

**Murder Reference No. 3-2020, CRA-D-406-2020 and
CRA-D-381-2020**

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2023:PHHC:164834

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

1. Murder Reference No. 3-2020 (O&M)

STATE OF PUNJAB

.....APPELLANT

Vs.

PALWINDER SINGH

.....RESPONDENT

2.

CRA-D-406-2020 (O&M)

KARAMJIT KAUR

.....APPELLANT

VS.

STATE OF PUNJAB

.....RESPONDENT

3.

CRA-D-381-2020 (O&M)

PALWINDER SINGH

.....APPELLANT

VS.

STATE OF PUNJAB

....RESPONDENT

Reserved on : 10.10.2023

Date of Decision: 20.12.2023

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Arnav Ghai and Mr. B.N.S. Marok, and
Mr. Kunwar Rajan, Advocates,
for the appellant (in CRA-D-381-2020) and
for the respondent (in MRC-3-2020).

Mr. Kunwar Ranjan, Advocate,
for the appellant
(in CRA-D-406-2020).

Mr. V.G.Jauhar, Additional A.G., Punjab
for the appellant (in MRC-3-2020) and
for the respondent-State
(in CRA-D-406 and 380 of 2020).

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HARPREET KAUR JEEWAN, J.

1. Since common questions of law and facts are involved in Murder Reference No. 3 of 2020, CRA-D-406-2020 and CRA-D-381-2020, therefore, these cases are taken up together and being disposed of by a common judgment.

2. Murder Reference No. 3 of 2020 has been submitted by the learned Sessions Judge, Sri Muktsar Sahib for confirmation of death sentence awarded to the appellant Palwinder Singh, son of Surat Singh, resident of Village Attari, Tehsil & District Sri Muktsar Sahib, vide judgment and order of sentence dated 22.10.2020, rendered in Sessions Case No. 01 of 15.07.2016.

3. Criminal Appeal No. 381-2020 and Criminal Appeal No. 406-2020 have been preferred by the appellants Palwinder Singh and Karamjit Kaur (hereinafter referred to as '*the* accused') respectively assailing the findings of conviction and sentence awarded as per the judgment and order of sentence dated 22.10.2020, passed by District & Sessions Judge, Sri Muktsar Sahib.

4. The instant case is based on an incident of 20.06.2015 when appellant-accused Palwinder Singh, along with his wife, his daughter aged about 07 years named Gagandeep Kaur, his son aged about 05 years named Jashanpreet Singh and his labourer (farm worker, namely Nirmal Singh) were travelling on a Maruti Car. They were travelling from Village Attari to Village Fattanwala and reached on the '*Katcha*' passage on the bank of Gang canal when the car fell into the canal. Resultantly, four occupants of

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the car died due to drowning and appellant accused Palwinder Singh survived. After about 09 months of the incident, appellant accused Palwinder Singh performed marriage with appellant accused Karamjit Kaur who is the widow of the deceased farm worker namely Nirmal Singh.

5. Appellants Palwinder Singh and Karamjit Kaur were convicted and sentenced as under, vide judgment and order dated 22.10.2020 passed by the Sessions Judge, Muktsar Sahib:-

Palwinder Singh:-

Offence	Punishment	Fine
Under Section 302 read with Section 120-B IPC on quadruple counts	Death sentence subject to its confirmation by the Hon'ble High Court of Punjab and Haryana, Chandigarh	Sentenced to pay fine of Rs. 25,000/- (twenty five thousand) on quadruple counts, in default of which to undergo rigorous imprisonment for six months each, in case his death sentence is not confirmed by the Hon'ble High Court.
Under Section 120-B of the IPC	Death sentence subject to its confirmation by the Hon'ble High Court of Punjab and Haryana, Chandigarh	Sentenced to pay fine of Rs. 10,000/- (ten thousand) in default of which to undergo rigorous imprisonment for six months, in case his death sentence is not confirming by the Hon'ble High Court.
201 IPC	To undergo rigorous imprisonment for three years.	Sentenced to pay fine of Rs. 5,000/- (five thousand), in default of which to undergo rigorous imprisonment for three months, in case his death sentence is not confirmed by the Hon'ble High Court.

Karamjit Kaur:-

Offence	Punishment	Fine
Under Section 302 read with	Imprisonment of life	Sentenced to pay fine of Rs. 10,000/- (ten thousand) on quadruple counts, in default

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Section 120-B on quadruple counts		of which to undergo rigorous imprisonment for six months
Under Section 120-B IPC	Imprisonment of life	Sentenced to pay fine of Rs. 10,000/- (ten thousand), in default of which to undergo rigorous imprisonment for six months
Under Section 201 IPC	To undergo rigorous imprisonment for three years.	Sentenced to pay fine of Rs. 5,000/- (five thousand), in default of which to undergo rigorous imprisonment for three months.

FACTS

6. As per the prosecution case, on 20.06.2015 ASI Harbhajan Singh (PW-14) visited Bansal Nursing Home, Sri Muktsar Sahib, after receiving written intimation (PW-7/A and PW-7/B) regarding the admission of appellant-accused Palwinder Singh in the hospital and about the fact that four persons, namely Nirmal Singh, Sarabjit Kaur, Jashanpreet Singh and Gagandeep Kaur, have been brought dead in the hospital. ASI Harbhajan Singh (PW-14) conducted initial investigation. After obtaining the doctor's opinion regarding his fitness, he asked appellant-accused Palwinder Singh to make a statement, however, he did not get his statement recorded and showed ignorance about the incident due to his condition.

7. On the same date, i.e. 20.06.2015, Gurnishan Singh @ Labha (PW-4), who is brother of deceased Sarabjeet Kaur and brother-in-law of appellant-accused Palwinder Singh and also the complainant now, met ASI Harbhajan Singh (Retd.) (PW-14) in the hospital and got recorded his statement (Ex. PW-4/B) to the effect that on that day (20.06.2015) he along

with his father Subeg Singh had gone to Village Attari to inquire about the health of his sister, Sarabjeet Kaur (now deceased). Thereafter, his brother-in-law Palwinder Singh (appellant-accused) started for village Fattanwala on a Maruti car bearing No. DL-08-CE-1368, and he was accompanied by his sister Sarabjeet Kaur, his niece Gagandeep Kaur and his nephew Jashandeep Singh to get medicines for them. Nirmal Singh, son of Baaj Singh, who is resident of Village Attari but who was working in the fields of appellant-accused Palwinder Singh also sat in the car stating to be sick and also needed medicines. He further stated that he along with his father followed the said car on their motor-cycle as they had to go to Village Wadian. When the car started turning from Attari bridge, the car suddenly lost control and fell into the canal. He along with his father Subeg Singh stopped the motor-cycle and started shouting which attracted many people. They arranged the ropes and pulled the car out of the canal with the help of a rope. After taking out the vehicle from the canal, he took his sister, niece, nephew, labourer Nirmal Singh and his brother-in-law (*Jija*) Palwinder Singh to the Bansal Hospital, Sri Muktsar Sahib where the doctor declared his sister, niece, nephew and Nirmal Singh as dead. However, his brother-in-law was under treatment. He further stated that Sarabjeet Kaur, Gagandeep Kaur, Jashanpreet Singh and Nirmal Singh died a natural death in an accident due to sudden loss of control of the vehicle and no one is to be blamed for the said occurrence and also that they have no doubts about anyone and have no interest in taking any action against anyone. The said statement was duly signed by Gurnishan Singh @ Labha, brother and Subeg Singh father of the deceased Sarabjeet Kaur. On the basis of the said

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statement, proceedings under Section 174 Cr.P.C. were Cr.P.C. were initiated and entry No. 24/20.06.2015 was registered in the 'Roj Namchaya', inquest reports (PW-14/E to PW-14/H) were prepared by ASI Harbhajan Singh (PW-14) and he concluded the inquest proceedings by recording statement of witnesses under Section 174 Cr.P.C. The dead bodies were handed over to the relatives after conducting the post-mortem.

