

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

CRA No.D-166-DB-2003

Date of decision: 23.02.2015

Avtar Singh and another

.....Appellants

Versus

State of U.T., Chandigarh

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr.Sudhir Sharma, Advocate for appellants.

Mr.Anil Kumar Lamdharia, A.P.P. for respondent- U.T.,
Chandigarh.

DARSHAN SINGH J.

The present appeal has been preferred against the judgment of conviction dated 31.01.2003 vide which, appellant Avtar Singh was held guilty and convicted for the offence punishable under Section 302 Indian Penal Code (in short 'IPC') and appellant Narinder Kaur was held guilty and convicted for the offences punishable under Section 302 read

with Section 34 and Section 201 IPC and the order on the quantum of sentence of the even dated vide which, both the appellants were sentenced as under:

Accused Avtar Singh			
Under Section	Imprisonment	Fine	In default of payment of fine further imprisonment
302 IPC	RI for life	Rs.3,000/-	RI for 1 year
Accused Narinder Kaur			
Under Section	Imprisonment	Fine	In default of payment of fine further imprisonment
302 read with Section 34 IPC	RI for life	Rs.3,000/-	RI for 1 year
201 IPC	RI for 4 years	Rs.1,000/-	4 months

2. The sequence of the events and catalogue of the facts leading to this prosecution are that on 05.05.1999 at about 09:45 a.m., a telephonic message was received by PW-21 Inspector Vijay Kumar, SHO Police Station-11, Chandigarh to the effect that Avtar Kaur has been murdered at village Khuda Ali Sher, U.T., Chandigarh. Inspector Vijay Kumar along with SI Jarnail Singh and SI Hari Singh and other police employees reached at House No.421, village Khuda Ali Sher i.e. the house of appellant Avtar Singh. PW-7 Pal Singh Sarpanch of village Khuda Ali Sher made his statement Ex.PJ to Inspector Vijay Kumar stating therein that on 05.05.1999, at about 09:30 a.m., he came to the Chowk of the village. PW-4 Prem Kaur told him that quarrel take place in

the house of everyone, come, she will show him blood and blood flowing in the drain, perhaps Avtar Singh might not have killed his wife. At this, complainant Pal Singh along with Prem Kaur went to the house of Avtar Singh (appellant No.1). He knocked the door. At his repeated knocking the door, nobody opened the door. Then he started knocking the door forcefully and also gave call that open the door. At this, appellant No.2 Narinder Kaur, niece (sister's daughter) of appellant Avtar Singh opened the door. Narinder Kaur was having the Pocha (mop) in her hand. Complainant asked Narinder as to where is Avtar Singh. Narinder Kaur replied that he has just now gone outside. At this, the complainant asked about the wife of Avtar Singh. Narinder Kaur replied that she is ill and is lying on the bed. Complainant Pal Singh shook Avtar Kaur, the wife of appellant No.1, who was lying on the bed, then he found that her legs and foot were drenched with blood and found that she was lying dead. At this complainant asked Prem Kaur to remain there and he went to telephonically inform the police. After that, he gave telephonic information to the police of Police Station-11 from the STD of Prem Singh and told that Avtar Singh along with his niece Narinder Kaur had killed Avtar Kaur. When he came out of the STD booth, he found that Avtar Singh was going towards outside running. He was caught hold by the complainant. Avtar Singh was having illicit relations with his niece Narinder Kaur and due to this reason, he used to give beatings to Avtar Kaur. That on 28/29.04.1999, Avtar Kaur informed him that her husband had been beating her by inserting pipe in her private parts and he would

kill her. The complainant along with other Panchayat Members gave this information to Mewa Singh, a police official, but he asked as to what proof they had regarding illicit relations of Avtar Singh and his niece and, thereafter, they returned from the police station. As a result thereof, Avtar Singh in furtherance of the common intention with Narinder Kaur, had murdered Avtar Kaur. If Mewa Singh, the police official, would not have been negligent with respect to the information given by them at the appropriate time, then this occurrence would have been averted. On this statement of complainant Pal Singh Ex.PJ, the formal FIR Ex.PJ/2 was registered and the investigation was started.

