

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

(1) Murder Reference No. 3 of 2018

State of Punjab through Special Judge, CBI, Punjab, SAS Nagar
.... PROSECUTOR

Versus

Khushwinder Singh
..... RESPONDENT

(2) CRA-D-880-DB of 2018

Khushwinder Singh
.... APPELLANT

Versus

Central Bureau of Investigation, Chandigarh
..... RESPONDENT

Reserved on : 11.04.2019

Date of decision : 24.04.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Arun Sharma, Legal Aid Counsel,
for the appellant (convict) in CRA-D-880-DB of 2018.

Mr. Sukhdeep Singh Sandhu, CBI Special Prosecutor.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in Murder Reference No.3 of 2018 and CRA-D-880-DB of 2018, therefore, these are taken up together and being disposed of by a common judgment.

2. Murder Reference No. 3 of 2018 has been made by learned

Special Judge, CBI, Punjab, SAS Nagar, for confirmation of death sentence awarded to Khushwinder Singh son of Raghbir Singh, resident of village Suhavi, District Fatehgarh Sahib, vide judgment dated 24.08.2018 and order dated 28.08.2018, rendered in Sessions Case RT No. 29 dated 16.01.2014/01.07.2017.

3. Criminal Appeal No. D-880-DB of 2018 has been preferred by Khushwinder Singh against the aforesaid judgment dated 24.08.2018 and order dated 28.08.2018.

4. The appellant (convict) was charged with and tried for offences punishable under Sections 201, 364 and 302 of the Indian Penal Code (in short 'IPC'). He was convicted and sentenced as under :-

<i>Offence</i>	<i>Sentence</i>
U/s 201 IPC	To undergo rigorous imprisonment for a period of four years and to pay a fine of ₹ 5,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one year.
U/s 364 IPC	To undergo rigorous imprisonment for life and to pay a fine of ₹ 5,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one year.
U/s 302 IPC	Death sentence (to be hanged by the neck till he is dead) and fine of ₹ 10,000/- and in default of payment of fine to undergo further rigorous imprisonment for a period of one year.

All the substantive sentences were ordered to run consecutively.

5. The case of the prosecution, in a nutshell, is that this Court vide order dated 16.07.2007, rendered in Criminal Miscellaneous No. 58783-M of 2006 filed by Kultar Singh, transferred the investigation of case FIR

No.59 dated 05.06.2004, Police Station Bassi Pathana, District Fatehgarh Sahib, relating to kidnapping and murder of Kulwant Singh, his wife Harjit Kaur and their two children Ramandeep Kaur and Arvinder Singh, to the Central Bureau of Investigation (in short, 'CBI'). Regular case No. RC-4 (S)/07/SCR-II/CBI, was registered on 11.09.2007 against Jaspal Singh, Sandeep Singh and Amar Singh of village Naugawan, Punjab, on the basis of aforesaid FIR No. 59 dated 05.06.2004. The complainant suspected that his brother-in-law Kulwant Singh, sister Harjit Kaur, niece (*bhaanji*) Ramandeep Kaur and nephew (*bhaanja*) Arvinder Singh were kidnapped or got kidnapped by Jaspal Singh, Sandeep Singh and Amar Singh with intention to kill them, as Kulwant Singh and Jaspal Singh were involved in a case pending in the court regarding distribution of ancestral land. On completion of investigation, cancellation report was filed by the CBI in the court of Special Judicial Magistrate, Punjab, Patiala. It was accepted by the court on 09.09.2009.

6. The ADGP (Crime), Punjab, Chandigarh, vide letter dated 03.07.2012 informed the SP, CBI, SC-II/New Delhi that Khushwinder Singh son of Raghbir Singh, resident of village Suhavi, Police Station Khamano, accused in FIR No. 67 dated 27.06.2012 under Sections 302, 307 and 201 IPC, Police Station Bassi Pathana, during investigation of that case had confessed his involvement in killing of four members of the family of Kulwant Singh. An application was filed in the court of learned Special Judicial Magistrate, CBI, Punjab, Patiala, with a prayer to re-open the investigation. Learned Special Judicial Magistrate, CBI, Punjab, Patiala, permitted the CBI to re-open the investigation, vide order dated 14.08.2012.

7. The matter was re-investigated. It came to light that Jaspal Singh and Kulwant Singh were brothers. They were residing in their ancestral house at village Naugawan, District Fatehgarh Sahib. The elder brother Jaspal Singh was living with his wife Kuldeep Kaur and son Sandeep Singh on the ground floor. Kulwant Singh was residing with his wife Harjit Kaur, daughter Ramandeep Kaur and son Arvinder Singh on the first floor. They were farmers. They owned 56 acres of land. The investigation revealed that Kultar Singh was having family business of grain commission agent at Grain Market, Sanghol, District Fatehgarh Sahib. Kulwinder Singh, elder brother of accused Khushwinder Singh, was *Munim* (accountant) of Kultar Singh since 1991. Kulwinder Singh was detained by CIA staff, Sirhind, in the year 2000, after some misappropriation was detected. He sold 2 acres of land for ₹ 8,00,000/- and arranged ₹ 2,00,000/- from relatives. The sale agreement of the land of accused Khushwinder Singh was also got executed in favour of Bhajan Singh, resident of Dhianu Majra. Kultar Singh set up a photostat shop for accused Khushwinder Singh in the chamber of Advocate, Shri D.S. Kang, at Fatehgarh Sahib, in the year 2002. Some dispute arose between two brothers, namely Jaspal Singh and Kulwant Singh, due to losses suffered in the commission agent business of Kultar Singh. Kulwant Singh was also under heavy debt. The relations between Jaspal Singh and deceased Kulwant Singh worsened after the division of their ancestral residential house and agricultural land. Accused Khushwinder Singh, being the younger brother of Kulwinder Singh, *Munim* of Kultar Singh, was aware of the problems and bad habits of Kulwant Singh. He established close proximity with Kulwant Singh. Kulwant Singh

