

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

(1) CRA-D-638-DB of 2010
Date of decision:11.9.2015

Nasib Singh
...Appellant

Versus

State of Haryana
...Respondent

(2) CRA-D-745-DB of 2010
Date of decision:11.9.2015

Santosh Devi
...Appellant

Versus

State of Haryana
...Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. L.S. Sidhu, Advocate
for the appellant in CRA-D-638-DB of 2010.

Mr. Rajesh Lamba, Advocate
for the appellant in CRA-D-745-DB of 2010.

Mr. Dhruv Dayal, D.A.G., Haryana.

Mr. S.S. Mor, Advocate
for the complainant.

GURMIT RAM, J.

The above noted both the appeals have been preferred by appellants Nasib Singh and Santosh Devi against the judgment dated 31.5.2010 and order of sentence dated 2.6.2010 passed by the Court of learned Additional Sessions Judge, Fatehabad in criminal case bearing FIR No.330 dated 5.10.2008 under sections 364, 302, 201, 452 read with section 34 of the IPC, Police Station Sadar, Fatehabad vide which the appellants were held guilty for the offences punishable under sections 450, 302, 364, 201 read with Section 34 of the IPC and convicted thereunder.

2. The case of prosecution as presented before the learned trial Court, in brief was that on 5.10.2008, SI/SHO Yogesh Kumar, Police Station Sadar, Fatehabad was present at village Bighar for patrolling where complainant Bhadar Singh son of Manphool Singh, resident of village Bighar came and made his statement before him which was recorded as under:-

“That he is an agriculturist by profession. On the night intervening 3.10.2008/4.10.2008 at about 11:30 p.m. his son Vinod received a telephonic message from his elder son Harpal Singh who is residing in dhani (hamlet), Salamkhera that Hanuman is not available at the house and some unknown person has also taken away Rachna Devi daughter of Hanuman, who at that time was sleeping by the side of her mother and brother in the dhani. He along with Raj

Kumar, Ex-Sarpanch hired the vehicle of Jogi Ram of their village and reached the dhani of his son Hanuman in Salamkhera. On reaching there, on inquiry, Santosh wife of Hanuman told that *'Hanuman has gone for irrigation, who is watering the land taken on lease. She was sleeping in the compound of the dhani along with her children. On hearing the noise of bolt (kundi), she woke up at once and some unknown person lifted her daughter Rachna aged about 6/7 years and ran away towards the fields by taking advantage of darkness.'*

Thereafter, they went to the land which was taken on lease, where Hanuman was also not found. They searched for him to their best at their own level, but they could not find any clue of him and his grand-daughter – Rachna. Today at about 11:00/11:30 A.M., Gurdayal Singh s/o Diwan Singh resident of village Salamkhera saw dead body of his son Hanuman lying in the canal ahead of Salamkhera. On reaching there, they identified the dead body of Hanuman and took out the same from the canal. Further they also noticed injury on the head of Hanuman being inflicted with sharp edged weapon. Some unknown person had thrown the dead body of Hanuman in the canal after committing his murder. His grand-daughter may also

have been murdered and thrown in the canal. Request was made to trace out the culprits and to take legal action against them.”

On the above-said statement of complainant, SI/SHO Yogesh Kumar made his endorsement and sent ruqqa to the police station, on the basis of which the instant case was registered. Inquest report with regard to dead body of Hanuman was prepared. Thereafter, it was sent to Civil Hospital. Fatehabad, wherein post-mortem on his dead body was got conducted. Then his dead body was delivered to his guardians. The motorcycle parked in the dhani of Hanuman (since deceased) alongwith his mobile phone, whereas his pair of chappals, one purse and his affidavit kept in the cotton crop field were taken in the police custody on 6.10.2008. In this affidavit, it was found recorded that deceased Hanuman was having apprehension of danger to his life from his wife Santosh, father-in-law, brother-in-law and his neighbour.

On 7.10.2008, complainant Bhadar Singh revealed to the police that dead body of his grand-daughter Rachna Devi was recovered on 5.10.2008 from Bakhra canal, Badopal in the area of village Kheri, Police Station Nathusari Chopta, District Sirsa from where Kheri canal minor emanates. Inquest report with regard to her dead body was prepared by the police of Police Station Nathusari Chopta. Post-mortem on her dead body was got conducted from Government Hospital, Sirsa. On this ASI Krishan Kumar was sent to said Police Station Nathusari Chopta and he got into his possession copy of her post-mortem report along with other relevant documents pertaining to it. Viscera of deceased, two bottles

of water and clothes of deceased Rachna were got deposited in malkhana of Police Station Sadar, Fatehabad. Santosh wife of deceased Hanuman was apprehended in this case on the basis of suspicion. During interrogation, she suffered disclosure statement that on the night of 3.10.2008, she served beer to her husband which was mixed with an intoxicant tablet, since she was having illicit relation with her neighbour Nasib and threw him in the Bhakhra canal after hitting him with a spade. Thereafter, when she came to her house, her also daughter Rachna, who was sleeping, woke up. Then she and Nasib lifted her and threw her also in Bhakhra canal in order to destroy the evidence (proof). Thereafter, she got demarcated the place from where Hanuman was thrown in the Bhakhra canal after hitting him with the spade as per her disclosure statement. Then she also got demarcated the place from where Rachna was thrown in the Bhakhra canal by her along with Nasib. Then she also got recovered her clothes which she was wearing at the time of the commission of the crime from the heap of cotton sticks, laid adjacent to her house.

On 16.10.2008, accused Nasib Singh was also apprehended in this case. He also suffered his disclosure statement during the interrogation. He also got demarcated the place from where Hanuman was thrown in the canal after hitting him with a spade. Further he also got recovered the spade which was allegedly used in the commission of offence in this case along with his clothes which he was wearing at that relevant time and one photograph which he and Santosh Devi got snapped together during their love affair. Recovered case property i.e. two spades, one gandas, parcels containing clothes of both the deceased,

parcel containing pair of chappals of Hanuman since deceased, parcels containing clothes of both the accused, viscera of deceased Rachna and two bottles of water along with some other relevant documents etc. etc. were sent to the office of Forensic Science Laboratory, Madhuban. Site-plan of the place of occurrence was prepared. Site-plans of the places of recoveries as well were also prepared. Statements of witnesses were recorded. On completion of investigation, challan in this case was presented in the Court of learned Additional Chief Judicial Magistrate, Fatehabad who further committed this case to the Court of learned Sessions Judge, Fatehabad for trial after making compliance of the provisions of section 207 of Cr.P.C.