3. PW-21 Inspector Vijay Singh inspected the spot. The spot was photographed. A Chunni stained with blood, Parandi, shirt, Pajama stained with blood, two pieces of bangles of glass and one mattress (Dari) were taken into possession after preparing the separate sealed parcels. The stains of the blood lying on the floor, one plastic pipe stained with blood, one steel glass and one ribbon lying in another room were also kept in separate parcels and were taken into possession. The blood on the wall was scratched and its parcel was prepared. On the roof of the house, the blood stained clothes were found lying in a plastic bag. The said bag contained five Salwars of different colour, one frock, two shirts, one plastic bag and one Chunni. These clothes were also put in sealed parcels and were taken into possession vide memo Ex.PK. The Investigating Officer prepared the site plan of occurrence Ex.PR. He also prepared the inquest report Ex.PQ and sent the dead body for the postmortem

examination. Accused were arrested. Smt. Harpal Kaur, the mother of the deceased, produced an envelop and the letter written by the deceased, which was taken into possession vide memo Ex.PM. On completion of the formalities of the investigation, the report under Section 173 Code of Criminal Procedure (for short 'Cr.P.C.') was presented in the Court.

4. Both the appellants were charge sheeted for the offences punishable under Section 302 read with Section 34 IPC. Accused Narinder Kaur was further charge sheeted for the offence punishable under Section 201 IPC, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as 21 witnesses.

6. When examined under Section 313 Cr.P.C., accused Avtar Singh pleaded that Pal Singh complainant is politically opponent to him on account of elections. Accused Narinder Kaur was not present in the house at that time. His wife Avtar Kaur suffered from gynecological disorder and was bleeding profusely. He was having cordial relations with his wife and gave blood to her. Accused Narinder Kaur pleaded that on 05.05.1999, she was called by Avtar Kaur as she was not feeling well. She along with the children of Avtar Kaur namely Kiranjit Kaur and Harinder Singh went outside to ease themselves. When they came back from the fields, she went to the house of Gurbachan Singh to fetch milk for the house of Avtar Kaur. When she came back along with milk at about 09:30/09:45 a.m., there was big gathering at the house of Avtar

Singh. Pal Singh started raising 'Raula' that she had killed Avtar Kaur and got her arrested. She was living with her family members at village Singhpura, Distt. Ropper. She tried to tell the true and actual facts but nobody listened her request and was taken in custody.

7. In the defence evidence, accused examined as many as nine witnesses.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted appellant Avtar Singh for the offence punishable under Section 302 IPC and appellant Narinder Kaur for the offences punishable under Section 302 read with Section 34 and Section 201 IPC. Both the accused-appellants were awarded the sentence as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. We have heard Mr.Sudhir Sharma, Advocate, learned counsel for appellants, Mr.Anil Kumar Lamdharia, learned Additional Public Prosecutor for the respondent- U.T., Chandigarh and have carefully examined the record of the case.

11. Initiating the arguments, learned counsel for the appellants contended that there is no direct evidence to establish that the appellants have committed the murder of Avtar Kaur. He contended that there were cordial relations between appellant Avtar Singh and his wife deceased Avtar Kaur and there was no motive for him to kill her. He contended

that the circumstances relied upon by the prosecution does not form a complete chain. The case of the prosecution is based on the fabricated version and evidence.

12. He further contended that the letter Ex.PL produced by the mother of the deceased is a fabricated document. No expert evidence to prove the handwriting of the deceased has been produced, even though it is alleged that the writings of the deceased were available with them. Those writings have not been got compared with the letter Ex.PL. It is the admitted case that Smt. Harpal Kaur, the mother of the deceased was posted in Police Station Sarojni Nagar, Delhi and was also residing in the quarter situated therein, but the address on the envelop is given of Police Station Vinay Nagar. The mother of the deceased has also stated that it was the first letter received by her from the deceased, even though the marriage has taken place 20 years before the occurrence.

