

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

231

CRA-D-1501-DB-2015 (O&M)

Date of Decision :01.10.2019

Harwinder Singh @ Pinder and another

... Appellants

Versus

State of Punjab

...Respondent

(2)

CRA-1605-DB-2015 (O&M)

Prithpal Singh @ Laddu

... Appellant

Versus

State of Punjab

...Respondent

(3)

CRA-S-4385-SB-2015 (O&M)

Davinder Pal @ Laddi

... Appellant

Versus

State of Punjab

...Respondent

(4)

CRA-S-4599-SB-2015 (O&M)

Hassanjeet Singh @ Hassan

... Appellants

Versus

State of Punjab

...Respondent

(5)

CRM-A-445-MA-2016 (O&M)

Kashmira Singh Gill

... Appellants

Versus

State of Punjab and others

...Respondents

**CORAM:HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. N.K.Vadehra, Advocate for the appellant
in CRA-D-1605-DB-2015.
Mr. Naresh Kaushik, Advocate for the appellant
in CRA-D-1501-DB-2015.

Mr. Amandeep Singh, Advocate for the appellant
in CRA-S-4385-SB-2015.

Mr. Amritpal Singh Gill, Advocate for the appellant
in CRA-S-4599-SB-2015.

Mr. H.S.Sullar, DAG, Punjab.

Mr. Ankur Jain, Advocate for
Mr. C.S.Bakshi, Advocate for the complainant and
for the appellant in CRM-A-445-MA-2016.

HARNARESH SINGH GILL, J.

We are dealing with five appeals arising out of the judgment of

conviction dated 09.09.2015 and order of sentence dated 11.09.2015 passed by the Additional Sessions Judge, Ludhiana. The appellants in CRA-D-1501-DB-2015, CRA-D-1605-DB-2015, CRA-S-4385-SB-2015 and CRA-S-4599-SB-2015, have been convicted and sentenced in FIR No. 8 dated 02.02.2012 under Sections 302, 379, 465, 468, 471, 474, 201, 120-B/34 of the Indian Penal Code (for short 'IPC') registered at Police Station Haibowal, Ludhiana, as under:-

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>U/Section</i>	<i>Imprisonment & Fine</i>	<i>In case of default of fine</i>
1	Harwinder Singh	302 IPC read with Section 120B IPC for the murder of victim Balraj Singh Gill	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Balraj Singh Gill	Further one year
		302 IPC read with Section 120B IPC for the murder of Monika Kapila	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Monika Kapila	Further one year
		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>U/Section</i>	<i>Imprisonment & Fine</i>	<i>In case of default of fine</i>
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
	Pritpal Singh	302 IPC read with Section 120B IPC for the murder of victim Balraj Singh Gill	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Balraj Singh Gill	Further one year
		302 IPC read with Section 120B IPC for the murder of Monika Kapila	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Monika Kapila	Further one year
		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
	Umesh Karda	302 IPC read with Section 120B IPC for the murder of victim Balraj Singh Gill	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Balraj Singh Gill	Further one year

<i>Sr. No.</i>	<i>Name of Convict</i>	<i>U/Section</i>	<i>Imprisonment & Fine</i>	<i>In case of default of fine</i>
		302 IPC read with Section 120B IPC for the murder of Monika Kapila	Life Imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of Monika Kapila	Further one year
		404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months

2. The sentences of the above three convicts namely Harwinder Singh, Pritpal Singh and Umesh Karda, have been ordered to run consecutively for each of the offence. The other three accused have been sentenced as under:-

<i>Sr No.</i>	<i>Name of Convict</i>	<i>U/Section</i>	<i>Imprisonment & Fine</i>	<i>In case of default of fine</i>
4.	Hassanjit Singh	404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months

<i>Sr No.</i>	<i>Name of Convict</i>	<i>U/Section</i>	<i>Imprisonment & Fine</i>	<i>In case of default of fine</i>
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
5.	Ravinder Rinku	404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months
6.	Davinder Pal	404 IPC read with Section 120B IPC	3 years and fine of Rs.10,000/-	Further 3 months
		465 IPC read with Section 120-B IPC	2 years	
		468 IPC read with Section 120B IPC	5 years and fine of Rs.10,000/-	Further three months
		471 IPC read with Section 120B IPC	2 years and fine Rs. 10,000/-	Further three months
		201 R/W 120B IPC	7 years and fine of Rs.20,000/-	Further six months

3. The sentences of these convicts i.e. Hassanjit Singh alias Hassan, Ravinder Rinku and Davinder Pal, have been ordered to run concurrently.
4. CRM-A-455-M-2016 has been preferred by Kashmir Singh Gill (complainant) for enhancement of the sentence.
5. FIR in this case, had been registered on the statement of Kashmira Singh Gill, recorded on 02.02.2012, to the effect that his son, namely Balraj Singh Gill, posted as DSP, (Headquarters), Moga on 01.02.2012, at about 6 PM told the complainant that he was going out

with his friends and shall return shortly. At about 7 PM, the mobile number of the son of complainant was switched off whereupon the complainant, along with Karminder Singh, Kamaljit Singh and Anmol Singh, started searching for Balraj Singh Gill and went towards the plot of Balraj Singh Gill situated in Golf Links. The Farm House of Sanjay Agnihotri, who is a friend of the son of complainant, is also situated near the plot where the son of complainant used to visit off and on. When the complainant reached the Farm House and went inside, he saw the dead body of his son lying soaked in blood. When the complainant went inside the bath room, he saw the dead body of an unknown lady lying in the bathroom. It was stated that the son of complainant had been killed by unknown persons and the dead body of the lady had been thrown in there to give wrong twist/colour to the murder of his son and that leaving behind Anmol Singh and Karminder Singh with the dead body of his son, complainant had come to report the matter to the police.

6. On this, Investigating Officer visited the Farm House at village Talwara. Senior Officers along with finger print experts, photographers also went to the place of occurrence and found the dead body of Balraj Singh on the sofa of the room and body of an unknown lady in the bathroom, adjoining the room. The body of Balraj Singh was checked by complainant, Kashmira Singh, Rajeshwar Singh Sidhu and Inder Singh. Body was handed over for conducting post mortem, whereas the dead body of the unidentified lady was kept in mortuary for identification. Blood stained earth, jacket brand Pringle, hairs from the wall of the bathroom, lady's underwear from the drainpipe of the bathroom, lady's

shoes, one knife from toilet, one condom alongwith cover from the dustbin of the bathroom, one broken bamboo danda from verandah, blood from the garden, hairs lying in the courtyard were also picked up by the investigation team. On 03.02.2012 body of unidentified lady was identified by her husband Surinder Kapila, who disclosed her name as Monika Kapila and recorded his statement that his wife Monika Kapila went in Innova car No. PB10-DA 7614 on 01.12.2002 at 5/5.30 p.m. At that time she was carrying a purse in which goggles of her daughter Sumidha, driving licence of his nephew Karan and Nokia model mobile with sim card No. 98886-34363 were with her. It was found that after committing murder of Monika Kapila, all these items were stolen.

7. After recording the statement of complainant, it was noticed that car No. PB-10DA-0060 used by deceased Balraj Singh (owned by his friend Narinder Pal Singh) two mobile phones one apple phone No. 8427273174 and Samsung Phone No. 98761-00299 were also stolen after his murder. Statement of Sanjay Agnihotri, who was friend of victim and was the owner of the farm house, where double murder was committed, was also recorded.

8. During investigation, Jaspal Singh came present and got recorded statement under Section 161 Cr.P.C. with regard to extra judicial confession made by Harvinder Singh, Pritpal Singh and Umesh Karda before him and produced them on 05.04.2012. They got recorded their confessional statements that they had connived with each other and committed the murder of Balraj Singh and Monika Kapila and took away mobile phones, Optra Car, Innova car and other articles. On their

disclosure statements, the cars of Balraj Singh and Monika Kapila and all the stolen articles, which they had divided amongst themselves, were recovered. Their disclosure statements are Ex.PW29/K, Ex.PW29/L and Ex.PW29/M. On further investigation of the appellants i.e. Harvinder Singh, Pritpal Singh and Umesh Karda, appellants Hassanjit Singh, Davinder Pal Laddi and Ravinder Singh @ Rinku were also named in the FIR and were later arrested. During investigation, appellants also disclosed that another FIR No.23 dated 08.04.2012 under Section 379, 411 IPC was registered against them along with other accused Jony Singh, Rachhpal Singh @ Pal and Balwinder Singh as all of them had been found to be in possession of the stolen articles.

9. Prima facie offences under Sections 302, 379, 465, 468, 471, 474, 201, 120-B, 34 IPC were made out and the Illaqa Magistrate committed the case to the court of Sessions on 08.09.2012.

10. Charges against appellants were framed under Sections 302, 379, 404, 465, 468, 471, 474, 201, 120-B IPC to which they pleaded not guilty and claimed trial.

11. Prosecution in order to prove its case, had examined as many as 41 witnesses. Complainant Kashmira Singh Gill stepped into the witness box as PW1, being retired Commandant B.S.F. and being father of the victim Balraj Singh reiterated his earlier version and proved the recovery of dead body of his son and the other evidence collected by the investigation agency from the place of occurrence.