started sharing his personal problems with accused Khushwinder Singh. In disguise of resolving problems of Kulwant Singh, accused Khushwinder Singh brain washed him proclaiming that he knew a “Baba” and he would have to pay ₹ 50,000/-. In order to solve the problems, family members had to put the mixture (pulses and rice) in the canal before visiting “Baba”. They would take the money to “Baba” who would perform the “Mantras” on the said money and would return the same to him. Accused Khushwinder Singh remained in contact with Kulwant Singh by meeting him at his village Naugawan at pre-decided places. Kulwant Singh sold some part of his land and executed sale deed in favour of Baljit Singh for ₹ 13,11,000/- on 27.05.2004. Another sale deed was executed in favour of Bant Singh for ₹ 2,25,000/- on 02.06.2004. Accused Khushwinder Singh came to know that all the formalities of the sale deed would be completed by Kulwant Singh by 02.06.2004, the date of visit to so called “Baba”. The family members were asked to come in the early morning on 03.06.2004 to perform certain rites on the bank of Bhakhra canal near Thablan Pul Ki Jhal. Kulwant Singh visited a cycle repairing shop on 02.06.2004 at his village Naugawan. On 02.06.2004, immediately after executing the sale deed of his land measuring 4 kanals in favour of Bant Singh, Kulwant Singh and accused Khushwinder Singh visited a cloth shop of M/s Lal Singh & Kanwar Keet Singh, Bassi Pathana, on a scooter. They purchased a yellow colour *Patka*. The witness who had seen accused Khushwinder Singh and deceased Kulwant Singh together at the cloth shop, also identified the photo of accused Khushwinder Singh from the group photo. Kulwant Singh visited a STD/PCO shop at Bassi Pathana. He contacted Kulwinder Singh over his mobile phone and

enquired about the availability of his Maruti car, as he intended to visit Paunta Sahib next day. Kulwinder Singh informed Kulwant Singh that he was at Khanna and the car was available at the fields of Kultar Singh in village Polo Majra. Kulwant Singh visited the fields of Kultar Singh in order to bring the Maruti car. Kultar Singh gave him car bearing registration No. PB-10V-0891. Kulwant Singh left his scooter there. The car was brought by Kulwant Singh from Kultar Singh in the late evening of 02.06.2004. It was parked inside the boundary wall of his residence at village Naugawan. It was seen by all the family members of Jaspal Singh. On 03.06.2004, it was seen by Jaspal Singh parked inside the boundary wall of his residence at about 02.00 hours, when he went to his fields to start the electric motor. When he came back, he again noticed Maruti car parked at the same place. When he got up at 05.00 hours, in the morning, the car was not there.

8. Kulwant Singh firstly picked up accused Khushwinder Singh from his village Suhavi at about 03.15 hours. Thereafter, they both went back to the residence of Kulwant Singh to bring his wife Harjit Kaur, daughter Ramandeep Kaur and son Arvinder Singh. Kulwant Singh went inside his house to bring his family members. He brought his wife Harjit Kaur, daughter Ramandeep Kaur and son Arvinder Singh and departed from their house in between 03.50-04.00 hours. Kulwant Singh and his family members were carrying one steel container (Dolu) having some pulses (rice and daal etc.), a tiffin containing "Parsad" and a canister containing at least ₹ 12,00,000/-. They reached at Bhakhra canal near Thablan Pul Ki Jhal at about 04.10-04.15 hours. According to the plan, accused Khushwinder

Singh asked Kulwant Singh and his wife to lit the lamps at different places. Thereafter, Kulwant Singh, Harjit Kaur, Ramandeep Kaur and Arvinder Singh were asked to stand on the bank of canal to start prayer and to put pulses in the water of Bhakhra canal. When all the family members were engaged in offering prayer and putting pulses in the water of canal, they were pushed by the accused into the Bhakhra canal near Thablan Pul Ki Jhal. Accused Khushwinder Singh escaped from the spot. He quickly moved from there in the car of Kulwant Singh to Suhavi via Tablan village Lohari Kalan. He reached Suhavi at about 05.15-05.25 hours. The Maruti car was found abandoned at about 05.30 hours in village Suhavi just only 74.4 meters away from the house of accused Khushwinder Singh. On 06.06.2004, dead body of a girl was spotted by a man deployed by Kultar Singh. It was identified to be body of Ramandeep Kaur. The dead body of Kulwant Singh was also spotted on 10.06.2004. From the dead body of Kulwant Singh, his identity card and PAN card were recovered. Post-mortem examination was conducted on both the dead bodies. The DNA tests were conducted by CFSL Kolkata. Accused Khushwinder Singh made an extra judicial confession before Jasmeen Kaur (complainant in FIR No. 67 of 2012). The challan was put up after completing all the codal formalities.

9. The prosecution has examined a number of witnesses. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated.

10. The appellant was convicted and sentenced to death, as noticed above. Hence this appeal by him against his conviction and sentence, and

the death reference by learned Special Judge, CBI, Punjab, SAS Nagar, for confirmation of death sentence.

11. Learned counsel appearing on behalf of the State as well as CBI have sought confirmation of death sentence. Learned counsel appearing on behalf of the appellant (convict) has vehemently argued that the prosecution has failed to prove its case against his client. According to him, case is based on circumstantial evidence. He further argued that chain is not complete.

12. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

13. PW.1 Jasmeen Kaur testified that she was married to Rupinder Singh in the year 2005. She had two children. She did not have cordial relations with her in-laws. She identified the accused in the court. In the year 2012, her husband had sold the land for consideration of ₹ 37,00,000/-. Her younger brother used to drink a lot. Accused Khushwinder Singh was married to the daughter of her maternal uncle. He told them that he knew one “Baba” who could help her brother getting away from the bad habit of drinking. Accused Khushwinder Singh also told her husband that he knew one agent through whom he could send her husband to foreign country. Accused came to their house on 25.06.2012 at night and told that in the morning at 2.30 AM, they had to go to “Baba”. They went early in the morning at 2.30 AM with her brother, father, mother and husband on the pretext of offering prayer before “Baba” in the car. However, in the midway, her father got down from the car. Her father came back to the house at about 10.00/11.00 AM. Then on the same day of 25.06.2012, accused in the