3. Finding a prima-facie case under section 450 of the IPC against accused Nasib Singh and under sections 364, 302, 201 read with section 34 of the IPC against both the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

4. During trial of the case, the prosecution examined as many as twenty six witnesses in total in order to prove its version against the accused.

5. Then the accused were duly examined as required under section 313 of Cr.P.C. Entire incriminating evidence and other circumstances as brought on the file during the trial of the case against them were put to them, which they denied entirely and pleaded their innocence and false implication in this case. But they did not lead any evidence in their defence, despite the opportunity granted.

6. The learned trial Court after hearing the counsel for both the

parties and going through the record as well held the accused guilty for the offences punishable under sections 450, 364, 302 and 201 read with Section 34 of the IPC vide the impugned judgment of conviction and awarded them sentence as detailed below:-

Under Section 302 read with Section 34, IPC.	Both the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- each and in default of payment of fine, both accused shall suffer further rigorous imprisonment for a period of one year.
Under Section 364 read with Section 34, IPC.	Both the accused were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine, both accused shall suffer further rigorous imprisonment for a period of six months.
Under Section 201 read with Section 34, IPC.	Both the accused were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each and in default of payment of fine, both accused shall suffer further rigorous imprisonment for a period of two months.

Accused Nasib Singh was also sentenced for the offence punishable under section 450, IPC, detail of which is as under:-

Under Section 450, IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default of payment of fine, he shall suffer further rigorous imprisonment for a period of three months.
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7. The appellants/accused being not satisfied with the impugned judgment of conviction and order of sentence have approached this Court by way of instant appeals, notice of which was given to the respondent—State. Record of the learned trial Court was also requisitioned.

8. Learned counsel for both the parties were heard and record was also perused and analysed with their able assistance.

9. Learned counsel for the appellants has contended that the entire case of prosecution rests purely upon circumstantial evidence and one of the said circumstances which the learned trial Court has relied upon heavily was the affidavit Ex.P23 which was allegedly recovered

from the wallet of Hanuman Singh (since deceased). In this affidavit, it was recorded that Santosh Devi wife of said Hanuman (deponent) was not a lady of good character and that he was apprehending threat to his life from her, her parents etc. It is further his contention that in this affidavit it has nowhere been mentioned that appellant-Nasib Singh was having any illicit relation with said Smt.Santosh Devi. Even PW-23 Harpal Singh also did not utter a single word against this appellant that he had ever caused any threat to said Hanuman Singh (since deceased) with regard to his life and liberty or there was any kind of strained relation betwixt them. Initially even PW-12, Bhadar Singh-complainant also did not make any allegations against him with regard to murder of Hanuman Singh. Then it was the case of prosecution that on the basis of some secret information some incriminating articles including affidavit Ex.P23, a pair of *chappal* of Hanuman (since deceased) etc. were recovered from the fields of one Gurdial Singh, but he was not cited as a witness in this case. Then it is also contended that the alleged affidavit Ex.P23 is neither an attested document from any competent authority nor it was got examined from any handwriting expert in order to establish the fact that the alleged signatures on it are of Hanuman Singh (since deceased) and of nobody else. Then learned counsel for the appellants has further strongly argued that during investigation of this case, one joint photo of appellants-Nasib Singh and Santosh Devi Ex.P39 was produced by appellant-Nasib Singh which was taken into police possession vide memo Ex.P21. Learned trial Court has mis-construed this photo in order to hold the involvement of the appellants in committing the murder of said

Hanuman and his daughter-Rachna, since this photo is not per-se admissible in evidence nor it carries any value in the eyes of law. In this connection, the entire approach of learned trial Court is thoroughly erroneous and not tenable under any provision of law. Moreover, there is no material on the record to substantiate the fact that the appellants were having any illicit relations with one another. Then neither the person, who had snapped this photo, was examined nor its negative was brought on the record in order to prove its authenticity. Even there was no complaint of any sort at any time from the complainant party with regard to the act and conduct of appellant-Santosh Devi.

Then it is further contended by learned counsel for the appellants that PWs are also discrepant with regard to the place from where the weapon of offence, i.e. spade was allegedly got recovered by accused-Nasib Singh, which further renders the said recovery of spade as alleged by the prosecution to be highly doubtful. Even the prosecution has also failed to prove exactly the spot of occurrence where Hanuman was allegedly murdered.

Then it is also plea of learned counsel for the appellants that as per statement Ex.P9 of complainant-Bhadar Singh, deceased-Hanuman was found missing from the night intervening 3/4.10.2008. The theory of last seen that deceased was seen in the company of Nasib Singh-appellant while going on a motorcycle towards Badopal canal along with the spade to irrigate the fields taken on lease came to the surface for the first time in the statement Ex.D2 of PW-23, Harpal Singh, which he made before the Police on 05.10.2008. The very factum of illicit relation of appellant-

Nasib Singh with that of appellant-Santosh Devi was also revealed on this very date by him in his said statement. So these two vital aspects of this case, i.e. last seen and **inter-se** illicit relation of the appellants were revealed to the police after a considerable delay of which the prosecution has no explanation at all, which remained a serious lacuna as well as infirmity in the case of prosecution, the benefit of which is certainly to be given to the appellants. The very possibility that this delay might have been used by the complainant-party in order to make out a concocted story for implicating appellants in this case falsely cannot be ruled out.

Then the learned counsel for the appellants have also pointed out the discrepancies in the statements of the prosecution witnesses. Then it is also submitted that the chain of the entire circumstantial evidence is not complete one in this case and as such it is difficult to hold that the appellants are involved in any manner with regard to the murder of Hanuman and Rachna (since deceased). Lastly, they have prayed for the acceptance of these appeals and to acquit the appellants of the charges framed against them by setting aside the impugned judgment.