13. He further contended that the conduct of the witnesses is highly unnatural. On receiving the letter, wherein it is mentioned that the deceased was apprehending danger to her life, the mother informed her brother. The brother further gave information to the younger sister of the deceased living at Chandigarh. The sister did not go to the house of the deceased to know her well being and advise Avtar Singh. There is no explanation as to why the mother and brother of the deceased themselves did not come forward to help and protect the deceased.

14. He further contended that the deceased was having gynecological disorder and used to have heavy bleeding from her vagina.

She even had been receiving treatment for this ailment and had died due to excessive bleeding. There is no evidence as to who had caused injury to the private parts of the deceased. The cause of death alleged by the prosecution is also not established.

15. He further contended that there is no evidence of any illicit relations between the appellants. Appellant Avtar Singh is the real brother of the mother of appellant Narinder Kaur. It is not possible that they will have having the illicit relations. Appellant Narinder Kaur was married and having children. Mere presence of the accused in the house, in absence of any overt act, does not prove the guilt.

16. He further contended that both the children of the deceased, whose presence were natural in the house, have been examined. Kiranjit Kaur, the daughter of the deceased, has appeared as PW-6 and Harinder Singh, the son of the deceased, has appeared as DW-5. They have totally discarded the story of the prosecution regarding illicit relations between the appellants and the allegations against them with respect to the murder of Avtar Kaur.

17. He further contended that no incriminating article has been recovered from both the appellants. As per the medical evidence, a hand has been inserted in the vagina of the deceased. In that case, the blood of the deceased would have been found in the nails of accused Avtar Singh but no effort to collect this evidence has been made by the Investigating Officer.

18. He further contended that complainant Pal Singh was

politically opponent to appellant Avtar Singh. He, with the help of his political associates, has cooked up a totally false version. The appellants were not present at the house at the time of the occurrence. Deceased Avtar Kaur had died due to excessive bleeding due to gynecological disorder. Appellant Narinder Kaur was living in village Singhapura, Distt. Ropar. Thus, he pleaded that the conviction of the appellants recorded by the learned trial Court is not sustainable.

19. On the other hand, learned Public Prosecutor pleaded that the case of the prosecution is based on sound circumstantial evidence. The blood was noticed flowing in the drain of house of appellant Avtar Singh. Appellant Narinder Kaur was found present in the house. She was having a Pocha (mop) to sweep the floor, which was being used to destroy the evidence. Appellant Narinder Kaur has also given the false answer about the condition of the deceased. The plea raised by the accused that deceased died due to excessive bleeding on account of gynecological disorder, is not proved from any evidence, rather serious injuries have been found in her private parts, which led to bleeding and her death. Appellant Avtar Singh was caught while he was running from the village. He further contended that some days before her death, the deceased had disclosed about her harassment to complainant Pal Singh, the Sarpanch of the village and had also written the letter Ex.PL to her mother. The letter Ex.PL is fully proved from the statements of PW-15 Harpal Kaur, PW-17 Ravinder Kaur and PW-18 Jagdeep Singh. In the letter Ex.PL, the deceased has categorically mentioned apprehension of

danger to her life at the hands of the appellants as well as with respect to their illicit relations. He further contended that the illicit relations between both the appellants is fully established from the statements of the prosecution witnesses. Thus, he contended that the appellants have murdered Avtar Kaur in furtherance of their common intention as she was obstacle in their illicit relations and they have been rightly convicted by the learned trial Court.

20. We have duly considered the aforesaid contentions.

21. Admittedly, there is no direct evidence to the commission of crime and entire case of the prosecution is based on circumstantial evidence. It is not necessary that in order to prove the guilt of the accused, there must be direct evidence. The conviction can be based even on the circumstantial evidence as the man can tell lie but circumstances can never. The legal position pertaining to the principles to base the conviction in the cases based on circumstantial evidence is well settled. In a latest judgment titled as **Vadlakonda Lenin Vs. State of Andhra Pradesh, 2013 (2) RCR (Criminal) 82**, the Hon'ble Supreme Court relying upon the golden principles laid down in case **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116** has reiterated the aforesaid principles as under:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

22. In the instant case also the prosecution is relying upon certain sound incriminating circumstances against the appellants, which are detailed below.

