

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-1-

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

(1)

CRA-D-721-DB of 2012
Date of decision:-29.11.2016

Neeraj Rana @ Sonu

...Appellant

Versus

State of Punjab

...Respondent

(2)

CRA-D-887-DB of 2012

Amarjit Singh @ Prince and anr.

...Appellants

Versus

State of Punjab

...Respondent

(3)

CRA-D-115-DB of 2013

Subhash Chander

...Appellant/complainant

Versus

State of Punjab and ors.

...Respondents

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

(4)

-2-
CRA-D-981-DB of 2013

Gurpreet Singh @ Raju

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Ms.Isha Goel, Advocate
for the appellant (s) in CRA-D-721-DB of 2012 &
CRA-D-981-DB of 2013.

Mr.J.S. Gill, Advocate
for the appellants in CRA-D-887-DB of 2012.

Mr.T.P.S. Bhatti, Advocate
for the appellant/complainant in CRA-D-115-DB of 2013.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

GURMIT RAM, J.

The aforementioned all the appeals have been taken up together for the purpose of disposal since these pertain to one and the same judgment and order of sentence dated 10.4.2012, in order to avoid repetition and conflict in judgments.

The abovesaid ***CRA-D-721-DB of 2012, CRA-D-887-DB of 2012*** and ***CRA-D-981-DB of 2013*** have been preferred by appellants – herein (accused) Neeraj Rana @ Sonu, Amarjit Singh @ Prince, Rajbir Singh @ Sonu @ Chona and Gurpreet Singh @ Raju respectively against

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-3-

the judgment of conviction and order of sentence dated 10.4.2012 passed by the Court of learned Sessions Judge, Amritsar in criminal case bearing FIR No.12 dated 16.1.2009, under Sections 302 and 382 of the Indian Penal Code (for short – ‘IPC’), Police Station “B” Division, Amritsar vide which they (appellants) were held guilty for the offences punishable under Sections 302 and 382 of the IPC and each of them was awarded the sentences as detailed below:-

Under Section	Sentence
302, IPC	Imprisonment for life along with fine of Rs.10,000/-. In default of payment of fine, the convicts shall undergo rigorous imprisonment for a further period of one year each.
382, IPC	Rigorous imprisonment for 10 years along with fine of Rs.5,000/-. In default of payment of fine, the convicts shall undergo rigorous imprisonment for a further period of six months each.

The aforesaid CRA-D-115-DB of 2013 has been preferred by complainant - Subhash Chander for the modification of the order of sentence dated 10.4.2012 and for awarding capital punishment to the respondents – herein (accused) for the offence punishable under Section 302, IPC, coupled with dacoity.

The case of the prosecution as presented before the learned trial Court, in brief, was that on 16.1.2009, SI/SHO Manjit Singh, Police Station 'B' Division, Amritsar along with SI Bakhtawar Singh and other

**CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013**

-4-

police officials was present at Ganda Nala (Dirty Drain) Bridge, Sultanwind Road, Amritsar in connection with patrolling, where Subhash Chander – complainant came and got recorded his statement Ex.PA which was as under:

“That he is running his goldsmith shop at Sarwarpura Bazaar. He has three children. His eldest son namely Sunil Kumar @ Bablu is undergoing his sentence in the murder case of his wife in Central Jail, Amritsar. His younger daughter Arti is married to one Vikas Arora, resident of Garden Enclave, Amritsar and his youngest daughter Jyoti is away to Australia on study basis. He and his wife Kamlesh Rani have been residing in the house. Today i.e. 16.1.2009 at about 4:00 p.m., he went to his house on the phone call received from his wife Kamlesh Rani since the clothes etc. were to be washed as his wife was unable to wash the same due to illness. After washing the clothes, he went back to his shop. Then he came back to his house at about 7:30 p.m. after closing his shop and found the main gate of his house open. After entering into the house, he found his wife Kamlesh Rani lying in a pool of blood. Two KARAS of gold each weighing 35 gms., three gold rings weighing 15 gms. and tops in the ears weighing 10 gms. were not available. Some unknown persons have taken away these gold ornaments after committing the murder of his wife. On seeing the dead body of his wife, he started weeping bitterly, upon which the neighbours and other residents of the Mohalla gathered there. On his phone call, his father Ram Lal also reached there. After leaving him at the spot to safeguard the dead body of his wife, he proceeded towards police station to lodge the report. Request was made to take legal action against the culprits.”

