

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

Reserved on: 26.10.2018

Date of decision: December 04, 2018

CRA-D-867-DB of 2012 (O&M)

Central Bureau of Investigation

.....Appellant

Versus

Bibi Jagir Kaur and others

....Respondents

CRA-D-868-DB of 2012 (O&M)

Kamaljeet Singh

.....Appellant

Versus

Bibi Jagir Kaur and others

....Respondents

CRA-S-1431-SB of 2012 (O&M)

Nishan Singh

.....Appellant

Versus

Central Bureau of Investigation

....Respondent

CRA-S-1500-SB of 2012 (O&M)

Bibi Jagir Kaur

.....Appellant

Versus

Central Bureau of Investigation

....Respondent

CRA-S-1501-SB of 2012 (O&M)

Paramjit Singh Raipur

.....Appellant

Versus

Central Bureau of Investigation

....Respondent

CRA-S-1538-SB of 2012 (O&M)

Dalwinder Kaur Dhesi

.....Appellant

Versus

Central Bureau of Investigation

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. S.K. Saxena, Special Standing Counsel and
Mr. R.K. Handa, Special Standing Counsel for CBI.

Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep Cheema, Advocate for the appellant
(in CRA-S-1538-SB of 2012).

Mr. Vinod Ghai, Senior Advocate with
Mr. A.S. Kang, Advocate for the appellant
(in CRA-S-1501-SB of 2012).

Mr. J.S. Bedi, Senior Advocate with
Mr. S.S. Brar, Advocate for the appellant
(in CRA-S-1500-SB of 2012).

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate for the appellant
(in CRA-D-868-DB of 2012) and
for the complainant (in other appeals).

Mr. Preetinder Singh Ahluwalia, Advocate for the appellant
(in CRA-S-1431-SB of 2012).

A.B. CHAUDHARI, J

By this common order, above said all the appeals are being disposed of.

2. Being aggrieved by the judgment and order dated 30.03.2012, in SC Case No.18T of 2010, dated 10.11.2001/ 29.09.2007, passed by the learned Additional Sessions Judge, Patiala, by which the above accused/appellants, namely, Nishan Singh, Bibi Jagir Kaur, Paramjit Singh Raipur and Dalwinder Kaur Dhesi were convicted for commission of offence punishable under Sections 120-B, 313, 365 and 344 of Indian Penal Code, 1860 (for short 'IPC') and were sentenced to undergo imprisonment as indicated against their names, by the learned trial Court, in the operative part of the impugned judgment and order, these appeals

have been filed by them in this Court.

FACTS

3. The prosecution case, in brief, was that appellant No.1-Bibi Jagir Kaur had two daughters, namely Harpreet Kaur alias Rozy and Rajneet Kaur alias Daizy. Harpreet Kaur alias Rozy died in the intervening night of 20/21.04.2000 and the cremation took place on 21.04.2000 in the morning at Village Begowal. Thereafter, wide publicity was given by media in various newspapers so also in the television that her death was under mysterious circumstances. The Government of Punjab ordered that a probe should be conducted and accordingly, Shri K.K. Attri, Inspector General of Police, was assigned the job.

4. In the meanwhile, Criminal Miscellaneous No.11329-M of 2000 was filed by the lawyers for Human Rights and another Criminal Miscellaneous No.11534-M of 2000 (Exhibit PW79/1) was filed by Kamaljeet Singh (complainant), in this Court. Learned Single Judge of this Court made a final order dated 09.06.2000 (Exhibit P-2) ordering that the investigation shall be conducted by CBI and accordingly, the investigation was handed over. Preliminary enquiry (P.E.) was registered at SIC-1 Branch of the CBI, New Delhi, on 11.07.2000, which was entrusted to Shri Harbhajan Ram (PW-90), SP of that Branch. Harbhajan Ram, SP took possession of documents, photographs and letters and greeting cards from Kamaljeet Singh vide memo (Exhibit PW77/4), on 18.07.2000, so also the diary (Exhibit P-20) of Dr. Jyoti Rana (PW7) and register (Exhibit P-23) of Dr. Vikramjit Singh (PW8) and their Guest's

Register (Exhibit P-33). He also took possession of register of Motel Oasis from Pardeep Chhabra (PW-21), the owner thereof. Harbhajan Ram, SP concluded that the offence was committed and as such, regular case RC-5-2000 dated 03.10.2000, under Sections 120-B IPC read with Section 304, 344, 313 and 201 IPC was registered. Investigation was handed-over to Shri Anurag Garg, IPS, Investigating Officer who collected all documents from Harbhajan Ram.

5. The investigation revealed that Bibi Jagir Kaur belong to *lubana* community. She was the head of religious *Dera Sant Prem Singh Begowal* having following of members of *lubana* community. She was elected M.L.A. from Bholath Constituency on the ticket of Shiromani Akali Dal and was inducted as a Cabinet minister in the Government headed by Shri Parkash Singh Badal. House No.955, Sector 39-A, Chandigarh was allotted to her. Thereafter, Bibi was elected as President of Shiromani Gurudwara Prabandhak Committee (for short 'SGPC') in March 1999 and as such, she resigned from Cabinet. Dalwinder Kaur Dhesi was a trusted friend of Bibi Jagir Kaur while Paramjit Singh Raipur was a political advisor of Bibi Jagir Kaur. Nishan Singh, Sub Inspector of Punjab Police was given the duty as Personal Security Officer of Bibi Jagir Kaur. Eventually, he was related to her, he being the younger brother of late Balbir Singh who was Bibi Jagir Kaur's brother-in-law as he was married to sister of Bibi Jagir Kaur. Satya, Harvinder Kumar alias Binder and Sanjeev Kumar (deceased) were the household servants of Dalwinder Kaur Dhesi. The investigation further, revealed that Harpreet

Kaur initially studied in Sant Prem Singh School, Begowal. PW77-Kamaljeet Singh (complainant) also belong to *lubana* community and his younger brother Simarjit Singh was the class-mate of Harpreet Kaur. Harpreet Kaur used to visit the residence of Simarjit Singh and in the course of her frequent visits, she became friendly with the complainant which later developed into a love affair. The investigation also revealed that after completing her matriculation, Harpreet Kaur was admitted in Shivalik Public School, Sector-41, Chandigarh in the year 1997 and she shifted to Chandigarh in the official residence of Bibi Jagir Kaur. But then her love affair with Kamaljeet Singh (complainant) continued not to the liking of Bibi Jagir Kaur, but despite her objection, it continued through letters, phone calls and meetings at Chandigarh. From the year 1998 onwards, the complainant-Kamaljeet Singh frequently visited Chandigarh and stayed in Motel Oasis and Janta Tourist Bungalow, where Harpreet Kaur used to meet him. On some occasions, even Kamaljeet Singh visited residence of Bibi Jagir Kaur to meet Harpreet Kaur and also stayed in her house. Kamaljeet Singh and Harpreet Kaur wanted to go USA and settle there after their marriage. Harpreet Kaur was to visit South Africa and USA, and therefore, she pressed Kamaljeet Singh that they should be engaged before her departure. On 06.09.1999, in room No.104 of Motel Oasis, Harpreet Kaur and Kamaljeet Singh got engaged in the presence of family members of the complainant and one Kusum (PW-13). Photography and videography of engagement ceremony was captured by Simarjit Singh. Harpreet Kaur with her younger sister Rajneet Kaur alias

Daizy had come for the ceremony. But Rajneet Kaur had left the place after sometime while Harpreet Kaur was dropped by Kamaljeet Singh.

6. According to the prosecution, Harpreet Kaur had developed physical relations with Kamaljeet Singh resulting into her pregnancy. She informed Kamaljeet Singh from USA on telephone in December, 1999 about it. After her return to India, Harpreet Kaur and Kamaljeet Singh visited Rana Medical and Maternity Centre, Sector 39, Chandigarh, on 12.02.2000, where Dr. Jyoti Rana medically examined her who advised her to have ultrasound. She underwent ultrasound at the clinic of Dr. Vikramjit Singh (PW-8) on 14.02.2000 confirming pregnancy. Complainant and Harpreet Kaur were hopeful of getting married soon and that Harpreet Kaur wanted to continue with the pregnancy and again visited Dr. Jyoti Rana on 23.02.2000, where Tetanus Toxide injection was given to her after three months of pregnancy. According to prosecution, Bibi Jagir Kaur was not in favour of the marriage of her daughter with Kamaljeet Singh because of great disparity in their respective status and rather she wanted Harpreet Kaur to get married to Channi son of Dalwinder Kaur Dhesi, who was studying in U.K. After coming to know about pregnancy of Harpreet Kaur, Bibi Jagir Kaur became perturbed as it was likely to bring disrepute to her political and social status. She discussed the problem with Dalwinder Kaur Dhesi and Paramjit Singh Raipur. Dr. Balwinder Singh Sohal (PW-27) was working as Medical Officer in the *Dera* of Bibi Jagir Kaur. In March/April, 2000, Bibi Jagir Kaur, Dalwinder Kaur Dhesi, Paramjit Singh Raipur, Nishan Singh, SI,

Satya, Harvinder Kumar alias Binder, Sanjeev Kumar (deceased) and approver, Dr. Balwinder Singh Sohal (PW-27) hatched a criminal conspiracy at Chandigarh, Jalandhar, Phagwara and other places in Punjab to abduct Harpreet Kaur from Chandigarh house and wrongfully confine her and get her pregnancy terminated against her will. In case of failure to do so, to eliminate Harpreet Kaur and destroy the evidence. Pursuant to the conspiracy, Dr. Balwinder Singh Sohal, the approver, contacted Dalbir Kaur, staff nurse to get the pregnancy terminated. Paramjit Singh Raipur and Dalwinder Kaur Dhesi and Dr. Balwinder Singh Sohal went to Chandigarh on 18.03.2000 and persuaded Harpreet Kaur to accompany them to Patiala for the purpose of shopping in connection with her marriage. Harpreet Kaur was given *chat* in Sector-22, Chandigarh mixed with powder of Trika tablets with an intention to cause her sedation. Having consumed the tablets mixed with drug, Harpreet Kaur developed dizziness and as such, she was brought to Jasdil Mansion, Phagwara by Dalwinder Kaur Dhesi, Paramjit Singh Raipur, Nishan Singh, Dr. Balwinder Singh Sohal, the approver. During night, when Harpreet Kaur alias Rozy was coming out of the effect of sedation, further sedative was administered to her and she again became unconscious. At that time, Dalwinder Kaur Dhesi pressed her abdomen with some wood due to which leakage started. In the early morning on 19.03.2010 at about 5:00 A.M., Dalwinder Kaur Dhesi, Paramjit Singh Raipur and Dr. Balwinder Singh Sohal brought her to Anmol Nursing Home at residence of PW40-Dalbir Kaur, wife of Dr. Satpal at Kartarpur. PW40-Dalbir Kaur

administered medicines for abortion and as a result, pregnancy was terminated on 20.03.2000. A dead male foetus was aborted which was about four and a half months. In the evening, Dalwinder Kaur Dhesi, Paramjit Singh Raipur, Dr. Balwinder Singh Sohal along with Harpreet Kaur left Kartarpur and returned to Jasdil Mansion. Thereafter, Harpreet Kaur was detained against her will and was not allowed to make any contact with Kamaljeet Singh and his family members. To ensure that, Nishan Singh, Satya, Harvinder Kumar, Sanjeev Kumar kept vigil and guarded her in illegal confinement in Jasdil Mansion. PW27-Dr. Balwinder Singh Sohal kept on visiting Jasdil Mansion in order to monitor condition of Harpreet Kaur and administered requisite post abortion medicines and informed the progress to Bibi Jagir Kaur.

7. On 08.04.2000, Harpreet Kaur alias Rozy succeeded in escaping from Jasdil Mansion and reached Bidhipur Phatak (Railway Level Crossing) near Kartarpur, where she along with Kamaljeet Singh (PW-27) and PW20-Manjit Kaur, in the evening, left for Rai and took shelter at the residence of PW26-Kulwinder Chauhan, Warden of Sports School Rai. In telephonic conversation, Bibi Jagir Kaur persuaded her daughter to return to Jasdil Mansion, Phagwara in the night of 09/10.04.2000 on the false pretext that she will get her married to Kamaljeet Singh. On 14.04.2000, Bibi Jagir Kaur asked Paramjit Singh Raipur, Nishan Singh, Dr. Balwinder Singh Sohal to eliminate Harpreet Kaur as she was insisting for marriage and had brought disrepute to her. In the intervening night of 20/21.04.2000, Dr. Balwinder Singh Sohal

reached Jasdil Mansion, Phagwara where Paramjit Singh Raipur asked him as to how many tablets of Phenobarbitone would be sufficient to kill a person. On his advise, 30/35 tablets of Phenobarbitone taken earlier by Paramjit Singh from Dr. Balwinder Singh Sohal from Patter Kalan Dispensary were powdered and mixed in the vegetables to serve to Harpreet Kaur. Harpreet Kaur was persuaded by Paramjit Singh Raipur and Dalwinder Kaur Dhesi in the presence of Dr. Balwinder Singh Sohal, the approver, to take meals. Thus, the said food was administered to her and after consuming the food, she died in the same night. Her death was confirmed by Dr. Balwinder Singh Sohal at about 2:00 A.M. after examining pulse and heartbeat. Bibi Jagir Kaur was informed about her death. In order to destroy all the evidence of murder, it was decided to project the death as a natural death due to dehydration and vomiting. Therefore, neither the postmortem was conducted nor information was given to the police. The dead body was handed-over by them to Bibi Jagir Kaur near Cheheru Bridge and was ultimately, cremated in Begowal village in the presence of Bibi Jagir Kaur and other accused persons without conducting any postmortem, at 10:30 A.M. on 21.04.2000. That even before funeral part was done, water was poured to drowse the pyre at 4:30 P.M. in the presence of Bibi Jagir Kaur and ashes were collected in a gunny bag and immersed in river Beas at Gobindwal on the same evening.