10. But on the other hand, learned State counsel has submitted that prosecution during the trial of the case has succeeded in bringing the entire evidence on record in order to complete the chain of circumstantial evidence to bring home the guilt of the accused. It is further his contention that learned trial Court while holding the appellants guilty in this case has dealt with all the contentions in their right perspective which are now raised by the counsel for the appellants in these appeals, while recording the impugned judgment of conviction. Then he has also

referred to statements of the witnesses which were examined by the prosecution during trial of the case. Even in the instant case there was a strong motive against the appellants for committing the murder of abovesaid Hanuman and Rachna, which fact has also duly been established on the record in the statements of the witnesses of the prosecution. Lastly, he has contended that during the trial of the case, no trustworthy material had come on record which could warrant any kind of interference in the impugned judgment and order of sentence.

11. Before embarking on the appreciation and analysis of the above rival contentions of both the parties from the judicial point of view, we deem it essential to cast an eye on the evidence on record in some brief, which is discussed as under:-

Bhadar Singh was the complainant in this case, who during trial of the case appeared as PW-12. His statement before the Court was verbatim to his statement Ex.P9 vide which he initially informed the Police with regard to missing of Hanuman and Rachna from their house, since the night intervening 3/4.10.2008. So there is no need to discuss his statement in detail in order to avoid repetition. In addition to this, he also deposed that during night he received information telephonically from one Gugan that dead body of a girl was found lying in the canal in the area of village Kheri upon which he went to Sirsa and perceived the dead body of his grand-daughter, Rachna in the hospital at Sirsa. Post-mortem on her dead body was conducted and his supplementary statement was recorded by the Police.

Statement of PW-6, Kikar Singh was to the effect that on

04.10.2008, his neighbour, Bahadur Singh informed him telephonically regarding missing of his son Hanuman and kidnapping of his granddaughter, Rachna from the house, upon which he along with Bahadur, Kailash etc. started search for both of them and on 05.10.2008, they found the dead body of Hanuman lying in the canal in the area of Salam Khera with injury on his head caused by sharp edged weapon. He also identified his dead body in Civil Hospital, Fatehabad at the time of its post-mortem.

PW-9, Krishan Kumar deposed to the effect that dead body of Hanuman was recovered from the river in the area of Salam Khera on 05.10.2008 at about 10/11 A.M., who was missing since 03.10.2008. He also received the information that dead body of Rachna daughter of said Hanuman, who was also missing since 03.10.2008 had been lying in the area of Kheri Minor, District Sirsa. On this he along with Rajpal went to that spot and identified her dead body. Post-mortem on her dead body was conducted in Civil Hospital, Sirsa on next morning.

PW-14, Duli Chand was the chowkidar of village Kheri, District Sirsa. On coming to know that dead body of a girl is lying in the river in the area of his village, he gave information to the police in this connection. He also accompanied the police to that spot and demarcated the place where dead body was found.

PW-23 Harpal Singh was the brother of Hanuman (since deceased). His deposition was to the effect that on 03.10.2008 he had seen his brother Hanuman (since deceased) while going with accused-Nasib Singh on the motorcycle. His brother was having spade at that time. He asked from Nasib Singh accused that his brother Hanuman had

gone with him to irrigate the land taken on lease. Both of them went to the land but his brother Hanuman and Rachna were not found. Then in this regard further he corroborated with the statement of PW-9, Bhadar Singh-complainant. Then he also proved the seizure memo Ex.P31 vide which blood sample taken from the dead body of deceased Hanuman was taken into police custody. Further he also proved the seizure memo Ex.P41 vide which police took into possession motorcycle and mobile phone of his brother Hanuman. Then he also deposed about the inter-se illicit relationship of accused Nasib Singh and Santosh and their involvement as well in committing the murder of Hanuman and Rachna.

PW-1, Dr.Surender Singh along with Dr. N.K. Chakarwari and Dr. Dalip Singh conducted post-mortem on the dead body of Hanuman on 06.10.2008 at about 11:00 A.M. on police request Ex.P2 in Civil Hospital, Fatehabad which was identified by Kikar Singh and Kailash Sharma.

Eyes and mouth were closed and foul smell was present in body which was de-composed. During examination, following injuries were found:-

“There was a sharp wound of 20 cm x ½ cm, brain deep, obliquely placed extending from left cheek, cutting left external pinna, extending to left temporo-parietal region.

On examination brain matter coming out of the wound and blood clotted. Other organs were healthy and pale.

“In their opinion the cause of death in this case was injuries to vital organ (brain) causing haemorrhage and shock, which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. Probable time that elapsed between the injuries and the death was within few minutes and between death and post-mortem was about 36 to 72 hours.

Further he proved copy of his post-mortem report as Ex.P1, inquest report Ex.P3 and opinion Ex.P4/1, which he gave on police application Ex.P4 to the effect that possibility of death due to *Kassi* cannot be ruled out. Further on opening sealed parcel in the Court, it was found to be containing clothes of deceased, i.e. shirt Ex.MO/14, *Banian* (vest) Ex.MO/15 and underwear Ex.MO/16. It was further in his statement that these clothes were the same which he had handed over to the police after sealing the same.

PW-18, Dr. Archana Aggarwal along with Dr. Viresh Bhushan conducted post-mortem on the dead body of deceased namely Rachana daughter of Hanuman Singh on 06.10.2008 at about 10:00 AM in Government Hospital, Sirsa on the police request Ex.P7/A, on the identification of Rajpal and Krishan.

On external examination, no ligature mark was found, it was a dead body of moderately built and nourished female child wearing red coloured T-Shirt and red *Payajama*, golden metallic ear rings in both ear lobes. Face was swollen and congested. Hair could be easily pulled out, eyes were bulging and liquified. Tongue was protruding between teeth.