12. Place of occurrence is a farm house owned by Sanjay Agnihotri, who appeared as PW2. Victim Balraj Singh being friend of PW2 used to

keep with him one set of keys of his farm house. Sanjay Agnihotri along with another common friend Jaswinder Singh (DSP), while searching for the victim went to the farm house and opened the room with second set of keys where they saw dead body of Balraj Singh lying on the sofa set in the drawing room of the farm house and the dead body of a lady in the bathroom. They also noticed that the vehicle on which Balraj Singh might have come, had been missing. Then father of deceased Balraj Singh accompanied by 3-4 persons also reached there and thereafter Kashmira Singh made a telephone call to the police whereupon the police party reached there.

13. The Board of Doctors found the following injuries on the dead body of victim Balraj Singh Gill:-

1. An Incised wound 3"x1" present on the right fronto temporal region of the skull 1½" above the right eye brow underlying bone badly crushed with obvious physical deformity.
2. Crushed injury 8"x7" involving left side of fronto tempo parieto occipital region of scalp underlying bones were badly crushed into pieces with obvious physical deformity. Brain matter was coming out & also meninges through crushed wound.
3. An Incised wound measuring 2"x ¾" present over the left lobule cutting pinna into 2 parts.
4. Diffuse swelling 4"x3.5" present over the left side of the face with obvious physical deformity underlying bones fractured. With obvious physical deformity of left orbit & maxilla & mandible left .
5. An incised wound 6"x2.5" obliquely placed over the left side of the neck at the level of thyroid cartilage starting from the midline of the neck ends at posterior

Triangle of the left side of the neck.

6. A reddish abrasion 3"x2" present over the left upper chest 2.5" lateral to the manubrium sternii.

7. A reddish abrasion 2"x1/2" over the lateral end of the left clavicle.

8. 2 abrasion of varying sizes over the right Middle & ring nucchal.

9. A Reddish abrasion of 2.5x1/2" over the posterior part of middle part of left forearm.

- Scalp & skull were Described, vertebree- Not explored
- meaning & brain were Described, spinal cord was not explored.
- Wall & cartilages were Healthy
- pleural cavity was congested
- lungs were both pale
- pericardium, heart, large vessels, coronary vessels were Healthy and contain 15cc of blood approximately
- peritoneum cavity was congested
- bladder was Healthy & empty
- organs of generation Healthy

14. The cause of death in this case was opined to be due to haemorrhage & shock as a result of crushed(head injury) & injury to the vital organs i.e Trachea & great vessels of neck & multiple fractures which were ante-mortem in nature & sufficient to cause death in the ordinary course of nature. The time interval between injury & death was immediate & time interval between death & post-mortem within 12-14 hrs.

15. PW4 Sh. Amrinderpal Singh, the then JMIC, Ludhiana, proved the police request as Ex.PW4/A, moved by Incharge, CIA, Ludhiana, for obtaining finger prints of appellants-accused Harwinder Singh, Pritpal Singh, Umesh Karda, Hassanjit Singh and Ravinder Singh, which was allowed by learned JMIC vide order Ex.PW4/B. The learned JMIC also

proved finger prints sheets bearing his signatures as well as of accused-appellants Ex.PW4/C to Ex.PW4/G respectively. Ex.PW4/H to Ex.PW4/J were police requests moved for taking hair samples of appellants-accused Pritpal Singh and Umesh Karda which was allowed vide order Ex.PW4/K.

16. While stepping into witness box as PW5, the examination-in-chief of the said witness as extracted by the trial Court in para No. 47.1 onwards of its order, reads as under:-

"47.1 "I am a Property Dealer by profession. I am President of Ward No 31, of Municipal Corporation, Ludhiana from Akali Dal Badal Party. On 5.4.2012, I was present at my house. Harwinder Singh, Pritpal Singh and Umesh Karda came to me at my house. All the three accused are present in the court. They told me that they have committed blunder by murdering Balraj Singh Gill and one lady by the name of Monika. The CIA police Ludhiana have been on our heels to arrest us by locating our positions from mobile phones. They stated that I am familiar with the police officials and have access to them and so, they be produced before them. They further stated that if you produce us before the police, they would be saved from their interrogation. Harwinder Singh remained standing with me and the other two persons were asked to stand out. Then Harwinder Singh narrated to me that he received a phone call on 01.02.2012 from Umesh Karda. He further stated that one man and a woman had come in separate cars to the farm house and he should come to PVP farm house and he stated that they are suspicious people. On hearing that I went to the above said farm house in my Auto Rickshaw. Then we started for searching of the

vehicles in the farm house. Then Harwinder Singh told me that he gave a telephone call to Pritpal Singh alias Laddu asking him to reach them and to bring one sabbal with him. Then we spotted the vehicles standing in the farm house. Then we three of us went there. Harwinder Singh further told me that then he was armed with Danda, Umesh Karda was armed with a handle of Kahi and Pritpal Singh have been carrying a sabbal. Then one lady came out of the room of the farm house and she was followed by one person Balraj Singh Gill. Then Umesh Karda and I, inflicted a blow on the back of the man with our respective weapons. Balraj Singh DSP fell down. Then he got up and caught hold Harwinder Singh from the neck and pushed him. Then Pritpal Singh gave a blow with sabbal in the head of Balraj Singh(iron rod). The lady started raising raula. Umesh Karda advanced towards the lady with his weapon. Balraj Singh DSP while grappling with Pritpal Singh came into the park. Then Harwinder Singh went to the park and demanded the bunch of keys of the farm house and the keys of the car. Then Balraj Singh told him that the keys had fallen in the park. Balraj Singh handed over his purse and mobile to Harwinder Singh. Then Harwinder Singh told me that he found the keys of the car from the park of farm house. Harwinder Singh then opened the lock of the room of the farm house. Then Harwinder Singh told Umesh Karda and Pritpal Singh to bring DSP Balraj Singh and the lady Monika inside the room. Then Pritpal Singh and Umesh Karda brought them inside the room. While entering the room, the electric light started glowing at the touch of hand of some body. Harwinder Singh then got seated DSP on the sofa. Then Umesh

Karda and Pritpal Singh took the lady inside the bathroom. Some time thereafter came out of the room carrying sabbal with him. Coming out of the room Umesh Karda started causing injuries on the head of Balraj Singh with sabbal. Thereafter Harwinder Singh caught hold of sabbal from Umesh Karda and caused injuries on the head and neck of Balraj Singh Gill. Thereafter Harwinder Singh went inside the kitchen and there Harwinder Singh started taking biscuits from the kitchen. Umesh Karda followed Harwinder Singh inside the kitchen. Umesh Karda proclaimed that they had not come there to eat biscuits. Umesh Karda then took one karad from the kitchen and came out into the room. Coming out of the kitchen, Umesh Karda started slicing the neck of Balraj Singh and he chopped off the neck of Balraj Singh Gill. Pritpal Singh alias Laddu also came out of the bathroom. He told the other two that woman Monika had died. At that time DSP Balraj Singh was also dead. Then Harwinder Singh told me that they went inside the bathroom. There all the three washed off their hands with the soap. They threw the Karad and soap stained with blood in the flush. Then they came out of the room and opened the outer gate of the farm house. Then Harwinder Singh drove the Optra car. Umesh Karda was having the key of Innova car. They both took the cars outside the farm house. Then Harwinder Singh handed over the keys to Pritpal Singh and required him to lock the rooms and the farm house. Pritpal Singh put locks on the room and outer gate and reached them. Then Harwinder Singh took charge of Innova car and they came to the village by driving the car. Optra car parked by the side of the farm house. Harwinder Singh

sat in his tempo. Then they brought Innova car and the tempo to the village of Harwinder Singh.

47.2 Harwinder Singh told me that he parked his tempo by the side of his house. On that night i.e. 02.02.2012, there was Parbhatpheri in his house. Harwinder Singh further told me that he sent one boy Kamla by name to his home to fetch one pant and Pajama, because his pant and coat had got stained with blood. Then he took the motor cycle of Umesh and parked it in his house. Thereafter we all three collected together. Then in the Innova car reached the place where Optra car was stationed. Then he drove the Optra car. In the Optra car, Harwinder Singh, Pritpal Singh and Umesh Karda changed their trousers/pants, because the previous ones were stained with blood, were placed in the Innova car. From there he drove Optra car whereas Umesh and Pritpal Singh sat inside Innova car. Jean pant worn by the deceased lady was brought by us. We suspected our finger prints on that jean pant because it was dealt with by Umesh Karda and Pritpal Singh. Then they drove towards Bagga Kalan. He further stated that he threw his pants as well as the pant worn by the lady and her purse in the drain. Then Umesh gave a call to Hassanjit Singh. He also narrated with regard to the incident and talked to him regarding sale of the cars. Hassanjit Singh asked them to come to him along with the vehicles and thereafter they went to him. He then narrated the entire episode to Hassanjit and taking him along went to Pervela City. Hassanjit thereafter tried to contact a person belonging to Jagraon for the sale of the vehicles, but he was not able to contact him. Then another phone number of village Bharewal was taken

and tried to contact for the sale of the vehicles, but he could not be contacted. Then Rinku Masih was contacted by taking his number from Jang, which was picked by some one else. Then we went towards Mullanpur. Pritpal Singh and Umesh also followed us. Then from the phone of Harwinder Singh, the person at Jagraon was again contacted, but he refused to purchase the vehicles. Thereafter we came to kothi of Hassanjit. Optra car was parked at Pervela City and thereafter we all three drove in the Innova and came back to the village. Harwinder Singh and Hassanjit joined Parbhatpheri in the village. Umesh and Pritpal left in the Innova car. On the next day in the morning at 8 AM, Harwinder Singh came to know that the person who was killed by him, was DSP Balraj Singh. Then we three assembled together and asked Hassanjit that he used to entice us to steal the vehicles and now he should make arrangement for the sale of the same. He stated that he would contact Rinku Masih. In the evening Harwinder Singh received a telephone from Hassanjit that he has been able to contact Rinku Masih. Then Harwinder Singh told that in the morning at 5 AM they would go to Gurdaspur to sell the cars.