8. The CBI investigation had found that Dr. Tarsem Singh of Begowal was persuaded by Bibi Jagir Kaur to give false statement to Punjab police to the effect that in the intervening night of 20/21.04.2000,

he had visited Jasdil Mansion and examined the deceased who was suffering from dehydration, dysentery and vomiting, and that it was advised by him to take the patient to Ludhiana. Dr. Balwinder Singh Sohal had made a confessional statement on 21.01.2000 before Metropolitan Magistrate, Delhi. Then, he applied for grant of pardon. He was granted pardon subject to condition under Section 306 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') by the Chief Judicial Magistrate, Patiala, on 12.01.2001. Thus he was approver witness for prosecution. The investigation was completed and the challan was filed as stated above. After completion of necessary formalities, the Sessions Court framed charges against the accused persons, which were denied by them and therefore, the trial was required to be held. The trial commenced. During trial, accused Sanjeev Kumar expired. In the trial, the prosecution examined in all 94 witnesses including the Investigating Officer (PW-94) Shri Anurag Garg, whose names have been given by the trial Court in Paragraph-15 of the impugned judgment. The trial Court, after completion of prosecution evidence, recorded the Statement under Section 313 of Cr. P.C. Defence witnesses were examined by the accused persons. The accused persons denied their involvement. The accused Bibi Jagir Kaur took a stand that she was the head of Yadgari Gurudwara Sant Baba Prem Singh, Begowal, but after the death of her husband, Shri Charanjit, her political opponent wanted to claim *gaddi* of the said *Dera* and after making conspiracy to implicate her by creating false evidence, though, death of Harpreet Kaur, her beloved daughter was natural, falsely involved

her. The complainant (PW-77) never brought to her any marriage proposal and she never knew about it. Her daughter was just 13/14 years of age. She denied any relationship between the complainant and her daughter and had no knowledge absolutely of whatsoever nature. She stated that Kamaljeet Singh and his sister formed a gang entangling young girls to blackmail them on the basis of video cassettes and photographs and her political rivals took advantage thereof and got a false case registered against her. The CBI had threatened the witnesses and Government servants to depose according to the desire of CBI and made a false and bogus investigation to trouble them. The mobile telephone number allegedly attributed to her was not used by her, but was used by Kirpal Singh Chauhan, Incharge of SGPC Sub-Office at Chandigarh. It was Dr. Balwinder Singh Pandori, who was in the employment of dispensary of the *Dera* and not PW27-Dr. Balwinder Singh Sohal, approver as he was never employed. CBI had initially opposed the bail application filed by PW27-Dr. Balwinder Singh Sohal which was rejected also. But CBI got him released by giving concession in subsequent bail application which was immediately filed in order to make him a approver. PW77-Kamaljeet Singh received huge amount from her political opponents to implicate her. The death of her dear daughter was her personal tragedy which was fully made use of by her political opponents for getting their ill designs fulfilled. Harpreet Kaur was cremated in open public view of thousands of persons, Chief Minister, Police Officers and public at large.

9. The other accused persons had also taken their respective

stand in the Statement under Section 313 Cr. P.C. and it is not necessary to reproduce them in the present judgment.

10. The learned trial Court thereafter, framed points for determination from 'a' to 'k'. The trial Court thereafter, heard the arguments of the prosecuting agency, CBI as well as accused persons and finally held that the accused persons were liable to be convicted and accordingly, recorded their conviction and sentence as stated above. Hence, these appeals.

ARGUMENTS

11. On behalf of the appellants, in these appeals, learned Senior Advocates Mr. R.S. Cheema, Mr. J.S. Bedi, Mr. Vinod Ghai and learned Advocate Mr. P.S. Ahluwalia appeared for different appellants. Mr. S.K. Saxena and Mr. R.K. Handa, Special Standing Counsel appeared for Central Bureau of Investigation, the prosecuting agency while Mr. A.P.S. Deol, learned Senior Counsel appeared for the complainant-Kamaljeet Singh.

12. The four appellants/accused persons, namely Bibi Jagir Kaur, Dalwinder Kaur Dhesi, Nishan Singh and Paramjit Singh Raipur have filed appeals vide appeal numbers CRA-S-1500-SB of 2012, CRA-S-1538-SB of 2012, CRA-S-1431-SB of 2012 and CRA-S-1501-SB of 2012, respectively. Three accused persons namely Satya, Harvinder Kumar alias Binder and Sanjeev Kumar (deceased) were acquitted by the learned trial Court for the charges framed against them, and their acquittal has not been challenged anywhere. Their acquittal was made for the

reasons stated by the learned trial Court in the impugned judgment. Appeal number CRA-D-867-DB of 2012 has been filed by the CBI against Bibi Jagir Kaur and others questioning the correctness of the acquittal on the main charge of offence of murder allegedly by the accused persons. Appeal number CRA-D-868-DB of 2012 has been filed by Kamaljeet Singh against Bibi Jagir Kaur and others questioning their acquittal for the main charge of offence of murder etc.

13. Learned Senior counsel for the respective appellants made the following submissions:-

- i) The impugned judgment of the trial Court is perverse and on misapprehension of facts, evidence on record and the law;
- ii) As per this Court's order, CBI had undertaken the investigation on 11.07.2000 by registering P.E. and Harbhajan Ram (PW-90) was the first Investigating Officer who filed his report on 11.09.2000. In his investigation, he came to the conclusion that Harpreet Kaur died because of dehydration. The second theory advanced by the CBI was that the deceased was pregnant and since the foetus was dead, it was essential to save the life of Harpreet Kaur and that is why abortion was made to take out the dead foetus, which story was rejected by the learned trial Court which created its own story that there was an abortion. The CBI had third theory that the accused Dalwinder Kaur Dhesi had pressed the wooden log on the stomach of the Harpreet Kaur due to which leakage started and the pregnancy was aborted. In the wake of different stories, the prosecution case itself was of grave doubt as the contradictory inferences were placed before the Court by way of prosecution story and then the Court also came to the conclusion *sans* any evidence about abortion;

- iii) The prosecution projected PW27-Dr. Balwinder Singh Sohal as star witness along with so called another star witness PW77-Kamaljeet Singh. PW27 was projected as an eye witness and the participant in the entire events which allegedly took place from the alleged abduction from the house at Chandigarh and thereafter, to Jasdil Mansion at Phagwara and alleged abortion at Kartarpur. He was made an approver whose evidence has been relied upon by the trial Court. the law as to the approver is well settled and like any other witness, the Court is bound to find out whether his evidence itself is truthful and can be accepted. Not only that, thereafter, if the evidence is found to be truthful, the Court has to look for corroboration to his evidence. In the two bail applications filed by PW27 before the Courts, in which he had repeatedly and affirmatively stated that he had nothing to do with the case or that he was nowhere connected with the crime in question and that he claimed that he has not participated in the crime. He was won over by the CBI which finding has also been recorded by the learned trial Court. The first anticipatory bail application was rejected on 07.11.2000 while his statement was recorded, for the first time, by PW94-Anurag Garg, on 09.11.2000 and in a short span thereafter, he applied to the trial Court for grant of anticipatory bail in which CBI had given its no objection for grant of anticipatory bail clearly with an eye on making him approver in the case. Learned Senior counsel for the appellants essentially took us to the evidence to point out that there were invariably major improvements made by him and his evidence was completely untrustworthy testing the same independently. It was also pointed out by the learned Senior counsel that PW27 admitted that he was threatened by CBI officers and was thus, under the influence of CBI to turn as approver witness;

- iv) It is not necessary to give details regarding evidence as we would discuss the same in the judgment. The learned trial Court made an error in accepting his evidence which was neither corroborated nor disclosed the offence. His name was never mentioned in the writ petition, which was filed by the complainant-PW77. The prosecution miserably failed to prove that he was appointed as a medical officer in the dispensary at *Dera* by not producing any evidence except his parol evidence and on the contrary, the doctor who was appointed in dispensary at *Dera*, clearly falsified his case that PW27 was ever appointed in the dispensary at *Dera*. The prosecution miserably failed to prove that he had any connection with Bibi Jagir Kaur since there was no occasion for him to have so but for the projection made by the CBI that he was with;
- v) The prosecution heavily relied on the call details record by examining some witnesses, but then it is an admitted fact that not even mobile phone from a single accused was at all seized by the Investigating machinery. The prosecution also failed to prove that the mobile phones were really used by the accused persons or they were in possession of those phones as mobile phones about which the call details were placed no record were owned by somebody else and were in possession of someone else. By merely producing the call details and the locations of the mobile phones moving from one place to another it cannot at all be inferred, even remotely, the accused persons had made movements in the area as alleged by the prosecution as the movement of the SIM card only can be said to have been proved by the prosecution. The evidence in the form of call details produced by the Investigating agency is worthless and is liable to be rejected;
- vi) At any rate, there is no compliance of Section 65-B (4) of the Evidence Act in relation to the proof and ingredients which are

required to be proved to claim production of legal evidence;

- vii) The story that deceased had jumped from the house at Jasdil Mansion and had run away from the said house and travelled 35 kilometers to Rai with advance pregnancy in the night is nothing but a cock and bull story. But even then, the evidence by the witnesses on the said story does not take the case of the prosecution any further regarding the alleged offence of murder. At the most, the story projected, assuming but not admitting, shows only the pregnancy being terminated and so on and so forth. The alleged statements made by the deceased to the witnesses about forceful termination of her pregnancy against her will or any other statements cannot constitute an admissible evidence within the meaning of Section 6 or Section 32(1) of the Evidence Act;
- viii) The death of Harpreet Kaur is said to have been caused and is fully corroborated by the evidence of PW39-Dr. Tarsem Singh because of dehydration and nothing more and at any rate, there is no reliable evidence on record that anybody committed her murder. The deceased was elder daughter of Bibi Jagir Kaur and she had only two daughters with no son and therefore, it was highly improbable that she will kill her own daughter for the motive stated by the prosecution or making any conspiracy as alleged by the prosecution;
- ix) The prosecution did not examine Saheb Singh and second daughter Rajneet Kaur since according to the prosecution itself, they were along with the deceased. No explanation whatsoever has come from the prosecution as to why they were kept back;
- x) According to the prosecution, the termination of pregnancy was made because Bibi Jagir Kaur did not want the people at large to come to know about her pregnancy in the first place and secondly, that she did not want to marry Harpreet Kaur in

a middle class family like that of PW77 when she was occupying all higher posts in the Society. Testing the case for the prosecution, the termination of pregnancy itself was made on 18.03.2000 that too in secrecy and that she was healthy at that time. The termination of pregnancy was not known to anyone except the accused persons and PW27-Dr. Balwinder Singh Sohal. If that was so, the termination of pregnancy having been made in secrecy, there was no question of any damage to her status and then, there was no cause or reason to order her killing as late as on 08.04.2000 as alleged by the prosecution. The story is wholly improbable as there was no evidence to show that even after 18.03.2000, there was any reason for her to order the killing of her own beloved elder daughter out of two. Learned Senior counsel submitted that the reason given by the witnesses that she was insisting for her marriage with PW77, is in the form of improvement and was introduced before the Court for the first time by the witnesses and unfortunately, the trial Court relied upon the same;

- xi) The trial Court recorded and relied upon the inadmissible evidence of PW27 and refused to consider and apply the effect of major improvements in the evidence of the witnesses;
- xii) The trial Court has categorically recorded a finding that a dead foetus was detected and in order to save the life of Harpreet Kaur, Dalbir Kaur, the nurse was justified in taking out the dead foetus. Applying the same reason and logic taking the prosecution case as it was, the other accused persons also could not be held guilty of any offence and it could be said that in order to save her life due to the dead foetus, the abortion was carried out;
- xiii) Assailing the evidence of PW77, the complainant, learned Senior counsel vehemently argued that he was a liar, blackmailer and untrustworthy and unreliable witness since he

turned hostile during recording of evidence and was also declared hostile accordingly. Thereafter, he was recalled and again he stated the prosecution story. During the cross-examination by the defence, all the improvements were brought on record. Unfortunately, his evidence has also been believed by way of corroboration etc., by the trial Court;