- First : Illicit relations between the appellants,**
- Second : Harassment of the deceased and threat to her life at the hands of appellant Avtar Singh,**
- Third : Recovery of the dead body from the house of appellant Avtar Singh and the presence of the accused,**
- Fourth : The medical evidence,**
- Fifth : False plea,**
- Sixth : Abscondance of accused Avtar Singh,**
- Seventh : Scientific evidence,**
- Eighth : Motive.**

First : Illicit relations between the appellants

23. As per the prosecution version, accused-appellant Avtar Singh was having illicit relations with appellant Narinder Kaur, who

happens to be his niece i.e. daughter of his sister and that was the reason due to which, he used to harass and torture the deceased. There can be no documentary evidence to establish these type of relations. The Court has to depend upon the oral evidence to arrive at a conclusion. In the instant case, PW-5 Ajmer Singh, PW-7 complainant Pal Singh, PW-9 Piara Singh, PW-15 Harpal Kaur, the mother of the deceased, PW-17 Ravinder Kaur, the sister of the deceased and PW-18 Jagdeep Singh have deposed about the illicit relations between the appellants. The testimony of PW-7 complainant Pal Singh is in detail. He deposed that Narinder Kaur was putting up in the house of Avtar Singh for the last 8-9 months. Avtar Kaur had told him on 01.05.1999 that Avtar Singh and Narinder Kaur were beating her. She further told that she was apprehending danger from them and they will kill her. Avtar Kaur had also told that Avtar Singh has illicit relations with Narinder Kaur. He further deposed that he sent one person to the house of Avtar Singh in order to call him but he refused to come. He and above three Members of Panchayat went to Police Station-11, Chandigarh on 01.05.1999. Inspector of Police was not available. They met Mewa Singh SI and told the entire incident to him. He did not give any weightage to this version saying that they have no solid proof thereof. They came to their house.

24. The aforesaid oral evidence is also corroborated from the inquiry report Ex.DW11/A against SI Mewa Singh, wherein in the conclusion, it is mentioned that it seems that Members of Panchayat have casually informed SI Mewa Singh regarding illicit relations of Avtar

Singh with his niece but they have not lodged any complaint in the police station, due to which, SI Mewa Singh could not take any preventive action. This finding in the inquiry report shows that complainant Pal Singh and Members of Panchayat of village Khuda Ali Sher have approached the police informing about the illicit relations between the appellants and threat to the life of deceased Avtar Kaur at their hands. Thus, the illicit relations between the appellants is a strong circumstantial evidence against the appellants.

Second : Harassment of the deceased and threat to her life at the hands of appellant Avtar Singh

25. PW-7 complainant Pal Singh has categorically deposed that Avtar Kaur had told him on 01.05.1999 that Avtar Singh and Narinder Kaur were beating her. She further told that she was apprehending danger from them and that they will kill her. At that time, he was alone. Thereafter, he called Roshni, Ajmer and Piara Singh, Members Panchayat. Avtar Kaur had told that Avtar Singh had illicit relations with Narinder Kaur. He told the Members Panchayat as to what should be done. He sent one person to the house of Avtar Singh in order to call him but he refused to come. Thereafter, he deposed about giving information to SI Mewa Singh but he did not give any weightage to their version saying that they had no solid proof. The testimony of PW-7 Pal Singh is also corroborated by PW-5 Ajmer Singh, PW-8 Dilbag Singh, PW-9 Piara Singh, PW-15 Harpal Kaur, the mother of the deceased, PW-17 Ravinder Kaur, the sister of the deceased and PW-18 Jagdeep Singh,

the brother of the deceased.

26. The aforesaid oral evidence is also corroborated from the letter Ex.PL, written by the deceased to her mother few days before the occurrence. Learned counsel for the appellants has vehemently contended that the letter Ex.PL is a fabricated document and has not been proved in accordance with law. Hence, the same cannot be taken into consideration. But we do not find any substance in this plea of learned counsel for the appellants.