evening came to their house. He told them that they all had to go to Dera of “Baba” on 26.06.2012. On 26.06.2012 at about 6.30 PM, accused Khushwinder Singh took her father, herself, and her both children to “Baba”. On the way, accused Khushwinder Singh told that he had got a call from “Baba” that her father had to consume liquor if he wanted to get rid of the drinking habit of her brother. Thereafter, the accused took all of them to Bhakhra canal. Her father consumed liquor on the asking of the accused. Accused told them to go to bank of the canal for offering prayers with folded hands. She and her father went to the bank. They were offering prayers with folded hands. Their eyes were closed. They were offering “Maha Ki Daal, Chawal and Nariyal”. After that, the accused pushed them into the running water of canal. Her father drowned immediately. However, she did not drown immediately. She told the accused that if any of them will survive, then he will surely be punished. In reply, accused told loudly in anger that earlier also, he had killed the family of one Kulwant Singh of Naugawan village in similar fashion. If they could not save themselves, then how could they survive. She caught hold of iron stairs on the bank of the canal. She came out of canal. She met the officials of the Irrigation Department. Her children were sitting in the car. The officials of the canal department themselves informed the police officials about the occurrence. She tried to search her children but could not found them. In her cross-examination, she deposed that her father retired as Hawaldar from Punjab Police. Her statement was recorded by the CBI.

14. PW.2 Kultar Singh deposed that they were two brothers. In the year 1990, he had opened commission agent shop in the name and style of

Sidhu Traders. He had seen the partnership deed. It was signed by him at Points A and B. There were three other partners, namely Jaginderjit Singh, Kulwant Singh and Ranjit Singh. The partners had made complaint against Kulwinder Singh *Munim* for embezzlement. He was re-employed in the year 2002. On 31.05.2004, Kulwant Singh had paid ₹ 2 lacs to him and further told him that he had sold land for ₹ 28 lacs. On 02.06.2004, Kulwant Singh had asked for his car, as he had to go to Shri Paunta Sahib. In the evening, at about 5.00 PM, after having tea, Kulwant Singh took the car from him. On 03.06.2004, in the morning, his *Munim* Kulwinder Singh informed him on phone that the car was lying abandoned in village Suhavi. He went to village Suhavi with Kulwinder Singh. He and Kulwinder Singh went to village Naugawan. They went to first floor of the house. All the doors were opened. Thereafter, they went to village Suhavi to see the car. It was open. Window panes were also open. On 03.06.2004, he made a complaint to Police Station Bassi Pathana. On 06.06.2004, dead body of Ramandeep Kaur was recovered from the canal. Inquest papers were prepared. Body was sent for post mortem examination. On 10.06.2004, he got telephonic information from Jarnail Singh that one dead body was recovered from Bhakhra canal. He was told to come and identify the body. He identified the body of Kulwant Singh. He had filed a petition in the Punjab and Haryana High Court to hand over the investigation to some independent agency. His car was seized by the police. He further deposed that he knew accused Khushwinder Singh, as he was younger brother of his *Munim* Kulwinder Singh. The witness correctly identified the accused in the court. He had got installed a photostat machine of accused Khushwinder Singh. Deceased

Kulwant Singh used to go to the court to pursue the court cases. Kulwant Singh deceased also used to drop his daughter Ramandeep Kaur alias Guddi to Senior Secondary School, near Fatehgarh Sahib court. In his cross-examination, he deposed that no identification parade of the accused was conducted in his presence.

15. PW.3 Mohan Lal deposed that he was working as a Gauge Reader in the Irrigation Department since August, 1978. His job was to take gauge reading of the water. He had to maintain the level of the water up to 11.5 feet. He usually check the level of water in the Jhal at about 6.00 AM. On 03.06.2004 at about 5.45 AM, when he went to take the gauge reading on the Jhal, he saw that four pairs of slippers, one *Dolu* and one tiffin box were lying on the bank of the river. Some *kheer* was lying in the tiffin box and some Prashad of Halwa was in the *Dolu*. Beldar Piara Singh was also with him. Piara Singh told him not to pay any heed to these articles. After about two hours, many people gathered there in cars. Police also came there. The articles then were taken to the house of Sarpanch, for identification. On 26.06.2012, he was posted at the same place. At about 10.00 AM, one lady was crying. She was soaked in water. She came to him and told that one Khushwinder Singh had killed her family members by throwing them in the canal, including herself. However, she managed to escape. He called the police through his telephone. After some time, police came there. She further told that Khushwinder Singh was having custody of two of her minor children. Police started investigation.

16. PW.4 Ram Inder Singh deposed that he was working as a tailor. On 02.06.2004, he had seen Kulwant Singh in the shop of Lal Singh and

Kamaljit Singh. Kulwant Singh was accompanied by accused Khushwinder Singh.

17. PW.5 Devinder Pal Singh Kang deposed that he had been practising as an Advocate in District Courts, Fatehgarh Sahib since the year 1992. He had a chamber in the court premises bearing No. 109 till 2013. He knew Kulwant Singh as he was brother-in-law of Kultar Singh with whom he had family terms. He knew Khushwinder Singh who was brother of Kulwinder Singh, *Munim* of Kultar Singh. He identified accused Khushwinder Singh in the court. The photostat machine in his chamber was bought by Kultar Singh in the year 2003. He gave the same to Khushwinder Singh.

18. PW.6 Bant Singh deposed that he had 22 killas of land in village Naugawan. Kulwant Singh had to give him ₹ 9.48 lacs. Kulwant Singh told him that he would give him the said amount by selling his 3 killas of land. He had entered into an agreement to sell with one Pritam Singh. He sold the said land on 27th by way of registered deed, but he could not tell the exact date. On that day, he had offered to pay him about ₹ 6 lacs in the Tehsil but he refused the same and told that he would take the amount later on by reaching the home. He further deposed that he had paid ₹ 14 lacs to Kulwant Singh. Kulwant Singh put ₹ 12 lacs in a canister and remaining amount of ₹ 2 lacs was put in dicky of the scooter. Kulwant Singh told him that he had to hand over the said amount to some body in village Polomajra. In his cross-examination, he deposed that he had seen the dead body of Kulwant Singh when it was taken out from canal.