- xiv) Learned Senior counsel referred to us the evidence of the witnesses, documents and so on and so forth and we would discuss the same later rather than producing the same here. Finally, the learned Senior counsel for all the appellants prayed for acquittal of all the appellants;

14. *Per contra*, the learned counsel for the CBI made the following submissions:-

- i) The appellant-Bibir Jagir Kaur was, at the relevant time, holding influential and powerful posts in the Punjab Government as well as in SGPC and therefore, the investigation was rightly handedover to CBI by this Court;
- ii) The deceased was cremated in a great hurry after her death without informing the police or any authority about her death and that was done deliberately with a view to destroy the evidence and avoid conduct of postmortem. Adverse inference must be drawn against the accused persons in doing so as accused persons were under obligation to inform the police about her death. No explanation has been furnished by the accused persons as to why that was done clandestinely;
- iii) The prosecution has produced on record the evidence in the form of call details which clearly proved the movement of accused persons from Chandigarh to Phagwara and also those who carried out the termination of pregnancy to Kartarpur. The fact that no phone calls were made by the deceased to PW77 from 18.03.2000 onwards as against en number of calls

from the said date to him clearly proved that she was abducted by the appellants and were taken away from Chandigarh with a view to terminate her pregnancy by practicing deception on her;

- iv) Mr. A.P.S. Deol, learned Senior counsel for the complainant and Mr. S.K. Saxena, learned Special Standing counsel took us through the call details record extensively and the documents connected therewith. It is not possible to quote their submissions, but if necessary would be discussed in the judgment. The submissions made by them were that the mobile phones in respect of which the call details have been proved by the prosecution were in the possession of respective accused persons. The tower locations at various places from Chandigarh to Phagwara etc. clearly indicated plenty of calls made by various accused persons amongst them and also with Bibi Jagir Kaur even at dead hours of night. The abduction took place on 1803.2000 from the house of Bibi Jagir Kaur at Chandigarh and thereafter, as narrated by PW27-Dr. Balwinder Singh Sohal, the deceased was brought to Jasdil Mansion at Phagwara belonging to accused Dalwinder Kaur Dhesi and was kept in confinement by the accused persons as a part of conspiracy, first to terminate her pregnancy and then get rid of her and to destroy evidence thereof. The call details, if carefully seen, will show as to how accused persons were acting in tandem and were making call details with each other for carrying out or executing the conspiracy that was hatched amongst them and ultimately they succeeded in terminating her pregnancy and also getting rid of her. Learned counsel took us through number of call details, which were carefully seen by us;
- v) Mr. A.P.S. Deol, learned Senior counsel for the complainant then argued that all the statements made by the deceased to the

witnesses including PW77 and his sisters were admissible under Section 32(1) of the Evidence Act as to the cause of termination of her pregnancy and the cause of her death. The statements made by her to them have been clearly proved on record by the prosecution through the evidence of these witnesses. The trial Court has rightly convicted the appellants for the charges levelled against them and their appeals deserve to be dismissed;

- vi) Learned Senior counsel for the complainant challenged the judgment of the trial Court by which the order of acquittal of the accused persons for the charge of offence of murder was made. According to Mr. Deol, the trial Court completely mislead itself in recording a contradictory finding and acquitting the accused persons for the charge of offence of murder which was clearly proved particularly when it was the bounden duty of defence to prove as to how Harpreet Kaur died and how her pregnancy was terminated before her death. Mr. Deol contended that the accused persons did not come out with any theory or reasonable and proper explanation. Adverse inference is required to be drawn against accused persons for not explaining the same as the prosecution has proved its case beyond reasonable doubt. The appeals filed by the complainant as well as CBI against the acquittal for the charge of offence of murder are required to be allowed;
- vii) Mr. S.K. Saxena and Mr. R.K. Handa, learned Special Standing counsel for CBI vehemently opposed the appeals preferred by the accused persons and supported the appeal preferred by the CBI. It was argued that the prosecution clearly proved by documentary evidence, the call details by producing the witnesses from the mobile phone companies with whom there was the record of the call/tower locations. The objection raised by the appellants about lack of proof as

per Section 65-B of the Evidence Act is wholly misconceived inasmuch as the witnesses from the mobile operators were duly examined to clearly prove their record, which was not challenged by the defence in the cross-examination. The printed details on record were clearly proved without any objection from the other side for any reason and the entire material and the printouts clearly proved the location of the persons making the phone calls and in this case the accused persons amongst them, at the dead hours of night, frequently, obviously with a view to carry out and execute their conspiracy. There was full compliance of relevant section of Evidence Act for proof of call details and the trial Court rightly relied on them. Perusal of the record of call details will clearly show as to how the accused persons in tandem acted to abduct the deceased from her house from Chandigarh and thereafter, gave her sedatives and brought to Jasdil Mansion at Phagwara and carried out further plan of termination of her pregnancy and finally, killed her. According to Mr. Saxena, PW27 is an eye witness to the entire incident and like any other witness his evidence has to be tested like an ordinary witness which is wholly trustworthy and he being an independent person having no interest in either party and being highly educated, there is no reason why his evidence should be discarded. The dispensary at *Dera* being in rural area and the manner in which the activities in *Dera* were conducted, namely with cash payments etc., the expectation of the defence that the documents/record of payments of salary to PW27 should have been brought, is ridiculous. There is no reason why the sworn testimony of PW27 should not be accepted that he was employed in dispensary at *Dera* and worked for almost 9 months and had thus, come in contact with Bibi Jagir Kaur. Not only that he was treating younger

daughter of Bibi Jagir Kaur as she was having epilepsy and required frequent treatment. The defence has not produced Rajneet Kaur to prove the case of prosecution on that aspect. The law as to the evidence of approver is well settled and there is no reason why the evidence of PW27 should be looked with any suspicion as there is no proof to raise any suspicion for doing so. The submission made by the learned Senior counsel for the appellants about the pressure etc. by the CBI as alleged, are all misleading and misconceived inasmuch as PW27 was a fully independent witness and a Government servant and a responsible witness. It is not necessary that there has to be an active participation of approver as Section 306 IPC nowhere contemplates so. After grant of pardon, he becomes an ordinary witness like any other witness and therefore, he cannot be treated differently. The burden to prove within the meaning of Section 6 of the Evidence Act, which the prosecution has proved its case beyond reasonable doubt, was not discharged by the defence and in particularly Bibi Jagir Kaur who was the mother of the deceased and therefore, the trial Court has rightly convicted the appellants. A strong presumption arose against the appellants in the wake of voluminous evidence brought on record by the prosecution in the form of call details as well as the eye witness account of PW27.

- viii) The evidence of PW27 is fully corroborated by the other witnesses including PW77 and his sisters so also the Warden of the hostel at Rai. These were all the independent witnesses who proved the prosecution case to the hilt leaving no scope for any doubt;
- ix) The objections levelled by the learned Senior counsel for the appellants about alleged different theories of prosecution is baseless. When the investigation was taken over by the CBI,

the investigation was bound to indicate a particular line of investigation, but then that is not the final investigation and therefore, no submission could be made on that basis. According to Mr. Saxena, it is final investigation report that is material and therefore, the argument is misleading;

- x) Mr. Saxena then contended that the deceased had made statements to the various witnesses including PW77 and his sisters and those statements were clearly admissible in evidence within the meaning of section 6 of the Evidence Act;
- xi) We were taken through the record extensively by Mr. Saxena who invited our attention to the documentary as well as oral evidence and also connected the same to show that the prosecution proved its case beyond any doubt. It is not necessary for us to reproduce all that here as the same would be part of discussion in the judgment;
- xii) In support of the appeals against acquittal filed by CBI, Mr. Saxena vehemently argued that the trial Court has recorded contradictory finding while recording order of acquittal about serious offence of murder. The trial Court accepted the evidence tendered by the prosecution in relation to the other offences including abduction and termination of pregnancy so also the conspiracy but then there is no reason why it has rejected the evidence regarding murder as the only inference that could be drawn was that the accused persons were the persons who had committed murder. According to him, it was for the accused persons to explain about the whereabouts of the deceased right after 18.03.2000 since the prosecution has proved that Harpreet Kaur went missing from that date from the house at Chandigarh. Mr. Saxena has cited some judgments and urged this Court to convert the acquittal on the charge of murder into one of conviction. He submitted that in all the probabilities, the conviction could be recorded and

finally prayed for dismissal of the appeals preferred by the appellants/accused persons and for allowing the appeal preferred by the CBI against acquittal of accused persons;

In reply, learned Senior counsel for the accused persons submitted that younger sister Rajneet Kaur was withheld by the prosecution from being examined in the Court and therefore, adverse inference is required to be drawn against the prosecution. Similarly, Saheb Singh who was the son of Dalwinder Kaur Dhesi was also not examined by the prosecution before the Court and no reasons were given by PW94-Anurag Garg from withholding their evidence from the Court when they were prime witnesses who could have disclosed the truth. Learned counsel then contended that there was failure on the part of prosecution in not seizing mobile phones or SIM cards which clearly was detrimental to the prosecution case and serious doubt was created about the evidence in the form of call details. It has also been contended that the prosecution story clearly seems to be highly improbable and at any rate, if really on 08.04.2000, Harpreet Kaur had gone out of Jasdil Mansion out of the alleged confinement/custody of PW77 and others, there is no explanation whatsoever as to why the matter was not referred to the police by them and/or any plea was field before the High Court as was done at a later point of time by producing her before the Court by asking for direction for security etc. which clearly show that the prosecution story is highly improbable and also false. PW77 claim that he loved deceased and if that was so, he would have definitely reported the matter to the police on 08.04.2000 or thereafter, or approached the High Court for protection etc. Nothing was done and it is only after cremation was over. Story was created afterthought. According to the learned Senior counsel for the appellants,

therefore, in the alternative, all the accused are required to be given benefit of doubt as there is serious doubt about whatever is stated by the witnesses.

CONSIDERATION

15. We have heard learned counsel for the rival parties at length for a few days. We have gone through the entire evidence with their assistance, oral as well as documentary. We have considered the submissions on the propositions of facts as well as law canvassed by them before us.

16. At the outset, we find that hue and cry in respect of death of deceased Harpreet Kaur alias Rozy was made w.e.f. 24.04.2000, i.e. after 21.04.2000 when her dead body was kept for *Darshan* for a few hours and after that cremation etc. had taken place in the presence of thousand of persons including the high ranking police officers, Chief Minister and number of people belonging to the area. Not only that, Criminal Miscellaneous petitions were filed by the complainant (PW-77)-Kamaljeet Singh and “Lawyers for Human Rights” in this Court. The projection that was made in the media, electronic media as well as before this Court was that the accused Bibi Jagir Kaur was politically and socially influential person being M.L.A., as well as the then Minister in the Cabinet and the Head of the prestigious SGPC. It would be apt to quote the valuable and significant observations made by Hon'ble Judge Tek Chand, J. of this Court way back in the year 1958, in the case of **Rao Harnarain Singh Sheoji Singh** versus **Gumani Ram Arya**, AIR 1958 Punjab 273, in Para-20, which reads thus:-

“20. If what was contended on behalf of the respondent, reflected a true picture of what he felt when giving publicity about this case, there must be grave and serious misgiving in his mind regarding his obligations as a journalist. It is little realised that improper news items and comments regarding causes which are either pending or about to be taken up before Courts of law, very often hamper and hinder the proper functioning of the Courts. Taking of sides in Criminal cases, suggesting innocence or guilt of accused persons can cause grave prejudice, by either influencing the minds of Judges, Jurors, witnesses, or by creating a climate of sympathy for, or prejudice against the accused. It is but essential, that those, who are engaged in the administration of justice, should be free from outside influence, and the judicial machinery should be left unaffected by popular feelings as to guilt or innocence of persons being tried or awaiting trial on a criminal charge. The legal machinery, according to our law for adjudging the culpability of accused persons, or in civil causes, for determining the rights of the parties, carefully excludes from consideration facts and circumstances, other than those which are presented in a formal manner, according to the rules of procedure and evidence. The decision rests on the material on the record, and extraneous matters, howsoever palpable, or seemingly important, are kept severely outside the judicial purview. Any outside comment upon a pending case, and any criticism of the parties or the witnesses, which is calculated to influence the decision, has to be placed under a legal ban. Journalists, whether out of good or evil intentions, who intrude themselves on the due and orderly administration of justice, are guilty of contempt of Court and can be subjected to summary punishment. The Courts do not countenance any interference which is calculated to impede, embarrass or

obstruct the administration of justice. Any publication, which has a tendency to foil or thwart a fair and impartial trial, or any conduct, which in any manner prejudices or prevents judicial investigation, whether by intimidation of or by reflection on the Court, counsel, parties or witnesses, in respect of a pending cause, constitutes contempt of Court.”