47.3 *On 03.02.2012 we collected Hassanjit and went to Gurdaspur from the house of Hassanjit in both the cars. On the way Rinku Masih contacted on phone to one Sawarn Singh. Sawarn Singh asked us to bring the vehicles to him. On our way, we narrated the whole incident to Rinku Masih. Sawarn Singh firstly had asked us to bring the vehicles for sale but when he came to know that these were involved in a murder, he refused to get the vehicles sold. Then we started back and on the*

way the number plates lying in Optra car were affixed in the place of older one. In the freshly installed number plates, number Zero was erased and the previous ones which were installed on the vehicles, were thrown on the bank of the pond and we returned back to the house of Hassanjit. Optra car was parked at the previous place. Innova car was made to station in the front street. Hassanjit dropped Umesh Karda at his house whereas Pritpal Singh walked to his house. He further stated that on the next night at 2 AM, the number plates of the vehicles were changed by writing the fresh number with sketch pen. Then Harwinder Singh, Umesh and Hassanjit along with two vehicles went towards village Bhundri, where Hassanjit Singh changed his clothes in his house. Innova was parked at Bhundri. We three travelled in Optra car to Hambran, for changing number plates. Again number plates were changed on reaching Hambran. Thereafter Hassanjit called Davinder Pal, who was dealer in making number plates and got a print out of number 6219 and the same was got affixed on the vehicles. Innova car was also brought back by us. We abandoned the Innova car in a vacant plot near village Jhammat. Then Harwinder Singh was dropped in his village. Umesh and Hassanjit went towards Haibowal dairies. Optra got mechanically broke down. Then Harwinder Singh got a telephone from the said two accused and he went there in the car of his brother. He picked up both of them and dropped them at village Jhammat and he came at his village in the car of his brother. From there I along with Hassanjit and Umesh went to attend marriage at Sidhwan. Then Harwinder and Hassanjit were dropped at Lyali Bridge and Umesh

drove Innova car to park the same near Lodhi Club, Ludhiana. From Lyali bridge, one Rajan of Harwinder's village took Harwinder and Hassanjit to his village.

47.4 Thereafter, on 07.03.2012, Harwinder, Hassanjit and Umesh went to Naina Devi and returned back on 08.03.2012. On the way, he took so many snaps with the mobile phone of Balraj Singh Gill. He further stated that on knowing their location from the mobile towers, the CIA police was locating them. He thereafter stated that he has committed a blunder along with his associates and he is not able to sleep at night. He thereafter made a request for producing them before the police.

47.5 Harwinder Singh was then sent out and Umesh Karda was called in . He told me his name as Umesh Karda. He also told me that on 01.02.2012, he was present at his village. He told me that on Golf Link Road, two vehicles arrived. One was driven by Balraj Singh Gill and the other by Monika. Then Umesh gave a telephone message to Harwinder and called him there. Harwinder reached there in his tempo. Then they both searched for the cars in the Farm house. Then Harwinder summoned Pritpal Singh alias Laddu to the farm house on his telephone. Then we all the three entered the farm house. At that time, Umesh told me that he was having handle of Kassi whereas Harwinder Singh had a 'Danda' and Pritpal Singh was armed with a sabbal. Meanwhile, a lady came out of the room of the farm house followed by a man. The man was DSP Balraj Singh Gill. Then Harwinder Singh and I, with our respective weapons gave blows on the back of Balraj Singh Gill and the later fell down in the Verandah. Then

Balraj Gill got up and caught of Harwinder from his neck and pushed him. Then Pritpal Singh alias Laddu gave a sabbal blow on the head of Balraj Gill. Then Balraj Singh Gill, while grappling with Pritpal Singh, came to the park along with Pritpal. There Harwinder searched keys of the farm and opened lock of the room. Harwinder Singh asked Pritpal and Umesh Karda to bring Balraj Gill and the lady inside the room. Then Harwinder Singh asked them to bring Balraj Gill and Monika inside the room. He and Pritpal took both of them inside the room. Harwinder Singh made Balraj Singh Gill to sit on the sofa. Laddu and I took the lady inside the bath room. There lady put off her pant and underwear. Then the lady offered that we commit anything with her we like and requested us to spare their lives. Pritpal gave a blow with sabbal on the head on the lady in the bathroom. Umesh also gave so many blows on that lady. Then the hands of Pritpal and Umesh got stained with blood. Then Umesh told that he came out of the bathroom with sabbal, in the room, then I caused several injuries on the head of Balraj Gill with sabbal. Then Harwinder took hold of sabbal from me and caused injuries with it to Balraj Gill. Pritpal also came out of the bathroom. Harwinder Singh then went inside the kitchen. Umesh told that he also followed him in the kitchen. Harwinder started taking biscuits in the kitchen. Umesh told that he picked up a karad(knife) from the kitchen and cut off the neck of Balraj Singh. He stated that trousers of all three of us got stained with blood. Then we all the three went inside the bathroom, washed our hands and threw soap and karad in the flush. Then we came out and opened the outer gate of the farm

house and took out both the cars out of farm house. Pritpal was asked to lock the room and the outer gate of the farm house. He did so. Harwinder drove Optra car. Umesh told that I drove Innova car and we took the same out of the farm house. Optra car was parked by the side of the farm house. Harwinder drove his tempo whereas I and Pritpal took charge of Innova and we came to our village. There Harwinder Singh parked tempo and motor cycle of Umesh in the house of Umesh, took one pant and Pajama and came back. Then we drove Innova car to the place where Optra car had been parked. From there Harwinder drove his tempo. He and Pritpal drove Innova car and reached at bridge of village Bagga Kalan. There at the bridge Harwinder Singh threw his coat of black colour in the 'Ganda Nallah'. Pritpal also threw his pant, pant of Harwinder, purse and jean pant of lady, in the Nallah. From there we sat out for Rasulpur again said I do not remember the name of the village. Umesh then had a talk with Hassanjit on telephone to sell the two cars. He also narrated about the murder. Hassanjit required us to take both the cars to him at his place. Then we collected Hassanjit from his Kothi and then we all the four started towards Hambran. Then Hassanjit tried to contact a person from Jagraon to sell the cars, but he could not contact him. Then Hassanjit tried to contact Rinku Masih. He was not available, but some body else picked up the phone. Then we sat out for Mullanpur. From there Hassanjit tried to contact a man at Jagraon to sell the cars, but he refused to purchase the cars. From there we returned to the Kothi of Hassanjit. SIM cards of the mobiles and sabbal were thrown there on the way. Optra

car was parked outside. On the Innova car, I, Hassanjit and Pritpal Singh, came to the village of Harwinder Singh. On that day in the morning, there was a Parbhatpheri at the house of Harwinder Singh. Harwinder Singh and Hassanjit Singh stayed at their village. Umesh then told that he and Pritpal went towards the dairies to park Innova car. The next day in the morning, there was talk in the village that one DSP and a woman have been murdered. Then I asked Hassanjit and Harwinder to get the vehicles sold. Hassanjit told him that he would contact Rinku Masih to sell the cars. In the evening at 8 PM told me that Rinku Masih had agreed to get the cars sold and the same was disclosed to me by Harwinder Singh. Then we all agreed to proceed to Gurdaspur the next morning along with us along with two cars as proposed by Rinku Masih.