8. On 19.03.2016, the FIR was registered under Section 302/120-B IPC against the accused Palwinder Singh and Karamjit Kaur, on the basis of the statement made by Gurnishan Singh @ Labha, the complainant (PW-4) when the proceedings under Section 174 Cr.P.C. were still in process for getting the approval from SDM, Sri Muktsar Sahib. As per his statement *"on 20.06.2015, he and his father Subeg Singh were visiting village Attari to enquire about his ailing sister and nephew. On that day itself, his accused brother-in-law planned to go to village Fattanwala with his family to see a doctor and to take medicines for both of them. As such he set out for Fattanwala in his Maruti car bearing No.DL-08-CE-1368 in their presence. He also took along one Nirmal Singh son of Baaj Singh who was working with him as a Farm worker/Siri by making him sit in the car with his family. After sometime they left and information was received by them while they were still at village Attari, around 2 O' clock. It was informed that the car in which the family along-with its servant were travelling had fallen in the Gang canal. At this, they immediately rushed to the site where a large number of people had already gathered and the car was taken out of the Canal by them using ropes. When they reached they found the accused his brother-in-law standing at the berm/bank of the canal. Along-*

with the car all the four persons his sister, niece, nephew and said Nirmal Singh were also extricated. They then took them to Bansal Nursing Home Sri Muktsar Sahib for the treatment along-with Palwinder Singh where all of them except him were declared dead. While his brother-in-law got admitted where he was undergoing treatment. Thereafter, his statement was recorded by the police to the effect that the incident was since appearing to be an accident which occurred as the car had fallen into the Canal after going out of control. Resultantly all the said four persons except accused/appellant Palwinder Singh had lost their lives due to drowning. There was nobody's fault nor they doubted anybody and it was an act of providence. After carrying out its proceedings u/s 174 Cr.P.C, postmortem of the dead bodies was got conducted before handing over the bodies to their respective relatives for performing their last rites. At that time there was a rumour going on in the village that the accused/appellant Palwinder Singh had murdered his entire family consisting of his wife, two children as well as his agricultural aid/servant namely Nirmal Singh with whose wife he was having illicit relations. But all these talks and rumours were ignored and not heeded by them at that time. They even remained on visiting terms with the accused thereafter for some time. They however at times were still getting such information with regard to continuance of illicit relationship between the two. They even came to know that Palwinder Singh and Karamjit Kaur wanted to marry each other. On 21.02.2016, one Bagicha Singh son of Balkar Singh of his village met him to disclose that he had gone to Sri Muktsar Sahib for some work that day and there he happened to see accused/appellant Palwinder Singh, his

brother-in-law whom he already knew sitting at a Dhaba known as Dhaba Lahorian situated near Malout road bye-pass where he was also visiting to have tea. He was engaged in a conversation with one woman while sitting over there with their back towards him. He was addressing that woman as Karamjit Kaur. Their conversation revealed that they had got married. As Karamjit Kaur was telling Palwinder Singh that although they had got married but she was still apprehending danger at the hands of her relatives and other family members. Palwinder Singh in turn told her that they would get protection/security by moving an application in the Court. All this information conveyed to him by said Bagicha Singh was then shared by him with his other family members and relatives. At this they all became sure and confident about the rumour of illicit relationship between accused/appellant Palwinder and Karamjit Kaur being true. Their illicit relationship was confirmed as well as the fact that they wanted to marry each other. As such they both had conspired and murdered his sister, her children and the husband of Karamjit Kaur namely Nirmal Singh finding them as hurdles in their way, thus following a conspiracy between the two that he took all of them in a car and drove it into the Gang Canal intentionally in order to finish them off. On that day he was going to inform the police along-with Darbara Singh Nambardar and said Bagicha Singh son of Balkar Singh and they had since met them on the way and had recorded his statement.”

9. After registration of the FIR, the investigation was conducted by Inspector Jasvir Singh (PW-10). On reaching the place of occurrence, he

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prepared the site plan (PW-10/C), at the instance of Surat Singh (PW-3) resident of Village Khapiyanwali, who was called at the spot. He arrested both the appellants-accused. On 21.03.2016, appellant Palwinder Singh disclosed to the investigating officer during police remand that he took a Maruti Car in question from the brother of his friend but the documents of the car were not received by him and after the occurrence he sold the car to Vijay Kumar, who is a scrap dealer. He further disclosed that five-six months prior to the occurrence, he purchased two LIC policies of Rs. 2,00,000/- each from Rajesh Kumar Randev, LIC officer, Sri Muktsar Sahib with a view that after the marriage with appellant-accused Karamjit Kaur, they can settle down. The statement of Vijay Kumar, scrap dealer and Rajiv Soni, Manager, LIC, was recorded and after completion of the investigation, '*challan*' was presented in the Court of Additional Chief Judicial Magistrate Ist Class, Sri Muktsar Sahib, from where the case was committed to the Court of Sessions for trial, vide order dated 01.07.2016.

10. The trial Court finding a *prima facie* case punishable under Sections 302/120-B/201 IPC, accordingly framed charges against both the accused on 15.07.2016 to which they pleaded not guilty and claimed trial.

11. The prosecution in order to substantiate its case, examined as many as 16 prosecution witnesses.

12. **PW4 Gurnishan Singh @ Labha**, who is the complainant of the case and who got registered the FIR while appearing in the witness box proved his statement Ex.PW4/B which he got recorded with the police apart from proving receipt Ex.PW4/A vide which he received dead bodies.

He deposed that on 20.06.2016 he and his father came to village Attari to see his ailing sister Sarabjit Kaur and her son Jashandeep Singh. However, after reaching the village, they came to know that the accused Palwinder Singh and the aforesaid deceased persons were going towards village Fattanwala in a car bearing registration No. DL-8C-E-1368, which was driven by the aforesaid Palwinder Singh. At about 02:00 p.m. they came to know that the car had fallen into the Gang Canal. They rushed towards the spot and at that time accused Palwinder Singh was standing on the berm of canal. The car and the deceased persons were taken out of the canal and he brought them to Nursing Home, Sri Muktsar Sahib. However, at the same time, 4 persons i.e. the sister, niece, nephew of the complainant and Nirmal Singh were declared dead whereas Palwinder Singh was admitted in the hospital. Thereafter, they have completed all the necessary formalities and took the bodies from the hospital.