17. The projection in the criminal petitions in this Court was that because of her influence, truth was being suppressed by the Government as well as by the police in relation to the death of her young daughter and that therefore, an independent investigation by the CBI was the need of the hour. Various narration of facts allegedly indicating suspicion about her death etc. was projected in the said criminal petitions here and there forcefully making allegations that the other accused/appellants had at the directions of accused/appellant-Bibi Jagir Kaur committed the murder of Harpreet Kaur, her own daughter in order to insulate her social as well as political status. Learned Single Judge of this Court, on 09.06.2000, also made an order directing investigation by CBI.

APPROVER

18. It is significant to note that after completing investigation into the case admittedly CBI did not rely on any direct evidence in the form of eye witnesses or otherwise. The CBI, however, made their alleged witness as approver, namely PW27-Dr. Balwinder Singh Sohal who deposed as a witness to the happenings right from the beginning till the end. It is an admitted position that the approver PW27-Dr. Balwinder Singh Sohal was not at all arrayed as an accused at any point of time after commencement

of investigation or at any point thereafter. In other words, though, according to the CBI, he had been a member of alleged conspiracy in the crime in question and had participated in the crime during investigation, the CBI never even thought of making him an accused at any point of time for which it has no explanation.

19. Section 306 Cr. P.C. reads thus:-

“306. Tender of pardon to accomplice.—(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.”

20. The salient features are:-

(i) a person supposed to have been directly or indirectly concerned in or privy to an offence;

(i) can be tendered a pardon;

(iii) will have to make full and true disclosure within his knowledge;

(iv) in the commission of the offence;

(v) shall, unless he is already on bail, be detained in custody until the termination of the trial.

21. Section 307 Cr. P.C. reads thus:-

“307. Power to direct tender of pardon.—*At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.”*

22. Section 308 Cr. P.C. reads thus:-

“308. Trial of person not complying with conditions of pardon.—(1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made, in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.”

23. It would be, with respect, apt to quote the following para 12 from the judgment of this Court in the case of A.L. Mehra versus The State, AIR 1958 Punjab 72, which read thus:-

“12. Mr. Sethi has placed three submissions before us in support of the contention that notwithstanding the provisions of Sub-section (3) of Section 337 it is within the power of the Court to admit his client to bail. It is contended in the first place that as soon as an accused person is tendered a pardon under the provisions of Section 337 of the Code of Criminal Procedure he loses the status of an accused person and acquires that of a witness, A.J. Peiris v. State of Madras, AIR 1954 SC 616 (B); In the matter of Khairati Ram, ILR 12 Lah 635 at p. 639: (AIR 1931 Lah 476 at P. 478) (C), and is entitled as such to be released from custody.

This contention cannot bear a moment's scrutiny, for, as pointed out by an American jurist, the grant of pardon carries an imputation of guilt and an acceptance thereof a confession of it. A pardon has been defined as an act of grace which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is in substance and effect a contract between the State on the one hand and the person whom it is granted on the other. As the greater includes the less, a general power to grant pardons carries with it the right to impose conditions limiting the operation of such pardon.

It follows as a consequence that it is open to the pardoning power to annex to a pardon any condition, precedent or subsequent, and of any nature so long as it is not illegal, immoral or impossible of performance. When a pardon is granted on a condition precedent, it does not become operative until and unless the prisoner performs the condition

in question. If the condition is not performed, the prisoner stands precisely as though no pardon had been granted : Pyare v. The State, AIR 1955 NUC (MB) 5650 (D); Kundan Lal v. Emperor, ILR 12 Lah 604 at P. 613: (AIR 1931 Lah 353 at p. 356) (E). If the condition is satisfied the pardon and its connected promises take full effect. In the leading case of Ex Parte Garland (1871) 18 Law Ed 366 (F), the Supreme Court of United States explained with admirable clarity the effect of a pardon thus :

"A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity. There is only this limitation to its operation; it does not restore offices forfeited or property or interests vested in others, in consequence of the conviction and judgment."

24. In **Sarvanabhavan and Govindaswamy versus State of Madras**, AIR 1966 Supreme Court 1273, the Constitution Bench of the Apex Court stated thus, as to "approver":-

"Ordinarily a Court seeks for corroboration of the evidence of an approver before convicting an accused person on that evidence. Generally speaking this corroboration is of two kinds. Firstly, the Court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other

than the statement of the approver that the approver himself had taken part in the crime; secondly, after the Court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the Court seeks corroboration of the approver's evidence with respect to the part of other accused persons in the crime, and this evidence has to be of such a nature as to connect the other accused with the crime.

(Para 19)

But it must never be forgotten that before Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the case of weak or tainted evidence like that of the approver. This is not to say that the evidence of an approver has to be dealt with in two watertight compartments; it must be considered as a whole along with other evidence. Even so, the Court has to consider whether the approver's evidence is credible in itself and in doing so it may refer to such corroborative pieces of evidence as may be available. But there may be cases where the evidence of the approver is so thoroughly discrepant and so inherently incredible that the Court might consider him

wholly unreliable. (S) AIR 1957 SC 637 and AIR 1961 SC 1762, Rel. on.

(Para 20)

The antecedents of the approver do not really make him either better or worse. His evidence can only be accepted on its own merits and with sufficient corroboration.

(Para 8)”

25. In **Ram Narain** versus **State of Rajasthan**, 1973 (3) SCC 805, the Supreme Court stated thus in Para-8:-

“An approver who is admittedly guilty of the crime is an accomplice who has betrayed his associates and has apparently sought pardon for saving his own skin. In other words he has purchased complete immunity for his prosecution at the expense of his associates by agreeing to give evidence against them for the prosecution. He is, therefore, presumed not to be a man of high character or a fair witness. His pardon being conditional, to please the prosecution he may well weave some false detail into the true details of the prosecution story and may also falsely involve some innocent person. There is thus a real danger of his telling a story true in general outline but containing some untruth which he can easily work into the story. It is for this reason that the courts as a matter of prudence and caution anxiously look for some corroboration to satisfy their conscience that the approver's testimony which is clearly admissible is also worthy of belief credit. One can of course visualise an accomplice who is genuinely repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence. But even in such cases the court has to judicially determine the extent to

which his uncorroborated testimony can be considered as trustworthy by looking to the other relevant material and the attending circumstances on the basis of which the accused can be safely convicted. The rule which seems to emerge from the foregoing discussion and judicial decisions is that the necessity of corroboration as a matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the judge.”

26. A careful perusal of the above manifestly show that there is a vast difference between a “witness” and a “approver-witness”. To say that after grant of pardon, the approver will have to be treated at par with the “witness” for all purposes would be ignorance of the various restrictions/ prohibitions/ consequences for an approver witness which do not apply to an ordinary witness. In cases where approver was made accused before granting pardon, and as in the present case, the approver PW27 was never made an accused alongwith other accused persons would make no difference. The “inculpatory statements” made by the accused to such a approver cannot partake the character of “extra-judicial confession” and such “inculpatory statements” as admissions vide Section 21 of the Evidence Act, cannot be made admissible in evidence. Nay an approver is a most unworthy friend, he having bargained for his immunity.

Approver-witness
PW27-Dr. Balwinder Singh Sohal

27. The defence of the accused persons was that PW27-Dr. Balwinder Singh Sohal had no connection/acquaintance/relation with the *Dera*, Bibi Jagir Kaur or all the other accused persons. The only

foundation and no other for PW27's claim that he had come into the contact/ connection/ acquaintance with the *Dera*, Bibi Jagir Kaur was that in January 1996, he got employed in *Dera* and left it in September 1996, or at least till the incident took place, i.e. from September 1996 till March/April 2000. He does not claim that he used to attend Rajneet Kaur even after he resigned in September 1996 till the year 2000. But his guarded deposition that he kept himself in touch with Bibi Jagir Kaur after resigning job in *Dera* is a major improvement/ omission and appears to have been introduced by him to make a show of his contact/ continuity from September 1996 till the year 2000. It was obligatory on the part of CBI to make thorough investigation in order to prove that he was in fact, working from January 1996 till September 1996 as a Doctor in the dispensary of *Dera* rather than his parole version. The evidence could be in the form of oral evidence of others working in the dispensary or even the patients for that matter. PW27 claimed that he was getting monthly salary of ₹7,500/- almost ₹3,000/- more than other dispensaries. The CBI did not prove by any semblance of evidence that he in fact, received the said salary for the period he allegedly worked from January 1996 to September 1996. PW27 stated in his evidence that the salary in other dispensaries was only ₹4,500/- p.m. He having only M.B.B.S. Qualification, CBI did not specify what was the special reason for paying him ₹3,000/- more than the other dispensaries. Even PW27 does not say why he was being paid ₹3,000/- more, in the wake of the fact that the dispensary is situated in village Begowal. The CBI did not collect any account books, bank-

passbooks or cash books either of this *Dera* of PW27 to show payment and receipt of the salary for the said period. The CBI has not taken stand that the dispensary or the *Dera* did not have any account or did not maintain any account whatsoever of receipts and disbursements. The CBI did not examine any witness from the staff of the *Dera* to support the statement of PW27 that monthly salary of ₹7,500/- was paid to him by one or the other mode to PW27 nor PW27 himself produced any appointment letter from the *Dera* or bank passbook or any evidence of receipt of salary or even for that matter the history cards, OPD cards, prescriptions of medicines under his own handwriting given to patients during his nine months period of employment from January 1996 to September 1996. The CBI did not produce a single paper in that context. The CBI was never prevented from getting at least one document from the *Dera* dispensary to show that PW27 was really employed in the *Dera* and was therefore familiar with the *Dera* and its office bearers. This was imperative because CBI ultimately projected PW27 as its star approver witness to show that his evidence was in the form of direct evidence/ocular evidence.

28. There is another reason why such investigation and the evidence from PW27 was most essential. The reason is the evidence of PW36-Balwinder Singh, the prosecution's own witness. He stated in his evidence that dispensary in the *Dera* itself was started for the first time in August 1996 by him as against the claim of PW27 that he worked from January 1996. Though he was cross-examined by the CBI, his statement was not challenged and therefore, can safely be accepted. In his evidence,

PW36 stated that he was the first and the only doctor in the dispensary when it was started. Though, he was declared hostile and cross-examined by CBI, his evidence remained unshaken. PW27 did not claim that he was the founder doctor of the dispensary. PW36 also stated that there was no doctor in the month of August 1996 in the *Dera* when he started the dispensary and he stoutly denied about employment of PW27. In the cross-examination by the defence, he stated thus:-

“There was no doctor in the name of doctor Balwinder Singh Sohal (PW27) who ever worked in this dispensary and it is only doctor Balwinder Singh who worked in this dispensary, i.e. myself.”

29. This statement was not challenged by the public prosecutor by making any further cross-examination and therefore, we think that the same is liable to be accepted as true. The trial Court has not even referred to the above evidence.

30. In the wake of the above tale-telling evidence, it would be proper to quote the finding recorded by the trial Court in Para-85 of the impugned judgment, which reads as under:-

“85. The testimony of PW27 Dr. Balwinder Singh Sohal was challenged at the outset by claiming that he never remained employed in the dispensary of the Dera Sant Prem Singh at Begowal and in fact PW36 Dr. Balwinder Singh Pandori remained employed as the first doctor of the said Dera and the benefit had been sought to be taken because of the name of Balwinder Singh being common. It may be that PW27 Dr. Balwinder Singh Sohal was not able to produce any document in the shape of appointment letter or in respect of any salary

having been received from the Dera for his employment in the dispensary. It may be that even the CBI had not been able to collect any documentary evidence in respect of the employment of the doctor at the dispensary of the said Dera and regarding disbursement of the salary etc., but that is primarily because the said Dera was a religious Dera and the dispensary had been charitable and no record by such type of Deras in the rural side is being maintained. Be that as it may, the fact remains that accused Bibi Jagir Kaur still being head (Mukh Prabhandhak) of the said Dera could easily produce the record in defence to show that PW27 never remained in their dispensary, but nothing of this sort was done, and therefore, criticism of Dr. Sohal by defence on that account is without any basis. Besides the oral testimony of PW27 Dr. Balwinder Singh Sohal regarding his employment as Doctor with the dispensary of Dera Sant Prem Singh Begowal from January 1996 to September 1996 prior to his joining government job as PCMS Doctor, the prosecution cited PW36 Dr. Balwinder Singh Pandori as a witness who was to prove that PW27 Dr. Balwinder Singh Sohal had been working in the dispensary of the Dera Sant Prem Singh Begowal but to the ill-luck of the prosecution he turned hostile by not supporting the case of the prosecution and claiming that he was the first doctor who joined the said dispensary but the said version given by this hostile does not find corroboration by any oral and documentary reliable evidence and therefore, cannot be believed, besides he was Ayurvedic doctor and seems to have coined the said explanation, as a reason for his turning hostile but as noticed the same could not be substantiated.”