There was congestion on upper part of neck and cheek. Skin showed vessels and bullae at places and is peeled off at places. Abdomen is distended and showed greenish discoloration in both flanks. Post-mortem staining could not be ascertained. Scalp, skull and vertebra were healthy.

On internal examination, membranes and brain were liquified. Walls and ribs and cartilages were as described. Plurae was congested. Mucosa of larynx and trachea was brownish velvety. There was fracture of right coruna of hyoid with localized haematoma at the side of fracture. Both the lungs were congested and oedematous on cut section. Blood stained fluid oozed out. Pericardium was healthy. Heart was healthy and empty. Large vessels were healthy. Mucosa of mouth pharynx and oesophagus was brownish velvety. Stomach was distended with gases. Mucosa was brownish velvety and it contained about 100 ml semi digested food. Small intestines were distended with gases and contained chyme. Large intestines were distended with gases and contained faecal matter. Liver spleen and both the kidneys were congested. Bladder was healthy and empty. Organs of generation external and internal were healthy.

The time elapsed between the death and post-mortem examination could have been 48 to 72 hours.

Further she proved the copy of post-mortem report as Ex.P7. On receipt of FSL report Ex.P26, she gave the opinion that cause of death in this case was due to asphyxia as a result of drowning, which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Further on opening sealed parcel in the Court clothes of the

deceased were taken out, which she identified the same, as she handed over to the police after post-mortem. Then on opening another sealed parcel she also proved the jewellery of deceased, which she handed over to the police after post-mortem.

PW-26, SI Yogesh Kumar was posted as SHO, police Station Sadar, Fatehabad on 05.10.2008. He was also the Investigating Officer of this case and on the said date, he recorded the statement Ex.P9 of complainant-Bhadar Singh in the area of village Bighar, when his police party was on patrolling duty on that date in that area. After making the endorsement Ex.P29 on the said statement of the complainant, he sent ruqa to the Police Station on the basis of which formal FIR Ex.P7 in this case was recorded. When he along with other police officials and complainant party proceeded two kilometres ahead from village Salam Khera at Badopal canal pavement (*Patri*), there dead body of Hanuman was already taken out of the canal. Further, he called the photographer HC Raj Kumar at the spot who took photographs of the spot. Crime Scene Team was also called at the spot. Further, he took blood sample of said deceased in vial which was converted into a parcel after sealing the same with the seal of "YK" and took the same into his possession vide seizure memo Ex.P46, which was attested by ASI Krishan Kumar and Harpal Singh-PW. Further, he also prepared the rough site plan of the spot Ex.P45. Proceedings under section 174, Cr.P.C., in respect of the dead body were also conducted. Post-mortem on the dead body of the deceased was got conducted from Government Hospital, Fatehabad. Then he also visited the Dhani of the deceased and prepared the rough

site plan Ex.P31. Further he also took into possession one motorcycle bearing registration No.HR-22-C-8135 along with one mobile phone make Nokia having sim No.9812342833 vide memo Ex.P41 which was also attested by aforesaid witnesses.

On 06.10.2008 he received secret information that one chappal and purse are lying in the field of Gurdial Singh. Thereupon he along with ASI Krishan Kumar went to that spot and got recovered one wallet containing an affidavit, one visiting card, ₹100/-, one pocket diary and one photo of deceased Hanuman along with pair of chappal of plastic in black colour which were taken into police possession vide seizure memo Ex.P24 which was attested by ASI Krishan Kumar and HC Madan Lal.

On the next date, this witness along with ASI Chhatar Pal and other police officials went to village Bigar where Bhadar Singh-complainant told them that they had brought dead body of his granddaughter Rachna. On this he directed ASI Krishan Kumar to bring papers pertaining to post-mortem report of Rachna and her viscera from Police Station Nathusiri Chopta, who accordingly went to that police station and obtained the aforesaid record along with clothes of said deceased, two bottles filled with water and ear-rings which were in different parcels. On his return ASI Krishan Kumar handed over the aforesaid parcels to him, which later on he handed over to ASI Krishan Kumar for depositing the same with MHC, Police Station Sadar, Fatehabad.

Matter was investigated from the residents of villages Bigar, Salam Khara etc. etc. but no clue was found in this regard till 10.10.2008.

Then on 11.10.2008 accused-Santosh Devi was formally arrested in this case and was interrogated. Even DSP headquarter Mr. S.S. Sheoran also enquired from her about the facts of the case in the police station. Then they went to village Salam Khera and the pavement of the canal towards Badopal where they found one *Kassi*, one *Gandasi*, one pair of plastic chappal, which were taken into police possession vide seizure memo Ex.P32 attested by ASI Krishan Kumar aforesaid and HC Bhajan Dass, which was deposited with MHC on returning to police station. Then on next date, accused Santosh Devi was produced before the Court. On 15.10.2008, accused Santosh Devi while in police custody was interrogated, who suffered disclosure statement Ex.P33 to the effect that she can point out the place where Rachna deceased was thrown in the canal by her and her co-accused-Nasib Singh. Further, she can also point out the place where she and accused-Nasib Singh had caused the death of Hanuman (since deceased). Further, she can also got recovered the clothes which were worn by her at the time of this occurrence by making demarcation of the spot where the same were concealed by her. On the next date she led the police party to the place of concealment and got recovered her said clothes beneath the heap of wooden sticks which were taken into police possession vide seizure memo Ex.P47. Further, he also prepared the rough site plan of the place of this recovery Ex.P48. Then she also demarcated the place where Rachna was thrown in the canal vide Fard Nishan Dei Ex.P37. Rough site plan in this regard was also prepared, which was Ex.P36. Then she also led the police party to the spot and pointed out to the police where she and Nasib Singh accused

committed murder of Hanuman and Fard Nishan Dei in this connection Ex.P39 was prepared. Then this accused was got medically examined.