13. However, on 21.02.2016, Bagicha Singh, son of Balkar Singh, who is residing in his village also, came to Sri Muktsar Sahib in connection with his personal work and on return, he told the complainant that when he was taking tea at one '*Lahiria Da Dhaba*' near Malout Road bypass, accused Palwinder Singh, who was earlier known to Bagicha Singh, was present along with one lady. From their conversation, he came to know that the name of lady as Karamjit Kaur and she was saying to Palwinder Singh that they have solemnized the marriage but there are threats from their family and relatives, upon this, accused Palwinder Singh told her that they would move an application before this Court to get security. On that day, he came to know that Palwinder Singh and Karamjit Kaur were having

illicit relations and Palwinder Singh intended to live with Karamjit Kaur as her husband and due to this reason, in connivance with each other, they committed the murder of the deceased persons.

14. **PW-3 Surat Singh** was the eye-witness of the incident of car falling into the canal and the accused Palwinder Singh coming out of it just before that stated that on 20.06.2015 at about 1/1.30 PM, he was going to village Jawahrewala on his motorcycle to do some domestic work. When he reached near the turn of Village Attari, he saw accused-Palwinder Singh driving the car along-with his wife Sarabjit Kaur, their children and Nirmal Singh sitting inside. When the car reached near the bridge of Gang Canal situated on the road leading to village Attari- Jawahrewala, accused Palwinder Singh “drove the car towards the canal and after opening the window of the car he jumped out of the car”. Resultantly, the car fell into the Gang canal. He raised alarm and people gathered over and took out the car out of canal with the help of ropes. They also took out Sarabjit Kaur, her children and Nirmal Singh out of the car and brought them to Usha Bansal Nursing Home, Sri Muktsar Sahib, where the doctor declared all the four dead. “Palwinder Singh accused was having illicit relations Karamjit Kaur and they wanted to marry with other.”

15. **Bagicha Singh, examined as PW-13** was a chance witness who over-heard the conversation between accused Palwinder Singh and Karamjit Kaur on 21.02.2016, when they were sitting at '*Lahiria Da Dhaba*' near Malout Road bypass, where he was also visiting to have a cup of tea. The witness deposed that as Karamjit Kaur was telling

Palwinder Singh that although they had got married but she was still apprehending danger at the hands of her relatives and other family members while Palwinder Singh in turn told her that they would get protection/security by moving an application in the Court.

16. **Mehar Singh examined as PW-12**, deposed with regard to extra judicial confession made to him by accused on 15.03.2016.

17. **Nishan Singh, (PW-9)** the brother of the deceased Nirmal Singh stated that on 20.06.2015 he was present when Palwinder Singh set out with his family taking along Nirmal Singh on his Maruti Car towards village Fattanwala. He along with his brother used to do the work of a labourer in the fields of appellant Palwinder Singh, who wanted to marry Karamjit Kaur, wife of Nirmal Singh (since deceased). His brother Nirmal Singh, came to know about the relationship and raised objection to the said relationship and also tried to stop his wife Karamjit Kaur whereas family of Palwinder Singh objected to the relationship as well. On 26.06.2015 when Palwinder Singh was in his car along with his family he asked Nirmal Singh to accompany him upon which Nirmal showed his inability to accompany him due to his work but Karamjit Kaur forced him to go with them and Palwinder Singh also caught hold of him from his arm and made him to sit in the car. At about 02:00 p.m., he came to know about the occurrence of falling of the car in the Gang canal while planting paddy and they rushed to the place of occurrence. After some time, the car was taken out of the canal, whereas Palwinder Singh was standing outside the car and he had not drowned in the canal. The wife and two children of Palwinder Singh, as well as his brother Nirmal Singh were in unconscious state and

they were shifted to a hospital at Sri Muktsar Sahib where they were declared as brought dead. As Palwinder Singh and Karamjit Kaur wanted to marry each other, therefore, they committed murder of the said persons and after 08 months, they solemnized their marriage with each other.

18. **Jasvir Singh, examined as PW-15**, who was the Reader Record-Room(Judicial) Sri Muktsar Sahib, proved the documents i.e. petition under Section 482 Cr.PC titled as Palwinder Singh & Anr. Vs. State of Punjab & Ors. Ex.PW15/A, orders Ex.PW15/B, Ex.PW15/C, statements of parties Ex.PW15/D, affidavits Ex.PW15/E and Ex.PW15/F respectively.

19. **PW-2, Rajeev Soni, Manager, LIC Branch Sri Muktsar Sahib** has brought the summoned record pertaining to LIC Policies in the name of Sarabjit Kaur wife of the appellant Palwinder Singh. He proved copies of the same as Ex.PW2/B, Ex.PW2/D, proposal form Ex.PW2/C, status of these policies Ex.PW2/E and Ex.PW2/F and copy of e-mail Ex.PW2/G.

20. **Rajesh Kumar Randev, Manager, LIC Branch Sri Muktsar Sahib, examined as PW16**, who brought the summoned record of LIC Policies pertaining to Nirmal Singh son of Baaj Singh and proved copies of the same as Ex.PW16/A, Ex.PW16/B, proposal forms Ex.PW16/C and Ex.PW16/D.

MEDICAL EVIDENCE

21. **Dr. Tarsem Bansal, Medical Officer, examined as PW7** stated that he medically examined accused Palwinder Singh on 20.06.2015 at the request of police. He proved his examination report Ex.PW7/C,

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intimation given to police Ex.PW7/A, Ex.PW7/B, police request Ex.PW7/D, his endorsement Ex.PW7/E, another police request Ex.PW7/F and his endorsement Ex.PW7/G.

22. **PW-1 Ranju Singla, Medical Officer**, stated that she had conducted the post-mortem examination of the dead bodies of all the deceased persons namely, Sarabjit Kaur, Nirmal Singh, Jashanpreet Singh and Gagandeep Kaur on 21.06.2015. She had proved postmortem reports vide PMRs Ex.PW1/E to Ex.PW1/H respectively. The cause of death in these cases was due to cardio respiratory arrest due to drowning. The probable time between death and postmortem was within 12 to 24 hours. She has also tendered her affidavit as Ex. PW-9/J.

23. **SI Harbhajan Singh (Retd.), examined as PW14**, who initially conducted proceedings under Section 174 Cr.PC on the dead bodies. He proved inquest reports Ex.PW14/E, Ex.PW14/F, Ex.PW14/G and Ex.PW14/H respectively.

24. **Inspector Jasvir Singh examined as PW-10**, who was the Investigating Officer of the case, had deposed on all the investigated facts apart from proving various material documents that were prepared by him during his investigation. He had thus proved documents like statement of Gurnishan Singh Ex.PW4/B, his endorsement Ex.PW10/A, FIR Ex.PW10/B, site plan Ex.PW10/C, grounds of arrest memos of accused Ex.PW8/E, their personal search memos Ex.PW8/F and PW8/H and intimation memo Ex.PW8/G.