19. PW.7 Balbir Singh is the material witness. He deposed that he

resides in a house after a gap of six-seven houses from the house of Kulwant Singh and Jaspal Singh. On 03.06.2004, he got up at 3.45 AM and went to water his fields. When he reached near the house of Sarpanch Jaspal Singh, he saw one white coloured Maruti car. The engine of the car was off and parking lights were on. He went to the motor. After watering the fields, he came back after 20 minutes. He saw that the said car was not there. Again at about 6.00 AM, he went to his fields. Some one who brought his lunch to the fields told that Kulwant Singh and his family members were not traceable. People were searching them. He told Jaspal Singh about the incident that he had seen the car in the morning.

20. PW.9 Inspector Shamsheer Singh deposed that he had registered a case against accused Khushwinder Singh vide FIR No. 67 of 2012 dated 27.06.2012 under Sections 302, 307, 201 IPC at Police Station Bassi Pathana. During interrogation of the case, accused Khushwinder Singh had confessed his alleged role in FIR No. 67 of 2012 and also confessed his alleged role in FIR No. 59 of 2004, Police Station Bassi Pathana corresponding CBI case No. RC4 (S) of 2007, as FIR No. 59 of 2004 was entrusted to CBI for investigation. Accused Khushwinder Singh had confessed that he had killed Kulwant Singh resident of village Naugawan and his family by throwing them into canal. The disclosure statement is Ex.PW.9/A. It was recorded in the presence of ASI Harjit Singh and HC Balbir Singh.

21. PW.10 Hakikat Singh deposed that he was daily wager. He had constructed the house of Khushwinder Singh in the year 2008. Khushwinder Singh might have spent ₹ 7.5 lacs on the construction of his house.

22. PW.12 Charan Singh testified that on 03.06.2004, at about 4.30/5.00 AM, when he was ploughing his fields with his tractor, he saw that Khushwinder Singh son of Raghbir was driving one white coloured Maruti car from village Thabla to village Lohari. He knew Khushwinder Singh. He identified him in the court. The car belonged to Kultar Singh.

23. PW.14 Mohan Lal deposed that he was working in a factory at Morinda since 2005. Prior to that, he was running a cycle repairing shop. On 02.06.2004, Kulwant Singh was sitting in his cycle repairing shop in the after-noon at about 2.00 PM. He asked Kulwant Singh how he got time to sit in his shop. He replied that one person was about to come to meet him. Then, a person, aged about 24-25 years, came to his shop on a scooter. He identified the accused in the court.

24. PW.16 Damanpreet Singh deposed that he was running a cloth shop. Kulwant Singh used to buy clothes from their shop.

25. PW.17 Ranjit Singh deposed that he had 35 acres of land in village Hajipur. He knew Kultar Singh. In 1982, Kultar Singh started a rice mill namely M/s Punjab Rice Mill. He had 25% share in the said partnership. Kulwant Singh and Jaspal Singh also became partners in the said firm in the year 1991. They also had 25% share. Kulwant Singh was resident of village Naugawan. He sold his land in the year 2003-04.

26. PW.18 Parampreet Singh deposed that account of accused Khushwinder Singh was opened on 22.10.2008. On 28.12.2009, ₹ 7 lacs was transferred to the account of accused Khushwinder Singh from the account of Manjit Kaur.

27. PW.19 Jaspal Singh is the brother of deceased Kulwant Singh.

Kulwant Singh sold about 4 killas of land to his uncle Pritam Singh on 27.05.2004 and later on, half killa land was sold on 02.06.2004 to Bant Singh. After 03.06.2004, his uncle Bant Singh told him that he had paid ₹ 14 lacs by putting the same in a canister on 29.05.2004. On 02.06.2004, his brother Kulwant Singh brought one car in the evening from his brother-in-law Kultar Singh. It was a Maruti car. Kulwant Singh brought the car to go to Paunta Sahib. On 03.06.2004, when he woke up at 2.00 AM for switching on the motor which was installed in the field, he saw that the said car was lying in the verandah of the house. His brother used to reside on the first floor of the house. It was the same car which he saw in the last evening. He again woke up at 5.00 AM and found that the car was not parked. Thereafter, he went to his fields. At about 6.00 AM, his son Sandeep Singh and one Bhola Singh son of Shyam Singh came to him on cycle. They told him that Amritpal had stated that Ramandeep, his niece, was not at home. His son further told that Amritpal had stated that Kulwant Singh's wife Harjit Kaur had told her in the evening to look after her daughter. After some time, one Gurmit Singh son of Partap Singh came to his fields and told that one call was made by *Munim* Kulwinder Singh at the telephone of Piara Singh that the car which was brought by Kulwant Singh for going to Paunta Sahib was lying in village Suhavi. They decided to go to Pollo Majra. When they reached the house of Bant Singh, they found that Kultar Singh and Kulwinder Singh were also present there. He further deposed that then he enquired from Kultar Singh as to why his brother had brought the car from him, to which he replied that the car was given by him to go to Paunta Sahib. Accused Khushwinder Singh used to run a photostat shop in the

chamber of Shri Devinder Singh Kang. Kulwant Singh also used to sit in the shop of accused Khushwinder Singh. His brother Kulwant Singh used to take his daughter to school. In the meanwhile, Kulwant Singh used to visit the shop of accused Khushwinder Singh and to talk to him for hours. Accused Khushwinder Singh was having knowledge about the land sold by Kulwant Singh.

28. PW.21 Sarabjit Singh deposed that in the year 2000, accused Khushwinder Singh was running a shop of pesticides in Kheri Naudh Singh. He started running a photostat shop in the chamber of Advocate Devinder Pal Singh Kang in Fatehgarh Sahib Court complex. He had seen one white coloured Maruti car having Punjab registration number on 03.06.2004, about 60-70 meters from his house. When accused Khushwinder Singh was married, he himself had arranged all the expenses. Khushwinder Singh was not doing any business at that time.