Then on the same date this witness went to the residence of accused Nasib Singh and took into possession one mobile phone make Nokia bearing sim No.9728040003 vide memo Ex.P42 after preparing its parcel. On the same date, he got the information that accused Nasib Singh had gone to the house of maternal uncle in village Luhar Khera near Sardulgarh, Punjab. Then he along with other police officials raided the said place and accused Nasib Singh on seeing the police party tried to run away but he was over-powered by the police. Then during interrogation, he suffered disclosure statement Ex.P43 attested by C.Satish Kumar and C.Satywan to the effect that he had kept concealed a *Kassi* used in the alleged crime after washing the same and a bottle of beer into bushes and his group photo with accused Santosh Devi in a box in his house and he could get the same recovered on demarcation. Further, he also suffered that he can point out the place where he and Hanuman deceased took beer and the place where Rachna was thrown in the canal and the place where short work of Hanuman was done by him and had thereafter thrown his dead body in Badopal canal. On 17.10.2008, both the accused were produced before the Court. Accused -Nasib Singh led the police party to Badopal canal and got recovered one *Kassi*, clothes and one torch which were taken into possession vide memo Ex.P20 after converting the same into separate parcels sealed with the seal of "YK". Memo Ex.P35 with regard to the demarcation made by the accused was also prepared. Then he

further got demarcated the place where he committed the murder of deceased Hanuman which was Ex.P36 and rough site plan prepared in this regard was Ex.P37. Thereafter he led the police party to his Dhani and produced before the police, his joint photo Ex.P39 with accused Santosh Devi, which was taken into police possession vide memo Ex.P21 attested by ASI Chhaterpal and EHC Ashok Kumar. Rough site plan prepared with regard to spot of this recovery was Ex.P50. On returning to police station, he deposited the case property of this case with MHC. Further, he also recorded the statements of witnesses during investigation of this case. Then he also proved the various incriminating articles which were recovered during the investigation of the case and produced before the Court in sealed parcels and on opening the same, the same were found to be containing as under: -

- i. Two *Kassies*, Ex.MO29 and Ex.MO30.
- ii. Two plastic bottles Ex.MO31 and Ex.MO32.
- iii. One parcel containing pair of Chappal Ex.MO33.
- iv. One parcel bearing seal of FSL containing one Jhampher, one *Salwar* and one *Chunni*, Ex.MO34 to Ex.MO36 which were stated to be the same, as got recovered from the possession of accused.
- v. One parcel bearing seal of "FSL" containing one lower, shirt and one underwear Ex.MO37 to Ex.MO39.
- vi. One parcel containing another pair of chappal Ex.MO40.
- vii. One parcel containing clothes of the deceased.
- viii. One parcel containing a small *Gandasi* Ex.MO41.
- ix. Another parcel bearing seal of FSL containing a small plastic

container having blood sample of deceased.

On completion of investigation, challan in this case was presented before the Court.

Abovesaid Chhatarpal ASI, Krishan Kumar ASI, Satish Kumar Constable, Ashok EHC, Madan Lal Head Constable and Bhagat Ram Head Constable appeared in this case as PW-21, PW-22, PW-24, PW-15, PW-16 and PW-17 respectively. In this case they corroborated with the above discussed statement of PW-26 SI/SHO Yogesh Kumar to the extent that they had joined the investigation of this case while being members of his police party. Said Head Constable Bhagat Ram also took ruqa Ex.P9 to the police station for registration of the case.

PW-10 Bhupinder Singh No.566 delivered special report Ex.P7 in this case to the learned Illaqa Magistrate on 05.10.2008 at about 6:50 P.M.

PW-2 Hanuman Singh, Patwari proved the scaled site plan Ex.P5 which he prepared on 01.12.2008 on the demarcation of Bahadur Singh.

PW-3 HC Raj Kumar visited the spot of occurrence on 05.10.2008 and snapped photographs Ex.PMO/1 to Ex.PMO/12 of the deceased, which he handed over to the I.O. on 22.10.2008 after developing the same.

PW-5, Rohtas was also a photographer and he took photographs of the dead body of the girl on 05.10.2008 which were Ex.PMO/13 to Ex.PMO/17.

Statement of PW-7 Sanjay was to the effect that he had given

his land on lease to Hanuman Singh (since deceased) and accused-Nasib Singh present in the Court for a period of one year for a consideration of ₹1,00,000/-. The turn of his water started on every Friday in the evening and on 03.10.2008 it was his turn of water.

PW-8 Rajinder Singh, Gunman took sample of this case to the FSL on 31.10.2008 and his affidavit duly sworn in this regard was Ex.P6.

PW-11 HC Sita Ram stated to the effect that on 07.10.2008, he was posted as MHC in Police Station Nathusari Chopta, Sirsa. On that date ASI Jagdish Parshad handed over to him copy of post-mortem and viscera of deceased Rachna Devi which he further delivered to ASI Krishan Kumar vide memo Ex.P8.

PW-13 Balwant Singh, Draftsman proved the scaled site plans Ex.P11 and Ex.P12 which he prepared after visiting the spot.

PW-19 SI Nar Singh recorded the FIR Ex.P7 on receipt of tehrir Ex.P29.

PW-25 HC Sunil Kumar was posted as MHC at police station Sadar, Fatehabad on 10.10.2008. His duly sworn affidavit as a part of his statement had come on the record as Ex.P44.

PW-20 ASI Jagdish Parshad was posted as ASI at Police Station Nathusiri Chopta on the relevant date. On receipt of telephonic message, that a dead body is lying in Kheri Minor, he went to that spot. He sent tehrir Ex.P31 to the said Police Station for registration of the case. He also conducted inquest proceedings under Section 174, Cr.P.C., with regard to dead body which is Ex.P33. Then he got conducted post-

mortem on the dead body of deceased-Rachana from Government Hospital, Sirsa vide application Ex.P7/A. After conducting the post-mortem on the dead body of deceased Rachana, the doctor handed over to him four sealed parcels and one post mortem report of Rachana, which he handed over to MHC Police Station Nathusiri Chotpa. Thereafter dead body of deceased was handed over to her guardian vide receipt Ex.P34.