The complainant signed his above statement after admitting it

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-5-

to be correct, upon which, SI/SHO Manjit Singh made his endorsement Ex.PA/1 and sent ruqa to the police station through HC Lakhwinder Kumar, on the basis of which the instant case was registered vide FIR Ex.PA/2.

Thereafter, SI/SHO aforementioned along with complainant reached at the spot and prepared rough site-plan after inspecting the site. Fingerprints from the spot were got lifted through the Fingerprint Expert. Snaps of the spot were also taken. Blood was also lifted from the spot with the help of cotton swab which was converted into a parcel. One pair of *Chappal* was also recovered from the spot and the same was also converted into a parcel. One blood stained *Chaadar* was also recovered from the spot, the parcel of which was also prepared. Inquest proceedings in respect of the dead body of deceased were conducted. Post-mortem on the dead body of deceased was also got conducted. Documents and other articles which were handed over by the doctor after the post-mortem of deceased were taken into police possession after converting the same into parcel.

On 18.1.2009, complainant Subhash Chander got recorded his supplementary statement to the effect that the unknown persons who had murdered his wife had also taken away mobile phone of his wife Kamlesh Rani Make Nokia, Model- 6288 bearing SIM No.98726-77616. Record of call details of this mobile was received. On examining its IMEI No.353226019059970, it was found that this mobile phone was being used by one Rohit Kumar son of Jugal Kishore resident of 50, Railway Link Road, Amritsar by inserting SIM No.99158-83085 who was

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-6-

associated in the investigation of this case on 28.1.2009. During investigation, he disclosed that he had received this mobile phone of black colour from the shop of Gaurav Sood @ Mani, the Proprietor of shop No.5, Liberty Market on 21.1.2009. This mobile was taken into police possession. On the same day, said Gaurav Sood @ Mani was also associated in the investigation, who during investigation disclosed that he had purchased this mobile phone on 18.1.2009 from a clean shaven person of fair complexion of the age of 20/22 years for a sum of Rs.2,700/- in the evening at 6:30 p.m. and that he could identify that person on seeing him. This mobile was identified by the complainant as the same one which was taken away by the culprits at the time of the commission of the alleged crime.

Further investigation of this case was jointly conducted by Sh.Jagdeep Singh Sidhu DSP, Chheharta and SI/SHO Manjit Singh as per the order of the SSP (Rural), Amritsar. During investigation of the case, Sunil Kumar son of complainant who was undergoing sentence in connection with the murder case of his wife in Central Jail, Amritsar was joined in the investigation, who after interrogation was got discharged on 4.4.2009.

Then another supplementary statement of complainant Subhash Chander was recorded on 7.4.2009 and on its basis, raids were conducted at the houses of accused Neeraj Rana, Rajbir Singh, Gurpreet Singh and Amarjit Singh @ Prince.

Accused Neeraj Rana @ Sonu, Rajbir Singh @ Sonu and Gurpreet Singh @ Raju were arrested by the police in this case on

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-7-

11.4.2009 on the basis of secret information.

Accused Neeraj Rana as per his disclosure statement got recovered one DATAR while in police custody from the heap of bricks lying on the roof of his residential house, the rough sketch of which was prepared and the same was taken into police possession. He also got recovered one female gold ring weighing 5 gms. bearing impressions of 'KS' from his residential house.

Accused Gurpreet Singh @ Raju as per his disclosure statement got recovered one gold ring weighing 5 gms. bearing impressioins of 'KS' from the room of his residential house. Then one motorcycle bearing registration No.PB-18-N/2584 make TVS Star City which was used at the time of the commission of the alleged crime was also recovered from the courtyard of the house of this accused and the same was also taken into police possession vide a memo.

Accused Rajbir Singh @ Sonu also got recovered one gold ring bearing impressions 'KS' of 5 gms. as per his disclosure statement. This accused also got recovered one *CHHURI* from the room of his residential house as per his disclosure statement, rough sketch of which was prepared and the same was taken into police possession.

Rough site-plans of the spots of all these recoveries were prepared separately. Subhash Chander – complainant husband of deceased was accompanying the police party when the recovery of abovesaid gold finger rings was effected. He identified the same as that of his wife Kamlesh Rani (since deceased), which were taken away by the assailants along with them after the commission of alleged crime.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-8-

Abovesaid Gaurav Sood @ Mani identified accused Neeraj Rana @ Sonu as the same person who had sold to him one mobile phone Make NOKIA – Model 6288 of black colour for a sum of Rs.2,700/- on 18.1.2009. On reaching the police station, the abovesaid entire case property was handed over to Malkhana Clerk – Gurvinder Singh.