31. Perusal of the above finding shows that the trial Court has

given concession to PW27 as well as CBI for not producing any documentary evidence to show his appointment or receipt of salary from the *Dera* from January 1996 to September 1996. Significantly, the trial Court did not want to believe PW36 because his version did not find corroboration by oral or documentary evidence and he was *Ayurvedic* doctor. In rural area, *Ayurvedic* doctors are easily available. But then he was the prosecution witness and it was for CBI to produce oral or documentary evidence. Similar is the case with PW27, where there was no oral or documentary evidence. This is absolutely fallacious. Not only that without any evidence from the prosecution or from the Investigating Officer and on his figment of imagination, the trial Court has observed that *Dera* being a religious *Dera* and the dispensary being a charitable dispensary, no record of such type of *Deras* in the rural side is being maintained. Neither the CBI nor a single witness said so. Strangely, it is then stated that the accused Bibi Jagir Kaur could have easily produced the record in defence that PW27 never remained in the dispensary. In other words, the trial Court has put the burden of proof on the accused and secondly, the trial Court expected that accused Bibi Jagir Kaur should have produced negative evidence that PW27 was not in the dispensary. This is preposterous. The trial Court has also stated that it was ill-luck as PW36-Dr. Balwinder Singh Pandori was declared hostile.

32. It is then significant to note that in Para-86 of the judgment, the trial Court with great difficulty has tried to establish connection of accused Bibi Jagir Kaur with PW27-Dr. Balwinder Singh Sohal. However,

even in that the nurse Surinder Kaur referred by PW27 was never examined about which PW27 stated that she was maintaining the register. In this connection, it is significant to note that PW27 claimed that he used to keep in touch with Bibi Jagir Kaur after resigning which is an improvement. The trial Court in the same paragraph has wrongly stated that there was no much dispute that the younger daughter of accused Bibi Jagir Kaur, namely Rajneet Kaur alias Daizy was under the treatment of PW27. That is factually wrong as his statement that he used to attend Rajneet Kaur for her epilepsy disease is an improvement/ omission in Exhibit PW27/DA. In the first place, it is mystery and rather strange as to why the CBI did not produce Rajneet Kaur, an adult girl, as a witness before the Court. The reliance placed on the omissions/ improvements by the trial Court is wholly misplaced and misconceived. In fact, on the overall reading of the judgment of the trial Court, we find that omissions/ improvements in the evidence of the witnesses at least material have been simply ignored without assigning any reason.

33. The reading of the examination-in-chief of PW27 particularly for establishing connection with the accused Bibi Jagir Kaur shows that CBI led such evidence from his mouth as if PW27 knew and was in contact with accused Bibi Jagir Kaur, her children, her relatives etc. personally right from January 1996 till the date of incident vide Paras 2, 3 and 4 of the examination-in-chief and thereafter. A stranger to law reading the above evidence would make unimpeachable impression that he was really close to accused Bibi Jagir Kaur and her children. But having

carefully perused his entire evidence including cross-examination, we find that his evidence is deceptive. His statement under Section 161 Cr. P.C. was recorded on 09.11.2000 by the Investigating Officer which was placed before the Court as previous statement for the purposes of Section 145 of the Evidence Act, 1872 (for short 'Evidence Act'). The very introduction/acquaintance/connection of PW27-Dr. Balwinder Singh Sohal with Bibi Jagir Kaur and others was in serious dispute. But in Para-86 of the judgment, the trial Court has stated that PW27 told how he came to know about vacancy of the doctor at *Dera* at Begowal and how he applied and the manner how he was selected for interview and thus had been in employment in the charitable dispensary of the *Dera*. To check the correctness thereof, we have gone through his entire evidence but we find that the same is not to be found anywhere in his evidence. In the light of the above discussion about the claim of PW27-Dr. Balwinder Singh Sohal that he was acquainted/connected/ interviewed and that he was in employment of the *Dera* could not be said to have been proved at all much less beyond reasonable doubt.

34. The deposition of PW27 in examination-in-chief that he knew Bibi Jagir Kaur personally, that Charanjit Singh was her husband, Baba Harnam Singh was her father, Sant Baba Prem Singh and sant Harnam Singh were her real brothers, Bibi Jagir Kaur had residence in the campus of *Dera*, Balbir Singh (Manager of *Dera*) was husband of sister of Bibi Jagir Kaur, Bibi Jagir Kaur belongs to *lubana* sikh caste, that during his employment in the dispensary he had occasion to meet Bibi Jaigr Kaur

when there was some problem regarding Hospital, that he had developed family relations with Bibi Jagir Kaur, that he used to pay visit to Bibi Jagir Kaur apart from the official work, that husband of Bibi Jagir Kaur died 10/15 years prior to his joining dispensary, that before joining with Bibi Jagir Kaur at Begowal *Dera*, he had applied for job in PCS, that before he joined Government service in February 1997, he intimated about his selection to Bibi Jagir Kaur and Manager, that in September 1996, he having got PCM job he resigned at *Dera* Prem Singh Begowal, that Bibi Jagir Kaur was elected as a Member of Punjab Legislative assembly and that prior thereto, she was member of Siromani Gurudwara Prabandhak Committee, that Bibi Jagir Kaur became minister and got house No.955 in Sector 39, Chandigarh, that in 1999, Bibi Jagir Kaur had become president of SGPC, that son of Dalwinder Kaur Dhesi was studying in U.K. and his name is Channi, that there was proposed alliance between Channi and Harpreet Kaur, that Harvinder Kumar alias Binder was driver of Dalwinder Kaur Dhesi, that on 09.03.2000, he had visited the house of Bibi Jagir Kaur in Sector 39, Chandigarh, that none of the daughters of Bibi Jagir Kaur were married at that time, are all the material omissions duly proved on record vide Exhibit PW27/DA dated 09.11.2000. It is strange to note that all the above omissions, which were most material regarding the alleged establishment of connection sought to be built up by this witness were completely and casually ignored by the learned trial Court from consideration that too without giving any reason as to why they were ignored. Vide para-157 of the impugned judgment, the trial

Court has made a mention about some omissions/improvements but cursorily, but even then did not apply the effect of the improvements as to his claim about employment in *Dera* dispensary or with Bibi Jagir Kaur.

INADMISSIBLE EVIDENCE

35. We have discussed earlier with reference to Section 306 to Section 308 of Cr. P.C. and Section 21 of Evidence Act about the status of a “approver witness” and an ordinary witness qua the admissibility of evidence in the form of “Inculpatory Statements” of the accused made to the approver-witness.

36. As stated earlier, it is the case of CBI that PW27 was a “participant” in the alleged crime alongiwth other accused persons, but was made a “approver”. This Court finds it strange that the trial Court recorded “inadmissible evidence” despite objection by the defence and it never decided the objection and at the height of it has taken into account such evidence. For example, in his examination-in-chief, he stated:-

“Paramjit (accused) told me to find solution of the problem aforesaid (Harpreet Kaur being pregnant), Paramjit told me that the problem about pregnancy is to be solved and they (accused persons) had planned to terminate the pregnancy, and the mode of termination was planned (abortion), Bibi Jagir Kaur (accused) asked me to cooperate for getting the abortion done, I was also told (by the accused Paramjit) that the girl Harpreet Kaur was not willing for the abortion, I was further told by Paramjit Singh, she was to be brought on the pretext of purchasing wedding clothes from Patiala and will be administered some sedative pills by mixing in the 'chat'”

37. A careful perusal of his examination-in-chief as to the recording of “inadmissible evidence” will show that in relation to almost all the accused, such evidence despite objections was recorded. The evidence was in the nature of admission by accused to another “accused”, PW27-Dr. Balwinder Singh Sohal, who had participated in the crime from the beginning till the end, but enjoyed the protection of Section 306 Cr. P.C. In our opinion, in the peculiar facts of the present case, PW27-Dr. Balwinder Singh Sohal's participation in the crime did partake the character of co-accused, though, he was actually. Hence the “inculpatory statements” by Paramjit Singh Raipur or Bibi Jagir Kaur or by any other accused to him would not at all be admissible in evidence. We really wonder as to how the trial Court went on recording the inadmissible evidence despite objections.

APPROVER ENSNARED:

38. Exhibit PW27/DA dated 09.11.2000 is the statement of PW27 under Section 161 Cr. P.C. recorded by the Investigating Officer, Shri Anurag Garg. It is significant to note that PW27 had made an application for grant of anticipatory bail in respect of the same incident on 02.11.2000 and the same was rejected on 07.11.2000 by the Sessions Court on the opposition of CBI. It is most important to note that the Investigating Officer, Shri Anurag Garg on 09.11.2000, i.e. immediately after two days of rejection of application for anticipatory bail of PW27, recorded his first statement under Section 161 Cr. P.C. (Exhibit PW27/DA), and he appears to have made incriminating statements. It is in this context, the idea to

project him as a approver in the fear of his impending arrest after 07.11.2000 due to rejection of his application for anticipatory bail appears to have taken the birth. This is further corroborated by the fact that he immediately filed second bail application on 24.11.2000. In ordinary course, after rejection of anticipatory bail application by the Sessions Court, the accused would approach the higher Court, i.e. High Court as there is remote or rather no possibility of the same Court entertaining the second application for grant of anticipatory bail within the span of 17 days only in the absence of plausible reasons. What further happened is again significant, namely that the Sessions Court in its second order had categorically recorded no objection given by the CBI for granting him anticipatory bail and hence it granted bail.

39. These events clearly show that when the first application for anticipatory bail was filed, CBI treated PW27 as the accused and opposed his plea for anticipatory bail and sessions Court accepted the opposition by CBI and rejected the application on 07.11.2000. But when on 09.11.2000, PW27 supported the CBI or rather surrendered to the dictates of CBI, he filed second bail application and CBI gave no objection. The theory that CBI thus made PW27 their approver-witness is further strengthened by the following narration.

40. The evidence regarding unauthorised absence of PW27 from duty without any explanation and his trips to the office of CBI at New Delhi and also about threats imparted by CBI to him is interesting. As to the threats, he stated thus:-

(extracts from pages 385, 386, 387 of record)

“.....During this period from 9/11 to 17.12.2000 I went on roaming here and there to get anticipatory bail in this case. After 17.12.2000 I joined my duty again said I had joined the duty earlier before getting the bail. I do not remember the exact date when I joined my duty. I applied for bail for the first time on 2.11.2000..... The CBI officers had given me threat after recording my statement on 31.10.2000 but I do not remember their names, regarding my arrest. I do not remember whether the CBI Officers threatened me that I had been concealing this fact, so I should disclose the true facts otherwise I would be arrested. The CBI Officer had threatened about my arrest 2/3 times till I got my anticipatory bail..... At this stage I do not remember as to what were the important events in the change of circumstances which resulted into filing of second bail application. As I had fear in my mind that CBI might arrest me, so I did not personally go to file my first bail application. It is wrong to say that I had been given status of approver by the CBI and then I filed the second application personally. I do not know that the aforesaid were the only circumstances to file second application for bail. I also do not know that while granting bail the Hon'ble Judge has given remarks with the observation that there is no change in circumstance but the CBI counsel has not opposed the bail application.....”

41. The trial Court recorded the finding about conduct of PW27 and the CBI, which is based on evidence and the cross-examination of this witness about the manner and the modalities adopted by the CBI in unfair manner to make him approver in the case. The same is evident from the following findings in the impugned judgment:-

“150. Before taking up the evidence of the approver PW27 Dr. Sohal, I would like to take up discussion regarding the circumstances, leading to the declaration of Dr. B.S. Sohal as an approver and whether the same inspires confidence.

151. It has come on record that Balwinder Singh who was doctor, posted as SHC Pattar Kalan, which was under Primary Health Centre, Kartarpur, remained unauthorized absent from his official duty at SHC Patter Kalan from

23.10.2000 to 6.11.2000 and then from 9.11.2000 to 17.12.2000. This fact was admitted by PW27 approver in his cross-examination and is even otherwise stated by PW28 Ravi Kumar, Pharmacist posted at SHC, Patter Kalan on the basis of the attendance register maintained at Patter Kalan. Dr. Sohal as per his own showing did not apply for leave or even for station leave before leaving from Delhi. Though it was claimed by this witness that his summons from the CBI had been received through SMO, PHC Kartarpur at his dispensary which were noted by him in his hand by making entry in the attendance register Ex.PW28/A, when he joined duty but nonetheless it was obligatory on the part of Dr. Sohal who was a government officer to have obtained the prior permission from the Office Controlling Authority before leaving for Delhi may be to attend the office of the CBI consequent upon the summons having been received by him through his senior officer on 21st October 2010 and made endorsement of point X to X1 in register Ex.PW28/A. Furthermore he does not offer any explanation regarding his continued absence from 23.10.2000 to 17.12.2000 from duty at SHC Patter Kalan except for brief spell of 2 days. Even the investigating agency could not explain the reason for recording of successive statements of approver Dr. Sohal first on 31.10.2000 Ex.PW27/DH, second on 9.11.2000 Ex.PW27/DA and the third on 17.12.2000 Ex.PW27/DB, all under sections 161 Cr. P.C. and then his first statement Ex.P79 under section 164 Cr. P.C. as a witness was recorded by Id. Metropolitan Magistrate on 10.11.2000 on the basis of his application Ex.P78.