25. **Harnek Singh, Head Constable, examined as PW-8**, was the

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formal witness, who was also member of the police party headed by SHO Jasvir Singh on 19.03.2016. The witness also got conducted the postmortem of dead bodies of all the victims on 20.06.2015 from Civil Hospital Sri Muktsar Sahib.

26. **Head Constable, Harjit Singh, examined as PW-11**, was also a formal witness, proved the DDR No.26 dated 04.05.2016 Ex.PW11/A vide which offence u/S 201 IPC was enhanced in the present case.

27. **Vijay Kumar examined as PW5** was the Junk-dealer to whom accused Palwinder Singh had sold his Maruti Car No.DL-8CE-1368 for Rs.11,000/- allegedly in order to destroy the evidence.

28. **Guranditta Singh, Revenue Patwari, examined as PW6**, who proved scaled site plan Ex.PW6/A of the place of occurrence that he prepared at the instance of Surat Singh.

29. However, PWs Nishan Singh, Sukhjinder Singh, Kartar Singh, DSP Kanwal Preet Singh Chahal and Narinderpal Singh (SP) were given up by the learned Public Prosecutor and the evidence of the prosecution was closed on 25.09.2017.

30. On completion of evidence of the prosecution, statements of both the accused as required under the provisions of Sections 313 Cr.P.C. were recorded, wherein they denied allegations against them and pleaded their false implication on account of the fact that they had married out of caste and the families of the deceased had opposed it.

31. In their defence, accused examined 05 witnesses. DW-1, Ravinder Singh, DW-2 Dr. Pardeep Garg, DW-3 Rajinder Kumar,

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Photographer, DW-4 Rajinder Singh Sandhu, Draftsman and Gurwinder Singh as DW-5.

32. Ravinder Singh, examined as DW1, deposed that on the day of occurrence he was grazing cattle when he saw Palwinder Singh going towards village Fattanwala on a Maruti Car along-with his wife, children and servant Nirmal Singh. As Palwinder Singh was looking towards the room constructed on the tube-well, the car fell into the Gang Canal. Palwinder Singh came out of the water since he knew swimming. The car and the other persons trapped in water were taken out with the help of JCB machine that was working near the factory of one Dr. Bhandari. They then got admitted Palwinder Singh and others in the hospital where all except Palwinder Singh were declared dead.

33. Dr. Pardeep Garg, Associate Professor, Department of Cancer and Radio Therapy, GGS Medical College & Hospital, Faridkot examined as DW2, brought the treatment record of Manjit Kaur wife of Surat Singh, mother of appellant Palwinder Singh who was diagnosed as a case of chronic lymphoid leukemia, which is a type of Cancer. The witness thus proved the documents Ex.DW2/A, Ex.DW2/ and Ex.DW2/C.

34. Rajinder Kumar, Photographer examined as DW3 clicked the photographs of the place of incident and the houses of accused Palwinder Singh and his brothers as well Ex.DW3/A to Ex.DW3/H respectively.

35. Rajinder Singh Sandhu, Draftsman examined as DW4 prepared the site plan of the place of incident Ex.DW4/A.

36. Gurwinder Singh examined as DW5 had also seen Palwinder Singh going towards village Fattanwala on a Maruti Car along with his

wife, children and servant Nirmal Singh on the day of occurrence since he was present there in the *Dhani*. Later he came to know that the said Car had fallen into the Gang Canal near the bridge of village Attari. He and Sukhjinder Singh brother of Palwinder Singh immediately rushed towards the place of occurrence on a motorcycle, where he saw Gurnishan Singh and his father present there. Some persons from the nearby fields were also present there. Palwinder Singh at that time was in the canal water and he was in drowning state. He was trying to save his life. The people present there were trying to rescue him with the help of ropes and turbans. Palwinder Singh was taken out of the canal with the help of ropes and turbans by the persons present there.

37. Learned trial Court found the evidence produced by the prosecution 'as reliable' while convicting and sentencing both the accused as noticed above.

ARGUMENTS ON BEHALF OF THE APPELLANTS COUNSEL

38. Mr. Ghai, learned Senior Counsel for the appellant Palwinder Singh and Mr. Kunwar Ranjan, counsel for the appellant Karamjit Kaur, submit that both the accused have been falsely implicated in this case and the trial Court has not taken into consideration the material facts on record while recording the conviction of the appellants. The following submissions were made:-

(A) That the Learned trial Court ignored that there is an inordinate delay of 9 months in the registration of the FIR and the instant case is registered on the statement of Gurnishan Singh who also made contradictory statement in earlier inquest proceedings u/s 174 Cr.P.C, and after due

inquiry, no foul activity was found in this case.

(B) That in the present case, the whole story of the prosecution is allegedly based solely on the presence of the PW-3 Surat Singh at the spot at the time of commission of offence, whereas a bare perusal of the statement of the witness and his unnatural conduct puts the story of the prosecution under doubt. Thus, it is decipherable that they have been introduced later-on in the instant case to implicate the accused persons.

(C) That the very basis on which the present FIR was registered i.e. the statement of complainant (PW-4) Gurnishan Singh @ Labha is shaky because as per his statement on dated 20.06.2015, he witnessed the entire incident and found no foul play but later on, he has changed or improved his stand on numerous occasions. Further, his various contradictory statements coupled with his conduct is also not natural.

(D) That the testimony of PW-9 Nishan Singh (brother of deceased Nirmal Singh) cannot be relied on as the accused persons were threatened by him due to which they had to seek protection against him. That the prosecution had relied upon PW-9 Nishan Singh who has been introduced as alleged last seen witness of deceased Nirmal Singh having gone with Palwinder Singh, appellant-accused in car. This witness has made material improvement in the Court and cannot be relied on.

(E) The investigation conducted by the Investigating Agency is one sided, unfair, tainted and completed in one day, the day the FIR was lodged and circumstances conclusively establish the factum of unfair investigation.

(F) That the trial Court has wrongly appreciated the alleged Extra Judicial Confession of PW-12 Mehar Singh as the said testimony of the

said witness cannot be relied upon. As he has made material improvement. Moreover, making of the alleged confession statement is highly unlikely as there was no FIR existing against him at that time and even the witness did not inform anyone thereafter and did not produce the accused before the police.

(G) The statement of PW-13 Bagicha Singh allegedly overhearing the conversation of both the appellants on 21.02.2016 is unbelievable as he did not make any report to the police for a period of one month and it is only on 19.03.2016 on the day of registration of the FIR, the statement was recorded.

(H) No offence under Section 201 IPC was made out and the complete statement of PW-5 Vijay Kumar was not properly appreciated by the trial Court.

(I) The trial Court has not properly appreciated the defence evidence. The trial Court ignored the fact that prosecution has ignored the fact that the prosecution utterly failed to prove any motive against the Appellant. There is no evidence brought on record regarding alleged illicit relationship of accused before their marriage. There is also no evidence on record pointing towards the fact that before the alleged occurrence they had ever conspired or tried to do any act which could corroborate the said motive.