12. So far as the alleged affidavit Ex.P23 is concerned, admittedly the same is not an attested document and it is in Hindi vernacular. For its proper evaluation in the eyes of law, it is essential to discuss its relevant part, the English translation of which is as under:-

I, Hanuman Singh son of Shri Bhadar Singh, caste Jaat am resident of village Salam Khera, Tehsil and District Fatehabad. I do solemnly affirm and declare as under:-

- 1. That I was married with Santosh daughter of Balwant, resident of Ellenabad, District Sirsa in the year 1998.*
- 2. That I have now one son aged 3 years and a daughter aged 6 years.*
- 3. That my wife now is a lady of immoral character. She quarrels with me and in the night time, she gives intoxicant tablets in the meals due to which I go to sleep and the persons from outside come to my house.*
- 4. That the relations and many persons persuaded my wife but she is adamant.*
- 5. That I apprehend danger to my life at the hands of my wife. My wife can even get me killed. I am under heavy*

mental tension. I can even commit suicide because of harassment due to illicit relations of my wife for which my wife Santosh, father-in-law Balwant, mother-in-law and brothers-in-law (Saale) Sandeep and Ramesh shall be responsible.

6. That my in-laws rang up on the telephone of my neighbour, who proceeds and gets the call made from my wife and she makes calls from his phone and she acts at his instance. Whenever my wife has to proceed anywhere, she takes him along....”

13. The above discussed portion of this affidavit clearly spells out that Santosh wife of deponent Hanuman (since deceased) was not a lady of good character. He was fed up due to immoral character of his better-half and also on account of her general behaviour towards him. Even he was also apprehending danger to his life at her hand as well as his in-laws. The above discussed para No.6 of this affidavit manifests beyond any doubt that his wife was in the grip of his neighbour and she was acting according to his tunes (though name of that neighbour is not mentioned in it.

14. Then as per the record the stamp paper on which this affidavit was drafted was purchased from Hanuman Prashad, Stamp Vendor, Fatehabad on 25.09.2008 in the name of one Harpal. This affidavit itself is also dated 25.09.2008. If its contents are to be read as a whole, the same is found to be a natural document without any fabrication and exaggerations. If the alleged deponent had any mala fide intention to

implicate appellant-Nasib Singh in this case falsely then he was having ample opportunity to do so by mentioning his name specifically in it in the capacity of his neighbour. So it is also difficult to believe that this affidavit is ante-dated one being allegedly prepared by the complainant-party after the death of the deponent. Had this document been prepared by the complainant-party after the death of its alleged deponent, then they could also have mentioned the name of appellant-Nasib Singh in it without any hesitation and ambiguity. The alleged occurrence took place during the night intervening 3/4.10.2008 and this affidavit as abovesaid is also dated 25.09.2008. Hence there was not much gap of time between these two dates. Its deponent could not have visited the office of competent authority for its attestation due to paucity of time for one reason or the other. If the stamp paper on which it was prepared as abovesaid had been purchased in the name of Harpal that also did not cut any much ice in this case in order to draw the conclusion the same being either false, fabricated or ante-dated. If the alleged signatures of deponent are not got examined or compared with his admitted signatures, then it was the lapse on the part of the I.O. during the investigation of this case for which complainant-party is not to suffer.

15. So far as the alleged joint photo Ex.P39 of both the appellants is concerned, its bare perusal evinces it clearly that there is sufficient space on both the sides wherein the appellants are shown to be standing in this photo. Had this photo been taken on the occasion of any family function as a group photo, then a considerable portion of the persons standing by them on both the sides was certainly to be seen along

with them, which is not so in it. Hence it is difficult to say that this photo had been prepared by any camera trick or by tampering subsequently in order to ensnare the appellants in this case without any reason. No doubt a photo itself cannot speak, but sometimes its impressions are such which tell about the inner feelings of the persons shown in it. The posture of both the appellants in which they are shown in this photo tells about their close proximity. In our society no married women generally permits herself to have such like snap with some other person/stranger in a manner in which appellant-Santosh is shown with appellant-Nasib Singh in this photo. Then in this case it is also to be noted that origin of this photo was the disclosure statement Ex.P43 which appellant-Nasib Singh suffered before the police during interrogation. He got recovered this photo as per his disclosure statement from his house and produced the same to the police. Since the origin of this photo is legal one, so it can be used as a piece of evidence against the appellants to prove their guilt. So there is nothing wrong on the part of learned trial Court in relying upon this photo to hold them guilty.

16. Then in this case disclosure statement Ex.P33 suffered by appellant-Santosh Devi during her interrogation is another vital piece of incriminating evidence against the appellants, the relevant part of which is as under: -

“that she developed illicit relations with her Dhani neighbour Nasib son of Diwan Singh, caste Jat sikh. She, after giving intoxicant tablets in the food to her husband, used to call her paramour Nasib to the house in the night

and they both used to fulfil their lust of sex inside the house or in the crop outside and they both made a plan that if Hanuman is removed from the way, then they will be able to visit each other frequently. According to this plan, on 03.10.2008, they had a turn of water in the evening in the field taken on Theka (lease). Nasib provided water to someone else and he took her husband from the house on his motorcycle for irrigation. Nasib Singh served Beer to her husband near the Canal and the Minor, in which he put intoxicant tablet given by her and he then rang up her. She then went to Nasib. She and Nasib lifted Hanuman, who was under the effect of intoxication, from there and after taking him on the Motorcycle at some distance, Nasib gave a Kassi (spade) blow on the left side of head of her husband as a result of which her husband died. Then she and Nasib put Hanuman in Badopal canal and Nasib came to drop her at her house at about 10:10 P.M. Her daughter Rachna had woken up, who had seen her with Nasib and the blood smeared with her clothes. So, they lifted her and threw her alive in the same canal. Then they returned to their house. Nasib took away spade and torch with him. She raised a noise and having prepared a false drama, called Raju, the Seeri (crop sharer) of her Jeth (husband's elder brother) by making a call from the phone of Nasib. She, in collusion with her paramour Nasib, has killed her husband and her

daughter Rachna. She has washed her clothes which were smeared with the blood of her husband on the same night and has kept concealed the same under the cotton sticks lying near her house, regarding which no other person except her has the knowledge and she will get the same recovered after making demarcation and will also demarcate that place where they both had thrown Hanuman after committing his murder and had also thrown the daughter.”