29. PW.22 Balbir Singh deposed that on 12.06.2014, he had gone to CBI Camp Office at Bachat Bhawan Fatehgarh Sahib. Shri Kuldip Singh, from some other government department, was also present. Accused Khushwinder Singh made a disclosure statement before them. The accused had disclosed how he had hatched the plan to kill Kulwant Singh and his other three family members belonging to village Naugawan. The disclosure memo was prepared. It was signed by him at point A. After recording disclosure statement, the accused wanted to show the places, from where Kulwant Singh and his family members were abducted and eliminated. Firstly, accused brought the CBI team and him to the house of Kulwant Singh, from where he had abducted Kulwant Singh and his family members.

Then the accused showed the place, where he had called Kulwant Singh and his family members and boarded the Maruti car. The accused then showed the canal where he took Kulwant Singh and his family in Maruti car, and showed the place where he had thrown them in the canal and killed them, which was at a distance of less than one kilometer. Accused also showed the place where the Maruti car was found abandoned in village Suhavi. Rough sketch of the place of abduction was prepared. The rough sketch map of the place of occurrence i.e. Thablan Pul Ki Jhal was also prepared. One more rough sketch of the place of recovery of abandoned car was prepared.

30. PW.23 Kulwant Kaur is the wife of Kultar Singh. She deposed that she had talked to Harjit Kaur on 02.06.2004 on a phone. She had called her to inquire about her backache. She told her that on the next day, they were to go to Paunta Sahib with another person. Kulwant Singh had taken their car to go to Paunta Sahib in the evening of 02.06.2004. The next morning, her husband received information that their car was lying parked at village Suhavi. After about 2-3 days, they came to know that some body's dead body was recovered near Narwana (Haryana) near a canal. They went to the place and identified clothes on the dead body of Ramandeep Kaur. Her cremation was conducted.

31. PW.24 Amritpal Kaur testified that Harjit Kaur was her neighbour. They had family relations. On 02.06.2004, the sister-in-law of Harjit Kaur called her on her telephone as she wanted to talk to Harjit Kaur. She called Harjit Kaur. Harjit Kaur informed her sister-in-law that she would go to Paunta Sahib on next day. After that, at about 9.00 PM, Harjit Kaur came to her house. She repeated that she would go to Paunta Sahib on

the next day along with her family. On the next day, she woke up at 4.00 AM to make tea for her father-in-law Piara Singh, who had to go to fields for switching on the motor. After some time, at about 5.00 AM, she went to see Ramandeep Kaur. However, she could not find her in the house. She checked her in her house but could not find her. She called Kuldip Kaur and told her that Ramandeep Kaur was not in the house. Then she received a call from *Munim* Kulwinder Singh on her landline phone. Kulwinder Singh wanted to talk to Kulwant Singh. She told him that Kulwant Singh had gone to Paunta Sahib with his family. Then Kulwinder Singh said that she might have gone to the house of her uncle Pritam Singh. After some time, she came back to her house. She came to know that some articles of Kulwant Singh and his family, i.e. *Dolu*, tiffin box and *chappals* were lying on the bank of Thablan ki canal.

32. PW.25 Krishan Gopal had inspected the spot and prepared site plan dated 27.09.2013 Ex.PW.25/1.

33. PW.26 ASI Ranjit Singh testified that he along with two Advocates, Shri Bajwa and Shri Kang, Kultar Singh and *Munim* Kulwinder Singh went to village Naugawan at the house of Kulwant Singh. He found the remnants of tea and a glass. There was also a .12 bore rifle. Kultar Singh searched the boxes in the house. However, no money was found.

34. PW.29 Ajaib Singh deposed that he retired from the post of SI in April, 2011. On 03.06.2004, he was present in Police Station Bassi Pathana. At about 10.00 AM, Jaspal Singh Sarpanch of village Naugawan along with Pritam Singh and Bant Singh came to Police Station and told SHO Rajesh Kumar that brother of Jaspal Singh, namely Kulwant Singh,

and his family members were missing since morning. He went to village Naugawan. Kultar Singh, Kulwinder Singh and two Advocates were already present there. He took all of them to the first floor of the house, where Kulwant Singh and his family used to reside. He also went to Thabla Pul Ki Jhal. Kultar Singh along with his Advocates was already present there. He showed him four pairs of slippers, one *Dolu* and one tiffin box lying on the bank of Bhakhra canal. He enquired from Jaspal Singh if these articles belonged to him. Jaspal Singh said that his wife might be knowing about this. Then, wife of Jaspal Singh identified that these articles belonged to Kulwant Singh and his family.

35. PW.30 Sanjay Sehgal deposed that he was entrusted with the investigation of case FIR No. RC-4(S)/2007-SCU.V/SCR-II dated 11.09.2007. The FIR was registered under the signatures of Shri R.S. Sahay, SP, CBI, SCR-II, New Delhi. He identified the signatures of Shri R.S. Sahay at point A and his signatures at point B. The FIR was registered on the orders of the High Court of Punjab and Haryana dated 16.07.2007. He collected various documents. He also collected copies of revenue record. He also collected the report dated 01.11.2007 of Dr. T.L. Mattu and Dr. Avinash Kaur, regarding the cause of death of Ramandeep Kaur. He prepared rough sketch map of the place from where the dead bodies of Kulwant Singh and Ramandeep Kaur were found. He collected the photo copy of index plan of Bhakhra Main Line – Division Patiala. He also collected four passport size coloured photographs of deceased Kulwant Singh, Harjit Kaur, Ramandeep Kaur and Arvinder Singh. He filed report under Section 173 Cr.P.C.

36. PW.31 Rajesh Kumar testified that he was posted as SHO at Police Station Bassi Pathana in June, 2004. On 03.06.2004, Kultar Singh and others lodged a missing complaint of his brother-in-law Kulwant Singh and his family. He directed ASI Ajaib Singh to register DDR. FIR was got registered by Kultar Singh on 05.06.2004. Maruti car was seized.