47.6 `On 03.02.2012, we took Rinku Masih from Salempur and we all went towards Gurdaspur. On the way, Rinku contacted Sawarn Singh on telephone. We went to Swaran Singh. Swaran Singh tried to get the cars sold. Sawarn Singh came to know that the cars are involved in murder, he refused to buy or to sell the same. Then we returned from there. In the way, Hassanjit and Harwinder Singh changed the number plates of the cars and old numbers plates were thrown by the side of the pond and from the new numbers plates affixed, numeral zero was erased. From there we returned to the kothi of Hassanjit. One vehicle was parked by the side of the kothi of Hassanjit and Innova car was parked in the street. Umesh told that he was dropped at his house by Hassanjit and Pritpal Singh alias Laddu went to his house on foot. On the next day, number plates of both the

cars were removed and numbers were inscribed with sketch pen. Then Umesh told that he, Harwinder and Hassanjit took the both the vehicles to village Bhundri. Hassanjit changed his clothes at Bhundri, because he was to attend some marriage. Innova car was parked there. Then we three i.e I, Hassanjit and Harwinder came to Hambran for changing number plates, in Optra car. There Harwinder called Davinder Pal, who deals in number plates. He came there. He was informed about the murder of Balraj Gill and Monika. We also told him that the cars were stolen ones. Davinder Pal, with the help of computer got print out number 6219, which was pasted on the number plate of Optra car. Then we proceeded towards Ludhiana. On the way, they parked Innova car in village Jhammat . Harwinder Singh was dropped at his village and with the car he and Hassanjit Singh went towards the dairies. The car broke down there due to mechanical defect. Then Umesh told that he made a telephone call to Harwinder Singh telling him about the break down of the car. Harwinder Singh reached there in the car of his brother and took them to village Jhammat. They were dropped at village Jhammat and Harwinder Singh came to his village. Thereafter they along with Harwinder Singh went to attend the marriage party at Sidhwan. On return journey, at lyali (checked OK) bridge, Hassanjit and Harwinder were dropped. The Innova car was parked near Lodhi club Ludhiana by me. From there, on the motor cycle of Rajan, I came back to my village.

47.7 On 07.03.2012, Umesh told that he, Harwinder and Hassanjit went to Mata Naina Devi and returned from there on 08.03.2012. On the way, they

took so many snaps with the mobile of DSP Balraj Singh Gill. On the basis of tower locations of our mobiles, the CIA police was searching us and they were calling us. My conscious pricks me. He offered me to produce before the police to save him from torture. Umesh Karda was sent out and the third accused Pritpal Singh alias Laddu was called in.

47.8 *When Pritpal Singh accused was called inside. Pritpal Singh told me that on 01.02.2012, he was present in his house and he received a phone call of Harwinder Singh that in Golf Links area two persons namely Balraj Singh and Monika have come in two different cars and that I should immediately go there with "Sabal". Pritpal Singh further told me that "I reached golf links with "Sabal". There I met Harwinder and Umesh. The place where the two cars were parked, we went inside that place. I was armed with "Sabal", Harwinder was armed with "Danda" and Umesh was armed with "Dasta of Kahai". From the room of the farm house, one lady first came outside and then one man came outside. Harwinder and Umesh gave blows on the backside of that man. The said man fell down in the Varandah. That man then caught hold Harwinder from his neck and pushed Harwinder. When the lady raised raula, Umesh went towards the lady. I gave a "Sabal" blow from behind on the head of the man. The said man grappled with me and we both came in the park in the farm house. Then Harwinder demanded the keys of the car from that man. That man told Harwinder that the keys have fallen in the park itself. That man handed over his purse and his mobile to Harwinder. Harwinder then searched for the keys in the park and went towards the door of room*

and open the door of the room from which the man and lady had come out. Then Harwinder told me and Umesh that we should bring the man and the lady inside the room. While entering inside the room, the switch of the light was pressed accidentally and the light was switch on. Harwinder made the DSP sit on the sofa. Myself and Umesh took the lady in the bathroom. The lady removed her pant and asked me and Umesh that we could do anything we wanted to do with her, but we should spare both of them. While in the bathroom I gave two/three “Sabal” blows on the lady. Umesh gave many blows on the lady. Our hands got smeared with blood and the blood stained hands of ours also touched the pant of the lady. Then Umesh took the “Sabal” from me and went outside in the room and gave many blows on Balraj Singh and Balraj Singh died at the spot. Then after washing our hands, we threw the soap and the knife in the flush. Then all of us came outside. I locked the room and the gate of the farm house and came outside. I had also picked up the jean pant of the lady. On coming outside, after parking the Optra car there, I and Umesh sat in the Innova car and Harwinder sat in his Tempo and all of us returned to the village. I and Umesh waited for Harwinder outside the village and Harwinder joined us after parking the Tempo in the village. Then , we returned to the place where we had parked the Optra car. From there, I and Umesh in Innova and Harwinder in Optra car started for Jainpur to Bagga Kalan. On the bridge of the Nala on the way, Harwinder threw his coat in the Nala. I also threw the ladies purse, jean pant and our two pants in the Nala. From there, we started for Nurpur. Then Umesh called Hassanjit telephonically

regarding sale of two cars and we all went to meet Hassanjit. We took Hassanjit with us and went to Hambran. On reaching Hambran, Hassanjit made a few calls to the customers for sale of the cars, but the deal could not be finalized. Then Hassanjit telephonically talked to a person of Jagraon regarding the sale of cars. That person also refused to buy the cars. Then we all returned to the kothi of Hassanjit and the parked the cars there. From there, myself, Umesh, Harwinder and Hassanjit came to the village in Innova car. We left Harwinder and Hassanjit in the village. That day, there was Parbhatpheri in the house of Harwinder. Hassanjit and Harwinder remained in the house of Harwinder. Then I along with Umesh and parked the Innova car in dairies. Then at 8:00 PM in the evening, Umesh told me that Hassanjit has talked to Rinku and that we have to go to Gurdaspur tomorrow for sale of cars. On 03.02.2012, Umesh brought Innova car in the village, Harwinder and Hassanjit came in the Optra car from the kothi of Hassanjit and I along with Umesh in Innova car and Harwinder and Hassanjit in Optra car picked Rinku from Salempur and started for Gurdaspur. On reaching Gurdaspur, we talked to Sawarn Singh, who tried to finalize the deal for the sale of cars, but the deal could not be settled. When he came to know about the murders, he refused to buy the cars. Then we started back from Gurdaspur. On the way, Hassanjit and others changed the number plates of the cars and threw the earlier number plates. From the new number plates, the digit "0" was erased. On returning, the Optra car was parked at the previous place and Innova was parked outside the kothi. On the next night, Hassanjit and Umesh removed

the number plates and wrote down the numbers with sketch pen. On 05.02.2012, Hassanjit, Umesh and Harwinder took both the cars to Bhundri. There Hassanjit obtained computerized number plates from Davinder Pal and affixed the number 6219. Hassanjit also told Davinder Pal about the numbers. Then Hassanjit, Umesh and Harwinder went to attend a marriage at Sidhwan Khurd. Since Optra car developed some mechanical defect, same was parked in the dairies. Innova was parked near Lodhi club. Harwinder, Umesh and Hassanjit then went to Shri Naina Devi on 07.03.2012 and returned on 08.03.2012. they clicked a number of photographs with the mobile of DSP. Due to the tracing of tower location of our mobiles, the CIA police is calling us. My conscious is troubling me and I am unable to sleep at night. You should help us in appearing before the police. I have committed a big mistake along with Harwinder and Umesh”.

47.9 *In this manner all these persons admitted their guilt before me and after being convinced that they are speaking the truth, I produced the said accused persons before CIA police in its office. The police recorded my statement. I identify the said accused in the court.”*

17. Post mortem on the body of deceased Monika Kapila was conducted by Dr. Raj Kumar (PW-6) along with his team mates i.e. Dr. Manjit Singh, Dr. Seema and Dr. Karamvir Goyal and the age of deceased Monika Kapila was 36 years and was 5 feet and 5 inches in length and following injuries were found on her body:

"INCISED WOUND

- 1.1/2 inches x 1/2 inch on forehead elliptical, obliquely placed just below hair line.
- Incised wound 4 inches x 1/4 inch present on left parietal region 1 inch from hair line along the length of parietal bone.
- 4 inches x 1/2 inch on left parietal bone 1 inch left to ll.
- 3 1/2 inches x 1/2 inch obliquely placed on left parietal bone 3 inches above the left ear.
- 4 inches x 1/2 inch on left temporoparietal region 1 inch from left ear.
- Obliquely placed 2 inches * 1/2 inch on right frontoparietal region near hair line.
- 2 1/4 inches x 1/2 inch on right parietal region 3 inches from right ear.
- 4 inches x 1/2 inch on vertex. • 3/4 inch x 3 mm on lower part of left ear lobule.
- 1 1/4 inches x 1/4 inch tapering ends on left ear lobule, backside of it .

Diffuse swelling with bluish contusion.

- 4 inches x 2 inches, underneath mandible and maxilla fractured.
- 2 inch x 3/4 inch had base of 3, 4 digit Right hand dorsally
- Reddish bluish on lower half of left upper arm laterally
- Reddish bluish dorsally on left forearm
- Bluish contusion on Thenar eminence of both hands.
- 3 inch x 1 1/2 inch at lower end of left leg, bluish in front of it. Lacerated wound
- 1.1/2 inch x 1/4 inch on right side of Chin.

Abrasion

- 1/4 inch x 1 mm on right Forearm laterally and cause of death as pointed out by the doctors is:
- Head injury • hemorrhage and shock from this injury.
- Injuries were ante mortem in nature.
- This was sufficient to cause death in ordinary course of

nature.

- Time between injury and death was immediate
- Between death and post mortem examination was between 24 to 36 hrs.