ARGUMENTS ON BEHALF OF THE STATE COUNSEL

39. Learned counsel appearing on behalf of the State has sought confirmation of death sentence of the appellant Palwinder Singh and of life imprisonment of the appellant Karamjit Kaur. He submits that the trial Court has not committed any error in holding the appellants guilty having

murdered the deceased persons and consequently sentencing the appellant Palwinder Singh to 'death' and his co-accused Karamjit Kaur to 'life imprisonment' for the heinous offence.

40. Mr. V.G. Jauhar, Addl. A.G., Punjab, submitted that the appellants accused are villagers. It is uncommon in village folk, to get life insurance policies for their family members and for the agricultural workers. The testimony of PW-2 Rajiv Soni and the testimony of PW-16 Rajesh Kumar proves that sometimes before the occurrence, the LICs policies were obtained on the name of the deceased, which is a very strong circumstance clearly indicating the *modus operandi* used by the appellants to get rid of their family members and to later on to get married in pursuance to their illicit relationship. Referring to the other evidence on record, it was vehemently contended that the trial Court has rightly convicted the appellants. Keeping in view the death of four persons, including the two minor children having been caused by the father himself, it was submitted that it is a rarest of rare case as such the death penalty has been rightly awarded to the appellant Palwinder Singh by the trial Court. Prayer for dismissal of the criminal appeals filed by the appellants Karamjit Kaur and Palwinder Singh and for confirmation of the death penalty awarded to Palwinder Singh was made.

FINDINGS OF THE TRIAL COURT

41. We have considered the arguments raised by learned counsels for the parties and perused the paper-book.

42. The judgment of the trial Court is based totally upon the fact

that this chain of circumstantial evidence was complete to reach to the conclusion that the conviction could be recorded of the appellants. Rather, the factum of the circumstantial evidence being more reliable was glossed over by the trial Court that it was better than the eye witness account as the bias factor would go out and there could be no case of mistaken testimony. The fact that the said evidence had accumulated in a geometrical progression was regarding to the extent that *mens rea* had also been proved which was on account of the LIC Policies taken for the wife of Palwinder Singh and for the deceased Nirmal Singh alongwith the clause of accidental claim just before the incident. The factum of extra judicial confession given to Mehar Singh PW-12 alongwith the witness Nishan Singh PW-9 coupled with the marriage of the two appellants, the trial Court condoned the delay aspect on account of the fact that Palwinder Singh was the sole survivor and had not attempted to save the others who were occupants of the car. The delay was also sought to be covered by giving a reasoning that the concerned persons were waiting for the accused to make a wrong move which was in the form of marriage and seeking protection on account of the harrassment being done by close family members. Rather the trial Court came to the conclusion that the caste and community issues could not be given such predominance as such that it would lead to false implication of the accused. A clean chit was also given to the investigation on the ground that no material defects were noticed and the defence witnesses were also discredited by taking note that the facts of the case as such spoke for themselves.

43. The trial Court has also taken into consideration, the insurance

policies simultaneously of the deceased Sarabjit Kaur (since deceased) and Nirmal Singh (since deceased) who are the wife of the appellant Palwinder Singh and husband of appellant Karamjit Kaur, respectively. Purchase of a second hand Maruti car and making all of them to ride on the said vehicle on a '*Katcha*' passage running along with the bank of the canal along with the admission of the appellant Palwinder Singh that he knew how to swim were also considered as material circumstances by the trial Court. In addition to this, the trial Court has taken note of the fact that both the appellants despite opposition by the relatives got married after about 07 months of the occurrence. Relying upon the provisions of Sections 106 and 114 of the Indian Evidence Act, a presumption of guilt was raised against the appellants. The explanation offered by the appellants on how their incident took place under Section 313 Cr.P.C. was found unsatisfactory by observing that it is a scientific phenomena that water gushes in the vehicle and makes it extremely difficult to open the door inside the water. The appellant Palwinder Singh having no injury or struggle mark on his body was also considered as one of the ground to believe the testimony of PW Surat Singh who stated that accused Palwinder Singh came out of the car by opening its window after directing it to the canal.

44. The trial Court also believed the testimony of PW-12 Mehar Singh, who is a former chairman of Market Committee before whom the appellant Palwinder Singh allegedly made an extra-judicial confession taking note of the circumstantial evidence and the eye witness account of PW-3 Surat Singh the trial Court recorded the conviction of the

appellants.

DISCREPANCIES IN THE CASE OF THE PROSECUTION

45. Prosecution has relied upon the direct evidence of Gurnishan Singh @ Labha (PW-4) who is the most material witness in this case. He is the real brother of the deceased Sarabjeet Kaur and maternal uncle of two minor children who died in the occurrence. As per his testimony, he is an eye witness of the occurrence and he has testified that on the day of occurrence he has visited the place of his sister and in his presence the appellant Palwinder Singh had gone along with the other family members including his sister in the car to village Fattanwala to get medicine. At about 02:00 p.m., he came to know that the car had fallen in the Gang canal. They rushed towards the spot and before their arrival, the crowd had already assembled there and the car was taken out of the canal with the help of ropes. Palwinder Singh was standing on the berm of the canal at that time. This version of the witness has come for the first time when he made a statement (PW-4/B) to the police on 19.03.2016 whereas the occurrence took place on 20.06.2015.

46. The veracity of the said statement of the witness becomes highly doubtful keeping in view the fact that the said statement is a changed version after a period of 09 months. On the day of occurrence on 20.06.2015 the witness made a statement that he has witnessed the entire incident and found no foul play but after 09 months he totally changed the version. In the cross-examination he has admitted this fact that ASI Harbhajan Singh (PW-14) belongs to his village and he is his relative. At the time of the occurrence, he conducted the proceedings under Section 174

Cr.P.C. The said ASI Harbhajhan Singh appeared as PW-14 and categorically stated that Gurnishan Singh, son of Subeg Singh and brother of deceased Sarabjeet Kaur met him and got recorded his statement Ex. PW-14/C which was signed by him and was also thumb marked by Subeg Singh, the father of the deceased and he recorded the police proceedings Ex. PW-14/D. On the basis of the said statement, he conducted the proceedings under Section 174 Cr.P.C. In the cross-examination he has stated that the relative of the deceased were present when he conducted the inquest proceedings and he recorded the statements under Section 174 Cr.P.C (Ex. DE/A of Nishan Singh and Ex. DE/B of Tarsem Singh, brother and brother-in-law of deceased Nirmal Singh). He has categorically stated that on the statement of Karamjit Kaur wife of Nirmal Singh (deceased) Ex. DE/C, Gurdip Singh Sarpanch of Village Attari and Nishan Singh had also signed and thumb marked it.