37. PW.32 Kuldeep Kaur testified that Kulwant Singh was her brother-in-law. He along with his wife Harjit Kaur and two children, namely Ramandeep Kaur and Varinder Singh, was residing on the first floor of their house. They were residing on the ground floor. Kultar Singh, brother-in-law of Kulwant Singh, was running a rice mill at village Pollu Majra. Kultar Singh was also running a shop of commission agent. Kulwant Singh and Jaspal Singh were also partners in the rice mill. They suffered losses. In order to set off the losses, Kulwant Singh had sold some land in the year 2004. On 02.06.2004, Kulwant Singh had brought Maruti car of white colour of Kultar Singh. It was parked in the verandah of their house. She and her husband woke up at about 2.00 AM on 03.06.2004 to water their fields. At that time, the car was parked in their house. She again got up at 4.30 AM and saw that the car was not there. Amritpal Kaur was on the first floor of the house. She asked her if she had seen Ramandeep Kaur, because Harjit Kaur had told Amritpal Kaur that they had to go to Paunta Sahib and Ramandeep Kaur would stay in the house. She sent her son Sandeep Singh to call her husband Jaspal Singh. Then her husband came to the house. He told that the vehicle was lying in village Suhavi. Then Kultar Singh and Kulwinder Singh went to see the car in village Suhavi. Jaspal Singh went to Police Station Bassi Pathana to lodge the missing report. After 3-4 days of

lodging of missing report of Kulwant Singh and his family, the body of Ramandeep Kaur was found in the Narwana canal. The dead body of Kulwant Singh was found from Narwana canal after four days of the recovery of body of Ramandeep Kaur.

38. PW.35 Tirath Singh deposed that he along with his wife reached the house of Kulwant Singh in village Naugawan on 03.06.2004, about one hour after receiving phone call from Jaspal Singh. When he reached there, then brother-in-law of Kulwant Singh, namely Kultar Singh, his *Munim* Kulwinder Singh and 4-5 persons of the village were standing on the first floor. They came to know that at Thabla Jhal, four pairs of sleepers, one *Dolu*, one tiffin were lying on the bank of canal. Some rice was also lying scattered. The dead body of Ramandeep Kaur was found on 06.06.2004. He was called by police official of Bassi Pathana on 10.06.2004. He along with Paramjeet Kaur went there. The SHO told him that one dead body was lying in Haryana. The dead body of Kulwant Singh was found. He identified the dead body of Kulwant Singh.

39. PW.36 N.R. Meena deposed that he was posted at Special Crime-II Branch of CBI since 2005. FIR No. 59 of 2004 was registered at Police Station Bassi Pathana, pertaining to abduction and murder of Kulwant Singh and his family members. The police filed un-traced report in 2005. Kultar Singh approached the Punjab & Haryana High Court. Investigation was entrusted to CBI. The CBI registered FIR vide Ex.PW.30/1. The CBI filed closure report on 30.06.2009. Same was accepted on 09.09.2009. On 03.07.2012, ADGP Crime, Chandigarh, intimated CBI about confession of accused Khushwinder Singh in FIR

No.67 of 2012. Thereafter, application was filed before the learned Special Judicial Magistrate, CBI, Patiala, for re-opening investigation. He granted permission vide order dated 14.08.2012. Investigation was taken up. The accused made a disclosure statement regarding the murder of Kulwant Singh and his family members by him. Two witnesses, namely Balbir Singh, Assistant Registrar, Co-operative Society and Kuldeep Singh, Junior Steno, Fatehgarh Sahib, were deputed. They reported before him at 13.00 hours at Bachat Bhawan, Fatehgarh Sahib. The disclosure statement was recorded in the presence of Balbir Singh and Kuldeep Singh, independent witnesses. In his disclosure statement, accused disclosed that the place of abduction of deceased and his family, place of occurrence/murder and place of recovery of Maruti white colour car which was used in the crime, were in his exclusive knowledge. These facts were not in the knowledge of police and CBI. Thereafter, accused took them in the presence of said independent witnesses to village Naugawan, where deceased and his family members used to reside. Accused showed them the place from where Kulwant Singh and his family members were abducted. Thereafter, accused Khushwinder Singh took them to Thabla Pul Ki Jhal. He showed the place where the Maruti car was parked and the place where Kulwant Singh and his family members were pushed into canal. He also showed the place where Maruti car was found parked, when he was running away from the place of occurrence. The sketches of these places were prepared. In the disclosure statement, the accused had disclosed that he had taken ₹ 14 lacs, brought by Kulwant Singh in a canister, after pushing them into the canal. He gave ₹ 1 lac to Anil Khanna for preparing his passport. Anil Khanna confirmed that

he had received ₹ 1 lac from the accused. He examined various witnesses and collected evidence. On 29.05.2004, deceased Kulwant Singh had received ₹ 14 lacs as sale proceeds through Bant Singh. He took ₹ 12 lacs in a canister and ₹ 2 lacs in dicky of scooter. Accused Khushwinder Singh was seen at M/s Lal Singh cloth shop along with deceased Kulwant Singh by Raminder Singh, who is tailor by profession. The deceased had purchased one yellow colour *Patka* from his shop. The deceased had visited one cycle repairing shop of Naugawan. Accused Khushwinder Singh met deceased Kulwant Singh in the shop. The dead body of Ramandeep Kaur was recovered from the canal of Narwana on 06.06.2004. Subsequently, dead body of Kulwant Singh was recovered from the same canal on 10.06.2004. The dead bodies were identified by wife of Kultar Singh and Kultar Singh.

40. PW.27 Dr. T.L. Mattu deposed that he retired as SMO in the year 2010. A board of doctors was constituted by Civil Surgeon, Fatehgarh Sahib. They conducted post mortem examination on the dead body of Ramandeep Kaur on 07.06.2004. He proved the post mortem report. The cause of death was due to asphyxia due to drowning and was ante mortem which was sufficient to cause death in the ordinary course of nature. The opinion is Ex.PW.27/7.

41. PW.28 Dr. Kuldeep Singh conducted post mortem examination on the dead body of Kulwant Singh. The cause of death was ante mortem drowning which was sufficient to cause death in ordinary course of nature. The opinion is Ex.PW.28/3. In cross-examination, he deposed that the exact time of death could not be specified.

