

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA No.D-898-DB of 2014
Date of Decision: February 23, 2015.

State of Punjab

...Appellant

Versus

Ram Sewak

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. Rajesh Bhardwaj, Addl. Advocate General, Punjab

Dr. Amarpreet Sandhu, Amicus Curiae,
for the respondent-Ram Sewak.

Amol Rattan Singh, J.

This case, which has a strange and 'longish' history, arises out of a statement made by one Gurinder Pal Singh son of Salwant Singh, resident of Village Burj Sidhwan, under the jurisdiction of Police Station City, Malout, on 25.05.2001, which is reproduced as follows:

“Statement of Gurinder Pal Singh son of Salwant Singh caste Kanboj Sikh resident of village Burj Sidhwan PS City Malout, aged about 37 years.

It is stated that I am resident of Village Burj Sidhwan and doing the work of agricultural. I have kept Nathu Ram and his family as Mali about one year ago in my own field. In the filed one house also has been built in which they all were residing. Today morning when I along with Harbans Singh Chowkidar time at about

07:00 AM to visit my field when we reached near the house built in the field then we saw that Nathu Ram son of Ajai Parshad age about 45 years, Yamna Devi wife of Nathu Ram aged about 40 years, Raj Kumar @ Raju son of Nathu Ram aged about 20 years, Daughter Rekha age about 18 years, Lakhi age about 12 years, Kunta (dohti) age about 9 years, Mannu (Dohta), were lying on the ground in the pool of blood, to whom any unknown persons murdered with the intension of enmity with sharp edge weapon after doing rape with Rekha and Yamna Devi with cruelty. Chowkidar Harbans Singh has been left near the dead bodies I reached to Sarpanch to give information then ahead Ram Gopal son of Ajai Ram met me, to whom I narrated the whole story and also sent him to see / look after the dead bodies, I was going to police station to inform, you met me near Burja Wala Phatak, Malout. Statement got recorded before you. I am the complainant, action be taken.

Sd/- Gurinder Pal Singh above in English”

As per the statement, 7 persons had been killed by some unknown persons, sometime during the night intervening 24/25.05.2001 and, of the three females killed, two had also been subjected to rape.

The said statement made before Sub-Inspector Jaswinder Singh, was converted into FIR No.33 dated 25.05.2001 and registered at Police Station, City, Malout, in respect of the commission of offences punishable under Sections 302/376/379/411 of the Indian Penal Code

2. After necessary formalities, the “inquest” reports are stated to have been prepared on the spot by Sub-Inspector Jaswinder Singh, who later appeared before the trial Court as PW-19.

Photographs of the deceased persons were also taken on

25.05.2001 by one Aatma Singh of a photo-studio in the city.

As per the “inquest” reports prepared in respect of the death of all 7 persons named in the statement of Gurinder Pal Singh, the injuries caused upon all the bodies were by a sharp edged weapon and the injuries were at an inclined angle “(inclined injuries)”.

The bodies having been sent for postmortem examinations, the obvious injuries were recorded, caused mainly on the face and neck regions on all the bodies. Pieces of the intestines, stomachs, lungs, brains and other body parts were also sent for chemical examination, upon which it was found that all the bodies had constituents of aluminum phosphide in the brain, lungs, liver, spleen and kidneys. However, the opinion of the doctors who conducted the postmortem examination, who appeared as prosecution witnesses later, was uncertain and divided as to whether poisoning could have been a contributory factor towards the death of all the deceased or whether they had died only because of the injuries inflicted upon them. Of course, one common opinion was that de hors the poisoning, death could have been caused in all seven cases by the visible injuries alone.

3. Though we do not find it necessary to describe the visible injuries in detail, however, since there was an allegation of rape also, it is necessary to refer to the postmortem report of the two ladies who were killed, i.e. Jamuna Devi wife of deceased Nathu Ram and Rekha, aged 18 years, daughter of deceased Nathu Ram.

As regards Jamuna Devi, other than incised wounds on her face and neck, all other organs were found to be healthy, but semen was found present on the vaginal swabs taken from her body.

As regards Rekha, again, apart from the incised wounds on her

face and neck, all other organs were found to be healthy, but it was also recorded that “copious amount of semen fluid was coming out of the intriotus”. The intriotus was described to be wide, blackened edged, with old tears of hymen present. The vagina was found loose.

Other than this, a reddish contusion, irregular in shape, 1 c.m. in diameter was also found on the posteromedial aspect of the right thigh, in its middle. Semen was also found present on the thigh and a scraping was taken for a DNA test, along with vaginal swabs taken from the body.

4. Subsequently, during deposition, Dr. Jasjiwan Kaur, who had conducted the examination of these two ladies, had testified and opined that in the case of Rekha, the presence of the semen showed that the deceased (Rekha) had sexual intercourse just before her death.

As regards Jamuna Devi, the doctor later opined in testimony that due to the presence of the semen, the deceased also seemed to have had sexual intercourse prior to her death.

Dr. Jasjiwan Kaur also stated that she could not co-relate the semen examination, which was positive, with any accused, as she had not been shown the DNA reports of either of the two deceased ladies and, as such, she could not also tell whether the semen found on both the two bodies was of the same male person or not.

It is necessary to mention here that the other female deceased, i.e. Kunta, aged about 9 years, was not shown to have been subjected to any sexual assault. She was stated to be the grand daughter (daughters' daughter) of deceased Nathu Ram.

5. As is obvious from the statement of Gurinder Pal Singh, the complainant, no specific person was named as a suspect or was accused of

the crime.

However, respondent Ram Sewak was arraigned as an accused on the statement of one Chhota Singh son of Nand Singh, resident of Burj Sidhwan and of one Azad son of Ram Gopal, permanent resident of Pakrian, Police Station Meerapur, District Farooqabad, but then resident of Burj Sidhwan. These statements are said to have been made to Sub Inspector Jaswinder Singh, as is discernible from the commitment order passed by the learned Sub-Judicial Magistrate, Malout, though no such statements of Chhota Singh and Azad, were exhibited as a part of the prosecution evidence. Chhota Singh, however, later appeared as PW6.

As per the commitment order, the statement of one Rani, wife of Balbir Singh, who is another daughter of deceased Nathu Ram and Jamuna Devi and mother of Kunta and Manu, was also made to the police, to the effect that after committing the murder, the assailant had also committed theft of some articles.

6. Respondent Ram Sewak is stated to have been in custody on 14.06.2001 in connection with another FIR registered against him on 13.06.2001, for the alleged commission of offences punishable under Sections 379 and 411 IPC, at Police Station, Sadar, Malout.

7. Consequently, he is stated to have been arrested in the present case also, while in custody in the other case and, during investigation, he is stated to have suffered a disclosure statement under Section 27 of the Evidence Act and got recovered one blood stained axe (wrongly translated as a spade in the commitment order, as it should actually be read as axe, from "Kulhari"), which was taken into possession and a recovery memo recorded.

Articles such as clothes and a bicycle (make Hero), were also stated to have been taken into possession vide a separate recovery memo, on the disclosure statement allegedly made by the accused. Thereafter, the report under Section 173 Cr.P.C. was presented to the Court.