18. Prosecution had also produced one goldsmith as PW-11. One of the appellants, Harwinder Singh along with his brother went to the shop of PW-11 and handed over 'gold ring' to be converted into a gold chain and Khanda shape locket and also paid Rs. 7000/- as difference between the value of the 'gold ring' and the value of the newly made chain and locket and identified that finger ring (photograph Ex.P1) shown to him was of deceased Balraj Singh. This witness also identified the chain and locket prepared by him and produced on record as Ex.PW11/A and Ex.PW11/B.

19. Prosecution has also placed on record tower location of the mobiles, which were used by appellant-Umesh Karda, 97816-24400, Harwinder Singh, 97819-33003 and of Pritpal Singh @ Laddu 8872414216 which were found within covering area of the place of occurrence i.e. Farm House. Similarly tower location of appellants, Bhinder and Hassanjit was placed on record.

20. PW8, Gurdawar Singh working in Radiant Toyota stated that on 07.04.2012, he was summoned to Police Station Haibowal. One sealed plastic parcel containing keys was opened in his presence and one of the keys was taken out by him from the said parcel. The parcel was sealed with the seal bearing impression 'HS'. He stated that he had applied the said key to Innova Car parked in the compound of PS Baibowal and the said key was the original key. It fitted in the Innova Car. The original report Ex.PW8/A prepared by the said witness was handed over to the

police. The said key was put in the small plastic container and converted into parcel and sealed with the seal impression 'BS'.

21. PW10-SI Jagjit Singh, Finger Print Expert stated that on 05.02.2012, he had been posted as finger print photographer in Police Line Ludhiana. On that day, he received a message from SI Manjit Kaur, Finger Print Expert, Incharge FSL team. He went to police line Ludhiana from where he along with SI Manjit Kaur, and team of other officials proceeded for the site on Government vehicle PB-10CH-7902. When they reached on the road to Bulloki from the dairy complex, they met the IO, SHO Haibowal near the Pulli of sewerage drain (gandha nala). There a Chevrolet Optra car of white colour bearing No. PB-10DA-6219 was also lying parked. The IO asked SI Manjit Kaur to lift the finger prints from the Optra Car. SI Manjit Kaur checked the finger prints applying the requisite chemical powder. Finger Prints from left front door handle on the out side, on the handle on the inner side of the same door and inner rear view mirror were collected and negatives were prepared and were deposited in the office of Finger Print Bureau PP Phillaur.

22. On 05.02.2012, the Investigating Officer also took the entire team consisting of himself, SI Manjit Kaur and other officials to BRS Nagar on Lodhi Club Road. There a dark grey colour Innova car, without number was lying parked on the Lodhi Club road and told them to develop the finger prints of unknown persons. Thereafter, SI Manjit Kaur applied required suitable Chemical power on various parts of car. However, the finger prints which became visible after applying the Chemical, were not comparable. As such, no finger prints were lifted from the Innova car. The

report was prepared by SI Manjit Kaur and handed over to SHO Haibowal.

23. Similarly PW13 HC Mehnga Singh, then deposed about having taken the specimen finger prints of appellants Pritpal Singh, Harwinder Singh, Umesh Karara, Hassanjit Singh and Ravinder Singh in the presence of the learned Magistrate and added that the said finger print sheets were taken into police possession vide memo Ex.PW13/A and were converted into a sealed envelope bearing seal impression 'GS'.

24. PW14, SI Manjit Kaur, Incharge, Forensic Print Expert, deposed about the detection of finger prints on the Chevrolet Magma Car on 5.2.2012. This witness proved the report, submitted by her regarding the finger prints, lifted from Chevrolet vehicle as Ex.PW14/A.

25. Balwinder Singh, the then Naib Tehsildar, as PW15, deposed that he was associated by Inspector Harpal Singh in the investigation of this case and proceeded towards the dairies on Balloke Road along with appellants Umesh Karda, Harwinder Singh and Pritpal Singh where appellant Umesh Karda got recovered one bunch containing five keys and one key of Innova Car vide recovery memos Ex.PW15/A and Ex.PW15/B respectively. The witness also proved the recovery memo of the wallet and single key got recovered by appellant Harwinder Singh (Ex.PW15/C) and the recovery memo of the wrist watch got recovered by appellant Pritpal Singh as Ex. PW15/D and identified the case property i.e plastic container containing the wrist watch as Ex.P5, plastic container containing single key and wallet as Ex.P6, and plastic container containing single key and

bunch of five keys as MO1 and plastic container containing the earth lifted from near the pole as MO2.

26. Owner of Chevrolet Optra Car, Narinder Pal Singh-PW19 stated that his car had been borrowed by his friend Balraj Singh Gill bearing registration No.PB10DA-0060. When the same was identified, Registration No.PB10DA-6219 was written against the original number. The witness identified his signatures on identification memo Ex.PW19/A and added that the digits 6219 were different from the other portion of number on the number plate and appeared to have been separately pasted.

27. The original number plates were produced in the Court and were identified by the witness as Ex.MO1 and Ex.MO2 and forged number plates fixed on his car as Ex.MO3 and Ex.MO4.

28. PW22 Inspector Surinder Mohan, a member of SIT constituted for the investigation of present case tendered his affidavit Ex.PW22/A affirming therein the fact that on 11.06.2012, the Senior Officials had handed over two parcels containing blood samples, hair strands and thread sealed with seal LMCH. The said parcels were deposited in the office of Director, FSL, Gujarat, and after the receipt of report dated 14.4.2012 of FSL, the parcels and the report were redeposited with MHC Harjinder Pal Singh of P.S. Haibowal and so long as the parcels remained in his possession, the same remained intact.

29. Investigating Officer, Inspector Rampal (PW26) stated that on the basis of the statement of Kashmira Singh Gill (Ex.PA), FIR Ex.PW16/C, was registered. The Investigating Officer further deposed

about the proceedings taken up by him during the course of investigation. The witness also identified the case property i.e parcel containing blood lifted from near the dead body of Balraj Gill as Ex. MO/26/1, blood stained jacket as Ex. MO/26/2, Sofa Set as Ex. MO26/3, parcel containing blood lifted from near the dead body of the lady as Ex.MO26/4, parcel of blood soaked hair as Ex. MO26/5, underwear Ex. MO26/6, lady shoes as Ex. MO26/7, Knife as Ex. MO26/8, Broken danda as Ex. MO26/9, parcel of blood lifted from Park as Ex. MO26/10, parcel of blood from courtyard as Ex.MO26/11, parcel of blood stained hair from the court yard as Ex. MO26/12, parcel containing condom as Ex. MO26/13, parcel containing clothes of deceased Balraj Singh Gill as Ex. MO26/14, moulds as Ex. MO26/15 to Ex. MO26/16, mould of tyre as Ex. MO26/17, blood sample lifted from the Console of Innova as Ex MO26/18, blood lifted from left seat of Innova Car as Ex. MO26/19, hair lifted from vehicle as Ex. MO26/20, burnt match stick as Ex. MO26/21, blood stained hair stuck on the wall as Ex. MO26/22, hair lifted from the wash basin as Ex. MO26/23, Innova car as Ex. MO26/24, Chevrolet car as Ex. MO26/25, forged number plates as Ex. MO/3 and Ex. MO/4, one parcel containing earth lifted on 6.2.2012 as Ex. MO26/26.

30. PW27 Inspector (Retd) Bant Singh deposed about the proceedings taken up on 8.4.2012 after appellant Harwinder Singh, Pritpal Singh and Umesh Karara were arrested. The witness elaborated that the said appellant had led the police party to the place of occurrence. On the way photographer HC Jatinder Singh was joined and after visiting the

spot, appellants pointed out various places and manner in which they had committed murder of Balraj Singh Gill and Monika Kapila. Rough site plan was prepared by Inspector Prem Singh as per the sequence pointed out by the appellants in terms of memo Ex.PW27/A. The witness further added that on 10.4.2012 complainant Kashmira Singh Gill came to CIA and produced two empty boxes of Apple I Phone and Samsung Galaxy along with photographs of deceased Balraj Singh Gill showing a ring in the finger of the right hand of Balraj Singh Gill and a wrist watch on his left wrist. The said articles were taken into possession vide memo Ex.PM. The witness further deposed about the proceedings taken up on 11.04.2012 when appellant Harwinder Singh got recovered pair of black colour shoes which were worn by him at the time of committing murder of Balraj Singh Gill and Monika Kapila. Thereafter appellant Umesh Karda led the police party to his house at Village Talwara and got recovered a pair of nylon chappals of yellow colour.