.....

152. Now if the above mentioned facts and circumstances are analysed, we find that continued

unauthorized absence for the period 23.10.2000 to 17.12.2000 from his official duty by Dr. Sohal, his not being able to tell in his cross examination as to where he remained during his stay at Delhi in connection with his appearance before the investigating officers of the CBI, during that interval and also before the Court of Metropolitan Magistrate, New Delhi, coupled by the fact that recording of the successive statements of Dr. Sohal by the CBI under section 161 Cr. P.C. and then by the Court, and not arresting Dr. Sohal despite the initial statements showing his implication, as an accused and the manner in which the second anticipatory bail application was got allowed by the CBI, from the Court after dismissal of the first bail application, without change in circumstances, thereafter confessional statement of Dr. Sohal was got recorded from the Court and on the same day he expressed his desire to the CBI by moving application in this behalf for being made an approver, collectively, lends support to the argument advanced on behalf of the defence, that for the entire period Dr. Sohal remained with the CBI nearly under custodial supervision and was subjected to sustained pressure. Dr. Sohal was involved in the conspiracy for abduction, secretly confining and terminating the pregnancy of Harpreet Kaur, and participated for achieving the object of the said conspiracy and his role having been revealed only during investigation, it therefore, was apparent that he was left with no other option because of the afore discussed circumstances but to confess his guilt by becoming an approver and also readily agreed to give the tutored version regarding the alleged conspiracy for murder and the manner of its execution, as per the version of the prosecution, by way of price of his liberty in this case and also to save his job. Otherwise also conduct of Dr. Sohal, is not natural that of an

accused of a murder case..... This also further points out that the confession made by the approver PW27 before the Id. Metropolitan Magistrate, and then his prayer for being made approver by granting pardon to him is not his voluntary act.

153. *There are other circumstances showing undue favours having been conferred upon Dr. Sohal approver. As already noticed Dr. Sohal remained unauthorisely absent from his duty for a considerable period during his posting as doctor at SHC Patter Kalan and therefore, could not have got away without any departmental action but according to his own showing in his cross-examination, he admitted that a notice was issued to him, after he was allowed to join duty in the office of Civil Surgeon on 29.11.2000. The witness, however, could not explain on what grounds he was let off.....*

.....

156. *A bare perusal of the afore quoted relevant extract of the statement of PW27 indicates that he has claimed to be a spectator at every moment but has not participated at any stage. The story as stated by him is also apparently unnatural.....”*

42. We agree with the above findings in Paras 150 to 153 and 156.

43. Apropos, the evidence of PW27-Dr. Balwinder Singh Sohal as discussed above, we also have reason to believe that he was made approver witness by practising pressure tactics, threats etc. in a professional manner and he tendered his evidence accordingly. He was given a Hobson's choice to be a approver or be accused. He chose the former. We also find that he improved his testimony by major

improvements which were unfortunately ignored by the trial Court. Rather the trial Court relied on those improvements. Not only that; his major evidence was inadmissible but was recorded despite objection and was also relied upon. To sum-up, since we have found that PW27-Dr. Balwinder Singh Sohal, approver is a planted witness and his testimony is not worthy of credence and is uninspiring and unacceptable justifying its rejection outright; it will be futile and wholly unnecessary to dwell upon his evidence as to phone calls, call details between the accused persons and himself. The question of looking for any corroboration to his testimony also does not arise. We reject his evidence.

PW77-Kamaljeet Singh son of Darshan Singh

44. Kamaljeet Singh, the complainant (PW77) after having filed petitions in the High Court on 24.04.2000, an order was made by the High Court to provide security to him. PW77 stated in his evidence that the security that was ordered to be provided by the Court to him in the year 2000 remained with him and was never withdrawn by the Court or the police nor he made any request for withdrawal to anybody. Thus, all the while he was under full security and there was hardly any chance of anybody pressurizing him or doing any mischief to him.

45. The examination-in-chief of PW77 commenced on 25.04.2009 and continued. On 25.02.2010, i.e. almost after 10 months, the special public prosecutor sought permission to declare him hostile, which was granted and he was accordingly declared hostile. After declaring him hostile on 25.02.2010, the special public prosecutor for CBI did not leave

in putting to him a single piece of the prosecution case in the form of suggestions or otherwise even minor details, which PW77 categorically, firmly and stoutly denied thereby falsifying the case of the prosecution. The cross-examination by Special Public Prosecutor ended on 30.07.2010 on which date defence started cross-examination. It is significant to note that his cross-examination by special public prosecutor runs from Page 697 to Page 784. PW77 was discredited by the special public prosecutor in the cross-examination to unimaginable extent, which can be seen from some of the pieces of cross-examination starting from the last paragraph of his cross-examination in which special public prosecutor charged him of accepting ₹3 crores. It would be proper to quote the stand taken by CBI by way of suggestions to him:-

“.....It is wrong to suggest that I had not asking CBI because the investigation to the CBI was entrusted by the High Court on the basis of the writ petitions filed by me. Volunteered I had not filed ay such petitions. It is wrong to suggest that I am making the false statement under the influence of the accused .

Question”: I have the information that you have charged about a few Crores Rupees to be precise Rs.3 crores from the accused for resiling from your previous statement before the CBI and the High Court.

Ans. It is your information, but so far as I am concerned it is absolutely wrong.”

Not only that, the CBI also filed an application under Section 340 of Cr. P.C. against him for perjury. It was also suggested to him by

CBI that in order to blackmail Bibi Jagir Kaur he had prepared video cassettes for the alleged betrothal ceremony. That he had led a trap for Harpreet Kaur and then impregnated her in furtherance of his object. That when he was not successful in his plot for extracting money from Bibi Jaigr Kaur, he filed writ petitions in the High Court for obtaining ill-gotten money. As a matter of fact, the Investigating agency having decided to take a stand by putting the suggestions as above in respect of its own prosecution case cannot be allowed to argue to the contrary as otherwise there would be no sanctity to the conscious stand taken by the prosecuting agency, namely the CBI. If the said stand is taken into consideration it is clear that CBI wants the Court to believe that the videography that was got done by PW77 regarding betrothal ceremony and impregnating Harpreet Kaur was out of a plot to extort money from accused Bibi Jagir Kaur or with an eye on her property as she had only two legal heirs to succeed to her estate. This stand taken by the CBI clearly projects the motive on the part of PW77 in falsely roping the accused persons in serious offence of murder in order to save himself from the legal punishment. The prosecution atleast qua PW77 ought to have come to an end with this event. Thereafter, the cross-examination of PW77 by the defence was completed on 31.07.2010 and on the same date, application under Section 340 of Cr. P.C. was filed by the CBI against PW77. The trial Court made an order on the said application on 07.01.2011 that the same would be decided only after the pronouncement of the judgment in the main trial, but the trial Court placed restriction on

his travel in the same order dated 07.01.2011. On 21.03.2011, i.e. almost after 7 months, an application purported to under Section 311 Cr. P.C. was filed by him for his re-examination, on the following grounds:-

“That the complainant had been under pressure and mental duress from various quarters; that the accused were wielding immense political influence and were powerful persons having connection with the ruling party in the State of Punjab as accused No.1 Bibi Jagir Kaur who was the Ex-Minister of the State, Ex-President of SGPC and the present Chairperson District Planning Committee, Kapurthala and even other accused persons were resourceful persons; that the father of the applicant was expired on prolonged illness and earlier thereto, his sister Manjit Kaur also expired loading to the worries of the family of the complainant; that the complainant had always been under threat whenever he was in the village, because of which he was not even able to take proper care of his ailing father; that due to pressure of the accused many witnesses in this case examined by the CBI have turned hostile; that complainant earlier knocked the door of the Hon'ble High Court for seeking cancellation of anticipatory bail granted to the accused on the assertions that the accused persons were influencing witnesses of the prosecution for pressing them to resile from their earlier statements by advancing threats and using other coercive means and further more Bibi Jagir Kaur was making efforts for getting the complainant eliminated and in this connection, real nephew of accused Bibi Jagir Kaur was arrested by the Delhi Police for having abducted a person and in the interrogation of said case, it was revealed that he had planned to kill the complainant on account of the case in hand; that the complainant even approached the Apex Court after dismissal

of his petition by the Hon'ble High Court; that the complainant, thus was under pressure and was not in normal state of mind as noticed above to make his statement; that when he appeared in the Court for making statement and thus, could not depose truthfully due to the pressure of accused Bibi Jagir Kaur and other co-accused as well as the authorities in the power of the State; that after having lost his father and sister realization has drawn on the complainant the futility of not supporting the truth and wants to rectify his sin; that it was also claimed that applications, documents and the affidavits filed in the Hon'ble High Court and in the Supreme Court, were true and duly signed by him; therefore, it was a fit case for allowing his re-examination.”

46. This application was hotly contested by the accused persons on the ground that it was filed with ulterior motive and there was security ordered to be provided by the High Court, throughout. His examination-in-chief started from 24.04.2009 and continued till 31.07.2010, i.e. almost one year and three months and he was represented by his separately engaged private counsel. Since he was not appearing for sometime, the Court had issued warrants for his appearance and therefore, he sought bail from the High Court, but in the said proceedings also, he did not mention any pressure, undue influence and so on and so forth. On the contrary, in the cross-examination, he vehemently and stoutly denied about all those suggestions about pressure, undue influence and so on and so forth. The application was made with a view to delay the trial which started in the year 2000 and for lame excuses advanced by the complainant, no such application for re-examination could be entertained particularly with the

background of the attempt to come out of his sworn testimony in relation to the Court proceedings and hence, application was filed under Section 340 Cr. P.C. by the CBI.

47. The trial Court relied on the decision in the case of **Zahira Habibulla H. Sheikh and another** versus **State of Gujarat and others**, 2004 (2) RCR (Criminal) 836 (SC), which decision, in our opinion on facts, had no application at all. The trial Court allowed the said application without giving a single, even *prima-facie* finding about any pressure, influence or anything from the accused persons. He again reiterated that PW77 belong to middle-class family while accused Bibi Jagir Kaur had number of posts. The trial Court agreed that he was granted police protection throughout. It cannot understood how he was subjected to any threat or pressure in the absence of any specific averments or proof even *prima-facie* except the bald statements made by him. The trial Court did not indicate as to how the fresh recording of his evidence was essential for the cause of justice in the public interest or for just decision except using the general words in his order. In Para-16 of the order again, without any specification about pressure or influence, the trial Court made general statements and held that delay in the trial was no reason to reject the application as the complainant was the star witness of the prosecution.

48. We have given our careful consideration to the provisions of section 311 Cr. P.C. We have also noted the fact that right from the year 2000, PW77 was having security consisting of 10 officers that was ordered to be provided by the High Court. He did not have any complaint

about the persons imparting security to him nor against the State or the police. He had engaged his own counsel apart from the special counsel for CBI. Right from the date of his examination-in-chief from 25.04.2009 till he filed the application under Section 311 Cr. P.C. on 21.03.2011, neither orally nor in writing he or his counsel or counsel for the CBI made any complaint to the Court or the High Court about the alleged pressure, threat, influence etc. Admittedly, PW77 did not produce any evidence in support of his prayer in the application nor any material as to how and when and by whom and by what mode he was pressurized, threatened or influenced. We are of the firm opinion that power under Section 311 Cr. P.C. in a trial that was almost at the fag end after 10 years, such application could not be dealt with in such a casual and cavalier manner based on no material and on the whims and fancies of Court. The delay in trial is one of the aspects of the matter. But then the power cannot be exercised to allow a witness to get re-examined for enabling him to make a somersault as per his whims and fancies. In our considered opinion, the application filed by PW77 under Section 311 Cr. P.C. under circumstances was *mala fide*, without any basis or merit and for reasons best known to him, which he honestly did not disclose to the Court and were not the reasons stated in the application. He thus, indulged in *suppressio veri suggestio falsi*. It is true that there is a judicial discretion in the Court to deal with such application but that does not mean that such a judicial discretion can be arbitrary and utilized on the whims and fancies. In the backdrop of the facts as stated above, we are of the firm

opinion that the trial Court made a grave mistake in allowing application under Section 311 Cr. P.C. at the behest of the complainant that too without obtaining any firm opinion from the prosecuting agency-CBI one way or the other. It appears that the CBI was fully aware about such a ploy adopted by the complainant and that is why it did not act fairly in either favouring the application or opposing the same, but diplomatically leaving it to the Court to decide. This is fortified from the fact that the CBI brazenly brought out everything it wanted from the mouth of PW77 in a diametrically opposite manner it had cross-examined vide Section 145 of Evidence Act and discredited this witness after declaring him hostile. Not only that the CBI forcefully buttressed before the trial Court and this Court that PW77 was its star witness and must be believed. The trial Court accepted the CBI's argument. We think CBI is a prosecuting agency and not a persecuting agency. It must maintain the highest moral standards. It ought to have in all fairness told the trial Court that the CBI having condemned its witness PW77 to the hilt and having suggested that he was a rank liar as he received ₹3 crores, did not want to rely on him. Not only that CBI had filed application against PW77 under Section 340 Cr. P.C. for taking action for perjury. In this behalf, it is interesting to note and rather weird that CBI had never asked for recalling PW77 who himself filed application, but it kept eye on the result of his application. No sooner the application filed by PW77 for his recall was allowed, without any permission from the Court and without the counsel for the complainant re-examining him, the Special Public Prosecutor cross-examined him. It is

unfathomable as to how CBI having already cross-examined him again was allowed to cross-examine him under the garb of the order of recall of PW77, particularly when CBI had never asked for recall of the witness. The trial Court thus, violated the provisions of Section 138 of Evidence Act.

49. It is necessary to look at the extract of his following evidence in this connection regarding pressure etc.:-

(extracted portion from record page 849)

“I did not move any application before the trial court prior to my appearance on 25.4.2009 claiming that I was under pressure and therefore, will not be a position to depose freely. Same is my reply regarding the dates 28.1.2010, 29.1.2010, 25.2.2010, 26.2.2010, 13.3.2010, 22.4.2010, 23.4.2010, 30.4.2010, 12.6.2010, 10.7.2010, 16.7.2010 and on 31.7.2010 for which dates my statement was recorded in the course of trial. I did not file any separate petition in the Hon'ble High Court during the period 25.4.2009 to 31.7.2010 claiming that I was under pressure from the accused and therefore, I am not in a position to make statement freely.”

(extracted portion from record page 881 to 882)

“Today I am not in a position to orally tell date, time or place, regarding the advancing of threats, or pressurizing me by accused Bibi Jagir Kaur or any other accused, however, I can produce newspaper cutting mentioning the said facts. It is wrong to suggest that I am seeking time to prepare appropriate answer for giving the same in future. The recording of my statement continued on different dates starting from 25.4.2009 to 31.7.2010 prior to re-examination.

During the period 25.4.2009 to 31.7.2010, I did not move any complaint to any police authority alleging that I had been pressurized or threatened by any of the accused. Volunteered, there was no use of doing so. However, I did not move any application before the Court during the said interval. I moved an application dated 25.2.2010 through my counsel Sh. K.S. Nagra, Advocate, alleging threats and harassment from CBI officers and from the political opponents of accused Bibi Jagir Kaur and also demanding security from the Court. Volunteered the said application was moved by me under pressure.”

50. The net result of the discussion is that we must hold that the order dated 02.05.2011 allowing the application under Section 311 Cr. P.C. is *per se* illegal and perverse. But then we think, it would not be just and proper to set aside the said order as it was in fact, implemented and was not put to challenge by any of the parties in the higher Court at the relevant time.

51. The *vista* post order dated 02.05.2011 allowing the application under Section 311 Cr. P.C., and upon reading of his cross-examination by the special public prosecutor from record Pages 794 to 834, clearly leads us to believe that the CBI joined hands with the complainant-PW77 and acted in tandem with him by taking a somersault qua PW77. We think CBI acted as a persecuting agency along with the complainant PW77 with a view to secure the conviction.

52. We have perused the cross-examination made by the defence after the cross-examination that was recorded. We find that the cross-examination shows major omissions and improvements in his deposition.

The trial Court has relied on some part of his testimony for coming to the conclusion for awarding conviction. We are aware about the maxim *falsus in uno, falsus in omnibus*. But then with the turn of the events in the present case and the somersault taken by PW77, we are of the firm opinion that he is a dishonest and deceptive witness and a liar. His story is incredible and abounds in contradictions of the gravest kind. His evidence is actuated with *mala fides*, enmity and a very strong motive and greed coupled with enmity against the main accused Bibi Jagir Kaur. We, therefore, reject his entire evidence being motivated and being dishonest.

PW20-Manjit Kaur and
PW26-Smt. Kulwinder Chohan

53. PW20-Manjit Kaur is the real sister of PW77-Kamaljeet Singh who is obviously an interested witness. Her testimony is, therefore, required to be carefully scrutinized. We have also seen her deposition and at the outset, we find that her entire material evidence is in the form of omissions or improvements duly brought on record by the defence. We have noted down all the improvements while reading her evidence. At any rate, upon reading of her evidence, we do not think she has testified as to any incriminating material so as to constitute any offence against the accused person. The only alleged incriminating portion that Harpreet Kaur too might be killed or murdered is in the form of improvement. Otherwise in her evidence, there is no incriminating material by which one could arrive at any adverse evidence against the accused persons. Her evidence that Harpreet Kaur had stated about administering of *chat* and that

thereafter, she had become unconscious in Sector 22, Chandigarh would not further the case of the prosecution since we have already rejected the evidence of PW27 on this aspect apart from the improvement that she became unconscious after having *chat* duly proved by way of omission in the cross-examination. It is significant to note that this witness claimed to have visited Jasdil Mansion at Phagwara in the night between 9/10.04.2000 in the dead hours at 1/1.30 a.m. and that Bibi Jagir Kaur had threatened her and her brother that they should not think that she would not exercise or use her power and in that case, she may set their house on fire and also that of Kamaljeet Singh. According to this witness, she tried to pacify Bibi Jagir Kaur in Jasdil Mansion at Phagwara, but she did not accede to their request and started threatening her. She and her brother and others felt frightened and not only that Dalwinder Kaur Dhesi, the accused, threatened that she had lot of Inspectors for getting her confined. She felt that they will not be allowed to go out of Mansion and therefore, they went towards servant quarter. Thereafter, on the next day, they came out of servant quarter and went away from the said place. The conduct on the part of this witness and her brother who is said to have gone in Jasdil Mansion in the dead hours of night in not making any report of the entire incident to the police anywhere or approaching any Court, is wholly unnatural and if she along with her brother were threatened with their life, it is impossible to believe that they would not act to save themselves by going to the police or the Court for protection. Apart from that, we do not find in her evidence anything, which would constitute any crime or

offence as such.

54. Similarly, is the evidence of PW26-Kulwinder Chohan. We have carefully seen her entire evidence and we again find that material particulars in her evidence are in the form of improvements and omissions duly brought on record by the defence, which we have noted while reading her evidence. At any rate, her evidence does not disclose a single piece of incriminating evidence against any of the accused persons. Looking at her evidence, we are of the opinion that her evidence is of no assistance to the prosecution as there is nothing incriminating against accused persons. She then claimed that statement was made by the deceased Harpreet Kaur to her, which would not constitute any offence. We, therefore, find that her evidence is also worthless.

Enmity and the interested witnesses

55. The trial Court has recorded a categorical finding that PW77 and his sister PW20 Manjit Kaur clearly had axe to grind against Bibi Jagir Kaur and the finding recorded by the trial Court in the judgment reads as under:-

(extracts from pages 202, 219, 220, 225, 226 of the impugned judgment)

“.....This witness who was cited as a star witness of the prosecution had a serious grudge against accused Bibi Jagir Kaur for having not been able to marry Harpreet Kaur because of her opposition and therefore could have introduced certain untrue facts for the discomfort of accused Bibi Jagir Kaur, especially when the initial and the first version given by him in the writ petition copy Ex.PW79/1,

does not find mention the names of accused Harvinder Kumar alias Binder, accused Satya and accused Sanjeev Kumar (since expired) nor any role was attributed to them. Besides he had claimed that the said facts had been disclosed by Harpreet Kaur, and he himself is not a witness to the alleged role played by the said three accused in guarding Harpreet Kaur. So far as PW20 Manjit Kaur is concerned, she being elder sister of PW77 complainant Kamaljeet Singh must be inclined to help her brother Kamaljeet Singh against accused Bibi Jagir Kaur by giving the said version which as already noticed does not find reflection in the earliest version of Kamaljeet Singh in the writ petition. Besides the testimony of PW20 Manjit Kaur, PW77 complainant Kamaljeet Singh and PW26 Kulwinder Chauhan being sketchy and unreliable.....

Besides Kamaljeet Singh complainant because having failed to marry Harpreet Kaur, who expired is certainly expected to have develop bias against accused Bibi Jagir Kaur because she even at the initial stage was against their love affair and tried to prevail upon Harpreet Kaur and kept her in isolation, so that she might abandon her relationship with Kamaljeet Singh and therefore, can certainly exaggerate the actual version by adding wrong facts for which he could be supported by the adversories of accused Bibi Jagir Kaur..... However, the aforesaid version is only supported by his relation witnesses who like him also had annoyance against accused Bibi Jagir Kaur and therefore, their said version is unacceptable..... However, the version of the aforesaid witness is of interested nature and as has already been discussed the testimony of PW77 Kamaljeet Singh and his relation witnesses which is not credible and not supported by independent and reliable evidence cannot be accepted..... Besides the testimony of PW77

Kamaljeet Singh and his related persons and the testimony of PW34 Harbhajan Singh does not inspire confidence because his hostility to accused Bibi Jagir Kaur was brought out in his cross-examination.....”

We agree with the above reasons given by the trial Court.

56. PW77 also deposed about Shri Sukhpal Singh Khaira who had visited his house and that they were political opponent of Bibi Jagir Kaur inasmuch as Sukhpal Singh Khaira had lost election for the post of MLA against her, which reads as under:-

(extracts from Pages 785 upto 786, 789 and 843 of record)

“..... From the very beginning we had connection with Congress party. It is correct that accused Bibi Jagir Kaur belongs to Shiromani Akali Dal since long. Mr. Sukhpal Singh Kheira was leader of the Congress party of our area who was political opponent of Bibi Jagir Kaur. It is correct that Sh. Sukhpal Singh Kheira lost two elections from Bibi Jagir Kaur who was successful candidate. It is correct that Bibi Jagir Kaur and Sukhpal Singh Kheira were strong opponent of each other in all political activities of our area having political rivalry. I had been meeting Sukhpal Singh Kheira being his supporter. He also had been coming to our residence. My family i.e. my father, myself, including my sisters are supporters of Sukhpal Singh Kheira, he being heading the congress faction of our area. Mr. Sukhpal Singh Kheira came to our residence after death of Harpreet Kaur. Cremation of Harpreet Kaur was attended by almost families residing at Begowal including our family and relations. Mr. Sukhpal Kheira Congress Leader however, was not present at the cremation of Harpreet Kaur. Sukhpal Singh Kheira had a talk with my deceased sister Manjit Kaur regarding the death of Harpreet Kaur. In fact, I

was present when Sukhpal Singh Kheira was talking to Manjit Kaur who in my presence told him that Harpreet Kaur had put a condition for the marriage that I should become a baptized sikh before the marriage (Objected to being hearsay).....

..... It became an issue in the area because of the political importance of Bibi Jagir Kaur at the instance of the opponents of Bibi Jagir Kaur. The said opponents of Bibi Jagir Kaur have been frequenting my parents and my sister Manjit Kaur but not much with me. It might be that Advocate was engaged by the said political opponents of Bibi Jagir Kaur with the help of my sister Manjit Kaur. As my sister Manjit Kaur was aware of my love affair with Harpreet Kaur, the political opponents of Bibi Jagir Kaur probably had taken benefit of the same and prevailed upon with my sister Manjit Kaur for joining hands with them for taking up the issue by emotionally blackmailing her.....

..... *It is correct that Sh. Sukhpal Singh Khaira is the same who earlier was defeated by accused Bibi Jagir Kaur in the assembly election and is the present MLA of Congress Party.....*”

57. The obsession of the trial Court about Bibi Jagir Kaur as head of *Dera Sant Prem Singh*, becoming MLA and then Minister in the Punjab Government and subsequently being elected as President of SGPC, Amritsar and the alleged lower middle class status of complainant PW77-Kamaljeet Singh, clearly and unfortunately worked as an adverse circumstance against Bibi Jagir Kaur in the mind of the learned Judge. Having all those posts was no fault on her part. That was projected by media vociferously and the learned Judge accepted it. Had there been any evidence that Bibi Jagir Kaur utilised her position to influence one and all

and PW77-Kamaljeet Singh, or that she had expressed to anybody that she would not marry her daughter in a lower middle class family of PW77 to any witness approaching her for such a proposal, one could perhaps draw such inference. But there is not even a remote piece of evidence anywhere to the above effect. Neither PW77-Kamaljeet Singh nor any witness had claimed that they had approached Bibi Jagir Kaur with any marriage proposal. To rely on the perception of PW77-Kamaljeet Singh, PW20-Manjit Kaur or PW23-Paramjit Kaur about it is a 'one-sided' and 'biased' view by the trial Court.