8. Though the commitment order makes out offences punishable under Sections 302, 376, 379, 411 of the IPC, the chargesheet served upon the respondent did not make out a case under Section 376 of the IPC, but offences punishable under Sections 302, 379, and 411 of the IPC were made out.

9. Before we come back in detail to the evidence before the trial Court, it is appropriate first, to bring on record a brief history of this case itself.

10. Initially, after the trial was conducted, the respondent was found guilty of the murder of the 7 persons named in the FIR, i.e. Nathu Ram, Jamuna Devi w/o Nathu Ram, Raj Kumar @ Raju s/o Nathu Ram, Rekha d/o Nathu Ram, Lakhi s/o Nathu Ram, Kunta and Maninder @ Manu, daughter and son respectively, of Balbir Singh (grand daughter and grandson of Nathu Ram).

However, even while holding that the evidence was suggestive of the fact that sexual intercourse took place with Jamuna Devi and Rekha, before committing their murder, no conviction was recorded for rape, because no charge in that regard had been framed.

As regards the charge for an offence punishable under Section 411 of the IPC, the respondent was acquitted of the said charge for lack of evidence in that regard.

11. Having held the respondent guilty of 7 murders vide judgment

dated 07.07.2004, the Addl. Sessions Judge (Adhoc) (Fast Track Court), Faridkot, sentenced him to death on 08.07.2004.

12. Thereafter, when the reference came up for hearing before a coordinate Bench, along with the appeal filed by the respondent against his conviction and sentence, applications were moved under Sections 216, 313 and 367 Cr.P.C. read with Section 482 Cr.P.C., seeking further enquiry and additional evidence.

Consequently, vide order dated 07.03.2005, this Court set aside the conviction and sentence passed on the accused and remitted the case to the trial Court, with a direction to reframe the charge since there was no charge framed for the commission of an offence punishable under Section 376 of the IPC, and to put necessary questions to the accused (present respondent), with regard to the evidence of him having been last seen with one of the deceased (Nathu Ram). Liberty was also given to the trial Court to re-write a detailed judgment, as per the totality of the evidence before that Court.

13. Consequently, on the matter being remitted to the trial Court, a charge for an offence punishable under Section 376 of the IPC was also added by that Court, to the original charges framed under Sections 302, 379 & 411 of the IPC.

14. The Additional Public Prosecutor, thereafter, made a statement that he has no further evidence to lead, nor does he require any witness to be recalled.

The defence, on the other hand, made an application seeking the recall of all the prosecution witnesses, in order to subject them to further cross-examination.

As such, all the prosecution witnesses, except Dr. Santokh Singh, PW-7, were recalled in order to subject them to further cross examination on behalf of the accused. The said Dr. Santokh Singh could not be recalled as he had left India.

15. After reconsidering the evidence, including the evidence by way of further cross examination of prosecution witnesses, the learned Addl. Sessions Judge (Adhoc) (Fast Track Court), Muktsar, finally acquitted the respondent of all charges, including the added charge under Section 376 IPC, on the ground of lack of evidence to prove any of those charges.

16. Thereafter, the State of Punjab filed a petition seeking leave to appeal against the said judgment dated 05.07.2005, bearing CrI. Misc. Application No.A-495-MA of 2005, in which notice was issued by a coordinate Bench on 20.03.2007.

17. The respondent, Ram Sewak, not having been served with the summons issued against him,ailable and then non-ailable warrants were issued, in order to try and secure his presence.

However, on hearing after hearing, on the application seeking leave to appeal, various Division Benches of this Court were informed that the respondent could not be served for lack of proper address.

Eventually on May 01, 2014, 7 years after notice was first issued, this Court passed the following order:-

“The appellant-state has filed an affidavit dated 29.04.2014 giving details of the efforts made to trace whereabouts of Ram Sewak, who was accused in 7 murders and a rape, but was acquitted.

The appeal was filed in the year 2005. Despite lapse of 9 years, the police is unable to trace Ram Sewak. We, therefore, called upon the State to clarify its position with regard to the appeal. Instead of clarifying its position, the State has filed an affidavit detailing its efforts to trace the whereabouts of Ram Sewak.

Accepting for a moment an averment in the affidavit that the State is in a position to trace Ram Sewak, we put the state to notice that in case they do not trace Ram Sewak, before the next date of hearing, this Court may recommend proceedings against officers concerned, particularly as from 2005 to 2011, no meaningful steps were taken.”

18. Under threat of proceedings being initiated against the concerned officers, finally Ram Sewak was produced before this Court by the State, on 27.05.2014, and a status report to that effect was filed by the Senior Superintendent of Police, Sri Muktsar Sahib.

19. The respondent having informed us that he was financially incapable of engaging any counsel to defend him, we appointed Dr. Amarpreet Sandhu as Amicus Curiae, though, in effect, to defend the respondent, the State already being present to further prosecute the case.

20. Leave to appeal was granted and since Ram Sewak was not in a position to furnish bail and surety bonds, he was directed to be detained in the Model Jail, U.T., Chandigarh, till such time that he furnishes such bonds.

Keeping in view the fact that he had actually been acquitted but nonetheless was sought to be still accused of 7 murders and rape, the appeal was directed to be heard on 29.05.2014, with the Crl. Misc. Application having been converted into an appeal.

The matter was then heard over two days and reserved on 30.05.2014.

21. Coming back now to the entire evidence led before the trial Court, both, at the first stage, and subsequently by way of further cross-examination of the prosecution witnesses, after remand of the case to that Court.

22. As already noticed, the Chemical Examiners' report is to the effect that aluminum phosphide was found present in the pieces of all the organs that were sent for examination, from the bodies of the 7 deceased persons, though nothing conclusive with regard thereto, was opined.

Out of the 5 doctors who had conducted the postmortem examinations on the bodies, Dr.G.S.Bhullar, upon being recalled for further cross-examination, had also stated that aluminum phosphide is available in the form of tablets and that aluminum phosphide reaches the organs after the tablets are absorbed, though he could not give the time when the deceased had taken food before death, as all the contents of the stomach had been sent to the Chemical Examiner.

Nothing significant, other than what has already noted earlier, can be discerned from the testimonies of the doctors, who conducted the postmortem examinations. However, it is necessary to mention that when they were recalled for further cross-examination on remittance of the case to the trial Court, they all stated that though the weapon alleged to be the

weapon of offence was not shown to them, the wounds could have been caused by a 'kassi' (described as a spade in the translated version of the inquest report and other proceedings, though actually, it is an inverted spade used commonly for manual earth digging purposes).

23. The semen swab and vaginal swabs were sent to the Chemical Examiner, Government of Punjab, who confirmed the presence of semen on the swabs. For DNA examination, blood samples of the respondent as also of the two ladies alleged to have been raped, i.e. Jamuna Devi and Rekha, along with their vaginal swabs, were sent to the Director-cum-Chemical Examiner to the Government of India, at the Central Forensic Science Laboratory, Calcutta. As per the report of the laboratory, the samples being highly degraded and putrefied, DNA isolation and amplification was not possible. The remnants of the samples are said to have been consumed, as per the report of the laboratory at Calcutta.