On 12.4.2009 Ram Lal, father of complainant Subhash Chander, got recorded his statement to the effect that accused Neeraj Rana @ Sonu was known to him already since he was working at the shop of his son Subhash Chander. He identified all the abovesaid three accused while they were in police custody. In his statement he got recorded that on 16.1.2009 at about 6:00 p.m., he was going to his house after knowing the well being of his daughter-in-law Kamlesh Rani who had undergone some operation. When he reached at the turning of the street, then he found present there abovesaid accused Neeraj Rana, Rajbir @ Sonu and Gurpreet Singh @ Raju along with one more person on two motorcycles. Accused Neeraj Rana wished him and went away from there along with his companions. Now he was of the firm belief that all these four persons had gathered there for committing the crime and subsequent thereto they murdered his daughter-in-law.

On 13.4.2009, one Vinod Kumar @ Goldi got recorded his statement with the police that on 7.1.2009 at about 6:00 p.m., he had gone to the house of accused Neeraj Rana @ Sonu who was found present on the roof of his house along with his friends namely Rajbir Singh @ Sonu, Gurpreet Singh @ Raju and Prince. Accused Neeraj Rana told him 'that he is on visiting terms to the house of one goldsmith who is a wealthy person.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-9-

During day time, said goldsmith remains present at his shop, whereas his wife alone is available in the house who used to wear enough gold ornaments. They were intending to commit dacoity at his house and to share the booty. They asked him (Vinod Kumar @ Goldi) to join them in the commission of this crime but he showed his inability to join them on the plea that next day, he was going to Banaras. He came back from Banaras after two months. On that day, he saw the photographs of accused Neeraj Rana, Chona and Raju and after reading the news item, he came to know that accused Neeraj Rana and his companions had murdered the wife of complainant – Subhash Chander and took away gold ornaments worn by her. He is of the firm belief that wife of complainant Subhash Chander had been murdered in pursuance of the planning/preparation which was made at the house of accused Neeraj Rana on 7.1.2009.'

On 27.4.2009, complainant – Subhash Chander got recorded his another supplementary statement to the effect that complete name and address of accused Prince is Amarjit Singh @ Prince son of late Manjit Singh, Goldsmith, resident of Turi Wala Bazaar, New Azaad Nagar, Sultanwind Road, Amritsar. His mother had re-married with one Amrik Singh, resident of Prem Nagar, Yamuna Nagar, Haryana. Accused Amarjit Singh @ Prince was arrested in this case on 15.5.2009. He got recovered one *DATAR* and one cutter used in the commission of the crime as per his disclosure statement. Besides he also got recovered tops. Rough sketch of this *DATAR* was prepared and thereafter the same was taken into police possession along with the cutter and tops. He also got recovered one Bullet motorcycle which was used in the commission of the alleged crime

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-10-

from the room of his house and the same was also taken into police possession vide a memo.

Statements of the witnesses were recorded. Report of FSL was received. On the completion of the investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, who further committed the same to the Court of learned Sessions Judge, Amritsar for trial after making compliance of the provisions of Section 207, of the Code of Criminal Procedure (for short - Cr.P.C.)

Finding a prima facie case punishable under Sections 302 and 382 of the IPC against all the accused, they were charge-sheeted accordingly vide order dated 10.9.2009, to which, they pleaded not guilty and claimed trial.

During trial of the case, prosecution examined twenty three witnesses in total to prove its case against the accused and further to bring them to book.

Then during their examination under Section 313, Cr.P.C., the entire incriminating evidence as brought on the record during trial of the case was put to them, which they denied in toto. Further, accused Rajbir @ Sonu @ Chona took the plea that he was working in his shop at 100 Feet Road, Sultanwind Road, Amritsar. He left for his house from his shop at about 7:30 p.m. and that he was picked up by the police when he was just near to his house.

Accused Gurpreet Singh @ Raju took the plea that on 9.4.2009 at about 7:00 p.m., he was sitting at his shop. There came 7-8 police officials who inquired about his name and picked him up. They

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-11-

took him to CIA Staff where he was tortured and illegally detained for 4 days.

Accused Amarjit Singh @ Prince took the plea that he was in custody in a criminal case. He was taken into custody by the police in this case by moving application in the Court. His police remand was taken. When he was left in Central Jail, Amritsar, then he came to know that he was involved in this case.