58. The trial Court has recorded a finding that there was love affair between Harpreet Kaur and PW77-Kamaljeet Singh, due to which she became pregnant vide point (b) & (c). For the purpose of the present trial, we do not find any significance whether there was love affair or not, since we agree with the finding recorded by the trial Court, that in fact Harpreet Kaur became pregnant from Kamaljeet Singh. It is difficult to come to any conclusion about the 'love affair' by relying on the interested testimony of PW77, PW20, PW23, the brother and sisters, or the so called 'love letters' and greeting cards. As is the case of CBI, itself in suggestions to PW77-Kamaljeet Singh that he had laid a trap on the girl with a view to blackmail Bibi Jagir Kaur and also made a video as well, and had taken ₹3 crore from Bibi Jagir Kaur, it would be unwise to record affirmatively a finding about 'love affair'. Nevertheless, we are prepared to record a finding agreeing with the trial Court that Harpreet Kaur became pregnant as deposed by independent witnesses PW7-Dr. Jyoti Rana and PW8-Dr.

Vikramjit Singh. It may not be relevant whether she became pregnant due to love affair or due to deception practised on her by PW77-Kamaljeet Singh.

We do not agree with the trial Court who placed reliance on the testimony of PW77-Kamaljeet Singh, a dishonest and liar witness, as described by CBI itself.

59. The trial Court has relied on the photographs mark H1 to mark H16 and mark H18 and mark A & B exhibited subsequently and the video of the alleged betrothal ceremony, despite absence of the legal proof thereof in the absence of primary evidence. Since the videographer was not produced, the defence was denied opportunity to cross-examine him. The trial Court knew it and observed as under, but still relied on this evidence:-

“It may also be that the negatives of the photographs Mark H1 to mark H16 and H18 and mark A and B which were subsequently exhibited as Ex.P76/4 to Ex.P76/17, Ex.P77/4 to Ex.P77/17, Ex.P77/18 to Ex.P77/21, Ex.P84/4, Ex.PW35/1 (P61) are not proved on record but the non production of the negatives is explained by the PWs who deposed that the said photographs were clicked with the camera of Harpreet Kaur. Thus, the negatives of the photographs being not available with the complainant he could not produce the same. It may also be that no videographer had been examined but it has come in the evidence of PWs that the video was being taken of the ceremony by Simarjit Singh brother of the complainant Kamaljeet Singh, this seems to have been done with the sole object of not involving any outsider to keep the betrothal ceremony as secret till accused Bibi Jagir Kaur agrees for

their marriage.”.

**Section-6 and
Section 32 of the Evidence Act**

60. Since we have found that the evidence of PW27 is untrustworthy, and that PW77-Kamaljeet Singh, the complainant is a liar and a perjurer, their evidence about the alleged statements made by the deceased to them must be rejected. Similar is the case with PW20-Manjit Kaur and PW26-Smt. Kulwinder Chohan whose evidence we have rejected and it also suffers from the vice of interested witnesses. Even otherwise, at any rate, the alleged statements to them about forcible termination of pregnancy are unreliable. In fact, to save her life due to dead foetus, the foetus was removed, is the finding and as such, no offence is constituted. That the deceased generally apprehended any danger to her life is in the nature of perception but not in the nature of any transaction resulting into death.

61. We think there is therefore no need to discuss the submissions on Section 6 or Section 32 of the Evidence Act, as we have rejected the entire evidence brought by the prosecution which failed to discharge its initial burden of proof. As to Mr. Saxena, learned Senior Standing counsel who raised a question how Harpreet Kaur died should be explained by Bibi Jagir Kaur, we think it is begging a question. There is evidence of PW39-Dr. Tarsem Singh who stated that she suffered from acute dehydration and she was being taken away to CMC, Ludhiana, but died on way. This evidence is probable and acceptable. He was a prosecution witness. Testing the prosecution case that to save her reputation, Bibi Jagir

Kaur wanted to terminate the pregnancy secretly, the pregnancy was terminated on 20.03.2000; and none knew about it. Harpreet Kaur was all well. No occasion then arose, nor there is any evidence that it became absolutely necessary to eliminate her after almost a month on 20.04.2000. Why a mother would even think of eliminating her beloved elder daughter!, when as alleged she had succeeded in secretly terminating the pregnancy.

Call details and the evidence to it

62. Learned Special Standing counsel for the CBI as well as learned Senior counsel for the complainant strenuously contended that record of call details brought on record was duly proved and the objection by the defence that the same was not proved in accordance with section 65-B of the Evidence Act is misplaced and misconceived. According to them, all the call details produced before the Court right from 18.03.2000, i.e. the date when Harpreet Kaur was abducted from the house at Chandigarh on the orders of Bibi Jagir Kaur till termination of pregnancy on 19.03.2000 and thereafter, her death on 20.04.2000 clearly indicated the movements and the presence of all the accused persons for conspiring and thereafter, executing the conspiracy for committing offence for which they have been charged. As stated earlier, we have with the assistance of the learned Special Standing counsel for the CBI and the learned Senior counsel for the complainant carefully seen the entire record of all the call details and the prosecution evidence in that context. According to us, it is not necessary for us to determine whether the call details etc. were proved

by the prosecution in accordance with law and therefore, we do not want to go into the said issue. Assuming that the prosecution has proved all the call details and the record thereof, what we find is that the reliance placed by the prosecution on the said evidence is of no use or assistance to the prosecution.

63. The first reason is that the investigating officer did not seize any of the mobile phones or the SIM cards in respect of which the evidence of call details has been relied upon. There is no explanation as to why that was not done. Secondly, except the mobile phone of Dalwinder Kaur Dhesi, the prosecution did not prove that the mobile phones allegedly used by other accused persons including Bibi Jagir Kaur were registered in their name or owned by them or that they were physically in possession of those mobile phones registered or belonging to somebody else. Not a single witness by the prosecution was examined nor any evidence has been brought on record that anybody saw mobile phones having SIM cards of the numbers allegedly used by the accused persons. There is thus, no direct evidence to that effect. In so far as Bibi Jagir Kaur is concerned, the defence examined DW1-Kirpal Singh Chauhan who stated that it was he who was using the mobile phone No.98140-04127 which cellphone was provided by SGPC and registered in the name of SGPC he being incharge of Sub-Office, Chandigarh of SGPC at the relevant time. In clear term, he stated in his evidence that mobile phone was used by him and he denied all the allegations about talk with other accused persons on the mobile phone. He also stated that said mobile

phone number was used by members of SGPC, officer bearers and the president of SGPC. When he was cross-examined, nothing was brought on record to show that Bibi Jagir Kaur had used the said mobile phone number, except for a general statement that the office bearers including the president were using the said mobile phone. But then he asserted that said mobile phone which used to remain in his custody throughout and he was making the use of said mobile phone. Similarly is the case with the other accused persons in respect of the mobile phones which belonged to and registered in somebody else's name. In our opinion, this was no evidence which could have any incriminating nature.

64. It is then significant to note that admittedly, the prosecution does not have a single piece of evidence to show, except the evidence of PW27-Balwinder Singh Sohal, which we have already rejected outright, that any of the accused persons had made movements from 18.03.2000 till 20.04.2000. Even PW27 did not say about all the accused persons making phone calls right from 18.03.2000 till 20.04.2000 except for a solitary and stray sentence which he stated about making of phone call to Bibi Jagir Kaur. To put it in other words, the prosecution does not have any evidence against any of the accused persons that in relation to alleged conspiracy or alleged abduction or other acts thereafter, till the date of death, the accused persons had factually moved from one place to another as indicated in the call details which have been heavily relied upon. To repeat, the prosecution cannot claim that by movement of SIM cards from one place to another, that it has also proved the movement of the persons

allegedly using the SIM cards in respect of which call details have been produced on record nor that a particular person was moving. The prosecution wants this Court to draw inference that if the call details shows the movement of SIM cards from one place to another, necessarily, the accused persons must be held to have moved alongwith SIM cards. We find that the submission is fallacious and misconceived. We therefore, reject the submissions regarding the call detail records.

Non-examination of material witnesses

65. Rajneet Kaur is the younger sister of deceased Harpreet Kaur. The evidence shows that throughout, she was along with deceased being the younger sister. Saheb Singh is the son of Dalwinder Kaur Dhesi who was also present in Jasdil Mansion at Phagwara. It has come in the evidence of the prosecution witnesses themselves that throughout, Rajneet Kaur was present with her elder sister and atleast on number of occasions when all these incidents are alleged to have taken place. At record page 1089, PW94-Anurag Garg stated that he recorded the statement of Saheb Singh son of Dalwinder Kaur Dhesi, who was residing in Jasdil Mansion at Phagwara. The statement of Rajneet Kaur was recorded as stated by PW90-Harbhajan Ram, vide record page 1005, and that her statement was handed over to PW94-Anurag Garg. It is significant to note that the prosecution never examined these two material witnesses who were in fact, the persons who could have unfolded the truth before the Court. The prosecution has given no explanation as to why these two witnesses were withheld from the Court. We also do not find any explanation on record

anywhere. In our opinion, examination of both these witnesses to find out the truth before the Court was essential and the prosecution was not at all justified in withholding the witnesses. It is different matter as to whether they would have supported the prosecution case or not, but then the CBI should have left it to the Court rather than withholding these witnesses. We have, therefore, no hesitation in drawing adverse inference against the prosecution.

**PW90-Harbhajan Ram and
PW94-Anurag Garg**

66. PW90-Harbhajan Ram was the first officer of the CBI who took over the investigation and registered P.E. And made some investigation. He stated that he had investigated the murder of Sant Harcharan Singh Longowal and also operation Blue-Star. He stated that name of PW27-Dr. Balwinder Singh Sohal never figured in his inquiry. In so far as the cause of death is concerned, he stated thus:-

extracts from record page 1002

“.....It is wrong to suggest that despite knowing the complete facts of police inquiry as well as my preliminary inquiry I am intentionally denying the same. Jaswant Singh and Dr. Tarsem Singh of Begowal were joined in the preliminary inquiry by me whereas only Dr. Tarsem Singh was joined in the police inquiry. In their statements in the preliminary inquiry the said witnesses claimed that Harpreet Kaur alias Rozy died due to dehydration. Likewise Dr. Tarsem Singh at the police inquiry also claimed the death of Harpreet Kaur alias Rozy because of dehydration.....”

67. His statement as above is also corroborated by which

Preliminary Enquiry which is placed on record, which also shows that he arrived at a conclusion that death of Harpreet Kaur was due to dehydration.

68. PW94-Anurag Garg is the main investigating officer. He stated that statement under Section 161 Cr. P.C. of PW27-Dr. Balwinder Singh Sohal was recorded by him on 09.11.2000. He stated that conduct of Dr. Balwinder Singh Sohal in helping abortion of Harpreet Kaur did not amount to any offence because if a dead foetus was found and somebody was helping the girl in getting her abortion done from the competent doctor and nurse, no offence as such would be constituted as the act would be to save the life of the girl. Dalbir Kaur was the trained nurse and her act to save the life of Harpreet Kaur as the foetus was dead did not constitute any offence. He stated that he did not arrest Dr. Balwinder Singh Sohal on 09.11.2000 as he was treating him as a witness. This was obviously false statement because CBI had opposed his bail application of 02.11.2000 which was dismissed on 07.11.2000.

69. The upshot of the entire above discussion is that the prosecution miserably failed to prove its case against all the accused persons. The judgment impugned is illegal and must be set aside which we do.

70. As a sequel to the reasons and the findings recorded by us, and for the same reasons, the appeals against acquittal vide CRA-D-867-DB of 2012 and CRA-D-868-DB of 2012 must be dismissed.

71. In the result, we make the following order:-

ORDER

- (i) **CRA-S-1431-SB of 2012, CRA-S-1500-SB of 2012, CRA-S-1501-SB of 2012 and CRA-S-1538-SB of 2012** filed by Nishan Singh, Bibi Jagir Kaur, Paramjit Singh Raipur and Dalwinder Kaur Dhesi, respectively, are allowed. The impugned judgment and order dated 30.03.2012, in SC Case No.18T of 2010, dated 10.11.2001/29.09.2007, passed by the learned Additional Sessions Judge, Patiala, by which the above accused/appellants, namely Nishan Singh, Bibi Jagir Kaur, Paramjit Singh Raipur and Dalwinder Kaur Dhesi were convicted for commission of offence punishable under Sections 120-B, 313, 365 and 344 of IPC and were sentenced to undergo imprisonment as indicated against their names, by the learned trial Court, in the operative part of the impugned judgment and order, is set aside; and they all are acquitted of the charges for which they were convicted. Bail bonds stand discharged;
- (ii) **CRA-D-867-DB of 2012 and CRA-D-868-DB of 2012** filed by the CBI and Kamaljeet Singh, complainant, respectively, are dismissed;

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

December 04, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**