27. No doubt there is some ambiguity with respect to the address mentioned on the cover Ex.PL/1 and the address deposed by PW-15 Smt. Harpal Kaur, the mother of the deceased. On the registered cover Ex.PL/1, the address of Smt. Harpal Kaur is mentioned as house No.H-20, Thana Vinay Nagar, New Delhi. But Smt. Harpal Kaur while appearing in the witness box, has disclosed her address as house No.H-20, Sarojni Nagar, New Delhi. In the cross-examination, she has stated that her quarter is situated in Police Station Sarojni Nagar itself. PW-10 Bhupinder Singh, the official of the Post Office, Sector 20-C, Chandigarh has deposed that the envelop Mark-A (later on exhibited as Ex.PL/1) bears the impression seal of Post Office Sector 20-C, Chandigarh. After affixing the seal, the letter was sent for delivery to the concerned person. As per the statement of PW-10, the envelop Ex.PL/1 bears the genuine seal of Post Office, Sector 20-C, Chandigarh, which shows that this letter was posted from Chandigarh on 28th April, 1999 and was received in the Post Office of Sarojni Nagar, New Delhi on 1st May, 1999. So, there is

no doubt that the letter Ex.PL was posted through envelop Ex.PL/1 on 28th April, 1999 from the Post Office of Sector 20-C, Chandigarh to the address of the mother of the deceased. There is stamp of Post Office Sarojni Nagar, New Delhi on the cover Ex.PL/1. It may be possible that Vinay Nagar and Sarojni Nagar may be one and the same place. There is absolutely no ambiguity in the house number mentioned on the cover Ex.PL/1 and the statement of PW-15 Harpal Kaur. The fact that the said letter has been received by her on the address mentioned on the cover Ex.PL/1, also indicates that Vinay Nagar and Sarojni Nagar has some correlation. So, the ambiguity in the address mentioned on the cover Ex.PL/1 is of no consequence.

28. The handwriting of the deceased in the letter Ex.PL has been identified by PW-15 Smt. Harpal Kaur, the mother of the deceased and PW-17 Smt. Ravinder Kaur, the sister of the deceased. Smt. Ravinder Kaur has categorically deposed that her sister Avtar Kaur had studied up to 8th Class. She can identify her writing and signature since she has seen her writing and signing. Ex.PL which is in four pages, has been written and signed by her sister. She identified her handwriting and signature on Ex.PL. She further deposed that she also identify handwriting of Avtar Kaur on the envelop Ex.PL/1. This evidence is relevant under Section 47 of the Indian Evidence Act to prove the handwriting of the deceased. She further deposed that this letter and envelop were in the possession of her mother Smt. Harpal Kaur and she had handed over the same to the police. From the aforesaid evidence, it

is established that the letter Ex.PL is in the hand of deceased Avtar Kaur.

29. In the letter Ex.PL, the deceased has categorically mentioned that her husband gave beatings to her daily and he treated her very badly. He has even threatened to kill her. He also beat her children. She had further written addressing her mother that she should save her and her children's life. She further mentioned that on receiving the letter, she should leave Delhi otherwise he will kill her. She further mentioned that he has kept his niece and she instigate him and daily got her beaten. She has further written that she had asked that he will take work from her like servants and she is in great trouble. She further mentioned that if they want the safety of her life, then they should immediately take her away otherwise he will kill her. One day he had beaten her after removing her clothes. She further mentioned that mother come to Chandigarh immediately on receiving the letter and she will tell the entire facts on meeting her. In the letter, she has repeatedly mentioned about her maltreatment and physical torture at the hands of appellant Avtar Singh and requested her mother to take her from there immediately on receipt of letter. The facts mentioned in the letter clearly established the plight of the deceased in the matrimonial house. So, from the aforesaid oral as well as documentary evidence, it is established that deceased was badly maltreated and harassed by the accused and she was apprehending threat to her life, which is a strong incriminating circumstance against the appellants.