Then all the accused took the plea of their innocence and false implication in this case.

After hearing learned counsel for both the parties and going through the record as well, the learned trial Court held all the accused guilty for the offences punishable under Sections 302 and 382 of the IPC and awarded them sentences as detailed in second para of this judgment.

The appellants-herein (accused) being dissatisfied with the impugned judgment of conviction and order of sentence have come up before this Court vide the instant appeals aforementioned, notices of which were given to the respondent-State. Record of learned trial Court was also requisitioned.

We have heard learned counsel for both the parties and also analyzed the record thoroughly with their able assistance.

Learned counsel for the appellants has argued that the impugned judgment of conviction and order of sentence dated 10.04.2012 are against the law, facts and evidence on record and hence not sustainable in the eyes of law. In this regard his first contention is that none of the appellants-herein (accused) was named in the FIR. At the incipient stage,

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-12-

complainant, Subhash Chander-PW-2 even levelled allegations against his relatives including his son Sunil Kumar for murdering his wife Kamlesh Rani and taking away the gold ornaments worn by her after doing her short work. Herein it is also his submission that even complainant-Subhash Chander had filed a writ petition before this Court against the police for not taking any legal action against these persons, but subsequently he digressed from this theory qua the commission of alleged crime and roped the appellants-herein (accused) in this case by inventing a concocted and fabricated version whereby levelling false allegations against them.

It is the admitted case of prosecution that appellants-herein (accused) were not named in the FIR Ex.PA/2. It was a case of blind murder of Kamlesh Rani wife of Subhash Chander and peculating her ornaments after slaughtering her. The entire case of prosecution was sailing upon the depositions of certain star witnesses of prosecution i.e. Subhash Chander-complainant (PW-2), Ram Lal (PW-3), Vinod Kumar (PW-5) and Dr. Surinder Singh (PW-13).

As per prosecution story, PW-2 Subhash Chander-complainant was the first person who reached at the spot of alleged occurrence after the commission of alleged crime and informed the police in this regard vide his statement Ex.PA. Then during investigation of this case, it came to light that PW-3 Ram Lal, the father of complainant-Subhash Chander had seen the appellants-herein (accused) present at the turning of street (*Gali*) on 16.01.2009 at about 5:00 p.m. on two motorcycles, when he was going back to his house after seeing his

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-13-

daughter-in-law Kamlesh Rani as she was operated upon. Then during investigation of the case statement of PW-5 Vinod Kumar was recorded to the effect that on 07.01.2009 he had gone to the house of accused Neeraj Rana @ Sonu wherein appellants-herein (accused) were found present while making plan to commit the offence of looting in the house of a well to do Gold Smith and appellant-herein (accused) Neeraj Rana also requested him to conjoin them in this criminal venture which he refused to join on the plea that next day he was to go to Banaras. Then it also came to surface during investigation that appellants-herein (accused) had made extra judicial confessions regarding their involvement in the commission of alleged crime before PW-13 Dr. Surinder Singh on 08.04.2009, who further made his statement in this regard before the police on the same day.

Now let us see the depositions of these PWs made in the Court as to how far these are confidence inspiring and withstood to face the cross-examination at the hands of defence counsel and further to hold as to whether the learned trial Court was justified in holding the appellants-herein (accused) guilty in this case in the light of their depositions and other evidence available on the record.

Complainant-Subhash Chander while appearing in the Court as PW-2 made his statement on the same lines as per his statement Ex.PA made by him before the police on 16.01.2009. Then he also deposed that on 06.04.2009 at about 8:00 p.m. he was sitting in the corner of dinning hall of Anand Hotel near bus stand, Amritsar. He listened conversations of three persons who were already sitting there, out of whom accused

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-14-

Neeraj Rana present in the Court was saying to his companions namely Sonu and Chona that Prince had taken all the booty of gold ornaments pilfered from the house of Subhash Chander after committing murder of his wife and had given them only three gold rings. Further they were contemplating to go to the house of said Prince at Jagadhari. Then it also came in his statement that he was knowing accused Neeraj Rana since he had worked at his shop for about a month about two months prior to the occurrence and his two companions used to visit him at his shop. Then his further statement was that he joined the police during investigation of the case on 11.04.2009. The recovery of the gold ornaments and weapon of offence was got made by the accused in his presence when he was one of the members of the police party on said date.