42. PW.37 Dr. Ghanendra Misra deposed that he received a letter

dated 02.12.2005 from SSP, Fatehgarh Sahib. He had to compare the impressions of foot wears contained in the unsealed bag with those contained in sealed parcels and to establish any relationship amongst them. He proved his report dated 04.01.2006. As per the report, the impression of feet available on foot wear A2L and A2R and on B3L and B3R were apparently similar and could be from the feet of same person. The other foot wears did not bear any clear impression on them.

43. The Chemical Examiner report is Ex.PW.27/3. No poison was detected on the exhibits sent for chemical examination. No spermatozoa were detected on the vaginal swab, as per the Chemical Examiner report Ex.PW.27/5. No poison was detected in the contents of exhibits sent for chemical examination, as per the Chemical Examiner report Ex.PW.28/2.

44. What emerges from appraisal of the evidence, as discussed here-in-above, is that the appellant had developed intimacy with deceased Kulwant Singh. Kulwant Singh was under debt. The appellant knew about the sale transactions made by Kulwant Singh. The appellant took advantage of the situation and persuaded Kulwant Singh and his family members to meet a so called "Baba". He asked them to make preparation for offering prayers. Thereafter, Kulwant Singh borrowed the car on 02.06.2004. The car was seen parked in his house by the witnesses. The appellant took Kulwant Singh and his family members to Bhakhra canal in the morning on 03.06.2004. He made the family members to make prayers at the canal. Since eyes of the victims were closed, the appellant pushed them into the canal. He came back in the same car. He abandoned the car at village Suhavi. He was seen travelling in the car by few witnesses. Earlier, the case

was closed by the local police as well as CBI. Thereafter, the matter was again re-investigated and challan was put up after completing all the codal formalities, on the basis of confession made by the appellant before PW.1 Jasmeen Kaur.

45. PW.1 Jasmeen Kaur is the material witness. She identified the appellant in the court. She testified that in the year 2012, her husband had sold the land for consideration of ₹ 37,00,000/-. Her younger brother used to drink a lot. The appellant told them that he knew one “Baba” who could help them. He took them to their house on 25.06.2012 at night and told that in the morning at 2.30 AM, they had to go to “Baba”. They went early in the morning at 2.30 AM. Her father got down from the car. He came back to his house. Then on 25.06.2012, the appellant came to their house and told them that they all had to go to Dera of “Baba” on 26.06.2012. On 26.06.2012 at about 6.30 PM, the appellant took her father, herself, and her both children to “Baba”. On the way, appellant Khushwinder Singh told that he had got a call from “Baba” that her father had to consume liquor if he wanted to get rid of the drinking habit of her brother. Thereafter, the accused took all of them to Bhakhra canal. Her father consumed liquor on the asking of the appellant. Appellant told them to go to bank of the canal for offering prayers with folded hands. She and her father went to the bank. They were offering prayers with folded hands. Their eyes were closed. They were offering “Maha Ki Daal, Chawal and Nariyal”. After that, the appellant pushed them into the running water of canal. Her father drowned immediately. However, she did not drown. She told the appellant that if any of them will survive, then he will surely be punished. Appellant told that

earlier also, he had killed the family of one Kulwant Singh in similar fashion. If they could not save themselves, then how could they survive. She caught hold of iron stairs on the bank of the canal. She escaped. She met the officials of the irrigation department. She tried to search her children but could not find them.

46. PW.2 Kultar Singh deposed that Kulwant Singh had paid ₹ 2 lacs to him on 31.05.2014 and further told him that he had sold land for ₹ 28 lacs. On 02.06.2004, Kulwant Singh had asked for his car, as he had to go to Shri Paunta Sahib. On 03.06.2004, in the morning, his *Munim* Kulwinder Singh informed him on phone that the above car was lying abandoned in village Suhavi. He went to village Suhavi with Kulwinder Singh. The car was open. Window panes were also open. They also went to the spot where one *Dolu*, tiffin box etc. were lying. The dead body of Ramandeep Kaur was found on 06.06.2004, and dead body of Kulwant Singh was recovered on 10.06.2004. He had filed a writ petition in this court.

47. PW.3 Mohan Lal is another material witness. He has categorically deposed that on 03.06.2004 at about 5.45 AM, when he went to take the gauge reading on the Jhal, he saw that four pairs of slippers, one *Dolu* and one tiffin box were lying on the bank of the river. The articles were taken to the house of Sarpanch, for identification. On 26.06.2012, he was posted at the same place. One lady was crying with soaked water. She narrated the incident to him. He called the police.

48. The statement of PW.1 Jasmeen Kaur is duly corroborated by PW.3 Mohan Lal, who happened to meet her immediately when she was pushed into the canal by the appellant.

49. PW.4 Ram Inder Singh had seen the appellant and Kulwant Singh buying clothes, including yellow *Patka*, from the shop of Lal Singh and Kamaljit Singh. PW.6 Bant Singh has told that Kulwant Singh had sold land to him. PW.7 Balbir Singh had seen the car used in the commission of crime, parked in the house of Kulwant Singh in the morning on 03.06.2004, when he went to water his fields. Thereafter, he came back and at that time, the car was missing. PW.9 Inspector Shamsheer Singh had recorded the extra judicial confession made by the appellant vide Ex.PW.9/A regarding the manner in which the appellant had pushed Kulwant Singh and his family members in Bhakhra canal. PW.10 Hakikat Singh had constructed the house of the appellant in the year 2008. PW.11 Anil Khanna admitted that the appellant had paid him ₹ 1 lac for preparing his visa. PW.12 Charan Singh had seen Kulwant Singh driving white coloured Maruti car from village Thabla to Lohari on 03.06.2004. He identified the appellant. The car belonged to Kultar Singh. PW.14 Mohan Lal had seen the appellant and deceased in the shop on 02.06.2004. PW.16 Damanpreet Singh deposed that he knew Kulwant Singh. He used to buy clothes from his shop. PW.17 Ranjit Singh deposed that he had a white Maruti car. Kulwant Singh had got registered the said vehicle in his name. PW.19 Jaspal Singh is brother of deceased Kulwant Singh. He testified that on 02.06.2004, his brother Kulwant Singh brought one car in the evening from his brother-in-law Kultar Singh. It was brought for going to Paunta Sahib. On 03.06.2004, when he woke up at 2.00 AM for switching on the motor in the field, he saw that the said car was parked in the verandah of the house. His brother used to reside on the first floor of the house. He again woke up at 5.00 AM and