24. As regards the samples of blood stained soil lifted from around the 7 bodies, nothing significant was discovered, other than the fact that it was human blood.

Similarly, the blood stated to have been taken from the 'kahi/kassi' and the 'kuhadi/kulhadi', was also simply found to be human blood, by the laboratory in Punjab.

25. An important aspect of the case is that cooked vegetables, flour, milk and a 'laddoo' (a sweet) were also discovered at the place of occurrence and were collected and sent to the laboratory for analysis. As per the report of the Forensic Science Laboratory, Punjab, a drug from the Benzodiazepine group (a psychotropic substance) was detected in the laddoo, though was not present in the other food items.

26. Finger Prints are also stated to have been lifted from 3 empty/half empty glass bottles of country liquor but, strangely, though these bottles containing finger prints were sent to the Finger Prints Expert at the Finger Prints Bureau, Phillaur, Punjab, the finger prints of the respondent-accused were not sent to the Finger Prints Bureau, despite a request in that behalf by the Director of the Bureau, as can be discerned from his report, exhibited as Ex.P-34 before the trial Court.

It needs to be specially noticed and discussed here that an adverse inference had been taken by the trial Court, in the first round of the trial, against the respondent, upon his having refused to submit his finger prints for examination, for comparison with those on the liquor bottles. In fact, as is discernible from the judgment, the prosecution moved an application to the Illaqa Magistrate to get thumb impressions of the accused, for the purpose of comparison with the finger prints on the glass bottles but, as per statement of the accused, recorded by the Magistrate on 18.06.2001, the accused stated that he was not willing to give his finger prints as well as foot prints for the purpose of comparison. This statement of the accused having been proved by PW-4 Ram Chand, who was the Reader of the Court of the Judicial Magistrate, a strong adverse inference was drawn from such refusal, for which no reason was given by the accused.

It needs to be stated here that though, normally, an appellate Court would independently apply its mind to the evidence, but we, nonetheless, have read the judgments in this particular case, after appreciating the entire evidence, in order to determine as to why the same trial Court had first found the respondent guilty and awarded capital punishment, but subsequently, on the same evidence, acquitted him.

27. In its second judgment, by which the respondent was acquitted, the trial Court held that PW19, SI Jaswinder Singh, had stated that finger impressions of the accused were taken at the time of search and were sent to the Finger Prints Expert; however, the report with regard to the same was not produced by the prosecution and, as such, in the second round of the trial, an inference was drawn against the prosecution on the ground that despite PW-19s' testimony that he had taken fingerprints of the accused and sent them to the Fingerprint Bureau, the report was not produced before the Court. It was held that had it been produced, it would possibly have shown that the finger prints do not match and therefore, it was withheld. (A perusal of PW19s' cross-examination shows that, in the 2nd round of the trial, he said that the thumb impressions of the accused were taken).

28. It is to be noted here that finger prints from the staff of the axe and the "*Kahi*" (spade) which are the weapons stated to have been used for committing the crime, are not shown to have been lifted at all. Hence, to our mind, even the presence of foot prints of the accused on the ground or finger prints on the liquor bottles, even if they were proved to have been his finger prints and foot prints, would have to be weighed against the fact that the alleged weapon(s) of offence were not subjected to finger print lifting. We shall discuss this again later while appraising the evidence in its entirety.

29. In the disclosure statement allegedly made by the respondent on 14.06.2001 after his arrest (Ex.P1), it is stated that after committing murder in the house of Nathu Ram, one cycle of black colour, Hero Jet; some steel utensils; some stitched and unstitched clothes and some other luggage and Rs.5,000/- were stolen by him, which were put into a jute bag and, along

with the cycle, were kept concealed in his residential room, which he could get recovered.

Thereafter, on the same day, the respondent is stated to have got recovered the said steel utensils, stitched and unstitched clothes and some other luggage from a jute bag from his room. The Hero Jet cycle is also stated to have been recovered from his room.

He is also alleged to have made a disclosure statement (Ex.PY) that he had committed the murder with a '*Kahi*' (Spade) and a '*Kuhari*' (Axe) and that he had left the spade at the spot at the time of committing murder and the axe he had kept concealed on a "glazed mat taat" at a distance of one *killa* (one acre) from the place of occurrence. The said axe is also stated to have been recovered from the said spot on 14.06.2001 itself.

30. The recoveries abovementioned, of the allegedly stolen goods and the axe, are stated to have been got made by the accused, before the Investigating Officer (PW-19), in the presence of ASI Harbans Singh (PW-15) and one Karnail Singh, resident of Malout, who was not produced as a prosecution witness.

31. Sealed parcels containing the pubic hair and semen sample of the respondent, are also stated to have been received by PW-19, in the presence of ASI Harbans Singh (PW-15).

32. It is also necessary to note here that the recovery of the blood-stained earth from the place of occurrence and around the bodies of the deceased was also made by PW-19 on 25.05.2001 itself, in the presence of one ASI Baldev Singh (PW-17) and Ram Gopal, who is stated to be the brother of deceased Nathu Ram but, very strangely, was again not produced as a prosecution witness, even though he finds mention both, in the recovery of blood-stained earth, as also in the initial statement by Gurinderpal Singh,

who stated that he had met Ram Gopal on his way to the police and had told him to stay back with the bodies of the deceased.

The '*Kahi*' (spade) stated to be the main weapon of offence, recovered from the spot, is also stated to have been so recovered in the presence of the abovesaid ASI Baldev Singh and Ram Gopal on 25.05.2001 itself, as per the recovery memos exhibited before the trial Court, carrying the signatures of Baldev Singh and the left thumb impression of Ram Gopal. Similarly, the recovery memos of the clothes, bed sheets, cotton clothes, liquor bottles and foot moulds from the place of occurrence, are also stated to have been made in the presence of the same two witnesses, as per the recovery memos exhibited, which also carry the signatures/thumb impression of these witnesses.

Similar is the position with regard to the recovery of the cooked vegetable, milk, flour and "*Laddu*" from the place of occurrence.

33. As per the affidavit of Head Constable Harjinder Singh, exhibited as Ex.P-20, all the parcels of blood samples, semen swabs, pubic hair, bed sheet, puffed pubic hair, loose hair found in the puffed pubic hair, were deposited by him with one Head Constable Sukhmander Singh, who later appeared as PW-12 and stated on affidavit that he had deposited them with the Central Forensic Laboratory at Calcutta on 6.7.2001, i.e. about 42 days after the date of occurrence.

The report of the Calcutta Laboratory (a part of Ex.P-33) is dated 14.12.2001.