In his cross-examination, he had admitted that his son Sunil Kumar is undergoing life imprisonment in Central Jail, Amritsar for the murder of his wife. He further admitted that he himself was also an accused in that case and remained in jail . His mother died twelve years ago due to heart attack and his father re-married after the death of his mother. Then it was also his admission that even his son Sunil Kumar has also got re-married now. Then it was also in his cross-examination that he gave a statement in press conference that his wife was murdered by Vishal and Vivek sons of his brother on the asking of the police. He also filed a writ petition against the police for not registering the case against Vishal and Vivek, who were any-how arrested and later on released. Then he also admitted that Vikas Arora, his father Adarsh Arora and their servants were also joined in the investigation of the case by the police. His

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-15-

relations with his son-in-law Vikas Arora were strained. Vikas had filed suit for compensation against him on account of defamation. Then he also admitted that said Vikas filed suit for specific performance against him on the basis of false agreement to sell. It was also found mentioned in his cross-examination that he had filed two rent applications against Vikas. Then it was also his admission that his son Sunil Kumar was also brought from jail on production warrant and had been interrogated in this case. Regarding abovesaid Anand Hotel, he admitted that this Hotel was having single hall for sitting and some tables were placed for the customers to take drinks etc. All chairs/tables were visible to each other.

From the above statement of PW-2 Subhash Chander, one thing is established that accused Neeraj Rana @ Sonu was already known to him since as per his deposition, said Neeraj Rana had worked at his shop for about one month about two months prior to the occurrence. Then it also came as above discussed in his statement that there was only one sitting hall in Anand Hotel, Amritsar for customers and all the chairs/tables placed therein were visible to each other. So in these circumstances, it does not appeal to any reasoning nor probable that appellant-herein (accused) Neeraj Rana would have made any incriminating disclosure to his companions regarding the commission of alleged crime in the presence of complainant-Subhash Chander to whom as per prosecution case complainant-Subhash Chander was acquainted earlier. Moreover, in the premises of any Hotel which is visited by the general public frequently, no sensible person will talk with regard to the crime already committed with his companions, that too in the presence of

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-16-

the complainant as in the case in hand. Then in the case in hand, the alleged occurrence took place on 16.01.2009 and the alleged conversation of accused Neeraj Rana with his two companions was heard by complainant Subhash Chander on 06.04.2009, i.e. after a gap of about three months from the date of alleged occurrence. Then from the above discussed statement of PW-2 it was also established that firstly he levelled allegations against the sons of his brother, his own son Sunil and his son-in-law Vikas and his family members with regard to the murder of his wife. In this connection even he also filed writ petition in this Court against the police for not taking legal action against the aforesaid persons with regard to the murder of his wife. Later on, all of a sudden, he changed the track and involved the appellants-herein (accused) in this case. It is settled law that when two views are possible from the prosecution version, then the view which is favourable to the accused is to be followed.

PW-3 Ram Lal is none-else, but the father of complainant-Subhash Chander (PW-2). His statement in nut-shell as abovesaid was to the effect that he had seen the appellants-herein (accused) standing on the turn of Ram Nagar near motorcycle on 16.01.2009 in the evening when he was returning to his house after seeing his daughter-in-law since she had undergone some operation. Regarding this material fact, he made his statement to the police on 12.04.2009 i.e. almost after about three months from the date when he had allegedly seen these persons present on the turn of Ram Nagar. There is no explanation on the part of the prosecution as to why he remained mum for about three

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-17-

months in not disclosing this material fact to the police pertaining to this occurrence. Then in his cross-examination, it also came that he did not give the name of accused Prince in his statement given to the police. Even he did not disclose the name of this accused on the date of alleged identification of other accused persons on 12.04.2009 as a suspect in this case. Then he also did not produce any record with regard to the alleged employment of accused Neeraj Rana at the shop of his son Subhash Chander as well as of the salary paid to him, if any.