found that the above car was missing. Thereafter, he went to his fields. At about 6.00 AM, his son Sandeep Singh and one Bhola Singh came to him on cycle. They told him that Amritpal had stated that Ramandeep, his niece, was not at home. His son further told that Amritpal had stated that Kulwant Singh's wife Harjit Kaur had told her in the evening to look after her daughter. After some time, one Gurmit Singh son of Partap Singh came to his fields and told that one call was made by *Munim* Kulwinder Singh at the telephone of Piara Singh that the car which was brought by Kulwant Singh for going to Paunta Sahib was lying in village Suhavi. They went to Suhavi. PW.21 Sarabjit Singh deposed that on 03.06.2004, he had seen one white coloured Maruti car having Punjab registration number about 60-70 meters from his house. Its window panes were open. The appellant had spent about ₹ 4-5 lacs in his marriage. The appellant made extra judicial confession before PW.22 Balbir Singh. Balbir Singh had signed the same along with Kuldip Singh. The appellant had pointed out places from where the family of Kulwant Singh was abducted, pushed in the canal and the place from where the car was recovered. PW.23 Kulwant Kaur is the wife of Kultar Singh. She had identified the dead body of Ramandeep Kaur.

50. The extra judicial confession is Ex.PW.9/A. It was duly proved. The appellant had taken the police to the places, from where Kulwant Singh's family was abducted and pushed in the canal, and where the car was abandoned. Kulwant Singh had got the car from PW.2 Kultar Singh. It was seen in the house of deceased Kulwant Singh by PW.7 Balbir Singh. The same car was also seen by PW.19 Jaspal Singh, brother of deceased Kulwant Singh, in the house. The land was sold by Kulwant Singh to Bant

Singh. Bant Singh appeared as PW.6. Kulwant Singh was also seen by PW.12 Charan Singh driving the car. He was seen in the company of the deceased by PW.4 Ram Inder Singh and PW.14 Mohan Lal. The life style of the appellant had also changed after the incident, as per the material brought on record.

51. The case, though is based on circumstantial evidence, but the chain is complete. The motive attributed to the appellant is that he wanted to grab the money of Kulwant Singh, who had recently sold land. The appellant had taken Kulwant Singh and his family on the pretext of receiving blessings from some "Baba". He took them to Bhakhra canal on 03.06.2004. He pushed them in the canal, while they were offering prayers. Dead bodies of Kulwant Singh and his daughter Ramandeep Kaur were recovered. However, the bodies of wife and son of Kulwant Singh were never recovered. Similarly, he had pushed the family of PW.1 Jasmeen Kaur into the canal. PW.1 Jasmeen Kaur's father had died. Her children were never traced. Her version, as noticed above, has been duly corroborated by PW.3 Mohan Lal. The appellant did not made any complaint that his extra judicial confession was obtained by coercion. It has been duly proved by PW.9 Inspector Shamsher Singh and PW.22 Balbir Singh.

52. The cause of death, as per the post mortem reports of Ramandeep Kaur and Kulwant Singh, duly proved by PW.27 Dr. T.L. Mattu and PW.28 Dr. Kuldeep Singh, respectively, was ante mortem drowning. No poison was detected in the Chemical Examiner's report.

53. PW.37 Dr. Ghanendra Misra proved his report dated 04.01.2006. According to the report, the impression of feet available on foot

wear A2L and A2R and on B3L and B3R were apparently similar and could be from the feet of same person.

54. The prosecution has proved its case against the appellant beyond reasonable doubt. The trial court has correctly appreciated the oral as well as documentary evidence.

55. So far as the confirmation of death sentence is concerned, it has been proved on record that the appellant had planned the murder of Kulwant Singh and his family. He pushed them in Bhakhra canal. He has played with the sentiments of gullible family of deceased Kulwant Singh.

56. In **Bachan Singh Vs. State of Punjab, (1980) 2 SCC 684**, their Lordships of the Hon'ble Supreme Court have discussed the principles of capital punishment as under :-

“132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners’ argument that retention of death

penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the last three decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware — as we shall presently show they were — of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235 (2) and 354 (3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before Parliament and presumably considered by it when in 1972-73 it took up revision of the Code of 1898 and replaced it by the Code of Criminal

Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19."

57. Their Lordships of the Hon'ble Supreme Court in **Machhi Singh and others Vs. State of Punjab, (1983) 3 Supreme Court Cases 470,** have held as under :-

*"38. In this background the guidelines indicated in **Bachan Singh's case** (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from **Bachan Singh's case** (supra) :*

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose

sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

58. These principles were reiterated by their Lordships of the Hon'ble Supreme Court in **Devender Pal Singh Vs. State of NCT of Delhi, (2002) 5 Supreme Court Cases 234**, as under :-

*"58. From **Bachan Singh's case (supra)** and **Machhi Singh's case (supra)** the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded. It was observed:*

The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed

for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community."

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the

rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.”

59. The present case falls within the ambit of rarest of rare case. The appellant has killed four persons, including two minor children. Whether the extreme penalty of death sentence is to be awarded, a balance sheet of aggravating and mitigating circumstances has to be drawn up.

60. Thus, there is no occasion for us to interfere with the well reasoned judgment and order of the trial court.

61. Accordingly, the death sentence imposed upon appellant Khushwinder Singh by the learned trial court vide judgment dated 24.08.2018 and order dated 28.08.2018, rendered in Sessions Case RT No. 29 dated 16.01.2014/01.07.2017, is confirmed. The murder reference is answered accordingly, and the appeal filed by Khushwinder Singh is dismissed.

62. Let a copy of this judgment with lower court record be sent to the learned trial court forthwith to proceed with the matter in accordance with law.

(RAJIV SHARMA)
JUDGE

April 24, 2019
ndj

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No