17. From the abovesaid disclosure statement, everything pertaining to the background for committing murder of both the deceased after making a pre-planned programme on the part of both the appellants in this case becomes quite transparent thereby leaving no substance justifying their innocence. This disclosure statement is quite detailed as well as elaborative touching the vital aspects of this case. Then appellant-Santosh Devi pointed out the places by making demarcation of spots where Hanuman (since deceased) was done to death and then his dead body was thrown into the canal after hitting him with the spade on the left side of his head and where she and her co-appellant-Nasib Singh had thrown Rachna in the canal after lifting her from the house. Then further she also got recovered her clothes which were worn by her at the time of committing the murder of her husband Hanuman from beneath the heap of cotton sticks near to her house which were kept concealed by her thereunder after committing the crime as per her disclosure statement. This disclosure statement can be applied against its maker appellant-Santosh Devi and her co-appellant Nasib Singh under the provisions of

Section 30 of The Indian Evidence Act, 1872 since it fulfils all the conditions provided under it. For the clarity sake illustration "A" appended to this Section is narrated as under:-

*(a) A and B are jointly tried for the murder of C.
It is proved that A said B and I murdered C. The
Court may consider the effect of this confession as
against B.*

Then the abovesaid fact of hitting Hanuman on the left side of his head with a *Kassi* before throwing his dead body in the canal is also corroborated by the medical evidence i.e. the injury shown in his post-mortem report Ex.P1. In order to reach at this conclusion, the support is taken from principles as laid down by the Hon'ble Apex Court in ***Jamiluddin Nasir vs. State of West Bengal, AIR 2014 SC 2587***. Then further there is also disclosure statement Ex.P43 of appellant-Nasib Singh himself which coincides with the above discussed disclosure statement of appellant-Santosh Devi. Even he also got recovered some incriminating articles such as photo Ex.P39, his clothes which he was wearing at the time of annihilating Hanuman (since deceased) etc. in pursuance of his said disclosure statement.

18. Then in this case the motive as alleged by the prosecution in the commission of the crime on the part of the appellants is also very strong which is further well established on record in the light of the evidence produced by prosecution during trial of the case. It is the case of the prosecution that appellant-Santosh Devi wife of Hanuman (since deceased) was having illicit relation with her neighbour Nasib Singh-

appellant. In order to clear their way for their frequent meetings with each other without any hindrance, they made a plan to eliminate said Hanuman and in pursuance thereof they committed his murder. Then it is also a fact that lust of sex is such which makes the persons concerned blind, impairing their all good senses whereby compelling them to commit any barbarous crime such as murder etc. The factum of illicit relation of both the appellants with each other is proved on the record beyond any doubt in the above discussed statements of PW-12 Bahadar Singh, PW-23 Harpal Singh and disclosure statements Ex.P33 and Ex.P43 of both the appellants-Santosh Devi and Nasib Singh respectively. In a case based on circumstantial evidence, the element of motive plays an important role.

Herein the learned State counsel has referred to an authority of *Hon'ble Apex Court titled as Raja @ Rajinder Singh vs. State of Haryana, 2015(2) RCR(Criminal)1006*, wherein it has been laid down that in case of circumstantial evidence motive assumes the great significance as its existence is an enlightening factor in the process of presumptive reasoning.

19. Then as abovesaid it is also one of the contentions of learned counsel for the appellants that the fact that deceased was last seen with appellant-Nasib Singh was disclosed to the police at a belated stage and as such this version of prosecution is neither legal nor does it inspire any confidence to rely upon it. In order to clear his contention he has submitted that statement of complainant-Bahadur Singh Ex.P9 was recorded with Police on 05.10.2008 (afternoon) and in his statement there

was no mention with regard to the fact that deceased Hanuman was seen with appellant-Nasib Singh at any time prior to the recovery of his dead body. But so far as the fact that deceased was last seen in the company of appellant-Nasib Singh was concerned, it was Harpal Singh brother of deceased Hanuman who had perceived him in the company of this appellant in the evening of 03.10.2008. He appeared during the trial of this case as PW-23 and supported the abovesaid version of last seen as relied upon by the prosecution. So if the said fact of last seen was not narrated in the statement of PW12-Bhadar Singh, then it did not cause any impact on the case of prosecution. The statement of said PW-23 Harpal Singh under Section 161 of Cr.P.C. was recorded on 05.10.2008 and then investigation of this case was started from the point of view of this last seen. Hence, the above contention of learned counsel for the appellants is found to be not tenable.

20. Regarding the material places of occurrence, since the occurrence in this case was in different parts, scaled site-plan Ex.P12, site-plan as drawn and annexed with crime detail form Ex.P49, memo as prepared on demarcation of appellant Santosh Devi qua this fact Ex.P38 and oral statements of PW22 ASI Krishan Kumar and PW26 SI Yogesh Kumar are available on the record. It is to be seen in the light of this evidence as to whether the same is consistent or discrepant on any material point qua this aspect of this case.

As above discussed, appellant-Santosh Devi suffered disclosure statement Ex.P33 qua certain material facts pertaining to the alleged occurrence, one of which was with regard to place where