Third : Recovery of the dead body from the house of appellant Avtar Singh and the presence of the accused

AND

Fourth : The medical evidence

30. PW-7 complainant Pal Singh has stated that he and Prem Kaur went to the house of Avtar Singh. They found that blood was flowing through the drain. They knocked the door. Door was got opened. They entered the room. He inquired from Narinder Kaur present in the Court as to where her maternal aunt was. She was having a mop in her hand, with which she was sweeping the floor. Narinder Kaur told him that her maternal aunt was sleeping. She told him that she was lying on the bed. He removed the cloth and found Avtar Kaur was lying dead. She was bleeding profusely from her private parts. He went to public call office and rang up the police in Police Station Sector-11, Chandigarh. He told the police officials on telephone that Avtar Singh had killed his wife. The police officials came their. Avtar Singh accused was caught by him at the spot. The statement of PW-7 Pal Singh has also been corroborated by PW-4 Prem Kaur, PW-5 Ajmer Singh and PW-9 Piara Singh. PW-21 Inspector Vijay Kumar, the Investigating Officer of the case also found the dead body of Avtar Kaur lying on a cot in the room in the house of appellant Avtar Singh. He had lifted various blood stained clothes from the house of the appellant and also carried out the inquest proceedings. So, it is established that the dead body of Avtar Kaur was recovered from the house of appellant Avtar Singh. Appellant Narinder Kaur was found

present in the house when the dead body was lying therein. Complainant Pal Singh has categorically deposed that appellant Narinder Kaur was having the cloth in her hand meant for sweeping floor. He has also deposed that he had caught Avtar Singh from the Chowk of the village.

31. As the dead body of Avtar Kaur was recovered from the house of appellant Avtar Singh, the presence of appellant Narinder Kaur along with dead body is established from the aforesaid evidence. Even this fact is established that appellant Avtar Singh was also present in the house immediately before the blood was noticed flowing in the drain. So, the circumstances leading to the death of Avtar Kaur were specially in the knowledge of the accused and they were required to explain under what circumstances Avtar Kaur met with death. The Hon'ble Supreme Court in case **State of West Bengal Vs. Mir Mohammad Omar and others, 2000 Supreme Court Cases (Criminal) 1516** has laid down that in such circumstances, the burden lies on the accused to establish as to what happened to the deceased and if they fail to explain, the presumption under Section 106 of the Indian Evidence Act arises against the accused. To support this view, reference can also be made to cases **Shri Bhagwan Vs. State of Rajasthan, AIR 2001 Supreme Court 2274, Munish Mubar Vs. State of Haryana, (2013) 1 Supreme Court Cases (Criminal) 52** and **Parveen Kumar Vs. State of Karnataka, 2003(4) Crimes 358 (Supreme Court)**.

32. The accused-appellants have come forward with the explanation that the deceased was suffering from gynecological problem

due to which, she used to suffer heavy bleeding many a time and appellant Avtar Singh had donated blood to save his wife. She was having a history of gyne problem and complication in deliveries. Appellant Narinder Kaur has also pleaded in her statement under Section 313 Cr.P.C. that Avtar Kaur was not feeling well. So, the appellants have raised the plea that deceased Avtar Kaur has died on account of the excessive bleeding due to gynecological problem and complication. But this plea stands falsified from the medical evidence.

33. PW-1 Dr. Krishan Vij, Professor of Forensic Medicine, Government Medical College, Chandigarh along with PW-14 Dr. Usha Bishnoi and Dr. Irvindjit Singh had conducted the postmortem examination on the dead body of deceased Avtar Kaur. Their observations are as under:

“Dead body of moderately build and moderately nourished wearing printed Salwar, Kamez with background of Mehndi colour half sleeve shirt with same pattern. Salwar is smeared with blood in upper regions. On removing Salwar, a maroon colour Salwar without tying rope smear with blood was present in between thighs against the region of genitalia. Inner aspects of thighs and adjoining legs showing scattered smearing of blood. Eyes closes, mouth closed, generalise pallor. Riger mortis was in the process of disappearing. Postmortem staining was present and fixed. Greenish discoloration present on the flanks of abdomen. Lips and nail showed cyanosis. Following injuries were found on the person of the deceased: -

1. Blueish contused area 5 cm X 3 cm and 4 cm X 3 cm on right and left buttocks respectively against region of ischial tuberosities.