31. PW28 Inspector Bhupinder Singh, the then Incharge of Technical Support and Cyber Crime Unit, stated that in the intervening night of 1/2.2.2012, he received a telephonic call from SHO Ram Pal of PS Haibowal that two dead bodies from Golf Link Colony Farm House had been recovered and dead bodies were of Balraj Singh Gill, DSP and one unidentified lady. SHO Ram Pal had asked him to locate the location of Mobile 98761-00299 of DSP Balraj Singh. Last location of the said mobile was at 25731 Tower Number where last call was received and it was switched off at 9.19 PM on 1.2.2012. Tower No. 25731 was of Noorpur Bet. Thereafter, dumps of different companies were taken from

the place of occurrence. The Airtel tower Number was 25522, Vodafone tower 18091 and 17839 and Idea Tower No. 20341,18291, 20021 and 20022. According to the call details, the location of Mobile No. 97816-24400 of Umesh Karara, 97819- 33003 of Harwinder Singh, 88724-14216 of Pritpal Singh @ Laddu, at the time of occurrence was at the tower which covers the place of occurrence i.e Farm House, Golf Link. The last location of the mobile phone of victim Balraj Gill was located at Noorpur Bet and the location of mobile phones of the appellants was also the same. The tower bearing No. 20822 was of Idea Company of the appellant mobile connection. On 2.2.2012 in the morning location of appellant Bhinder was again near the Goel Farm, which was again near to the Farm House, the place of occurrence. On 3.2.2012, again all the mobiles of appellants along with 99142-40097 which was used by appellant Hassanjit travelled through Sidhwan Bet, kot Isekhan, village Vinjoke Makhoo, Harike, Taran Taran, Amritsar, Ramdass and Dera Baba Nanak and travelled back to Ludhiana. On 5.2.2012, again location of appellant Umesh Karda, Harwinder and Hassanjit was found together to be at village Bhundri. On 6.3.2012 Umesh Karara and Hassanjit went to Sri Anandpur Sahib and Harwinder was using Pritpal Singh's mobile phone 88724-14216 and went to Anandpur Sahib on 7.3.2012. On 9.3.2012, appellants returned back to Ludhiana from Anandpur Sahib. The call details and relevant papers were also produced by this witness before the police.

32. Appellants-Harwinder Singh, Umesh Karda and Pritpal Singh were produced by Jaspal Singh (PW-5) on 05.04.2012 before Inspector

Harpal Singh (PW-29). The said witness proved the arrest memos, personal search memos of appellants, which have already been discussed, and further the respective disclosure statements as Ex.PW29/K, PW29/L, PW29/M, Ex.PW29/O and Ex.PW29/P. The rough site plans of the places of recoveries have been proved as Ex.PW29/N/1, PW29/O/1 and Ex.PW29/P/1 respectively. The mobile make Samsung recovered from appellant Harwinder Singh has been proved as Ex.P7 and mobile make Nokia 7210 as Ex.MO/2. This witness further deposed about the disclosure statement made by appellant Umesh Karda regarding the concealment of bunch of five keys of Farm House as Ex.PW29/Q, disclosure statement of appellant Harwinder Singh regarding the purse of victim Balraj Singh Gill and key of Chevrolet car as Ex.PW29/2 and disclosure statement of appellant Pritpal Singh regarding the wrist watch of victim Balraj Singh Gill as Ex.PW29/S. The witness further added that when the police party proceeded for the recovery of the said articles at the instance of the appellant, Naib Tehsildar Balwinder Singh was found standing outside the office of Registrar and was asked to join the investigation and keys of Farm House and keys of Innova Car were recovered at the instance of appellant Umesh Karda and taken into possession vide memos Ex.PW15/A and Ex.PW15/B respectively. Rough site plan of place of recovery Ex.PW29/T was prepared. The wallet of DSP Balraj Singh Gill and key of Chevrolet Optra Car were recovered at the instance of appellant-Harwinder Singh vide Ex.PW15/C and rough site plan of the place of recovery Ex.PW15/C/1 was prepared. The

recovery memo of water proof wrist watch Guess was effected vide Ex.PW15/D and rough site plan Ex.PW15/D/1 was prepared. On 7.4.2012 on the basis of interrogation Hassanjit Singh, Davinder Pal Laddi, Ravinder Singh alias Rinku were named as accused and offences under Sections 465, 468, 471, 474, 120B, 201 IPC were added. They were arrested as proved on record by way of respective memos. Harpal Singh, Inspector (PW29) had also proved the recovery of other articles by way of many recovery memos which have been perused.

33. The then CIA Incharge, Inspector Gurbans Singh Bains (PW31), being member of the SI Team, stated that on 10.04.2012 complainant Kashmira Singh Gill had produced two empty card boxes of Mobile Phones i.e Apple I Phone and Samsung Galaxy and two photographs of his son Balraj Singh Gill wearing gold ring in his finger and wrist watch, which were taken into possession vide memo Ex.PM. The witness also deposed about the fact that vide order Ex.PW4/K the then learned Ilaqa Magistrate granted permission to take the hair sample of the appellant, pursuant to which the Board of Doctors was constituted and the Medical Officer took the hair of appellant and converted the same into parcels vide seal impression 'LMCH,' which was handed over to ASI Gurdev Singh.

34. This witness then deposed about the recovery of Tempo Trax Cargo bearing temporary No.PB-06-1615, which was used at the time of commission of crime, vide memo Ex.PW31/A and about the preparation of the rough site plan of the place of recovery Ex.PW31/B, the recovery memo of pair of black colour shoes worn by appellant Harwinder Singh at

the time of committing crime as Ex.PW27/B and rough site plan of the said place of recovery as Ex.PW31/C. The witness also proved the site plan of place of recovery of pair of yellow colour chappal worn by appellant Umesh Karda at the time of commission of the crime as Ex.PW31/D. The witness further deposed about the request moved by him for obtaining the finger prints of appellants as Ex.PW4/A and subsequent proceedings in this regard taken up before the learned Ilaqa Magistrate as Ex.PW4/B to Ex.PW4/G.

35. Jatinder Kumar stepped into the witness box as PW41 and stated that a disclosure statement had been made by appellant-Harwinder Singh regarding the place where both the number plates of Optra Car were thrown in the area of Preet Randhawa Marriage Palace, Batala Dera Baba Nanak Road, Gurdaspur as Ex.PW31/E, pursuant to which the appellant led the police party to the disclosed place and got recovered the said number plates which were taken into police possession, vide recovery memo Ex.PW24/A. On the disclosure statement of appellant-Umesh Karda regarding the broken number plates of the said Innova Car thrown by him, site plan and recovery memo were prepared, which are on record.

36. Surinderpal Singh, who appeared as PW-35 was Inspector, Incharge, P.S. Haibowal, Ludhiana and stated about the identification of mobile phones and wallet, by Kashmira Singh Gill, complainant to be that of his son Balraj Singh Gill and identification of bunch of keys of the Farm House by Sanjay Agnihotri. The witness further deposed that on 9.4.2012 appellant-Davinder Pal led the police party to his shop in Village Hambran where his father had been present and he got recovered one flatter/cutting machine along with its iron stand, Ex.PW35/1, one CPU make Intex, Ex.PW35/2, Monitor make Samsung, Ex.PW35/3, key board make Omax, Ex.PW35/4, Mouse make Quantum, Ex.PW35/5, three

interconnected leads Ex.PW35/6, piece of black and white tape which was used for preparing the numbers plates of Car, Ex.PW35/7. Recovery memos of the said articles were prepared as Ex.PW35/8 and site plan as Ex.PW35/9.

37. PW36 Inspector Balwinder Singh proved the police request, Ex.PW36/A, moved by him before the Manager, M/s Padam Cars Private Limited, Ludhiana, and police request Ex.PW36/B moved before Manager, Radiant Toyota Company, G.T. Road, Jugiana, Ludhiana, for mechanically testing the keys of Chevrolet and Innova vehicles and the respective endorsements made by the managers in this regard as Ex.PW36/1 and Ex.PW36/2 respectively, pursuant to which the representatives of both the companies visited P.S.Haibowal, where Chevrolet and Innova vehicles were lying parked and opened the vehicles with the respective keys. The reports submitted by Parveen Kumar and Gardawar Singh, representatives of the Companies are Ex.PW36/C and Ex.PW8/A respectively.

38. The independent witness Lakhwinder Singh alias Lakha who was joined at the time of recovery of mobile phone of Apple Company from appellant Pritpal Singh and mobile phone of Nokia from appellant-Umesh Karda, mobile phone make Samsung from appellant-Harwinder Singh endorsed the version of Inspector Harpal Singh and Inspector Prem Singh in this regard, appeared as PW37.

39. The testimony of the other witness need not be adverted to for the reasons that the same is mere elaboration of the testimony of the witness discussed above.

40. To prove them innocent, the appellants in defence examined Dalbara Singh as DW1 who stated that from 01.02.2012 Hassanjit was with him, being co-villager and they went to Gurudwara Shri Anandpur Sahib. Similarly, Nirmal Singh (DW-2) stated that on 05.04.2012 at 10:00 a.m. police officials took some articles from the shop of Davinder Singh when his father was present there.

41. In defence news reports regarding press conference of complainant Kashmira Singh Gill had been placed on record showing that he was not satisfied with the investigating agency regarding murder of his son Balraj Singh.

42. Other than this, defence also moved an application so that prosecution can admit and deny the time and date of clicking of photographs, which was dismissed and other application was moved under Section 45 of the Evidence Act for seeking definite scientific opinion of the expert regarding time and date of clicking of photographs at the place of occurrence which was ordered to be heard with the main case by the trial Court, was dismissed.

43. After hearing the arguments raised by learned counsel from both the sides, learned Additional Sessions Judge, Ludhiana, vide judgment dated 09.09.2015 convicted the appellants. Hence, the present appeal.