Hanuman (since deceased) was murdered. Thereafter, she led the police party to that spot and identified the same on the basis of which identification memo Ex.P38 was prepared. In the scaled site-plan Ex.P12, point Mark-A is depicted as a *katchi patri* (pavement) built alongside canal where Hanuman was done to death by hitting him with *kassi*. Point Mark-B is shown in it as the spot where said Hanuman was thrown into the said canal by both the appellants. Distance shown in between these two points is 8 feet. Near to point Mark-C, where appellant Nasib Singh parked his motorcycle, some *safeda* trees bearing Nos.108, 109 and 110 are shown to be standing besides some ditches etc. Site-plan annexed with crime detail form Ex.P49 is also found to be quite consistent with the above discussed scaled site-plan Ex.P12. Then it had also come in the cross-examination of PW26 SI Yogesh Kumar that appellant Santosh Devi led the police party where Rachna was stated to be thrown in the canal which place was about 8-10 acres away from the *dhani* of Hanuman. Then she also led the police party to the place where Hanuman was murdered which was at a distance of about 2 kms. from the first place. In this regard, PW22 ASI Krishan Kumar had deposed that Badopal canal *patri* was at a distance of about 1 ½ kms. from the *dhani* of Hanuman. The alleged place where Hanuman was murdered was at a distance of about 1 ½ kms. from the spot where Rachna was alleged to be murdered. They also found some struggle marks at that spot. Then as per the record appellant Nasib Singh also pointed out the place where Hanuman was murdered, memo Ex.P36 of which was prepared. Along with this memo, crime detail form and the site-plan drawn in this regard

are also annexed and the same are also found to be consistent with the above discussed evidence led by the prosecution on this point. The above discussed entire evidence of prosecution is not found to be discrepant at all qua the above said matter. So the contention of learned counsel for appellants that version of prosecution is discrepant with regard to different places pertaining to the alleged occurrence is also found to be not maintainable.

21. So far the recovery of *kassi* used in the commission of the alleged crime is concerned, the same was got affected by appellant Nasib Singh as per his disclosure statement Ex.P43 dated 16.10.2008. He also led the police to the place of concealment of *kassi* i.e. Badopal canal by pointing out the same vide memo Ex.P35 and got recovered the same along with some other incriminating articles which were taken into police possession vide memo Ex.P20. The rough sketch of this place of recovery is, however, not available on the record. Recovery of another *kassi* from the same very area was also made on 11.10.2008 prior to this recovery after interrogating appellant Santosh Devi. These two *kassis* were also produced in the Court as Ex.MO29 and Ex.MO30 in the statement of PW26 along with other case property of this case. There is nothing on the record to hold that either the recovery of these *kassis* or the place from where same were got recovered was doubtful.

22. Then the learned counsel for the appellants has pointed out some minor discrepancies in the statements of prosecution witnesses. In this connection, he has submitted that according to PW22 ASI Krishan Kumar, complainant Bhadar Singh met the police party at about 3:00

p.m., who was alone whereas PW26 SI Yogesh Kumar on this point stated that said Bhadar Singh met the police at about 3:30 p.m. accompanied by one or two persons of his village. Then it is further his contention that according to PW22 when the police reached at the spot, dead body was already taken out of the canal and placed at the patri whereas according to PW26 when the police party reached at the spot, the dead body was lying on the bank of the canal. Then it was also his contention that according to PW22, the place from where the dead body of Hanuman was recovered was at a distance of about 3 ½ /4 kms. from his *dhani* whereas this distance as stated by PW26 was of about 2 ½ kms. Then he has also pointed out the failure of the police to join any independent person at the time of the interrogation of both the appellants. The above said all the alleged discrepancies in the statements of the said prosecution witnesses do not play any significant role to dislodge the version of prosecution. Such like discrepancies are bound to occur when statements of two or more persons are recorded qua certain facts because no person can state like a parrot with regard to the facts in issue. So far as the failure of the police to join any independent witness at the time of interrogation of the appellants is concerned, the same also does not carry any much weight or substance in the eyes of law to turn the scale of justice in favour of the appellants, since in our society, the people generally shirk to join the investigation of any criminal case and to depose against the accused for one reason or the other.

23. Then it is settled law that accused can be convicted on the basis of circumstantial evidence when the same is found to be complete

from all the aspects in order to hold him guilty. Herein the principle as laid down by the Hon'ble Apex Court in **Madhu alias Madhuranatha & Anr. Versus State of Karnataka, AIR 2014, Supreme Court, 394** is followed which is as under:-

“A conviction can be based solely on circumstantial evidence. The prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the Court where various links in the chain of circumstantial evidence are complete in themselves. The circumstances from which the conclusion of guilt is to be drawn should be fully established. 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 or point to any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. The evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable.”

24. In the light of above discussed evidence of the prosecution, material circumstantial evidence which came on the record during trial of this case in nutshell was as under:-

(i) Inter se illicit relationship of both the appellants.

(ii) Motive.

(iii) Appellant Nasib Singh was last seen with deceased Hanuman in the evening of 3.10.2008 while going on a motorcycle along with kassi to irrigate the land taken on lease.

(iv) Statement of PW7 Sanjay to show that he had given his land to

Hanuman (since deceased) and appellant Nasib Singh for one year on *theka* (lease), his turn of water started on every Friday in the evening hours and on 3.10.2008 it was his turn of water.

- (v) Joint photograph Ex.P39 of both the appellants.
- (vi) Disclosure statement of appellant Santosh Devi Ex.P33 and disclosure statement of appellant Nasib Singh Ex.P43 regarding their involvement in the commission of crime.
- (vii) Recovery of weapon of offence including other incriminating articles got made by both the appellants in pursuance of their said disclosure statements.
- (viii) Conduct of appellant Nasib Singh when he tried to escape by running on seeing the police party.
- (ix) FSL Reports Ex.P26, Ex.P51 and Ex.P53 which were submitted by the concerned laboratory, Karnal after chemically analysing the clothes of both the appellants which they had got recovered at their own in pursuance of their disclosure statements above mentioned. As per these reports, human blood was found on a *kassi*, clothes and vegetable material, though the group of blood was not got ascertained.
- (x) Medical evidence i.e. post-mortem reports Ex.P1 of Hanuman and Ex.P7 of Rachna, both coinciding with the cause of death of both deceased as given in ocular version.

25. The above discussed entire circumstantial evidence of this case clearly brings this case within the ambit of five principles as laid down by the Hon'ble Apex Court in **Sharad Birdhichand Sarda Versus State of Maharashtra, (1984) 4 SCC 116.**

26. In the light of above discussion, no substance is found in both the appeals to warrant any kind of interference in the impugned judgment. So both these appeals stand dismissed and disposed of accordingly.

Impugned judgment of conviction and order of sentence stand upheld. Copy of this judgment be sent to the quarter concerned for information and strict compliance.

11.9.2015
Brij/gaurav sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE