

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-483-DB of 2015
Date of decision: 05.10.2015.

Manna Ram Appellant.

Versus

State of Punjab and others Respondents.

Coram: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Satbir Gill, Advocate for the appellant.

S.S. Saron, J.

The appellant Manna Ram, who is the husband of Bimla Rani (deceased in the case) has filed this appeal against the judgment and order dated 10.12.2014 passed by the learned Sessions Judge, Ferozepur whereby his son in law Harmesh Ram, and Rani (respondents No.2 and 3) have been acquitted of the offences punishable under Section 120-B and Section 302 read with Section 120-B of the Indian Penal Code ('IPC' - for short).

We have heard learned counsel for the appellant and perused the records of the learned trial Court which were requisitioned.

Case FIR No.101 dated 18.05.2014 was registered at Police Station Guru Harsahai, District Ferozepur on the statement (Ex.PA) of Sunita Rani (PW1) wife of respondent No.2 - Harmesh Ram, resident of Basti Guru Karam Singh Wali, Guru Harsahai, aged 36 years. She stated that she was resident of the aforesaid address and did household work. She had studied up to 10th class. She was married about 20 years ago with Harmesh Ram (respondent No.2). Her husband was a constable in the police. She had two

sons who were aged 17 years and 15 years. She for the last three-four months was residing in the house of her husband Harmesh Ram (respondent No.2). Her parents were residing at Mohalla Peeran Wala, Dr. Hans Raj Street, Village Guru Harsahai, which was at a distance of about one kilo-metre from her house. Her husband was then a Head Constable in the Punjab Police and his belt number was 1213/FZR. He was assigned the duty of a guard in the Courts at Guru Harsahai. Her husband (respondent No.2) quite often used to quarrel with her; besides, give her a beating. He used to say that he wants to get married again, besides, she had got less dowry and was not good looking.

On the date of making the complaint, i.e. 18.05.2014 in the morning, the husband of the complainant had been quarrelling with her. He also gave her a beating. To know about this incident, Bimla Rani (deceased in the case and mother of the complainant, besides, the wife of appellant Manna Ram) had come to their house. The time then would be about 07:30 p.m. During this time, her husband also came home and he had consumed liquor. He started quarrelling with her. He was at that time carrying a three feet long cycle chain in his hand. He swung the chain and it hit on her left leg. In the meantime, her mother came forward to save her and her husband attacked her with the chain which hit her mother - Bimla Rani on her head and she fell down. The complainant raised an alarm of 'mar ditta - mar ditta' and her son Lovepreet (PW3) came and rescued her. Harmesh Ram (respondent No.2) along with the chain ran away from the spot. The complainant shook her mother - Bimla Rani but she was not conscious.

The complainant then sent her son (Lovepreet PW3) to call her brother Ashwani Kumar (PW2). When Ashwani Kumar reached there, they

arranged a vehicle and brought their mother to Civil Hospital, Guru Harsahai. The doctor there informed that her mother had died. It is stated by the complainant that her mother - Bimla Rani had died as she was hit on her head with a chain by her husband Harmesh Ram (respondent No.2). The statement had been recorded which was read and accepted as correct by her. Proceedings were asked to be initiated. The statement was signed by her in English which was verified by Lady Constable Mandip Kaur 3/FZR and was attested by Inspector/SHO Kuljinder Singh on 18.05.2014.

Police proceedings were recorded by Inspector/SHO Kuljinder Singh, Police Station Guru Harsahai which were to the effect that he was present at the police station when one 'ruqa' (memo) through a ward servant was received at the police station. Inspector/SHO Kuljinder Singh along with ASI Balwinder Singh, Head Constable Balvir Singh, Constable Gurmit Singh, Constable Jaskaran Singh and Lady Constable Mandip Kaur proceeded in accordance with the memo that was received. It was regarding the death of Bimla Rani wife of appellant - Manna Ram, resident of Dr. Hans Raj Street, Near Piri Mohalla having occurred and for carrying out investigation in this regard. They reached Civil Hospital, Guru Harsahai where they met Sunita Rani (PW1) complainant along with Ashwani Kumar (PW2) son of appellant-Manna Ram, resident of Basti Guru Karam Singh, Guru Harsahai. Sunita Rani got her statement recorded there with Mandip Kaur (Lady Constable) in the presence of her brother Ashwani Kumar. Sunita Rani read her statement and signed it in English and her brother Ashwani Kumar also signed in Punjabi. Lady Constable Mandip Kaur also signed on the statement which was attested by Inspector/SHO Kuljinder Singh. From

the statement, a case for the offence under Section 302 IPC was found to be made out against Harmesh Ram (respondent No.2). The proceedings were written and sent to the police station through Constable Jaskaran Singh for registering a case. After registration of a case, its number was asked to be informed. The special report was asked to be sent to the senior officers. The PCR, Ferozepur was also asked to be informed through wireless message. Inspector/SHO Kuljinder Singh was busy at the spot. The proceedings were recorded in the area of Civil Hospital, Guru Harsahai at 10:00 p.m. on 18.05.2014. At the police station, case FIR No.101 dated 18.05.2014 for the offence under Section 302 IPC was registered.

The investigation in the case was conducted. After completion of investigation, police report ('challan') was filed against Harmesh Ram (respondent No.2) in the Court of learned Sub Divisional Judicial Magistrate, Guru Harsahai on 15.09.2014. As regards Rani (respondent No.3) wife of Nachhtar Singh, it was mentioned that an inquiry was being conducted and when the report was received it would be informed. Copies of the 'challan' were supplied to the accused on 25.09.2014. The case was adjourned for scrutiny of documents to 04.10.2014. It was then on the said date adjourned to 13.10.2014. The SHO concerned was directed to remain present in Court on the date fixed. The case was then taken up on 13.10.2014. The investigating officer ASI Dharam Singh had appeared from Police Station Guru Harsahai. He made a statement that a Special Investigating Team (SIT) had been formed to inquire about the role of Rani (respondent No.3) wife of Nachhtar Singh in the occurrence. He further informed that report had been submitted by the Special Investigating Team to the Senior Superintendent of

Police, Ferozepur for clearance. On the next date of hearing, he stated that he would submit the inquiry or final report. The case was adjourned to 27.10.2014 on which date supplementary 'challan' with respect to accused Rani (respondent No.3) widow of Nachhatar Singh, resident of Gali No.6, Bhattha Basti was submitted.

In the said supplementary 'challan' as regards Rani (respondent No.3), it was mentioned that she filed an application against Ashwani Kumar and Rajender Kumar sons of the appellant Mana Ram, and Chainna son of unknown resident of Vehra Ghumiar Wala, Bhattha Basti, Guru Harsahai regarding rape being committed on her, besides, threats held out to her. This was inquired into by constituting a Committee, the result of which was that from secret and open inquiry, it had been brought out that Harmesh Ram (respondent No.2) who was a Head Constable in the Punjab Police was a frequent visitor to the house of Rani (respondent No.3). Sunita Rani (complainant) used to stop her husband Harmesh Ram (respondent No.2) from letting Rani (respondent No.3) come to their house as she suspected that because of this there remained a discord between her and her husband. It is mentioned that a fight and a skirmish had occurred between Harmesh Ram (respondent No.2) and his wife Sunita Rani on 18.05.2014. Because of the fight, the mother in law of Harmesh Ram (respondent No.2) namely Bimla Rani (deceased) had come to make them understand. Then there was a quarrel between Harmesh Ram and Sunita Rani. Bimla Rani came forward in the fight to save her daughter Sunita. Harmesh Ram then hit Bimla Rani with a chain on her head due to which she died. Harmesh Ram fled away from the spot. Case FIR No.101 dated 18.05.2014 was registered at Police Station

Guru Harsahai for the offence under Section 302 IPC. For the said reason, Rani (respondent No.3) widow of Nachhatar Singh in order to save Harmesh Ram (respondent No.2) from the case registered against him made a rape charge against his in-laws' family and put pressure on them.

In the inquiry, it was further mentioned that Ashwani Kumar son of appellant Manna Ram had got his statement under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' - for short) recorded in the aforesaid FIR No.101 dated 18.05.2014 registered at Police Station Guru Harsahai. His statement was to the effect that his brother in law i.e. sister's husband Harmesh Ram (respondent No.2) had illicit relations with Rani (respondent No.3). Harmesh Ram was wanting to get married to her. It was, in the circumstances, recommended by the duly constituted Committee that an opinion be obtained from the Deputy District Attorney Legal regarding registering a case and conducting an in depth investigation; besides, after receiving a fact finding report on correct facts, an inquiry be brought into effect. Rani (respondent No.3), it was observed, was attempting to give an advantage to Harmesh Ram in the FIR registered against him. Therefore, it was recommended that she be nominated as an accused for the offence under Section 120-B IPC and further proceedings be brought into effect. The report of the constituted Committee was sent to the SSP Ferozepur, who sent the report to the District Attorney (P) for obtaining legal opinion.

The District Attorney (P) on perusing the inquiry report of the Inquiry Committee in the above case, recommended for nominating Rani (respondent No.3) as an accused for committing the offence under Section 120-B IPC and for filing a 'challan' against her. On receiving the report, the

SSP Ferozepur accordingly ordered for filing a 'challan'. The accused Rani was arrested in accordance with law on 16.10.2014 and supplementary 'challan' was filed in the Court of the Illaqa Magistrate.

The learned Sub Divisional Judicial Magistrate, Guru Harsahai, on 03.11.2014 on considering the police report under Section 173 Cr.P.C. and the documents sent with it was of the view that there were sufficient grounds to proceed against the accused Harmesh Ram and Rani (respondents No.2 and 3) for the offences punishable under Sections 302/120-B IPC. The offence punishable under Section 302 IPC, it was noticed, was exclusively triable by the Court of Session. As such, the case was committed to the Court of learned Sessions Judge, Ferozepur for trial.

The case was received by commitment by the learned Sessions Judge, Ferozepur on 17.11.2014. On the said date, respondents No.2 and 3 were charge-sheeted on the allegations that they on 18.05.2014 at about 07:30 p.m. in the area of Guru Harsahai agreed to do an illegal act, viz. to commit murder of Bimla Rani and that act, viz. murder of Bimla Rani was done in pursuance of the said agreement and thereby they both committed an offence punishable under Section 120-B IPC. Secondly, Harmesh Ram (respondent No.2) on the said date, time and place in furtherance of the said criminal conspiracy of both, did commit murder by intentionally causing the death of Bimla Rani and thereby he committed an offence punishable under Section 302 IPC whereas Rani (respondent No.3) committed an offence punishable under Section 302 read with Section 120-B IPC. Both the accused (respondents No.2 and 3) were directed to be tried of the said charge. The contents of the charge were read over and explained to the accused in simple

Punjabi. They heard and understood the contents of the charge to which they pleaded not guilty and claimed trial.

The prosecution, in order to establish its case, examined Sunita Rani (PW1) wife of respondent No.2 - Harmesh Ram; Ashwani Kumar (PW2), brother of PW1 Sunita Rani and Lovepreet Singh (PW3) son of respondent No.2 - Harmesh Ram and also of PW1 Sunita Rani on 03.12.2014. They did not support the prosecution case and were declared hostile and cross-examined by the learned Public Prosecutor.

An application was filed by the prosecution under Section 311 Cr.P.C. on 03.12.2014 itself for summoning Sukha son of Mangal Singh and Parkash son of Saraj, residents of Basti Gurnam Singh, Police Station Guru Harsahai as prosecution witnesses. It was stated that they were inadvertently not cited as witnesses in the list of witnesses but their statements were recorded under Section 161 Cr.P.C. They were important witnesses to be examined for just decision of the case. Respondents No.2 and 3 stated that they had 'no objection' if the application under Section 311 Cr.P.C. was allowed. Accordingly, the learned Sessions Judge, Ferozepur on 03.12.2014 allowed the application by *inter alia* observing that their examination was essential for just decision of the case.

Parkash (PW4) and Sukha (PW5) neighbours of respondent No.2 - Harmesh Ram, besides, Rajinder Kumar (PW6), brother of PW1 Sunita Rani were examined on 10.12.2014. They also did not support the prosecution case and were declared hostile. They were cross-examined by the learned Public Prosecutor for the State and confronted with their statements made before the police.

The learned Public Prosecutor for the State on 10.12.2014 stated before the learned Sessions Judge, Ferozepur that in the present case, the complainant and the eyewitnesses to the occurrence had not supported the prosecution version and the remaining witnesses were formal in nature and the prosecution case was not likely to improve by their examination. As such, the remaining witnesses were given up being unnecessary and the prosecution evidence was closed. The learned Sessions Judge, Ferozepur considering the evidence and material on record passed the impugned order acquitting respondents No.2 and 3 of the offences for which they were charged. The appellant - Manna Ram, the husband of Bimla Rani (deceased), aggrieved against the acquittal of respondents No.2 and 3 has filed this appeal.

It is submitted by the learned counsel appearing for the appellant that Bimla Rani died due to the injuries inflicted by Harmesh Ram (respondent No.2), the son in law of the appellant, when he was beating Sunita Rani, the daughter of the appellant, and Bimla Rani was saving their daughter Sunita Rani from him. During trial of the case, the prosecution examined six witnesses but Sunita Rani (PW1), who was the complainant, besides, Ashwani Kumar (PW2) and Rajinder Kumar (PW6) who are the brothers in law of Harmesh Ram (respondent No.2) did not support the prosecution case as they had compromised due to relationship.

The other witnesses namely Lovepreet Singh (PW3), the son of Sunita Rani (complainant), as also Parkash (PW4) and Sukha (PW5) neighbours of the complainant also did not support the prosecution case. . They totally resiled from their statements made before the police. The entire

evidence, it is stated, requires re-appreciation as the acquisitions against the respondents No.2 and 3 could be brought home by producing cogent and convincing evidence.

It is stated that Ashwani Kumar (PW2) and Rajinder Kumar (PW6) did not support the prosecution case because they were not on good relations with the appellant and his wife Bimla Rani - the deceased. The appellant and his wife in fact had turned them out from their house. Therefore, they did not support the prosecution version and were won over by the accused (respondents No.2 and 3). A reference is made to an affidavit dated 09.01.2014 (Annexure P1 submitted with the appeal). The guilty persons have been wrongly acquitted by the learned trial Court.

It is also submitted that Sunita Rani (PW1) and Rajinder Kumar (PW6) had in fact given statements in a press conference where they could be seen stating that Harmesh Ram (respondent No.2) had murdered their mother. The recording of the same along with transcriptions is placed on record as Annexure P2 with the appeal.

The post-mortem report of the deceased, it is stated, corroborates the prosecution version. As per the report, the death of Bimla Rani was due to hemorrhage and shock and due to the injury to the vital organ, i.e. brain, which was ante mortem in nature and was sufficient to cause death in normal course of nature.

Therefore, it is prayed that the impugned order passed by the learned trial Court acquitting respondents No.2 and 3 of the charges framed against them may be set aside and the appeal be accepted and respondents No.2 and 3 be convicted and sentenced in the interest of justice.

We have given our thoughtful consideration to the matter and considered the contentions that have been raised.

The prosecution case is that Harmesh Ram (respondent No.2) used to quarrel with his wife Sunita Rani (PW1), who is the complainant in the case. Harmesh Ram (respondent No.2) quarrelled with Sunita Rani (PW1) on 18.05.2014 and had also given her a beating on that day. To inquire about this, Bimla Rani (deceased) wife of the appellant Manna Ram had come to the house of the complainant Sunita Rani and her husband Harmesh Ram (respondent No.2). The time would be at about 07:30 p.m. and during this time respondent No. 2 - Harmesh Ram came home. He had consumed liquor and started quarrelling with Sunita Rani (PW1). He was carrying a three feet long cycle chain which he swung and hit the complainant Sunita Rani (PW1) which hit on her leg. In the meantime, her mother Bimla Rani (deceased) came forward to rescue her and her husband (respondent No.2) hit her with the cycle chain which hit on her head and she fell down. The complainant then raised an alarm 'mar ditta - mar ditta'. Her son Lovepreet (PW3) came and rescued her. Harmesh Ram (respondent No.2) fled away from the spot along with the chain. The complainant shook her mother and she saw that she was not conscioius. Then she asked her son (Lovepreet - PW3) to call her brother Ashwani Kumar (PW2), who came there and they arranged a vehicle and took Bimla Rani (deceased) to Civil Hospital, Guru Harsahai where the doctor disclosed that she had died.

The prosecution case against Rani (respondent No.3) is that she with a view to save Harmesh Ram (respondent No.2) from the offence which was registered against him had made allegations of rape being committed on

her with a view to put pressure on the in-laws of Harmesh Kumar. In this regard, Ashwani Kumar (PW2) son of Manna Ram got recorded his statement under Section 161 Cr.P.C. in the present case. The statement inter alia is to the effect that his brother in law (sister's husband) Harmesh Ram had illicit relations with Rani (respondent No.3) and that his brother in law Harmesh Ram wanted to marry her.

Sunita Rani (PW1) while appearing in Court stated that she had no dispute with her husband Harmesh Ram (respondent No.2), who was accused and present in Court. She also stated that she did not know Rani (respondent No.3) present in Court. She stated that she did not know about the cause of death of her mother. At the said stage, the learned Public Prosecutor stated that the witness (PW1) had resiled from her previous statement and was not supporting the prosecution version. He may be permitted to put questions in the form of cross-examination to her. The learned trial Court allowed the request.

Sunita Rani (PW1) was cross-examined by the learned public prosecutor. She stated that her statement was not recorded by the police. It is stated as incorrect that the police had recorded her statement (Ex.PA). She had seen the statement (Ex.PA), which bears her signatures. She voluntarily stated that her signatures were procured by the police on blank papers while conducting proceedings regarding death of her mother (Bimla Rani). It was stated that it was neither a fact nor had she stated that Harmesh Ram (respondent No.2) had been frequently entering into quarrels with her and beating her or saying that he would re-marry or that she had brought less dowry articles or that she was not beautiful. Sunita Rani (PW1) was got

confronted with her statement (Ex.PA) from portion 'A' to 'A1' wherein it had been so recorded. She further stated that it was neither a fact nor had she stated that on 18.05.2014 her husband started quarrelling with her in the morning and gave her a beating or that her mother Bimla Rani came to ask about her well being at her house or that at about 07:30 p.m. her husband also came to the house and he was under the influence of liquor and started quarrelling with her. She was confronted with the statement (Ex.PA) from portion 'B' to 'B1' wherein it was so recorded. It was stated that it was neither a fact nor had she stated that her husband was holding a three feet long cycle chain and he gave a blow with it on her leg or in the meanwhile her mother came forward to intervene and saved her or that the accused (respondent No.2) gave her mother a cycle chain blow on her head who fell down and she raised an alarm or that her son Lovepreet (PW3) intervened and saved her or that Harmesh Ram (respondent No.2) slipped away from the spot along with the chain. She was confronted with her statement (Ex.PA) from point 'C' to 'C1' wherein it was so recorded. It is further stated by Sunita Rani (PW1) that it was neither a fact nor had she stated that her mother became unconscious or she sent her son to call her brother Ashwani Kumar (PW2) or after making arrangements for a conveyance they brought her mother to Civil Hospital, Guru Harsahai where she was declared dead or that Harmesh Ram (respondent No.2) had committed the murder of her mother by inflicting injury on her head with a chain. She was confronted with her statement (Ex.PA) from point 'D' to 'D1' wherein it was so recorded. She stated as incorrect that she had deposed falsely being won over by the accused. In cross-examination on behalf of the accused (respondents No.2 and 3), Sunita

Rani (PW1) stated that dead body of her mother was found on the road in front of her paternal house as some vehicle had struck her and she died in the roadside accident.

Ashwani Kumar (PW2) *inter alia* stated that Harmesh Ram (respondent No.2) had cordial relations with his sister (Sunita Rani - PW1). He (PW2) stated that his mother (Bimla Rani) had not gone to the house of Harmesh Ram (respondent No.2) on 18.05.2014. His mother had died due to the injuries sustained by her in a roadside accident. Harmesh Ram (respondent No.2), it is stated, was present in the Court, but he did not know Rani (respondent No.3). At the said stage, he was got declared hostile by the learned Public Prosecutor and cross-examined.

In his cross-examination, Ashwani Kumar (PW-2) stated that his statement was not recorded by the police. It is stated as incorrect that Mark PW2/A was his statement recorded by the police. It was neither a fact nor he stated that on 18.05.2014 at about 07:30 p.m. his mother Bimla Rani had gone to the house of his sister Sunita (PW1) to ask her about her well being or that Harmesh Ram (respondent No.2) gave a beating to her with an intention to kill her or that his mother intervened to save his sister or that Harmesh Ram (respondent No.2) inflicted a cycle chain blow on the head of Bimla Rani or that her sister called him and after making arrangements for a conveyance, they took Bimla Rani to Civil Hospital, Guru Harsahai where she was declared dead or that his mother had died as she tried to intervene when Harmesh Ram was inflicting injuries upon Sunita or that Harmesh Ram wanted to kill his sister Sunita Rani to solemnize his marriage with Rani. Ashwani Kumar was confronted with the statement Mark PW2/A from point

'A' to 'A1' where it had been so recorded. It is further stated by him that his statement was not recorded by the police on 15.10.2014. It is stated as incorrect that Mark PW2/B was his statement recorded by the police on that date. It is stated that it was neither a fact nor did he state that Harmesh Kumar (sic.- Ram) was having illicit relations with Rani or that he (Harmesh Ram) wanted to kill Sunita and solemnize his marriage with Rani. He was confronted with the statement Mark PW2/B from portion 'A' to 'A1' wherein it had been so recorded. He stated that it was neither a fact nor did he state that he never went to the house of Rani, and she never conspired against him (Ashwani Kumar) to pressurize him to enter into a compromise. He was confronted with the statement Mark PW2/B from portion 'B' to 'B1' wherein it was so recorded. At portion 'B' to 'B1' it is recorded that he (Ashwani Kumar) never went to the house of Rani widow of Nachhatar Singh and neither did he see her house. This conspiracy was being hatched by Rani was being done to save their brother in law Harmesh Ram and they by putting pressure wanted them to compromise. It is stated as incorrect to suggest that he had deposed falsely being won over by the accused. The cross examination on behalf of the respondents No.2 and 3 was nil, although opportunity was given.

Lovepreet Singh (PW3) is the son of Harmesh Ram (respondent No.2) and Sunita Rani (PW1). It is stated by him that his father i.e. Harmesh Ram had cordial relations with his mother i.e. Sunita Rani. He did not know Rani (accused) present in Court. Bimla Rani (deceased) was his maternal grandmother. It is stated that Bimla Rani died on account of injuries sustained by her in a road side accident. The learned Public Prosecutor at the said stage got Lovepreet Singh (PW3) declared hostile and his request for

cross-examining him was allowed. In cross-examination it is stated by Lovepreet Singh (PW3) that his statement was not recorded by the police. It is stated as incorrect that Mark PW3/A was his statement recorded by the police. It was neither a fact nor did he state that on 18.05.2014 at about 8.00 pm he was playing with his friends outside the house and returned back to his house and his father Harmesh Ram was quarrelling with his mother Sunita Rani or that his maternal grandmother Bimla Rani fell on the ground and on seeing him Harmesh Ram who was armed with a cycle chain slipped away from the spot or that they took Bimla Rani to Civil Hospital, Guru Harsahai where she was declared dead. He (PW3) was confronted with the statement Mark PW3/A from portion 'A' to 'A1' wherein it had been so recorded. It is stated as incorrect to suggest that he had deposed falsely being won over by the accused. In cross examination by the accused (respondents No.2 and 3), it is stated that the houses of Parkash (PW4) son of Saraj and Sukha (PW5) son of Mangal Singh were at a distance of about half a kilometer from their house. They had not visited their house on 18.05.2014.

Parkash (PW4) also did not support the prosecution case and was declared hostile. He stated that he did not know Rani (accused); besides, Harmesh Ram did not have any dispute with his wife. The mother in law of Harmesh Ram i.e. Bimla Rani, it is stated, died in a road side accident. He was cross examined by the public prosecutor. He denied having made any statement to the police. It is stated as incorrect that his statement Mark PW4/A was recorded by the police. It is stated as correct that the name of the wife of Harmesh Ram (respondent No.2) was Sunita (PW1). It is stated that it was neither a fact nor did he state that Harmesh Ram had developed

relationship with Rani and they wanted to solemnize marriage or that Harmesh Ram had been hurling abuses and entering into quarrels with his wife or that on 18.05.2014 Harmesh Ram had a quarrel with his wife Sunita Rani or that Bimla Devi, mother of Sunita Rani came to the house of Harmesh Ram or that at about 7.30 pm, Harmesh Ram entered into a quarrel with Sunita Rani or that Bimla Rani intervened and Harmesh Ram inflicted a cycle chain blow on her head which resulted in her death. He was confronted with the statement Mark PW4/A from portion 'A' to 'A1' wherein it was so recorded. It is stated as incorrect that he had deposed falsely being won over by the accused.

Sukha (PW5) a witness from the neighbourhood of Harmesh Ram also did not support the prosecution case. He stated that he did not Rani (accused) present in Court. Harmesh Ram, it is stated, was not having dispute with his wife. The mother in law of Harmesh Ram had died in a road accident. At the said stage, the learned public prosecutor stated that the witness (PW5) had resiled from his previous statement and was not supporting the prosecution version. He prayed that he may be permitted to put questions in the form of cross-examination. His request was allowed.

In cross examination it is stated by Sukha (PW5) that his statement was not recorded by the police. It was stated as incorrect that his statement Mark PW5/A was recorded by the police. It is stated as correct that the name of the wife of Harmesh Ram (respondent No.2) was Sunita (PW1). It is stated that it was neither a fact nor had he stated that Harmesh Ram (respondent No.2) had developed relationship with Rani (respondent No.3) and they wanted to solemnize their marriage or that Harmesh Ram

(respondent No.2) had been hurling abuses and entering into quarrels with his wife or that on 18.05.2014 Harmesh Ram had a quarrel with his wife Sunita Rani or that Bimla Devi, the mother of Sunita Rani, came to the house of Harmesh Ram or that at about 7.30 pm Harmesh Ram entered into a quarrel with his wife Sunita Rani or that Bimla Devi intervened and Harmesh Ram inflicted a cycle chain blow on the head of Bimla Devi which resulted in her death. The witness was confronted with the statement Mark PW5/A from portion to 'A' to 'A1' wherein it had been so recorded. It is stated as incorrect that he had deposed falsely being won over by the accused.

Rajinder Kumar (PW6) stated that Harmesh Ram (respondent No.2) was the husband of his sister Sunita Rani. He stated that Harmesh Ram did not have any relationship with Rani (respondent No.3). He had cordial relations with his sister. His (PW6's) mother (Bimla Devi) died on account of injuries sustained by her in a road side accident. Rajinder Kumar was at this stage got declared hostile and cross examined by the learned Public Prosecutor. He stated that his statement was not recorded by the police and it was incorrect that his statement Mark PW6/A was recorded by the police. It is further stated that it was neither a fact nor had he stated that Harmesh Ram had developed relationship with Rani and on that score he did not want to keep Sunita Rani with him or that there used to remain a dispute between them or that his mother Bimla Devi (deceased) had gone to the house of Sunita Rani or that Harmesh Ram started beating Sunita Rani or that Bimla Rani intervened or that Harmesh Ram gave a cycle chain blow on the head of his mother Bimla Rani, which resulted in her death. The witness was confronted with the statement Mark PW6/A from portion 'A' to 'A1' wherein

it had been so recorded. It is stated as incorrect that he had deposed falsely being won over by the accused.

It is after the above evidence had been recorded that the public prosecutor for the State made a statement before the Court that the complainant and the eye witnesses to the occurrence did not support the prosecution case and the remaining witnesses were formal in nature. The case of the prosecution was not likely to improve by their examination, as such he gave up the remaining witnesses.

There is indeed no evidence on record which would in any manner establish the guilt of the accused Harmesh Ram and Rani (respondents No.2 and 3). However, it is submitted on behalf of the appellant, who is the husband of Bimla Rani (deceased) that the affidavit Annexure P1, which he has attached with the appeal and which was deposed by him and his wife Bimla Rani (deceased) on 09.01.2014 shows that Ashwani Kumar (PW2), Rajinder Kumar (PW6), their wives: i.e. Rani wife of Ashwani Kumar and their sons Prince, Ajay Kumar alias Bunny and Sagar sons of Ashwani Kumar; besides, Suman alias Soma Rani wife of Rajinder Kumar (PW6) and their son Ankush Kumar son of Rajinder Kumar mentions that they were out of the reach of the appellant and his wife Bimla Rani and they often went by volition of their own mind. They had taken from them i.e. from the appellant and his wife Bimla Rani whatever share they were entitled to in the movable and immovable properties. The affidavit (Annexure P1) further mentions that they along with their families were being dispossessed from their movable and immovable properties. Ashwani Kumar (PW2), Rajinder Kumar (PW6), their wives: i.e. Rani wife of Ashwani Kumar and their sons

Prince, Ajay Kumar alias Bunny and Sagar sons of Ashwani Kumar; besides, Smt. Suman alias Soma Rani wife of Rajinder Kumar their sons Ankush Kumar son of Rajinder Kumar would have no concern or connection with them or their other heirs and relatives in future.

The said affidavit (Annexure P1) dated 09.01.2014 is not a part of the trial Court record. Even if it is taken that the appellant and his wife had disowned their sons Ashwani Kumar (PW2) and Rajinder Kumar (PW6), their wives and children, would not in any manner establish the prosecution case so as to hold that Harmesh Ram (respondent No.2) had committed the murder of Bimla Rani or that Rani (respondent No.3) had conspired in the commission of the alleged murder. In other words, the affidavit (Annexure P1) even if it is taken into account, would not be an eye witness account of the incident that had occurred. It would at the most be a circumstance from which it can be said that relations between the appellant Manna Ram and his wife Bimla Rani (deceased) on the one side were not cordial with their sons Ashwani Kumar (PW2) and Rajinder Kumar (PW6), besides, their wives and sons i.e. Rani wife of Ashwani Kumar and their sons Prince, Ajay Kumar alias Bunny and Sagar sons of Ashwani Kumar, and Suman alias Soma Rani wife of Rajinder Kumar and their son Ankush Kumar son of Rajender Kumar on the other. Therefore, even though Ashwani Kumar (PW2) and Rajinder Kumar (PW6) may have resiled from their statements, the affidavit (Annexure P1) cannot be taken to be such circumstantial evidence from which it can be said that the chain of circumstances was complete pointing to the guilt of the accused and no reasonable inference could be drawn regarding their innocence.

In respect of circumstantial evidence, the circumstances from which a conclusion of guilt is to be drawn are to be fully established and all the facts so established are to be consistent only with the hypothesis of the guilt of the accused. Besides, the circumstances must not only be compatible with his guilt but these should also be incompatible with his innocence.

In Hanumant Govind Nargundkar and another v. State of Madhya Pradesh, AIR 1952 SC 343, it was said that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The affidavit (Annexure P1) which was deposed earlier by the appellant Manna Ram and his wife Bimla Rani on 09.01.2014 even if it is taken to be proved would not be such a circumstance when considered with the other evidence on record to hold that Harmesh Ram (respondent No.2) had committed the murder of his mother in law Bimla Rani or that Rani (respondent No.3) had conspired with Harmesh Ram.

The other material that has been placed on record in the appeal is a CD (compact disc.) along with its transcription as Annexure P2. It is stated

that the CD contains statements of Sunita Rani (PW1) wife of Harmesh Ram (respondent No.2) and that of Rajinder Kumar (PW6) before the media. Sunita Rani (PW1) before the media reportedly stated that she was quarrelling. Her husband was beating her. She sent a message to her mother and she came. Earlier he gave a chain blow to her and then he gave two blows to her mother (deceased). She fell on the ground and died at the spot. Then her brother came and took her to the hospital. To a question as to what was her husband doing, Sunita Rani replied that he was a Constable in the police.

Rajinder Kumar (PW6) also reportedly stated before the media that his brother in law Harmesh Ram was a Constable in the Police and he was usually posted on the guard duty of a Judge. He had kept one more lady. He gave a chain blow to his sister. She fell down. Then he gave two-three chain blows and his mother died at the spot. They took her to the hospital where she was declared dead. Harmesh Ram used to tell his sister that she was not beautiful and she had brought less dowry. Harmesh Ram had kept one more lady. As they were poor persons, they had given dowry as per their capacity. To a question as to how many years ago was the marriage solemnized, he replied that the marriage was solemnized about 17-18 years back. Harmesh Ram was usually quarrelling and beating his sister from the beginning. To another question as to how many children did they have, he replied that they had two boys, one was 17 years and the other was 15 years old.

The said statements alleged to be made before the media by Sunita Rani and Rajinder Kumar are sought to be produced on record by way of CD. Even if it these are to be taken into account, the same would show that

relations between Harmesh Ram and his wife Sunita Rani (PW1) were not cordial and nothing beyond that. The CD (Annexure P2) in fact is not on record. It is an electronic record and the manner in which it is to be proved has not been submitted. The procedure for taking the same in evidence has been laid down by Hon'ble the Supreme Court in Anwar P.V. v. P.K. Basheer, 2014 (4) RCR (Civil) 504 wherein it has been held that giving of statements in any proceedings pertaining to an electronic record is permissible subject to certain conditions. The following observations of the Supreme Court are apposite:-

“13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or

production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B (2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65-B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B (2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best

of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A - opinion of Examiner of Electronic Evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.”

The CD (Annexure P2) and its transcription do not in any

manner satisfy the requirements of the legal position as laid down by Hon'ble the Supreme Court. In fact no application has been filed for leading additional evidence or proving the affidavit (Annexure P1) and the CD (Annexure P2). Besides, even if the same are taken into account would not improve the prosecution case when considered with the other evidence and material on record.

It may also be noticed that the except for the statement (Ex.PA) of Sunita Rani (PW1) made before the police, the statements of the other witnesses i.e. Ashwani Kumar (PW2), Lovepreet Singh (PW3), Parkash (PW4), Sukha (PW5) and Rajinder Kumar (PW6) made before the police have not been proved on record. They were confronted with their statements before the police which were marked only and not exhibited in accordance with the procedure for exhibiting and proving documents on record in criminal trial. Therefore, the statements made by Ashwani Kumar (PW2), Lovepreet Singh (PW3), Parkash (PW4), Sukha (PW5) and Rajinder Kumar (PW6) before the police are in any case not proved on record. This worsens the prosecution case.

A reference has also been made to the postmortem report of Bimla Rani. A copy of the postmortem report is placed on the record. However, the said postmortem report has not been proved on record. Dr. Delphina Paul, Civil Hospital, Ferozepur, it is mentioned conducted the postmortem examination on the dead body of Bimla Rani. However, she was not examined and neither the postmortem report proved on record. Therefore, the contents of the same are not liable to be read in evidence so as to establish the cause of death of Bimla Rani. Even otherwise, if the cause of

death is established, the same would not be of much consequence as there is no other material to substantiate the allegations of murder of Bimla Rani.

In the circumstances, there is no material on record to establish the guilt of the accused (respondents No.2 and 3) and even if the joint affidavit (Annexure P1) of the appellant and his wife as also the CD (Annexure P2) relating to certain statements alleged to have been made by Sunita Rani (PW1) and Rajinder Kumar (PW6) before the media are taken into account the same would not be of much significance.

In the circumstances, there is no merit in the appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

05.10.2015
A.Kaundal

This is one of some cases received by me from my learned brother on 06.01.2018. It is being signed by me even now, despite him having demitted office after 'retirement', the detailed judgment being in consonance with what was pronounced by us in Court when his Lordship was very much holding office. In fact, it needs to be stated that in the other cases received, where I have agreed with the judgment of my brother, an identical separate order (as this one) has been passed by me, there being no reason to pass different orders in identical situations, where on merits I agree with his judgments (in each separate case).

Thus, the detailed judgment in fact giving effect to what was pronounced, it would be unfair, in my opinion, to put the matter up for rehearing, especially in view of what has been held first by the Privy Council in **Firm Gokal Chand Jagan Nath v. Firm Nand Ram Das-Atma Ram** AIR 1938 PC 292 and subsequently by the Supreme Court in **Surendra Singh and others v. State of Uttar Pradesh** AIR 1954 SC 194 and **Iqbal Ismail Sodawala v. The State of Maharashtra and others** (1975) 3 SCC 140.

In *Firm Gokal Chand*, it was held by their Lordships as follows:-

“A further point was raised by the appellants. They urged that the judgment of the High Court appealed from was not a valid judgment because it failed to comply with Order 41, Rule 31, Civil Procedure Code. The relevant facts on this issue are that the hearing in the High Court was before two Judges, Harrison and Agha Haider JJ., and was actually delivered by the former Judge, the latter agreeing. The judgment was delivered on 22nd February 1933, but Harrison J. went on leave before signing the judgment, which was signed by Agha Haider J., the Deputy

Registrar appending a note that Harrison J. had gone on leave before signing the judgment he delivered. Order 41, Rule 31 requires that the judgment of the Appellate Court shall be in writing and shall state various matters, and “shall at the time that it is pronounced be signed and dated by the Judges or by the Judges concurring therein.”

8. The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the Rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The Rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required; to comply with for that object. No doubt in practice Judge do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by Sections 99 and 108. Civil Procedure Code section 99 provides that no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. That Section comes in the part dealing with appeals from original decrees. But Section 108 applies the same provision to appeals from appellate decrees and it is always in the discretion of the Board to apply the principle on appeal to His Majesty in Council. In their Lordships' judgment the defect here was an irregularity not

affecting the merits of the case or the jurisdiction of the Court, and is no ground for setting aside the decree.”

That of course was a matter pertaining to a civil case, but the judgment in *Surendra Singh* was in the case of a criminal appeal before the Allahabad High Court. In that case, after having signed the draft of a judgment that had been reserved and sending it to the other member of the Division Bench, the hon'ble Judge who had sent the draft (Bhargava, J.) unfortunately died before the judgment was pronounced.

In such a situation, their Lordships of the Supreme Court held that the judgment subsequently pronounced by Kidwai, J. could not be held to be a valid judgment and therefore the death sentence upheld in the case of one of the appellants and the sentences for lesser periods for different offence in respect of the other appellants, could not be held to be operative and that hence, the appeals would have to be reheard by the High Court. Thus, in that case the judgment was never actually pronounced by Bhargava, J. before he died and what was signed and sent by him to Kidwai, J. was a draft judgment. Therefore, it was held that it could not be presumed that Bhargava, J., (had he remained alive), could not have changed his mind before pronouncing the judgment.

In the present case the judgment having been duly pronounced in Court, to the effect that the appeal of the appellant is dismissed, the situation as existed in *Surendra Singhs'* case (supra) is not applicable.

In *Sodawalas'* case (supra), it was not a judgment in appeal that was in question but the judgment of the trial Court itself, which had been pronounced in Court but had not been delivered after signature and transcription, to the accused.

Referring to the judgment in *Surendra Singhs'* case as also to *Firm Gokal Chand*, it was held that the learned Sessions Judge not appending his signatures to the judgment at the time it was pronounced, due to it not having been transcribed, was a procedural irregularity which would not vitiate the conviction of the accused.

In the present case, though there is no issue of any transcription from one language to another, but nonetheless, the judgment drafted by my learned brother being, to repeat, in elaboration of and giving reasoning for what was pronounced in Court, in my opinion, it would be appropriate to issue the judgment formally even now, though a very long time has elapsed since its pronouncement.

It needs to be noticed here that in **Vinod Kumar Singh v. Banaras Hindu University and others** (1988) 1 SCC 80, it was held by the Supreme Court that a judgment which has been pronounced but not signed, can be even modified, if there are adequate reasons for the same, in which situation, the matter should be placed for further consideration, upon notice to parties.

That situation does not arise in the present case as the detailed judgment is not different from the order pronounced in Court on 05.10.2015.

Consequently, I agree with the judgment of my learned brother S.S. Saron, J.

(AMOL RATTAN SINGH)
JUDGE

January 16, 2018

dinesh