2. Reddish blueish contusion 9 cm X 4 cm on front and lateral aspect of left thigh in its middle third region.
3. Reddish blueish contusion 14 cm X 5 cm on front and lateral aspect of right thigh in its middle third region.
4. Reddish bluish contusion 4 cm X 2.5 cm on lateral aspect of left upper arm in its middle third region.

On widening apearnt the legs and valva, blood trickled down. On speculam examination blood trickled down, the cervix appeared normal. Right vaginal wall showed extensive tears on per vaginal examination. Uterus was of parous size, mobile. Left fornix free but vaginal tear from right vaginal wall extended upto right fornix. On dissection, abdominal wall in the superapubic region showed haemorrhage particularly on the right side involving also large area extending upto pectineal eminence on right side.”

34. On the application of the police Ex.PD, the doctors gave the opinion Ex.PD/1 that the cause of death in this case was shock and haemorrhage due to injuries. The injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

35. The aforesaid medical evidence shows that deceased had suffered the serious injuries in her private parts. The right vaginal wall showed extensive tears on her vaginal examination. Uterus was of parous size, mobile. Left fornix was free but vaginal tear from right vaginal wall extended up to right fornix. On dissection, abdominal wall in the superapubic region showed haemorrhage particularly on the right side involving large area extending up to pectineal eminence on right side. The doctors gave opinion Ex.PC/1 that possibility of injuries caused by insertion of hand into the area particularly the one carrying

irregular/projected configuration, could not be ruled out. So, the aforesaid medical evidence clearly establishes that the deceased was subjected to the physical assault. Serious injuries were caused in her private parts, which was the cause of her death.

36. Thus, the medical evidence belies the plea raised by the appellants that due to gynecological problem, the deceased suffered excessive bleeding and died. In that case there could have been no question of such serious injuries on the private parts of the deceased.

37. Moreover, the appellants have not led any evidence to show that deceased was suffering from any gyne problem during her life time. Appellant Avtar Singh has taken the plea that he had donated blood to save the life of his wife. If that would have been so, there must be some record regarding her treatment. But no such record has been produced, which clearly establishes that this false plea has been projected by the appellants, which is not supported by any evidence.

38. Thus, it is established that Avtar Kaur has suffered the homicidal death in the house of appellant Avtar Singh. The presence of both the appellants is established in that house at the time of the occurrence. The circumstances leading to the death of Avtar Kaur was specially in the knowledge of the appellants but they have come forward with a false plea. These events also constitutes the strong incriminating circumstance against the appellants.

Fifth : False plea

39. As already mentioned, from the medical evidence it is

established that serious injuries were caused in the private parts of deceased Avtar Kaur, which was the cause of her death but the appellants have raised the false plea that she has died due to excessive bleeding as she was suffering from the gyne problem. It is settled principle of law that in the cases based on the circumstantial evidence, raising the false plea also supply the link in the chain of the circumstantial evidence. The Hon'ble Supreme Court in case **State of Maharashtra Vs. Suresh, 2000(1) RCR (Criminal) 149**, has laid down that in the cases based on circumstantial evidence, false answer given by the accused can also be counted as providing “a missing link” for completing the chain. Again in case State of **Andhra Pradesh Vs. Kanda Gopaludu, 2005(4) RCR (Criminal) 686**, the accused has taken the plea that deceased committed suicide which proved to be false . The Hon'ble Apex Court held that in case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain. The same legal position has been reiterated in case **Rameshbhai Mohanbhai Koli and others Vs. State of Gujarat 2010 (4) RCR (Criminal) 807**. Thus, the false plea raised by the appellants that the deceased has died due to excessive bleeding as a result of gyne problem is again an incriminate circumstance against the appellants.