44. We have heard the arguments raised by the learned counsel for the appellants and the learned State counsel and we have carefully gone through the case file with their able assistance.

45. From the evidence, we find that appellants, namely, Harwinder Singh, Umesh Karda and Pritpal Singh have committed double murder with brutality and in a gruesome manner. The Police reached the place of occurrence before complainant Kashmira Singh Gill had arrived. Sanjay Agnihotri, owner of the farm house and Jaswinder Singh, DSP also reached the farm house and seen the dead bodies of Balraj Singh and Monika Kapila. Thus, their conduct is neither suspicious nor unnatural as both went to search the vehicle of deceased Balraj Singh being his close friends. We do not agree with the arguments raised by counsel for the appellants that Sanjay Agnihotri, Jaswinder Singh DSP and owner of Chevrolet Car, borrowed by Balraj Singh (deceased) were present at the place of occurrence and the Investigating Officer, who was also present, failed to record their statements. This does not create any dent in the prosecution case.

46. Regarding News item dated 06.02.2012 in Daily Ajit in which it had been reported that complainant Kashmira Singh Gill (father of deceased Balraj Singh) had raised finger towards the investigating Agency as prior to his arrival family member of the deceased lady were called at the place of occurrence and in the said press release he had shown his dissatisfaction the way the investigation agency was proceeding. It must be remembered that this was just after the incident.

47. To our mind, the only thing which this press conference shows is that Kashmira Singh wanted that actual culprit should be punished and not any innocent person and that is why later on he gave full cooperation to

Investigating Agency.

48. Learned counsel for the appellants have further argued that prosecution has failed to examine the gunman of the deceased DSP Balraj Singh nor in the present case FIR had been registered immediately on the receipt of the information of the cognizable offence. It is also argued that Jaspal Singh is a stock witness and no extra judicial confession was ever made by appellants-Harwinder Singh, Umesh Karda and Pritpal Singh and being stock witness Jaspal Singh was closely linked with the Police Officer(s) and stood as prosecution witness in many other cases.

49. Learned counsel for the appellants have also laid much emphasis on video clip showing photographs of the appellants in Samsung mobile phone belonging to deceased Balraj Singh being manipulated to involve the appellants in the crime. Counsel has also raised doubt on the re-opening or seal of samsung, Nokia and Apple I Phone because the complainant had handed over the boxes of Samsung and Apple I phone mobiles to Inspector Harpal Singh on 10.04.2012. Thus, as per the counsel for the appellants it is a case of planting evidence against the appellants, even regarding joining of Naib Tehsildar Balwinder Singh, at the time of recovery, who had admitted that SDM had informed him in advance to remain available. Thus Investigating Agency has failed to prove its case beyond doubt.

50. Per contra, learned State counsel has argued that appellants-Harwinder Singh, Pritpal Singh and Umesh Karda jointly made an 'extra judicial confession' before Jaspal Singh, who appeared as PW-5 that they had committed the murder of Balraj Singh Gill and Monika Kapila at the

farm house for the theft of their cars and mobile phones. Later, when they came to know that deceased Balraj Singh Gill was DSP and police parties were conducting raids and because of much publicity, they had abandoned the cars and approached Jaspal Singh.

51. It has also been argued that the recoveries effected from the appellants have been proved scientifically. Blood sample, blood shoe prints, photographs have nailed the appellants and proved the case beyond shadow of doubt. Even gold smith -Jaswinder Singh, as an independent witness had proved the guilt of the appellants as gold finger ring brought by appellant-Harwinder Singh, converted into chain and Khanda by adding some more gold, stands proved vide Ex.P1. The said witness had identified deceased Balraj Singh with the said ring in his finger in his photograph. Thus, the prosecution had discharged its burden of proof by leading and proving evidence scientifically as well as by producing evidence on record, as recovery of all the items has been effected from the appellants. Hence, the stand taken by defence that deceased (Balraj Singh) went to the farm house without his mobile or other articles especially his wristwatch or wallet, cannot be believed.

52. PW5-Jaspal Singh is the President of Ward No.31 of Municipal Corporation, Ludhiana before whom appellants-Harwinder Singh, Pritpal Singh and Umesh Karda had made 'extra judicial confession'. The said 'extra judicial confesesion' carries credibility and reliability. In law, we have to bank upon the extra judicial confession, in addition to the scientific investigation and evidence before the Court. Other evidence, before the Court to find out the guilt of the appellants stands duly proved.

53. As per the mobile tower location and location of appellants Umesh Karda, Harwinder Singh and Pritpal Singh show their being present at the Farm house where the occurrence took place.

54. We also do not agree with the arguments raised by the counsel for the appellants that the photographs of appellant-Harwinder Singh w.e.f. 17.02.2012 to 02.04.2012 were extracted. The report Ex.PX/2 from CFSL Hyderabad points out the clicking of photographs of appellant-Harwinder Singh and his friends from the mobile phone of deceased Balraj Singh Gill.

55. Handing over the empty boxes of two mobile phones of the victim Balraj Singh, to the Investigating Agency, by complainant at later stage, to our mind does not create any doubt. Rather it authenticates prosecution story.

56. In his statement recorded under Section 313 Cr.P.C., appellant-Harwinder Singh, could not put forward any explanation that the mobile phones were owned by Balraj Singh Gill and Monika Kapila (since deceased) and photographs of appellant-Harwinder Singh and company were found in the Samsung mobile phone of deceased Balraj Singh Gill.

57. To our mind that recovery of three mobile phones of the deceased (Balraj Singh Gill and Monika Kapila) along with their other belongings like wallet 'Mont Blanc' wrist watch make 'Guess' leaves no doubt about active involvement of the appellants in the crime.

58. By producing PW-11, Jaswinder Singh, a goldsmith, the prosecution has further cleared the picture regarding involvement of the appellants in the crime. Being an independent witness, Jaswinder Singh

identified the finger ring worn by deceased Balkar Singh (in photograph Ex.P-1) and identified appellant-Harwinder Singh in court, who had visited his shop along with his brother with the said ring and got it converted into a gold chain with khanda. Not only this, Harwinder Singh also got recovered the number plates of Chevrolet Optra Car and to this, as per record, PW24 Kulwinder Singh, who is an agriculturist, is witness. The finger prints and foot prints had been proved as per scientific method as the specimen finger prints of appellants, Harwinder Singh, Umesh Karda, Pritpal Singh, Hassanjit Singh and Ravinder Singh were compared by finger print Burueau, Phillaur and the same stand proved.

59. Thus, extra judicial confessional recoveries and scientific evidence on record along with the tower location of appellants-Harwinder Singh, Umesh Karda, Pritpal Singh leave no doubt about their being at the scene of crime and their active involvement in the occurrence.

60. As per the record and the evidence of prosecution, to our mind, it is established that on the basis of unimpeachable, clinching and scientific evidence, appellants-Harwinder Singh, Umesh Karda and Priptal Singh have committed murder of Balraj Singh Gill and Monika Kapila .

61. As far as appellants-Hassanjit Singh, Ravinder Singh @Rinku and Davinder Pal are concerned, they were arrested after the murder took place. As per evidence appellant-Hassanjit Singh was called telephonically for the sale of two cars of the deceased. Appellant-Ravinder Singh @ Rinku joined the criminal party on 03.02.2012 who further made call to one Swaran Singh to sell cars of the deceased and it was Devinder Singh, one of the appellants, who allegedly wanted to stick

different number plates on the cars.

62. Thus, to our mind appellants-Hassanjit Singh, Ravinder @ Rinku were involved after two murders took place and have already undergone 6 months and 15 days of actual sentence. Thus, while upholding the conviction of the appellants as recorded by the Additional Sessions Judge, Ludhiana, their substantive sentence is reduced to the period already undergone by them. However, there is no modification in the amount of fine.

63. Appellant Davinder Singh stands acquitted of the charges framed against him as allegations regarding his shop are not proved beyond shadow of doubt.

64. The judgment in Shankar Kisnrao Khade Vs. State of Maharashtra, (2013)5 SCC 546, relied upon by the learned trial Court, while directing the sentences imposed upon accused-appellants Harwinder Singh; Pritpal Singh and Umesh Karda to run consecutively, was delivered by the Supreme Court, taking into consideration the offences committed in that case. In the said case, a minor girl of 11 years with intellectual disability was murdered by strangulation after she had been subjected to repeated rape and somemization by a 52 years old man. The trial Court convicted the accused therein under Section 302 and sentenced him to death sentence; awarded RI for life under Section 376; RI for seven years under Section 366-A IPC and RI for five years under Section 363 read with Section 34 IPC. The High Court dismissed the appeal filed by the accused. The Supreme Court, after taking into consideration the series of acts leading to gruesome murder of a minor girl with intellectual

disability, while commuting the death sentence to life imprisonment, directed that the sentences shall run consecutively. While observing that the case passed all the crime tests i.e. Crime Test, Criminal Test and Rarest of Rare Case Test, it was held to the following effect:-

“Enormity of the Crime and execution thereof (Crime Test)

30. Victim was aged 11 years, on the date of the incident, a school going child totally innocent, defenceless and having moderate intellectual disability. Ex. P-4 was a certificate issued by the President of the Handicap Board General Hospital, Amravati which disclosed that the girl was physically handicapped and was having moderate mental retardation. Evidence of PW 10, PW 12 and PW13 also corroborates the fact that she was a minor girl with moderate intellectual disability, an aggravating circumstance which goes against the accused. Vulnerability of the victim with moderate intellectual disability is an aggravating circumstance. The accused was a fatherly figure aged 52 years.