34. Before we finally move on to the testimonies of the prosecution witnesses, the sole defence witness, and the statement of the accused under Section 313 Cr.P.C., reference also needs to be made to Ex.D1, which is the

judgment of acquittal of the respondent-Ram Sewak, in the case registered against him on 13.06.2001 for offences punishable under Sections 379 & 411 IPC, at Police Station, Sadar, Malout. As already noted earlier, the respondent is stated to have been placed under arrest in connection with the present case, while he was already in custody on 14.06.2001, pursuant to FIR No.88 having been registered against him at the aforesaid Police Station, Sadar, Malout on 13.06.2001. The allegation against him in that case was that, after giving sweet "*Laddoos*" containing some substance to different persons and upon their having become unconscious, he allegedly removed their wrist watches. This FIR for theft is stated to have been lodged not on account of any complaint, but when the respondent was apprehended during routine checking on 13.06.2001, by a police party of Police Station, Sadar Malout. The Officer-in-Charge of the party had stated that they saw a person coming from the opposite side and since he got perplexed on seeing them, and turned back, he was over-powered and arrested and during investigation he revealed his name to be Ram Sewak, from whose pocket 3 wrist watches had been found, which he admitted to have stolen about 2/3 years back, from the wrists of labourers, after having administered the "*Laddoos*" to them. It is further described in the judgment of the learned Sub-Divisional Judicial Magistrate, in the theft case, that during further investigation conducted, two persons had identified two of the wrist watches to be actually theirs.

35. The respondent was acquitted of the charges of theft and having received stolen property, by that judgment, on the ground that neither any independent witness was joined despite such witnesses being available at the time of arrest and further, on the ground that the statement of the

witnesses produced, who had identified their watches, did not inspire confidence because, firstly, no theft of their wrist watches was ever reported by them and further, no sealed parcel was ever made with regard to the watches allegedly recovered.

36. Coming back to the present case, we now come to the testimony of the first prosecution witness, i.e. Gurinderpal Singh, complainant in the FIR, in whose employment, Nathu Ram deceased was working, as a “*Mali*”, in his agricultural fields.

Gurinderpal Singh testified with regard to his employment of Nathu Ram and stated that as part of such employment he was provided a residential house in the agricultural fields, where his family members also resided with him. He thereafter reiterated what he had stated in the complaint, about having reached the field at about 7 am along with Harbans Singh, Chowkidar and having found the 7 dead bodies lying in pools of blood. He reiterated in his testimony, what he had earlier stated to the police, with regard to his leaving Harbans Singh with the bodies and that on his way to lodging a report with the police he met Ram Gopal, brother of Nathu Ram whom he also sent to be with the dead bodies. He then went towards the police station and on the way, he met the I.O. (PW-19). He however, while testifying before the trial Court, did not say anything about any rape having been committed on Rekha and Jamuna Devi, which was initially recorded in his statement before the police.

In cross-examination, he stated that both Harbans Singh Chowkidar, and Ram Gopal were present at the spot when he returned with the police and further, also stated that Nathu Ram deceased had never revealed to him about any enmity with anyone.

Upon being recalled on 16.05.2005 for further cross-examination after remittance of the case to the trial Court, he simply gave the location of his farm house / field house in relation to the village, stating that it was at a distance of about 2 ½ / 3 kilometers.

37. It is noteworthy that Harbans Singh, Chowkidar, was given up as having been won over by the prosecution and as regards Ram Gopal, as already noted earlier, he was neither produced as a prosecution witness nor was his statement recorded by the police, though he was cited to be a witness to the recoveries made at the place of occurrence, on the date of discovery of the bodies, i.e. on 25.05.2001 itself.

38. The next important witness is Chota Singh, PW-6, an agriculturist aged about 65 years, resident of the same village as PW-1 i.e., Burj Sidhwan.

This witness testified on 6.8.2002 that on 24.05.2001 he was going to his land / fields for bringing fodder at about 6 PM and just outside the village he met deceased Nathu Ram and the accused “present in the Court”. He denied knowing the name of the accused but stated that both the respondents and the deceased Nathu Ram were drunk and were carrying bottles of liquor and were going to the “*Dha*” (house of Nathu). After that he returned home at 7 PM, on the next day went to meet his married daughter and returned on the third day, upon which he met the police at the railway crossing, on the 29th of May, where he made the statement (presumably also to the above effect, though not specified in the testimony).

In cross-examination, he stated that he had met the accused once or twice earlier with the deceased Nathu Ram, when he used to visit Nathu Ram for purchase of vegetables, though he had never asked the name

of the accused. He further stated that he knew that Nathu Ram and the accused were drunk, on account of the smell coming from them and also because they had also offered him a drink, even though he had never earlier taken liquor with Nathu Ram or ever sat with Nathu Ram for any purpose. He further stated that he did not know the number of liquor bottles with the duo and again reiterated in cross-examination that he had never asked the name or other particulars of the accused from Nathu Ram.

As with all witnesses, he denied in cross-examination that it is wrong to suggest that he had never met Nathu Ram or the accused. He admitted that he took liquor when guests visit him, at times, though Nathu Ram had never seen him drinking.

39. Upon recall of this witness on 16.05.2005 for further cross-examination, he denied the suggestion that he had any relative living in the village where the accused belongs (in U.P.), or that he had ever been to that village. He admitted that no identification parade of the accused was arranged in his presence and importantly, he further stated that *since a long time had passed, he could not identify the accused*. He further stated that he did not remember the clothes which the accused had been wearing or even the time when he saw him. In the second cross-examination on 16.05.2005, he further stated that he had been going on a cycle to cut fodder and returned on the cycle and that *"I had seen 2 persons going from their backs"*. He further stated that he had made a similar statement to the police and that he had told the police about the occurrence on the third day, further stating that it was on the evening of the 26th and that the police was present in the village when he had made his statement.

It is obviously noteworthy that in his statement on the first

round of the trial, he had stated that he had met the police at the railway crossing, where he had made his statement to them.

40. We have seen that, as per the site-plan of the area (exhibited as Ex.P-31) which is actually in the context of recovery of utensils, clothes and cycle etc. alleged to have been stolen by the respondent, village Burj Sidhwan is at some distance from the railway crossing, with a metalled road in between, upon which the house of one Sham Lal is located, where the respondent also resided. Thus, obviously, the railway crossing is not contiguous to the village, so as to indicate that the statement was made at the railway crossing near the village, or that it was actually the same place. Actually, both places seem to be some distance apart, though the exact distance is not shown in the site-plan.

41. In further cross-examination on 16.05.2005, PW-6 further stated that since many people were present in the Court when his statement was earlier recorded there, he could not recognize the person seen by him earlier.

Thus it is seen that, on further cross-examination in the second round of trial, this witness had effectively resiled from his earlier testimony where he had testified that he had actually interacted with the deceased and the respondent, on the evening before the fateful night. He also resiled with regard to the identity of the respondent, whom he refused to recognize in the Court, in the second round of the trial.

42. Coming now to the finger print expert, SI Kulwant Singh, PW-8. He testified that outside the room where the occurrence took place, he found a bottle of country-made liquor which was empty, an empty pint and an empty nip, on which there were some marks. After sprinkling graphite

powder on all three bottles, the marks of hands, fingers, thumbs and palms, were visible. He encircled the developed marks and put his initials on them and put the empty bottle, the pint and the nip into separate boxes which were then handed over to the Investigating Officer, PW-19, with a direction to seal them and send them to the Finger Print Bureau at Phillaur, for comparison. He further stated in his examination-in-chief that he testified to having prepared the report exhibited as Ex.PT and identified his signatures on the said report and further stated that his statement was recorded by the investigating officer.