Sixth : Abscondance of accused Avtar Singh

40. Accused Avtar Singh had absconded from the house after the commission of the crime and as per the statement of PW-7

complainant Pal Singh, he was caught from the Chowk of the village. Thus, it is established that after committing the crime he had absconded. A Division Bench of Hon'ble Delhi High Court in case **Amar and another Vs. State (Delhi Administration), 2012 (5) RCR (Criminal) 221** laid down that conduct of the accused in absconding when police got suspicious of his complicity in the offence is relevant under Section 8 of the Indian Evidence Act and will be indicative of his guilty mind. In case **Usman Mian Vs. State of Bihar, 2004(2) RCR (Criminal) 920** the abscondance of the accused was relied upon as a circumstance against the accused to base his conviction in the murder of his wife. A Division Bench of Hon'ble Delhi High Court in case **Parmod Vs. State (Delhi), 2013(4) JCC 2823 (D.B.)**, laid down that abscondance is definitely one link in the chain of circumstances establishing the guilt of the accused. The abscondance of the accused was also relied upon as an incriminating circumstance for the conviction of the accused in cases **Chaman Lal and another Vs. State, 2010(2) JCC 1052**, **Krishna Ghosh Vs. State of West Bengal, 2009(2) RCR (Criminal) 609**, **Ravirala Laxaiah Vs. State of Andhra Pradesh, 2013(3) RCR (Criminal) 341** and **Ram Pal @ Bunda Vs. State of Haryana, 2013(2) RCR Criminal) 879**. Appellant Avtar Singh is a government employee. There is no explanation from the side of the appellant Avtar Singh that as to why on that day, he had not gone to attend his duties. It shows that the commission of crime was planned and appellant Avtar Singh even did not report for his duties.

Seventh : Scientific evidence

41. As per the statement of PW-21 Inspector Vijay Kumar, he has lifted Chunni, Parandi, shirt, Pajama, pieces of bangles of glass, one Dari (mattress) spread on the bed from the room wherein the dead body was lying. He also found the stains of blood on the floor of adjoining room. One plastic pipe stained with the blood, one steel glass, ribbon were taken into possession from the adjoining room. He also found a plastic bag lying on the roof of the house containing five Salwars of different colours, one frock, two shirts, one plastic bag and one Chunni. All these articles were put into the sealed parcels and were sent to the Forensic Science Laboratory for examination. The report of the FSL is Ex.PF, which shows that the human blood of group 'AB' was found on all the aforesaid clothes/articles except the shirt and broken pieces of bangles. If the deceased would have died due to excessive bleeding on account of gyne problem, there was no reason of the blood having been found on such number of clothes and what was the need for concealing the blood stained clothes by putting in a bag on the roof of the house. The blood stained clothes were concealed on the roof of the house in order to destroy the evidence. As per the statement of PW-7 Pal Singh, appellant Narinder Kaur was having mop in her hand, which shows that she was indulging in destroying the evidence from the scene of crime to screen themselves from the legal punishment. Thus, the aforesaid scientific evidence further adds a link in the chain of the circumstantial evidence.

Eighth : Motive

42. From the evidence discussed above, it comes out that the appellants were having the illicit relations. Certainly the deceased was an obstacle in their illicit affair. So, she has been eliminated by the appellants in furtherance of their common intention to carry on their illicit affairs/relations. So, the appellants had a strong motive for the commission of offence.

43. Thus, keeping in view our aforesaid discussion, the case of the prosecution is based on cogent, convincing and sound circumstantial evidence, which are consistent only with the hypothesis of the guilt of the accused-appellants and are not explainable on any other hypothesis. These circumstances are conclusive in nature and forms a complete chain not to leave any reasonable ground for conclusion consistent with the innocence of the appellants rather the aforesaid circumstances establish that in all human probability, the murder of Avtar Kaur has been committed by the appellant Avtar Singh and Narinder Kaur also shared the common intention for the commission of the offence. She also destroyed the evidence to screen themselves from the legal punishment. Thus, we do not find any infirmity in the conviction and sentence of the appellants, which are hereby affirmed and maintained.

44. Consequently, the present appeal has no merits and the same is hereby dismissed. The accused-appellants are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this

judgment before the learned Chief Judicial Magistrate, U.T. Chandigarh, who shall send them to jail to undergo the remaining part of their sentence. If, they fails to surrender, the learned Chief Judicial Magistrate, U.T. Chandigarh, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

(M. JEYAPPAUL)
JUDGE

23.02.2015
sunil yadav

(DARSHAN SINGH)
JUDGE