47. The complainant eye witness PW-4 has not alleged bias or ill will on the part of the investigating officer PW-14 who recorded his statement and conducted the proceedings under Section 174 Cr.P.C., rather he belongs to the village of the complainant PW-4 and he is even his relative and it would have been very easy to implicate the accused at that point of time if they had any such suspicion. Though the witness has denied making of the statement at the time of proceedings under Section 174 Cr.P.C but he voluntarily stated that his signatures were obtained on blank paper and he was perplexed and in a shocked state of mind. The said explanation on signing of blank papers is found highly improbably keeping in view the fact that no ill-will is attributed to the investigating officer who

recorded the statement and is a relative of the witness and no protest was raised for 9 months.

48. The testimony of PW-4 is further found shaky keeping in view the fact that in the cross-examination he has stated that Bagicha Singh (PW-13) told him about hearing of conversation between the appellants accused on 21.02.2016 on the same day and further said that he met PW-3 Surat Singh after 21.02.2016 but there is no explanation as to why he remained silent thereafter for a period of about one month when he made a subsequent statement to the police on 19.03.2016.

49. No doubt a relative, who is an eye witness, would make an effort to bring on record the real culprit. However, keeping in view the facts and circumstances of the present case, there is a strong indication that on account of subsequent events the complainant (PW-4) being a close relative of the deceased became vindictive and came up with a new version altogether to implicate his brother-in-law in the present case. The sister of the witness was married to the appellant Palwinder Singh. They were blessed with two minor children. The appellant Palwinder Singh lost his entire family including his wife and two children in the present occurrence. Appellant Karamjit Kaur also lost her husband. They got married after 08 months of the occurrence, which has apparently created rancor in the minds of the relatives of the deceased wife of the appellant Palwinder Singh. The defence version is that the matrimonial alliance between both the appellants became bone of contention which was opposed by the relatives seems quite probable and, thus, causes a dent in the testimony of the complainant (PW-4). The same is evident from the fact that both the appellants had to file a

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petition under Section 482 Cr.P.C. seeking protection from the hands of the relatives of the appellant's deceased wife Sarabjit Kaur and relatives of the deceased Nirmal Singh husband of appellant Karamjit Kaur.

50. Copy of the petition Ex. PW-15/A which has been proved by Jasbir Singh, Reader (PW-15) indicate that both the appellants got married on 26.01.2016 and the private respondents against whom the protection was sought are Nishan Singh, son of Baaj Singh, brother of the deceased Nirmal Singh, who has appeared during the trial as PW-9. Respondent Nos.5 and 6 are stated to be the brothers and respondent No.7 is the cousin brother of appellant Karamjit Kaur. It is contended in para No. 5 of the said petition that the said relatives were not accepting their marriage and claiming that the marriage has caused defamation to the family and they have further threatened to involve them in false criminal cases. The said petition was drafted on 16.03.2016 and is having the filing stamp dated 23.03.2016.

51. The statement Ex. PW-4/B of Gurnishan Singh is recorded on 19.03.2016 which is a changed version after 09 months and the apprehensions of the appellants that their relatives threatened them to implicate them in false criminal cases appears to be genuine, keeping in view the fact that Nishan Singh who is brother of the deceased husband of appellant Karamjit Kaur is one of the respondent in the said protection petition under Section 482 Cr.P.C. and when he appeared during the trial as PW-9, he has made material improvements in his statement given to the police Ex. DE/A. Apart from this, he has also made a statement during the

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proceedings conducted by the investigating agency under Section 174 Cr.P.C. and signed the investigation papers while taking the dead body of his brother. In his examination-in-chief, he has stated that on 20.06.2015 when he was present in the fields along with his brother Nirmal Singh, appellant Palwinder Singh came there on the Maruti car and he forcibly dragged him and made him to sit in the car. However, this part of the statement of the witness is in total contradiction to his statement recorded on 19.03.2016 under Section 161 Cr.P.C. (Ex.D-5) and he was confronted with the said statement where this part is not recorded. He gave the explanation that police did not read his statement to him therefore, he cannot say if that fact is not recorded in Ex. D-5. The lie on his part is writ large as he has admitted that he identified the body of his deceased brother but he stated that he does not remember if his statements were recorded by ASI Harbhajan Singh during inquest proceedings. As per the cross-examination of ASI Harbhajan Singh (PW-14) when inquest report of deceased Nirmal Singh was prepared at that time his brother Nishan Singh (PW-9) and one Satnam Singh were present and they both thumb marked the same. He also recorded their statement under Section 174 Cr.P.C. which are Exs. DE/A and DE/B. He has further testified that even Sarpanch of Village Attari namely Gurdeep Singh and Nishan Singh son of Baaj Singh (PW-9) have thumb marked the statement of Karamjit Kaur (appellant) wife of Nirmal Singh (Ex. DE/C) at that time. PW-9 Nishan Singh was confronted with these facts of his previous statement Ex.DE/A recorded by PW-14 SI Harbhajan Singh on the day of occurrence, i.e. 20.06.2015 but he could not give any satisfactory reply for retracting his previous statement

and putting up with a new version which is totally contradictory to one given on the day of occurrence, i.e. 20.06.2015 to the one subsequently recorded by the police on 19.03.2016 when the FIR was registered. Keeping in view these circumstances, the only inference which can be drawn is that the defence version recorded in the petition filed under Section 482 Cr.P.C. by the appellants that the relatives had threatened to implicate them seems highly probable and causes a strong dent in the prosecution version.

52. The version given by the complainant (PW-4), as well as, PW-9 Nishan Singh at the time of registration of the FIR is after the long delay of 09 months after the occurrence. No doubt, the delay in lodging the FIR in itself cannot be taken as a ground to disbelieve the prosecution version but there has to be satisfactory explanation to the said delay. Keeping in view the long delay in the present case which is not of few days but it is running into nine months and that too when there are circumstances on record due to which the relatives of the deceased wife of the appellant Palwinder Singh and the relatives of the deceased husband of appellant Karamjit Kaur are bound to be inimical as such, the testimony of the said witnesses, i.e. the relatives of the deceased, i.e. PW-4 Gurnishan Singh @ Labha and PW-9 Nishan Singh needs a thorough scrutiny.

53. As discussed above, scrutiny to the testimony of PWs 4 and 9 clearly indicates that there are dents in the prosecution case. The delay is not explained with satisfactory explanation.