So far as abovesaid PW-5 Vinod Kumar @ Goldy was concerned, he did not support the prosecution version in the Court. He was declared hostile and was cross-examined by the Public Prosecutor. In his cross-examination made by prosecution, he stated in clear words that police did not meet him nor did he make any statement to the police. Then he admitted that he appeared in the Court of Illaqa Magistrate and made his statement Ex.PO before the Court. Then at the same time he uttered that the said statement was recorded under the pressure of Subhash Chander-complainant. Then in his cross-examination made by defence counsel he stated that neither he studied with accused Neeraj Rana in any school nor he is resident of his '*Mohalla*'. He never went to his house nor he met his mother. Complainant-Subhash Chander took him to Police Station B-Division where he was produced before DSP, who asked him to make statement in favour of Subhash Chander. Even Subhash Chander threatened to get him killed from some bad elements, if he did not support the case of Subhash Chander. Even he (Subhash Chander) offered him Rs.3/4 lakhs for deposing in his favour.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-18-

PW-13 Dr. Surinder Singh before whom the accused had allegedly suffered extra judicial confession also did not support the prosecution version at all. He was also declared hostile and cross-examined at length by Public Prosecutor, but nothing had come on the record in his cross-examination to substantiate the version of prosecution from any angle. Rather he had specifically denied that all the four accused had come to him on 08.04.2009 or that they had made any extra judicial confessions before him regarding committing of murder of Kamlesh Rani and taking away her gold ornaments after her murder.

For the reasons aforementioned, statements of PW-2 Subhash Chander and his father Ram Lal PW-3 are not found to be of any worth from the legal point of view to rely upon the same. PW-5 and PW-13, the other two star witnesses of the prosecution, did not support the prosecution version at all. Resultantly, the prosecution version had virtually been rendered toothless to cause any kind of bite to the appellants-herein (accused) with regard to their involvement in the commission of alleged crime.

Now the remaining relevant evidence of prosecution is to be seen from the legal point of view.

Deposition of PW-1 Gaurav Sood @ Mani was to the effect that on 18.01.2009, accused Neeraj Rana came to his shop and sold to him one Nokia mobile phone 6288 of black colour Ex.P1 for a sum of Rs.2700/-. He identified this mobile phone before the police of Police Station B-Division, Amritsar vide identification memo Ex.PK on 11.4.2009.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-19-

But in his cross-examination, it came on the record that mobile phone Ex.P1 was not in any sealed condition. He used to take identity proof from the person whosoever come to him to sell the mobile phone, but he did not maintain any register in this regard. On his demand of identity proof, accused went to bring the same, but he did not turn up. He maintained a notebook for the sale and purchase of mobile phones, but he did not produce it either before the police during investigation or before the Court at the time of recording his statement. His statement was recorded by police on 11.04.2009 i.e. after a gap of about three months from the date of alleged occurrence. So the documentary proof with regard to sale of mobile phone Ex.P1 by accused Neeraj Rana to Gaurav Sood (PW-1) was not produced in the Court during trial of the case. Even no proof with regard to the identity of this accused that he had sold this phone to PW-1 was produced in the Court at the abovesaid relevant time which had caused various loopholes in his testimony whereby shattering its veracity.

Then as per case of prosecution, PW-7 Rohit Kumar purchased Nokia mobile phone make 6288 from Gaurav Mani (PW-1) in the month of January 2009. He started using this mobile phone by putting Sim card of Airtel company bearing No.99158-83085. Then it came in his statement that he purchased this mobile phone without any receipt. In his cross-examination, he specifically stated that he did not bring any record regarding purchase of said mobile phone. So the oral statement of this witness sansing any documentary proof with regard to purchase of said Nokia mobile phone is of no worth in legal sense.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-20-

PW-23 Inspector Manjit Singh was posted as SHO, P.S. B-Division, Amritsar on the date of the alleged occurrence. He recorded statement Ex.PA of complainant Subhash Chander upon which he made an endorsement Ex.PA/1 on the basis of which formal FIR Ex.PA/2 was registered. Then he proceeded to the spot of occurrence alongwith the members of the police party including complainant Subhash Chander. He carried out spot inspection and prepared its rough site plan Ex.PW23/B. Further, he also conducted inquest proceedings in respect of dead body of deceased Kamlesh Rani vide inquest report Ex.PW23/A. Then he got conducted post-mortem on the dead body of deceased vide his application Ex.PU. From the spot of occurrence, he lifted blood with a cotton swab, a pair of lady's *Chappal* and a blood stained piece of *Chaddar* which were converted into sealed parcels Ex.P9, Ex.P10 and Ex.P11 respectively and took the same into police possession vide memos Ex.PL, Ex.PM and Ex.PN in the same sequence. Then he also converted the clothes of deceased after the post-mortem into a sealed parcel Ex.P12 and took the same in his possession vide memo Ex.PW23/C. Then on 18.01.2009, he recorded supplementary statement of Subhash Chander-complainant regarding taking away of Nokia mobile phone 6288 of his wife by the assailants along with them. Then during investigation of this case, said mobile phone was recovered from PW-7 Rohit Kumar who had purchased this phone from PW-1 Gaurav Sood @ Mani. This mobile phone was also taken into police possession and said both Rohit Kumar and Gaurav Sood @ Mani were associated in the investigation of this case. Then this witness also proved report of Forensic Science Laboratory (FSL) Punjab,

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-21-

Chandigarh Ex.PZZ, besides, the photographs Ex.P1 to Ex.P8 of the spot of occurrence as well as of dead body of deceased.

