible conclusion inconsistent with his innocence and to hold that the alleged murder of Sarita and Mehak was committed by the present appellant in connivance with some other.

48. In the light of the above discussion, there is no merit in this appeal and the same stands dismissed and disposed of accordingly. Consequently the impugned judgment of conviction and order of sentence

in appeal are affirmed with the modification that appellant is held guilty for the murder of Sarita and Mehak under Section 302, IPC, simpliciter. He cannot be held guilty for offence under Section 302 read with Section 34, IPC, for the reason that his co-accused Kanta has been acquitted vide the impugned judgment and his remaining two co-accused namely Sunil Kumar and Sonu were proclaimed offenders during trial of the case. In case the appellant is held guilty for the offence under Section 302 read with Section 34 IPC by holding that he had committed the murder of Sarita and Mehak in connivance with his said co-accused Sunil Kumar and Sonu who are proclaimed offenders, then that would tantamount to condemn them unheard as well as without their trial.

February 27, 2015

Gaurav Sorot/Brij

**(S.S. SARON)
JUDGE**

**(GURMIT RAM)
JUDGE**