54. In *Jai Prakash Singh vs. State of Bihar and another, 2012 (2) RCR (Crl.) 251*, it was held that if there is delay in lodging the FIR, it

would lose the advantage of spontaneity. The danger, thus, would creep in with the introduction of the coloured version. The FIR thus has to be examined with grave doubt regarding the truthfulness of the allegations made and in the absence of the promptness in the lodging of the FIR, the informant's version has to be looked at very carefully. The issue of delay has been brushed aside only on the ground that the complainant party was waiting for the accused to make the wrong move, which we do not see any basis. Rather, it is apparent from the record that the appellants having got married on 27.01.2016, were constrained to file a petition under Section 482 Cr.P.C. before the Sessions Court. Ex.P-15/A, in which Nishan Singh-PW-9, brother of the deceased Nirmal Singh was also arrayed as party and who is the brother-in-law of the appellant Karamjit Kaur. A perusal of the said petition would go on to show that it has been specifically mentioned that there were two male children who had been born from the wedlock of the deceased Nirmal Singh and Karamjit Kaur and now were residing with the appellants. In the absence of any male member in the family of Karamjit Kaur and since Nirmal Singh was a sole bread winner and to look after the future of her children, she had remarried and the private respondents were not happy. The marriage was supposed to be low key affair out of the apprehension of respondent Nos.4 to 7 and the appellants only had an affair after the death of Nirmal Singh and both have decided to get married since they were both major. The alliance had not been accepted as Karamjit Kaur is wife of the deceased servant and the private respondents had claimed that it had defamed the family and, thus, on account apprehension, the petition had been filed. An interim order was

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passed on 23.02.2016 Ex.PW-15/B and directions were issued to respondent No.2, the Senior Superintendent of Police himself to look into the matter. A perusal of the record would go on to show that statement of Gurdas Singh, brother-in-law of Karamjit Kaur, who was also arrayed as respondent No.5, was duly recorded alongwith the statement of Tarsem Singh that they would not interfere in the life of Karamjit Kaur as she had solemnized marriage with Palwinder Singh without their consent and they did not want to have relation with Karamjit Kaur. The said statements were produced as Exs.DW-15/B and DW-15/C and duly submitted by way of compliance report before the Sessions Court i.e. Ex.DW-15/D by the police in the protection petition filed by the appellants on 16.03.2016 as Ex.PW15/C.

55. The statement of the accused under Section 313 Cr.P.C. was also never taken into aspect in the proper perspective wherein appellant-accused Palwinder Singh categorically took the stand that he was residing separately in his fields with his mother who was seriously ill due to cancer. There being no other member in the family to look after the house after the death of Sarabjit Kaur and their two minor children and similarly no other member in the family of Karamjit Kaur since Nirmal Singh was not residing with his brother and not on speaking terms, his mother had made a proposal that he should remarry Karamjit Kaur. It is on account of the fact of the marriage they threatened him not to bring Karamjit Kaur in his house as it was an inter caste marriage and thus, they had to obtain protection from the District Court. Rather, it is his case that even Gurnishan Singh and his father-in-law had been following him when the car had fallen into

the canal, which in fact has also come on record earlier since Gurnishan Singh has himself given a statement that at the initial point of time, as discussed above, that the car had fallen into the canal and it was by way of an accident. It is apparent that the change in the attitude of the family was only on account of the inter caste marriage between a Jatt Sikh man and a Sansi lady. Similar stand has also been taken by Karamjit Kaur and her statement under Section 313 Cr.P.C. and that the marriage was on account of the ailing mother of Palwinder Singh and the brother-in-laws were not happy and also forcibly took possession of her house. The factum of illness of the mother of Palwinder Singh has also been proved by examining DW-2 Dr. Pardeep Garg, Associate Professor, Department of Cancer and Radiotherapy, Guru Gobind Singh Medical College and Hospital, Faridkot wherein, he had produced the hospital record that Manjit Kaur is suffering from chronic lymphocytic leukemia.

56. In addition to the aforesaid circumstances, we are also of the considered opinion that the alleged motive of occurrence, i.e. both of the appellants were having illicit relationship as such and they finished the lives of their family members to perform their marriage with each other seems highly doubtful keeping in view the fact that there was no whisper of such relationship before the alleged occurrence. Neither during the life time of the deceased individuals nor thereafter, for 09 months any such allegations were ever made by any of the relatives, common friends or by any of the villagers. Had there been so, the deceased wife of the appellant-accused Palwinder Singh would have whispered something either to her parents or to her brother or to any of her friends. No report to the

'Panchayats' was even made either by the deceased or by any of the family members of the deceased wife of the appellant-accused Palwinder Singh. Similarly, no such complaint was ever made either verbal or in writing by any of the relative of the deceased Nirmal Singh. Though in the cross-examination the brother Nishan Singh told about the illicit relation between the appellants but he could not tell when he came to know about the fact. He has admitted in the cross-examination conducted on 16.09.2017 that he did not move any application to the police stating about the said illicit relation. He has also stated that during his life time Nirmal Singh (deceased) did not move any application to the police against appellant Palwinder Singh for his having illicit relationship with Karamjit Kaur nor any application was moved by the parents of Karamjit Kaur or by him.

57. Both the appellants belong to different caste. PW-9 Nishan Singh has admitted this fact that Palwinder Singh (appellant) was married at village Wadian in a *Jatt Sikh* family and Karamjit Kaur belongs to *Sansi* community of Village Wadian. The said admission on the part of PW-9 indicate that earlier the appellant Palwinder Singh was married in a *Jatt Sikh* family in village Wadian. The complainant (PW-4) is resident of the said village and his sister was married to the appellant Palwinder Singh. After the death of the sister of PW-4, appellant Palwinder Singh got married to a lady belonging to the same village but of *Sansi* community. PW-4 Gurnishan Singh has also admitted this fact in his cross-examination that accused Karamjit Kaur daughter of Sukhdev Singh belongs to his village and she is *Sansi* by caste.

58. We have also scanned the testimony of PW-3 in the light of the

observations made by the trial Court. Surat Singh, the other brother-in-law of the appellant Palwinder Singh being married to the sister of the deceased-wife had projected himself as an eye witness and stated that he was behind the car when Palwinder Singh had driven it into the canal and jumped out. Accordingly to him, due to illicit relationship, he has done so as he wanted to marry Karamjit Kaur. He admitted that Karamjit Kaur belongs to Scheduled Caste community whereas his in-laws belong to Jatt Sikh Community. He also admitted that his statement had been recorded by the police on 19.03.2016 when the FIR was lodged after a period of 9 months. He had attended the cremation as well as *bhog* ceremony but never disclosed this fact allegedly being in shocked condition. This aspect has not been taken into consideration by the Sessions Judge while going on to use the circumstantial evidence to convict the accused in the presence of the alleged eye witnesses who were set up being closely related but he chose not to inform the police at that point of time. The prosecution was taking support of this evidence but the same was brushed aside by the trial Court who went on to rely on the circumstantial evidence aspect rather than dealing with the veracity of the alleged eye witness who was such a close relative but had chosen not to inform the police or the other relatives about the said fact.

59. We have also scanned the testimony of PW-13 Bagicha Singh in the light of the observations made by the trial Court upon which the trial Court has relied who claimed that on 21.02.2016, he had come to Muktsar Sahib and was sitting at a *dhaba*. He belongs to village Badiyan and the complainant Gurnishan Singh is also the resident of the said village. There

the accused were addressing each other and he knew Palwinder Singh who used to visit the village and in his presence, they were talking about that they had committed murder of Sarabjit Kaur, two children and Nirmal Singh. The said witness also did not approach the police and only on 19.03.2016, chose to get his statement recorded with Gurnishan Singh, Darbara Singh, Lambardar when the FIR was registered.