PW-4 SI Bakhtawar Singh joined the investigation of this case in the police party of PW-23 Inspector Manjit Singh and he corroborated the above statement of PW-23.

PW-12 Des Raj, Photographer, took snaps Ex.P1 to Ex.P8 of the spot at the instance of SHO P.S. B-Division, Amritsar on 16.01.2009 with digital camera and handed over the same to the police vide memo Ex.PV.

Inspector Sukhwinder Singh (PW-16) who was posted as SHO , P.S. A-Division, Amritsar also conducted part investigation of this case as per orders of SSP, Amritsar. During investigation, he recorded another supplementary statement of complainant-Subhash Chander on 07.04.2009 in which he named Neeraj Rana, Gurpreet @ Raju, Rajbir Jhona and one Amarjit Prince as the culprits in this case. On 09.04.2009, he recorded statement Ex.PX of PW-13 Dr. Surinder Singh. Then on 11.04.2009, he arrested accused Neeraj Rana, Gurpreet @ Raju and Rajbir @ Jhona in this case vide their arrest memos Ex.PY, Ex.PY/1 and Ex.PY/2 respectively. Further, he also interrogated them and proved their disclosure statements Ex.PZD, Ex.PZE and Ex.PZF suffered by them respectively during the interrogation.

Then in pursuance of his disclosure statement, accused Neeraj Rana got recovered a *Datar* MO1 and one gold finger ring bearing letters 'KS' from his house. Rough sketch of this *Datar* Ex.PB was prepared and then this *Datar* and said gold finger ring were taken into police possession

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-22-

vide memos Ex.PC and Ex.PD respectively. Rough site plan Ex.PZG of place of this recovery was prepared. Thereafter, accused Gurpreet Singh @ Raju got recovered one gold finger ring from the disclosed place of concealment bearing letters "KS" and the same was also taken into police possession vide memo Ex.PE. Besides, he also got recovered one motorcycle make TVS Star PB-18-N-2584 from his residential house which was also taken into police possession vide memo Ex.PF. Ex.PZH was rough site plan of the place of this recovery. This witness also deposed about the recovery of gold finger ring got effected by accused Rajbir Jhona from his residential house as per his disclosure statement, which was taken into possession vide memo Ex.PG. Further, this accused also got recovered one *Chhuri* Ex.MO2, rough sketch of which was prepared and the same was taken into police possession vide memo Ex.PJ. Rough site plan prepared of the spot of this recovery was Ex.PZJ.

Then on 12.04.2009, this witness recorded the statement of Ram Lal (PW-3). Further he also got recorded statement of Vinod Kumar (PW-5) under Section 164, Cr.P.C.. He also arrested accused Amarjit @ Prince in this case. Further, he also seized copies of various FIRs Ex.PZL to Ex.PZR registered against these accused and on completion of investigation, presented the challan.

PW-17 ASI Varinder Kumar associated in the police party of PW-16 Inspector Sukhwinder Singh during investigation of this case and there is no need to discuss his statement separately in order to avoid repetition and also for the reason that his statement is almost on the same lines as that of PW-16 above discussed.

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-23-

PW-22 HC Kanwaljit Singh produced the call details of mobile phone Nos.98726-77616, 98726-77620 and 98724-74094 for the period 16.01.2009 to 19.01.2009 which were obtained from Airtel Company and proved the same as Ex.PW22/A, Ex.PW22/B and Ex.PW22/C respectively. Then he also proved the call details of two other mobile phone numbers 98142-88477 and 98882-98329 as Ex.PW22/F and Ex.PW22/G respectively. But these call details cannot be taken into consideration for the reason that no certificate of the competent authority as required under Section 65-B of the Indian Evidence Act in order to ensure the genuineness of these call details was appended to the same nor any employee of Airtel company and Vodafone company, who had prepared the record of these call details, was examined in the Court for the purpose above-mentioned.