On cross-examination on 13.06.2003, he denied the suggestion that there were no finger prints on the bottle or even that there were no bottles at the spot.

Upon recall on 9.5.2005, on further cross-examination, he stated that he had received a wireless message on the morning of 25.05.2001 the time of which he did not remember and that he had not recorded the wireless message in his record. He also did not claim any expenses for going to the spot (though he had come from Faridkot where he was posted in the SSPs' office, as stated by him in his examination-in-chief). He further stated in the second round of cross-examination, that he had come to Police Station, City, Malout, from where he was taken to the place of occurrence by the police, though he did not remember the time and also did not remember if any entry was made by the police in "rojnamcha"(daily diary). He also did not remember the name of the police officer who took him to the place of occurrence, nor the number of the vehicle in which he had been taken. He had further stated in the cross-examination that the occurrence had taken place at about 1 / 1 ½ KM from village Sidhwan.

43. PW-9 was the Halqua Patwari of village Burj Sidhwan, one Gursewak Singh, who testified that on 27.08.2001 he had prepared a site-plan (Ex.PU), on which his signatures and marginal notes he identified.

In cross-examination he stated that the place of the site was towards the western side of the village and that there were other farm houses also, near “the disputed farm house”, though he thereafter stated that there was no other farm house. He gave the distance of the farm house of the complainant to be at a distance of about 2 KMs from the village and that he had been asked by ASI Baldev Singh (PW-17) to prepare the site plan.

On recall for further cross-examination on 9.5.2005 he denied the suggestion that he had prepared the site-plan actually in his office and not on the spot, on the asking of the police.

It is to be noted here that the site-plan (Ex.PU) which was admitted to have been prepared by PW-9, also shows the position of the dead bodies, even though this site-plan was made on 27.08.2001, i.e. more than 3 months after the occurrence.

44. PW-10 was one C. Krishan Kumar who testified to the handing over of the parcels bearing the seal ‘JK’ (Doctors’ seal), at the medical college at Faridkot as also at the Forensic Science Laboratory at Chandigarh, further stating that the parcels were not tampered with during the time that they remained in custody with him.

The cross-examination of this witness on both occasions is insignificant.

45. PWs 11 and 12 were formal witnesses to the receiving and delivering parcels of samples.

46. One Murti Kishore, who was sought to be initially produced as

prosecution witness, is shown to have been given up, even though he was present in Court on 13.06.2003.

47. PW-13 was Rani Devi, wife of Balbir Singh, aged 26-27 years, resident of Amargarh, in District Ganga Nagar (Rajasthan), daughter of deceased Nathu Ram & Jamuna Devi, as already said earlier.

She testified on 6.4.2004 that her father had started living at village Burj Sidhwan about 3 years earlier and her brother Raju had come to visit her and had taken her daughter Kunta aged 10 years and her son Maninder aged about 9 years, to village Burj Sidhawan.

She further stated in her examination-in-chief, that on the 24th/25th of the month of “Vaishak” (overlapping the English Calendar months of April and May), she had received a telephonic message that her father was in a dispute and as such, she had gone there and had then come to know that her children, her father, 2 brothers, mother and sister have been killed. She further stated that one cycle of her father, some utensils and some clothes and Rs.5,000/- in cash, were missing. She further stated that this money was taken from her by her brother for his marriage and that after 10/15 days of the occurrence, she had been shown some articles in the Police Station, which she identified as the cycle, 1 or 2 clothes, one “*Lota*” and other utensils as belonging to her parents, which she had seen earlier.

In cross-examination she stated that she was living about 150 KMs away from her father and used to meet him after about 6 months and that only those utensils and articles were lying in the Police Station which were identified by her.

On recall for further cross-examination on 9.5.2005, she stated that she had been married 10 / 11 years prior to the occurrence and that she

had received a telephonic call in the morning of the night on which the occurrence took place, at about 5 or 6 am. The call was made by her relatives.

She said she did not remember if her statement was recorded by the police on that day or not. She further stated that she did not know that from where the articles which were shown to her, were purchased by her father and that no bills were recovered from the house, regarding any such purchase.

48. PW-14 was an official witness who testified to the respondent refusing to give his finger prints before the Sub-Divisional Judicial Magistrate on 18.06.2001. He identified the signatures of the said SDJM, Malout, with whom he had been then working as Reader.

On recalling for further cross-examination on 9.5.2005, this witness stated that the Court at Malout is situated within the town, with shops around and that the statement of the accused was recorded during Court hours and he was produced by the police on the application having been made, though he did not know if any copy of the police request was given to the accused or not, and that no written reply was given by the accused.

49. Sub-Inspector Harbans Singh appeared as PW-15 and stated that he had joined PW-19 in investigating the case on 14.06.2001 and that the respondent was interrogated by the said PW-19 (SI Jaswinder Singh).

He further testified with regard to the disclosure statements made by the respondent, on interrogation, about the concealment of the axe and the allegedly stolen articles and their subsequent recoveries from the places given in the disclosure statement, and with regard to the memos of

disclosure and recovery being attested to by him (PW-15) and by Karnail Singh, which were thumb marked by the respondent.

He further stated that on 15.06.2001 the respondent was produced before a Doctor and pubic hair and semen sample of the respondent were taken into possession as per the memos exhibited in Court.

He also identified the parcel containing the axe and the domestic articles stated to have been recovered from the respondent.

In cross-examination he admitted that such articles are normally used in house holds and are easily available in the market and that Karnail Singh had met the SHO, though he did not remember as to from where Karnail Singh was joined as a witness to the recoveries. He denied the suggestion that Karnail Singh was resident of Dabwali Dhab and that he was a stock witness of the police. He further, in cross-examination, stated that there was no 'Abadi' (resident population) near the house of the accused, which was far away.

He also denied the suggestion that the accused did not make any disclosure statement or did not get the recoveries effected or that his thumb impressions were obtained on blank papers.

On recall for further cross-examination on 9.5.2005, he stated that he did not know when the accused was arrested in the case, and that he was interrogated somewhere in Malout town though he could not give the place or the time of interrogation. He denied the suggestion that the respondent was interrogated in a car, road or building, but was interrogated in a vacant place, the location of which he could not give.

He further stated that the accused had made the disclosure statement in the Punjabi language and not in Hindi. He also stated that

Karnail Singh s/o Niranjana Singh was joined at the time of interrogation and that he had met the SHO, though he did not remember whether Karnail Singh was with the SHO or not when the respondent was brought from the Court. He admitted that nobody except Karnail Singh had been joined as a witness at the time of recovery. He further denied knowledge of the owner of the field from where the recovery of the '*Kuhari*' (axe) was effected. He further stated that he did not remember who had done the writing work, though his statement was recorded by PW-19 in his own handwriting and that the crop standing on the field from where the recovery was made was 4 to 5 feet high. He, further, stated that he did not remember if there were any foot prints and also could not give the direction of the place of occurrence from village Burj Sidhwan or even the distance. However, the place of recovery was stated by him to be at a distance of about one acre towards the southern side of the place of occurrence. He further stated during cross-examination that the accused was interrogated in his presence on 14.06.2001 but did not remember the intervals between the interrogation. He stated that the ownership of the place where the second recovery (of the bi-cycle and the utensils) was that of Sham Lal though but he could not give the names of those who owned the surrounding areas. He further could not tell as to how many rooms were in the house where the recoveries were made.