31. Dr. Kewade - PW3, who conducted the post-mortem, had deposed as well as stated in the report the ghastly manner in which the crime was executed. Rape was committed on more than one occasion and the manner in which rape as well as murder was executed had been elaborately discussed in the oral evidence as well as in report which we do not want to reiterate. The action of accused, in my view, not only was

inhuman but barbaric. Ruthless crime of repeated actions of rape followed by murder of a young minor girl who was having moderate intellectual disability, shocks not only the judicial conscience, but the conscience of the society.

32. In my view, in this case the crime test has been satisfied fully against the accused.

Criminal Test

33. Let us now examine whether "Criminal Test" has been satisfied. The accused was aged 52 years at the time of incident, a fatherly figure for the minor child. The accused is an able bodied person has seen the world and is the father of two children. The accused repeatedly raped the girl for few days, ultimately strangled her to death. Intellectually challenged minor girls will not be safe in our society if the accused is not given adequate punishment. Considering the age of the accused, a middle ager of 52 years, reformation or rehabilitation is practically ruled out. In the facts and circumstances of the case, in my view, criminal test has been fully satisfied against the accused and I do not find any mitigating factor favouring the accused. The only mitigating circumstance stated was that the accused is having two sons aged 26 and 27 years and are dependent on him, which in my view, is not a mitigating circumstance and the "criminal test" is fully satisfied against the accused. Both the crime test and criminal test are, therefore, independently satisfied against

the accused.

34. Let us now apply the R-R Test. I have critically and minutely gone through the entire evidence and I am of the view that any other punishment other than life imprisonment would be completely inadequate and would not meet the ends of justice.

35. Remember, the victim was a minor girl aged 11 years, intellectually challenged and elders like the accused have an obligation and duty to take care of such children, but the accused has used her as a tool to satisfy his lust. Society abhors such crimes which shocks the conscience of the society and always attracts intense and extreme indignation of the community. R-R Test is fully satisfied against the accused, so also the Crime Test and the Criminal Test". Even though all the above mentioned tests have been satisfied in this case, I am of the view that the extreme sentence of Death penalty is not warranted since one of the factors which influenced the High Court to award death sentence was the previous track record of the accused."

XX

XX

XX

52. Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the R-R Test and not "balancing

test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society no previous track record etc., the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge centric" that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc.. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges."

XX

XX

XX

Consecutive sentence cases:

117. *Ravindra Trimbak Chouthmal v. State of Maharashtra*, 1996(2) R.C.R.(Criminal) 734 : (1996) 4 SCC 148 is perhaps among the earliest cases where consecutive sentences were awarded. This was not a case of rape and murder but one of causing a dowry death of his pregnant wife. It was held that it was not the "rarest of rare" cases "because dowry death has ceased to belong to that species of killing." The death sentence was, therefore, not upheld. Since the accused had attempted to cause disappearance of the evidence by severing the head and cutting the body into nine pieces, this Court directed that he should undergo the sentence for that crime after serving out his life sentence. It was held:-

"We have given considered thought to the question and we have not been able to place the case in that category which could be regarded as the "rarest of the rare" type. This is so because dowry death has ceased to belong to that species of killing. The increasing number of dowry deaths would bear this. To halt the rising graph, we, at one point, thought to maintain the sentence; but we entertain doubt about the deterrent effect of a death penalty. We, therefore, resist ourselves from upholding the death sentence, much though we would have desired annihilation of a despicable character like the appellant before us. We,

therefore, commute the sentence of death to one of RI for life imprisonment.

“But then, it is a fit case, according to us, where, for the offence under Sections 201/34, the sentence awarded, which is RI for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder the atrocious way in which the head was severed and the body was cut in nine pieces. These cry for maximum sentence. Not only this, the sentence has to run consecutively, and not concurrently, to show our strong disapproval of the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body. To these sentences, we do not, however, desire to add those awarded for offences under Sections 316 and 498-A/34, as killing of the child in the womb was not separately intended, and Section 498-A offence ceases to be of significance and importance in view of the murder of Vijaya.

"The result is that the appeal stands allowed to the extent that the sentence of death is converted to one of imprisonment for life. But then, the sentence of seven years' RI for the offence under Sections 201/34

Indian Penal Code would start running after the life imprisonment has run its course as per law."

Since imprisonment for life means that the convict will remain in jail till the end of his normal life, what this decision mandates is that if the convict is to be earlier released by the competent authority for any reason, in accordance with procedure established by law, then the second sentence will commence immediately thereafter."

65. The dictum of the Supreme Court that imprisonment for life means that the convict will remain in jail till the end of his normal life and that this decision mandates that if the convict is to be earlier released by the competent authority for any reason, in accordance with procedure established by law, then the second sentence will commence immediately thereafter, would thus, not be applicable in this case as, as referred to above, there is no series of acts (crime) in this case entailing death sentence and/or life imprisonment under more than one count.

66. In the instant case, admittedly, the crime of the accused-appellants, Harwinder Singh; Pritpal Singh and Umesh Karda, in committing murder of deceased Balraj Singh and Monika Kapila, stands proved. The learned trial Court, has thus, convicted and sentenced the accused-appellants, as referred to above.

67. The learned trial Court got swayed by the fact that in this case two murders had been committed, and thus awarded two life sentences for the said two murders. However, the learned trial Court lost sight of the fact that the said murders were committed in the same occurrence and in

both the cases the offence is one i.e. Section 302 IPC and there are no separate FIRs. Still further, except for the offence under Section 302 IPC, there is no other offence, which entails the punishment of either death sentence or life imprisonment. Thus, the judgment in Shankar Kisanrao Khade's (supra) case is distinguishable and not applicable in the case in hand. The test of 'Rarest of Rare' case applied in Shankar Kisanrao Khade's (supra), would not come into play in this case as there is no series of acts (i.e. more than one offence entailing death sentence or life imprisonment), which may justify the imposition of the consecutive running of sentences.

68. Hence, we direct that the life sentences imposed upon the appellants Harwinder Singh; Pritpal Singh and Umesh Karda, on two counts, shall run concurrently.

69. Coming to the question as to whether the sentences awarded for the other offences upon the said accused-appellants, shall run concurrently or consecutively, in Vikas Yadav Vs. State of U.P. and others, (2016)9 SCC 541, the Hon'ble Apex Court, considered the judgment delivered in Shankar Kishanrao Khade's (supra). However, while relying upon the judgment of the Constitution Bench judgment in Union of India Vs. V. Sriharan alias Murugan and others, (2014)11 SCC page 1, it was held as under:-

“76. The next submission pertains to the direction by the High Court with regard to the sentence imposed under Section 201 to run consecutively. Learned counsel for the appellants have drawn our attention to the Constitution

Bench decision in V. Sriharan (supra) . The larger Bench was dealing with the following question:-

"Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?"

77. Learned counsel appearing for the appellants have drawn out attention to the analysis whether a person sentenced to undergo imprisonment for life when visited with the "term sentence" should suffer them consecutively or concurrently.

The larger Bench in that context has held thus:-

"We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence."

78. In the instant case, the trial Court has imposed the life sentence and directed all the sentences to be concurrent. The

High Court has declined to enhance the sentence from imprisonment for life to death, but has imposed a fixed term sentence. It curtails the power of remission after fourteen years as envisaged under Section 433-A. In such a situation, we are inclined to think that the principle stated by the aforesaid Constitution Bench would apply on all fours. The High Court has not directed that the sentence under Section 201/34 IPC shall run first and, thereafter, the fixed term sentence will commence. Mr. Dayan Krishnan, learned senior counsel appearing for the State has argued that this Court should modify the sentence and direct that the appellants shall suffer rigorous imprisonment for the offence punishable under Section 201/34 IPC and, thereafter, suffer the fixed term sentences. Similar argument has been made in the written submission by the learned counsel for the informant. As the High Court has not done it, we do not think that it will be appropriate on the part of this Court in the appeal preferred by the appellants to do so. Therefore, on this score we accept the submission of the learned counsel for the appellants and direct that the sentence imposed for the offence punishable under Section 201/34 IPC shall run concurrently with the sentence imposed for other offences by the High Court.”

70. Thus, it is clear that if two sentences, one of them being life sentence and another one a term sentence, are imposed by the Court, then

unless the term sentence is ordered to start first, both the sentences shall run concurrently. It was, thus, held that the Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Unless it is so directed, the life sentence running at the first instance, all the sentences shall run concurrently, the reasoning being that once the prisoner spends his life in jail, there is no question of his undergoing further sentence.

71. Hence, the sentences imposed under other counts, shall also run concurrently.

72. Since the main case is decided pending CRM if any, stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

01.10.2019
pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No