Further PW-11 Dr. Kirpal Singh conducted post-mortem on the dead body of deceased Kamlesh Rani on 17.01.2009 in the premises of Medical College, Amritsar and found six injuries on her person as detailed in the post-mortem report Ex.PT. All the injuries were ante mortem in nature. As per his opinion, cause of death in this case was haemorrhage and shock, which was sufficient to cause death in the ordinary course of nature.

PW-6 Rishi Ram, Draftsman, prepared scaled site plan Ex.PP of the place of occurrence after visiting the same on 25.03.2009.

PW-8 ASI Janak Raj, PW-9 HC Hardial Singh, PW-10 ASI Balraj Singh and PW-19 ASI Gurwinder Singh were formal witnesses in this case and they tendered their duly sworn affidavits Ex.PQ, Ex.PR,

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-24-

Ex.PS and Ex.PBBB as a part of their respective statements.

PW-15 Harvinder Singh, Clerk of DTO Office, Amritsar deposed to the effect that as per record motorcycle bearing registration No.PB02-AC-5551 make Bullet was registered in the name of Prince Singh son of Amarjit Singh resident of Amritsar.

PW-18 Narinder Singh, Clerk of Registering Authority-cum-SDM, Batala produced the record regarding registration of motorcycle bearing No.PB-18-N-2584, which as per record, was registered in the name of one Kapil Kumar s/o Ramesh Kumar, resident of Pathankot.

PW-14 Shri Vishesh, Judicial Magistrate Ist Class, Jalandhar was posted as in the same capacity at Amritsar on 21.05.2009. He recorded the statement of Vinod Kumar under Section 164 of the Cr.P.C. on the said date and proved the same as Ex.PO.

Herein it is made clear that this Vinod Kumar during trial of the case appeared as PW-5 and did not support the case of prosecution for any purpose.

In the light of above discussed statements of PW-5 Vinod Kumar and PW-13 Dr. Surinder Singh, it is concluded that vital links in the chain of circumstantial evidence in this case are missing. Recovery of certain incriminating articles as per disclosure statements of the accused is not held to be suffice to hold the accused guilty in this case. Herein, it is also to note that the alleged recoveries of entire incriminating articles were effected in the presence of PW-2 Subhash Chander-Complainant, when he was member of police party of PW-16 Inspector Sukhwinder Singh. No person from the locality of the places of alleged recoveries was associated

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-25-

in the investigation at that time. Then this entire process of recovery was completed in one day in a stereo-typed manner.

In the light of above discussion, it is held that prosecution has miserably failed to prove its version against the appellants – herein (accused). Impugned judgment of conviction and order of sentence are not sustainable in the eyes of law and are liable to be set aside.

CRA-D-115-DB-2013

As above-mentioned, this appeal is preferred at the instance of complainant-Subhash Chander for modifying the order of sentence and to award death penalty to the private respondents-herein (accused). But at the time of arguments, the learned counsel for the appellant has failed to point out any kind of material on the record to say that the respondents-herein (accused) are liable to be awarded death penalty instead of life imprisonment in this case.

In the light of above discussion, the aforementioned criminal appeals bearing numbers CRA-D-721-DB-2012, CRA-D-887-DB-2012 and CRA-D-981-DB-2013 filed on behalf of convicts Neeraj Rana @ Sonu, Amarjit Singh @ Prince, Rajbir Singh @ Sonu @ Chona and Gurpreet Singh @ Raju against their conviction and sentences are accepted, whereas criminal appeal bearing number CRA-D-115-DB-2013 filed by complainant Subhash Chander is dismissed.

Resultantly, the impugned judgment of conviction and order of sentence are set aside. Appellants – herein (accused) are acquitted of the charges framed against them by granting them the benefit of doubt.

The appellants - convicts, namely Neeraj Rana @ Sonu,

***CRA-D-721-DB of 2012;
CRA-D-887-DB of 2012;
CRA-D-115-DB of 2013 and
CRA-D-981-DB of 2013***

-26-

Amarjit Singh @ Prince, Rajbir Singh @ Sonu @ Chona and Gurpreet Singh @ Raju be released from the custody forthwith unless wanted in some other case.

Intimation be sent to the quarter concerned for the strict compliance.

29.11.2016

Brij / Gaurav Sorot

**(T.P.S.MANN)
JUDGE**

**(GURMIT RAM)
JUDGE**

1. Whether reportable? No/Yes
2. Whether reasoned / speaking? No/Yes