He admitted that he did not call any Municipal Councilor of the area before opening the lock (of the room of recovery) and that the key of the lock was picked up by the accused from a place near the room. He further stated that at the time of arrest of the accused his personal search was done but nothing was recovered from his possession. He also did not

remember the make of the lock though he remembered that the room was locked after the recovery but could not remember where the key was then kept.

He further stated that a list was made of the articles lying in the room and denied that the accused did not make a disclosure statement or that he had not got the recoveries effected.

50. ASI Baldev Singh, PW-17, testified in his examination-in-chief that he had joined the police party headed by SHO Jaswinder Singh and that the said party was present at Brujawala crossing in connection with patrolling, when Gurinderpal Singh came and made his statement which was recorded by PW-19.

He further stated that the dead bodies were got photographed by the SHO, upon reaching the place of occurrence and that they were identified by Ram Gopal and Chowkidar Harbans Singh.

He further testified to the preparation of the inquest reports, lifting of blood-stained and simple earth samples as also the recovery of blood-stained "*Kahi*" (spade) and preparation of their recovery memos and sketch. The vegetables, milk, wheat flour and "*laddus*" were also testified to have been recovered from the spot, with all recoveries having been sealed with the seal of PW-19, attested to by him (PW-17) and Ram Gopal (brother of the deceased, Nathu Ram).

He further stated that a "*Talai*" (thin mattress) made of cloth and stained with semen was also picked up and taken into possession along with bottles of liquor which were again all sealed and recoveries attested to by himself and Ram Gopal.

He further stated that, subsequently, the investigation was

handed over to him on 16.06.2001.

In cross-examination he stated that the accused was neither named in the FIR nor even on the spot. While stating that he belonged to the same town, i.e. Malout, he also stated that the place of occurrence was at a distance of 3 KMs from village Burja, near Dabwali Dhab.

He was also put a suggestion which he denied, with regard to a rumor that the murders were actually committed by “the son-in-law”.

He admitted that though many people had gathered at the spot, he did not record the statements of any person of Dabwali nor joined them in the investigation. He also admitted that he did not make any inquiry from the Chowkidar whether he had earlier come to the place of occurrence. He further stated that the dead bodies were lying outside the room in an open place (this statement is not entirely in consonance with the site-plan, Ex.PU, which shows the dead bodies of Nathu Ram, Jamuna Devi and Raju to have been lying outside the room and those of Rekha, Lakhi, Kunta and Maninder who have been lying inside the room).

Nothing further was put to him in cross-examination, though he was recalled on 9.5.2005, in the second round of the trial.

51. Coming now to the detailed testimony of PW-19, Sub-Inspector Jaswinder Singh, the principal Investigating Officer. While testifying to the place where the crime was reported to him, he further stated that he reached the place of occurrence where Harbans Singh, Chowkidar and Ram Gopal were already present, with both these people identifying the bodies. He further testified to the preparation of the inquest reports, sending the bodies for post-mortem examination, recovery of the blood-stained earth, simple earth, “*Kahi*”, the food articles, the liquor bottles, the “*Talai*” and cotton,

and with regard to the preparation of the recovery memos and attestation thereto by ASI Baldev Singh and Ram Gopal.

He also testified to the correctness of the site-plan Ex.P28, prepared and signed by him along with the marginal notes thereon.

He further testified that the respondent was arrested by him in this case on 14.06.2001 and was interrogated in the presence of ASI Harbans Singh (PW-15) and that the respondent had made a disclosure statement with regard to the concealing of the axe, the cycle, clothes and utensils etc. He also stated that the accused had got recovered one “Deck”. He further testified to the recoveries made of the above articles and further with regard to producing the respondent before the Doctor, from where his pubic hair and semen samples were taken by the Doctor and handed over to him (PW-19).

He further stated that moulds of foot prints were also taken and taken into possession and that after completion of the investigation, the accused had been “challaned” by him.

52. In cross-examination he admitted that many persons were present at the place of occurrence by the time the police party reached there and stated that there were 2 weapons that were used to commit the offence, though he denied the possibility of 2 persons having committed the murders. Having initially stated that all the dead bodies were lying outside the room, he corrected himself to state that 3 were inside and 4 were outside. He further stated that from the position of the dead bodies, it appeared that none of the victims tried to run away.

He also stated in cross-examination that he did not remember if he took the finger prints from the “*Kahi*” or “*Kuhari*” and whether they

were sent for testing or not.

He further denied the suggestion that no disclosure statement was made by the respondent, or that recoveries were not effected from him. He also denied the suggestion that all the seals on the case property were actually used to seal the case property at the police station and not at the places where recoveries had been made.

He also stated that he did not take into possession the receipt of the ownership of the cycle recovered, while admitting that all the recovered articles were normally used in the household and were easily available in the market. He, however, admitted that he did not record any statement of the persons who had come at the spot and also that he did not remember if any person from the public was joined at the time of interrogation or at the time of making recoveries from the accused.

Strangely, he did not remember even having joined Karnail Singh at the time of having made the recovery of the cycle, the axe and the utensils and the stitched and unstitched clothes, on 14.06.2001, even though PW-15 Baldev Singh, ASI, had specifically stated that Karnail Singh was joined in the investigation by PW-19, Sub-Inspector Jaswinder Singh.

Upon being recalled for further cross-examination on 23.05.2005, after remand of the case, he stated that he had received information from Police Station, Sadar, Malout, regarding the registration of another case against the accused and that a Daily Diary Report had been recorded in that regard and the accused had been arrested one day earlier in connection with that case (at Police Station, Sadar, Malout), prior to arrest in this case. He denied the suggestion that the other case was got wrongly registered against the respondent and that the accused was actually handed

over to Police Station, Sadar, Malout and then his arrest was made in this case. (It needs to be noted that this witness was the SHO of Police Station, City Malout, and the other case was registered at Police Station, Sadar, Malout).

He further stated that the accused was interrogated in the Police Station City, Malout which, though situated in a populated area, no Municipal Commissioner/Councillor was joined at that time. He further stated that he did not know whether the Chowkidar (Harbans Singh) had stated anything with regard to the “*Kahi*” and “*Laddus*” lying at the spot.

He further stated that an entry had been made in the log book with regard to taking a Government vehicle at the time of making recoveries, though he did not remember the number of that vehicle. He also stated that he did not remember as to where PW-6 Chhota Singh had made his statement to him, or even the time thereof.

He further admitted that the thumb impressions of the accused were taken at the time of search and were sent to the laboratory and to the finger print expert; however he did not know “about the report”.

As regard the bottles lying on the spot, he stated that they were all lifted by putting a finger in their mouth though he did not remember whether at the time of lifting the finger print expert had put the bottles in his bag. No receipt was stated to have been taken from the finger print expert in this regard, though the articles were entered in the register.

He further stated during cross-examination, that when the accused was arrested, search was conducted but nothing was recovered from him. He further stated that when they went to the house of the accused to make recoveries, the owner of the house was not present and he was also

not called. No search warrant was obtained and the door of the house of the accused from which the articles were taken, was also open. (This is in contradiction to the testimony of PW-15). He again stated during recall for cross-examination, that he did not remember whether the finger prints were picked up from the “*Kuhari*” or the “*Kahi*”.

53. Coming now to the statement made by the respondent under Section 313 Cr.P.C.

Respondent Ram Sewak, after denying all the questions put to him to be incorrect, finally stated, upon being asked whether he had anything to say, that he did not know deceased Nathu Ram nor his family members and that he was involved in a theft case leading to utensils etc. allegedly stolen from the house of one Nathu Ram and was subsequently acquitted in that case.

After the addition of the charge of rape, upon again being called upon to make his statement in Court, he reiterated that he never went to the Dhani of Nathu Ram nor made any disclosure statement and that nothing was recovered from him and that the case has been planted upon him.

He, however, wished to lead defence evidence at both stages of the trial and had tendered in evidence the judgment of the learned Sub-Divisional Judicial Magistrate, already referred to hereinbefore, as Ex.D1.

54. Inspector Joginder Singh, who had earlier been posted as DSP Malout on the date of occurrence, appeared as DW-1, on 01.07.2005, who stated that he had gone for inspection of the spot after the 7 murders had taken place and that Sub-Inspector Jaswinder Singh and other police officials were already present at the spot, to investigate the case.

He further submitted that he conducted investigation of the case along with SI Jaswinder Singh and that Harbans Singh, Chowkidar, and other respectables of village Burj Sidhwan, also joined in the investigation. He testified to the lifting of the blood-stained and simple earth by Sub-Inspector Jaswinder Singh, as also to the recovery of the cooked vegetable, flour, “*Laddu*”, “*Kahi*” (Spade) and “*Kuhari*” (Axe) from the spot and preparation of memos in that regard.

He further submitted that he had recorded in the case diary with regard to the same and that the IO had been directed to deposit the articles in the “Malkhana” and to search and arrest the accused. He further stated that no assailant had been named during investigation on that day. In cross-examination, he simply admitted that Sub-Inspector Jaswinder Singh had investigated the case.

55. It is necessary to state here that this defence evidence was produced by the defence only after the matter had been remitted to the trial Court.

56. We have now detailed the entire evidence, almost like a trial Court, in view of fact that the respondent was first convicted of 7 murders and sentenced to death, but after remittance of the matter back to the trial Court, he was acquitted by the same Court. Hence, we felt it was absolutely necessary to appreciate the entire evidence in detail, after bringing it on record.

57. As is glaringly obvious from the entire investigation conducted by the Police, very strangely, no statement under Section 161 Cr.P.C. was recorded by joining any of the numerous persons admittedly on the spot after the occurrence, as would be naturally expected when such a dastardly

and gruesome crime has been committed.

However, an examination of the police file, which is part of the case record, shows that statements attributed to Chowkidar Harbans Singh and Ram Gopal, brother of deceased Nathu Ram, have been recorded in hand, signed by the Investigating Officer Sub-Inspector Jaswinder Singh (PW-19), on 25.05.2001, but not at the spot, because during the course of testimony before the Court, even in the first round of the trial, this witness stated that he had not recorded any statement of the person who had come to the spot, which fact is corroborated by the statement of ASI Baldev Singh, during his cross-examination in the first round of the trial.

Further, it is seen from the police file that even a statement attributed to Karnail Singh, who was shown to have been a witness to the recoveries made after the arrest of the respondent, has been recorded under Section 167 Cr.P.C. though he was not produced as a prosecution witness. From these statements, nothing incriminating against the respondent, is discernible as regards Chowkidar Harbans Singh and the brother of the deceased, i.e. Ram Gopal, other than that the fact that they went to the spot after the occurrence.

However, as regards the statement of Karnail Singh, purportedly made under Section 161 Cr.P.C. at the time when the respondent is stated to have made disclosure statements which, in turn, are stated to have led to the discovery of the axe, also allegedly used as a second weapon of offence and the cycle, utensils and clothes allegedly stolen from the premises of occurrence; this statement very obviously wholly incriminates the respondent. But as already stated earlier, Karnail Singh was never produced as a witness in Court, to prove his statement with

regard to the alleged disclosure made by the respondent and the recoveries allegedly made at his behest after disclosure.

58. Non-lifting of finger prints even from the “*Kahi*” recovered from the spot on the morning after the night of occurrence, also obviously points to extremely shoddy investigation, one way or the other. We say one way or the other because the reason could either have been that the “*Kahi*” was actually not recovered from the spot and was planted as a weapon of offence subsequently or, possibly, if any finger prints were lifted from it, they were not sent for forensic examination. If it is the latter case, then obviously the inference can only be that the investigating agency had reason to believe that the finger prints of the respondent would not be found on this alleged weapon of offence, or that they were shielding the respondent, or someone else.

The same rationale applies when we consider the case of non-lifting of finger prints from the “*Kuhari*”, which is stated to have been recovered upon the disclosure statement made by the respondent, though, if it was recovered by the accused having picked it up, in any case his fingerprints would be on it.

59. No doubt, the statements of police officials cannot be and should not be wholly disregarded, and if recoveries are made in their presence, even without the presence of other persons, they are very much admissible in evidence. However, what we find very strange, is the fact that Karnail Singh, an attesting witness to the alleged recovery of the “*Kuhari*” and the utensils and cycle stated to have been recovered on the statement of the respondent, was not even projected as a prosecution witness, lending possible credence to the question put to one of the investigating officers, as to whether he was a stock witness of the police, (which of course was

denied).

60. What then are we left with?

The statement of Chotta Singh (PW-6) who first appeared as a witness stating that he saw the respondent with deceased Nathu Ram and who even testified that he had spoken to Nathu Ram, who had asked him to join him from a drink. That would make him (Chhotta Singh) the witness who last saw the accused with the deceased. Strangely, this witness, in the second round of cross-examination, resiled from his earlier statement and stated that he, while on his cycle, saw 2 people walking, “from the backs”. To state the obvious, of the two statements, one is not believable. Though normally we would tend to believe the one made in the first round of the trial, which could not be ‘dented’ in the cross-examination, however, we are not entirely convinced of the statement of this witness. We say this for the reason that, with 7 murders having taken place, of a family with whom he was at least passably acquainted, he chose to not inform the police of his meeting Nathu Ram and the respondent, but to go to his daughters’ house and make a statement only on his return 3 days later. On the other hand, he had no association at all with the respondent, who in any case would not be of any influence, he being of the “lower strata” of society and not a native to even the State of Punjab. Therefore, one reason which comes to mind for the resiling/backtracking of Chotta Singh from his earlier statement, is that he possibly had deposed falsely at the first instance and, knowing, by the second round of the trial, that the respondent had been sentenced to death earlier, this witness possibly had qualms of conscience.

Of course, the reverse could be equally true, i.e. that he did come under some kind of influence of the respondent and therefore, backtracked from his earlier statement.

61. We therefore, then have to weigh this with the other evidence, which, as we have already discussed hereinabove, does not conclusively prove beyond the shadow of reasonable doubt, that it was the respondent who had committed the murders. Non-lifting of finger prints from the alleged weapon(s) of offence and non-examination of the finger prints of the respondent even though they were admittedly taken as per the deposition of the Investigating Officer, again is, as already said, a double edged argument, viz., either the I.O. was certain that these finger prints would match with those of the respondent and as such, he was being shielded or, conversely, they were certain to have not matched and as such, they were not sent for examination in order to strengthen the case against the respondent, either possibly to shield someone else or simply because there was no other person whom the Investigating Agency found as a suspect and as such was using the respondent as a scape-goat.

62. We would also refer to, in this regard, the judgment produced as Ex.D1 on behalf of the respondent, wherein he was acquitted of the charge that was framed against him under Section 379 IPC, on the allegation of stolen watches having been recovered from him. Though obviously we are not sitting in appeal against his acquittal in that case, but since that judgment has been led in defence evidence and further because the respondent is stated to have been actually arrested in the present case while he was in custody in that case, we are bound to refer to the seeming absurdity of the allegation against him in that case. The allegations against the respondent were that the watches which were recovered from his pocket had been stolen by him 2 or 3 years earlier, after he had laced some sweet “Laddus” and offered them to the victims of the theft. Other than the fact

that the watches themselves were not kept in sealed parcels as held by the trial Court trying that case, we find it extremely strange that a man would be carrying watches stolen 3 years ago, in his pocket. Further, the circumstances showing his arrest in that case, though otherwise may be plausible, with all circumstances taken together, shows it to be highly suspect. A commonality of the circumstance of some sweet '*laddus*' having been given to the alleged victims of the alleged theft committed by the respondent, in the other case and the factum of an "adulterated laddu" having been found at the site of occurrence in this case is obviously not lost on us. The respondent having been acquitted in that case and correctly so in our opinion, after a scrutiny of the judgment passed in that case (exhibited in this case), naturally, no inference from the allegations made in that case against the respondent, can be taken and read into this case, even with regard to what is projected to be the modus operandi of the accused.

63. Clinching evidence against the respondent would have been obviously the DNA testing on the samples of semen taken from him, along with such testing on the vaginal swabs taken from the 2 deceased adult ladies, which were sent for forensic examination to the Central Forensic Laboratory at the Calcutta. However, these were also sent on 3.7.2001, as already stated earlier, more than 40 days after the occurrence, by which time the laboratory reported that they had been completely putrefied, either by the time that they were brought there, or in the laboratory itself, since the report is signed with a date of 14.12.2001. As such, no DNA could be extracted from the samples. The report further showed that the samples had been consumed, thereby meaning that no vaginal swabs are now available for any further DNA testing, which otherwise we may have been inclined to

order even at this stage, in view of the seriousness and brutality of the crimes.

64. To sum up what weighs for and against the respondent, we enumerate the following:-

(i) That one of the deceased persons, Nathu Ram, was last seen with the respondent, as per the first deposition of PW-6, Chotta Singh, who on the second round of trial simply stated that he saw two people “going from their backs”

(ii) Disclosure statements are stated to have been made by the respondent, allegedly leading to the recovery of an axe, as well as utensils and clothes, in the presence of the Investigating Officer, ASI Harbans Singh, and one Karnail Singh who signed the disclosure statement and recovery memos, but was not even listed or produced as a witness.

(iii) Two alleged weapons of offence, i.e. a “*Kahi*” (spade) and a “*Kuhari*” (axe), were stated to have been recovered; the former from the place of the occurrence and the latter from where allegedly the respondent had hidden it. However, no finger prints were lifted from the two alleged weapons of offence, even though prints were lifted from bottles of liquor stated to have been recovered from the spot.

(iv) Finger prints were lifted from the bottles found on the spot, but were not compared with the finger prints of the respondent, which were admittedly taken by the Investigating Officer at the time of his arrest, but no report was obtained thereon.

This has to be weighed against the fact that the respondent, in the trial Court, refused to provide a sample of his finger prints.

(v) Vaginal swabs from the two ladies stated to have been raped, as

also semen swabs/samples from the respondent, were taken, but with no conclusive evidence whatsoever, with regard to DNA matching or even DNA extraction from these samples.

The same is the case with regard to the pubic hair taken from the respondent, i.e. no result came forth.

65. Thus, as regards scientific proof in the form of finger print or DNA matching, there is no conclusive proof, whatsoever.

Therefore, in the absence of any scientific evidence, can we convict him on the basis of the other evidence detailed earlier?

66. 7 murders and 2 rapes shock the conscience of any court enough to try and ensure that there is retribution and closure; however, that cannot be the cause for a possible grave miscarriage of justice.

Keeping in view the fact that 7 innocent lives, including those of children and 2 women were lost due to wholly senseless killings, we could also have directed the taking of additional evidence in the form of confirmation of the finger prints stated to have been obtained of the respondent, on the recovery memos, to compare them with those obtained from the liquor bottles recovered from the place of occurrence. However, even if such matching is proven to be positive, it would still not prove as to whether the killings were actually done by the respondent after having consumed liquor with the deceased Nathu Ram, or whether, after his having left the spot, someone else having come there and committed the brutal murders and the rapes.

The situation may have been otherwise, in case positive finger printing had been obtained from the alleged weapons of offence, i.e. the “*Kahi*” (spade) and the “*Kulhari*” (axe), which could then have been

matched with at least the thumb impression already present on record, of the respondent, on the recovery memos.

However, we have also seen the case property, i.e. “*Kuhari*” and the “*Kahi*”, which have, for the past 13 years, been through innumerable hands, including those of the persons who brought them to us. Very strangely, both these alleged weapons of offence were neither kept sealed nor preserved in a manner so as to ensure that no additional finger prints come upon them. Both the weapons were simply presented to us in a gunny bag, without any preservation or protection on them, of any kind whatsoever. As such, it would be wholly pointless at this stage, after 13 years, to try and obtain additional evidence by way of finger print lifting and matching, from these alleged weapons of offence.

Further, in the absence of the alleged recoveries having been proved by an independent witness, i.e. Karnail Singh, who could have been produced in Court, to testify with regard to the the disclosure statements and recoveries made, which themselves are suspect, and with the witness of “last seen together”, also having resiled, the only strong inference against the respondent is his refusal to give a sample of his finger print for matching. Weighing that against the fact that such finger prints or at least thumb impressions, were admittedly available with the Investigating Officer, which were still not got matched, we are unable to hold him guilty, simply on the basis of his refusal to provide such finger print samples.

We, therefore, find no error of jurisdiction or of law, in the impugned judgment and as such, dismiss the appeal.

The respondent shall be released from detention forthwith, as he had been detained on account of non-furnishing of bail bonds (upon

execution of non-bailable warrants to secure his presence).

(AMOL RATTAN SINGH)
JUDGE

February 23, 2015
vcgarg/dinesh

(RAJIVE BHALLA)
JUDGE