60. A plain reading of statement of Jasbir Singh-PW-15 would go on to show that he had recorded the statement of said Bagicha Singh who had proceeded towards the place of occurrence and also the statement of Gurnishan Singh @ Labha and prepared the site plan and then gone to arrest the accused vide Ex.PW-8/E dated 19.03.2016 and both the them were produced in Court on the next date on the 20.03.2016. It is apparent that the statement of Surat Singh, Mehar Singh and Bagicha Singh were also recorded on 19.03.2016 and investigation as such was done in one day itself and the accused were arrested.

61. We have also considered the observations made by the trial Court with regard to the insurance policies which are proved by the testimonies of Rajeev Soni PW-2 and Rajesh Kumar Randev PW-16. We feel that unnecessary weightage has been given regarding the two policies dated 21.01.2015 and 28.05.2015 which were in the name of Sarabjit Kaur, the deceased and the wife of appellant-accused Palwinder Singh only on account of the fact that the nominee's name was Palwinder Singh. It is but natural that the nominee would be the husband. The said payments were never made to the appellants on account of the criminal litigation since the official had come to know that there was a police case pending and it is not

the case of the prosecution that Palwinder Singh had tried to encash the policies. The statement of PW-16 Rajesh Kumar Randev would also go on to show that the policies in question of Rs.2,00,000/- and Rs.1,60,000/- were issued on 09.06.2018 in the name of Nirmal Singh, deceased-employee. Merely because the nominee was the wife Karamjit Kaur and the attestation was done by Palwinder Singh being the employer could not be a ground as such to co-relate that the appellants as such had conspired that they would be the beneficiaries of the policies after the death of the insured. Even otherwise, Karamjit Kaur was never a signatory being the nominee which would be clear from the execution also that as per the rules and regulations there was no need to obtain the signatures of the nominee.

62. The factum of the extra judicial confession made to PW-12 also does not inspire any confidence in Mehar Singh, who claims to be the ex-Chairman of the Market Committee, who also belongs to village Attari. In his evidence, he has deposed that the marriage of the appellants was conducted on 27.01.2016 and it was the talk in the village that they were having relations with each other. The extra judicial confession is stated to be made on 15.03.2016 at 8.30 a.m. when both the accused had come to him and taken him to one side separately and repenting about the fact of committing the murder of the respective spouses and the children. It is his own statement that he was busy in personal work but he did not disclose these facts to the police. In cross examination, he could not justify what work he was held up in and only stated that there were 2-3 cases pending in Sri Muktsar Sahib but could not tell the date of those cases. He admitted the presence of Gurnishan Singh-complainant and the family members at

the time of the cremation in the village and that the *bhog* ceremony had also taken place. The last remains of Sarabjit Kaur were also immersed into the water by Palwinder Singh and other family members of Sarabjit Kaur. He also admitted that in a murder case registered against Baaj Singh, his name has also been mentioned in the initial statement and that he was also witness in another civil suit apart from being involved in a compromise between other persons. He was also a witness in another State case and was on anticipatory bail in a complaint case under the Scheduled Caste and Scheduled Tribes Act. He denied the suggestion that he had good relations with SHO Jasvir Singh and he had become a false witness at his instance. Thus, the factum remains that being the Chairman of the Market Committee and being taken into confidence by the accused, he kept silent for four days and had not gone to the police till the FIR was registered on 19.03.2016 and, therefore, no credence can be given to his statement which has been relied upon by the trial Court. The principles which have to be kept in mind for extra judicial confession is that it should be voluntarily and truthful and should inspire confidence and the person to whom it is being made should have some standing in the society. As noticed, the extra judicial confession was made on 15.03.2016, just 4 days before the FIR in question. Mehar Singh kept quite over the same in spite of knowing the fact that two minor children and two spouses of the appellants had been drowned intentionally while driving the car into the canal. Only when the FIR was lodged on 19.03.2016, his statement was recorded by the over active SHO Jasvir Singh, who solved the case in one day itself since even the statement of Bagicha Singh, the chance witness of

the conversation which took place at *dhaba* was also recorded on the same day including the statement of the complainant also. This aspect was never been kept in mind by the trial Court and, therefore, reliance upon the same which has been done cannot be easily accepted. The background of the person has also been noticed that he have sufficient litigations and being a political person. In *Jaswant Kaur vs. State of Punjab, 2006 (2) RCR (Crl.) 202*, similar statement made was not accepted and it was held that it was not safe to base the conviction on the doubtful testimony and the evidence had to be critically evaluated. Reliance can also be placed upon the judgment in *Sunny Kapoor vs. State (U.T. of Chandigarh), (2006) 10 SCC 182* wherein also, a similar view was taken. In *Baldev Singh vs. State of Punjab, (2009) 6 SCC 564* it was observed that extra judicial confession is a weak nature of evidence and conviction cannot ordinarily be based solely thereon unless the same is corroborated in material particulars. The said principle would squarely apply as such to the facts of the present case.

63. The statement of PW-14 would also go on to show that when the inquest report was prepared of the deceased Nirmal Singh, Nishan Singh and Satnam Singh were present. The said person is also the brother of the deceased Nirmal Singh in whose presence the deceased had sat in the car of the appellant and had reached the site at 2.00 p.m. on getting to know that the car had fallen in the canal. When the statement of Karamjit Kaur was recorded by the said officer under proceedings under Section 174 Cr.P.C., Nishan Singh and Gurdeep Singh, Sarpanch of village Attari had also signed and thumb marked the statements and the statement of

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Sukhjinder Singh, brother of the appellant-accused Palwinder Singh was also recorded. At no stage any of the close relatives at that point had informed the police that the appellants were in relationship or it was suspected of the same. Nothing has also come on record to show that there was any whisper at an earlier point of time that the appellants were in relationship. It is apparent that only on account of them getting married on 27.01.2016, they have been implicated on account of the fact that it was an out of caste alliance and not acceptable to the relatives of the deceased-spouses of the appellants. Unnecessary reliance has been placed upon the fact that appellant-accused Palwinder Singh sold the Maruti Car for Rs.11,000/- to the junk dealer while not noticing the statement of Vijay Kumar PW-5, a junk dealer who had purchased it wherein, it has categorically been stated that the car was sold by Palwinder Singh on account of the fact that it had destroyed his family and whenever he saw the car, he memorized the family moments. This emotional aspect which had haunted the appellant-accused Palwinder Singh which had led to the sale of the car has been totally brushed aside by the trial Court and used against appellant-accused Palwinder Singh that he had tried to destroy the evidence on its own, while disregarding the eye witness account allegedly put up by the prosecution. The trial Court has fallen back on the circumstantial evidence to convict the accused, which we feel was not appropriate. Rather than dealing with the discrepancies in the statements of the alleged eye witnesses and giving the benefit to the accused, it has chosen to fall back on circumstantial evidence to record conviction and, therefore, the reasons given for conviction also are not sustainable.

64. The defence version as such which has not been taken into in proper perspective is that the draftsman DW-4 Rajinder Singh Sandhu had prepared the site plan as shown in photographs Ex.DW-3/A to DW-3/C which had been proved by DW3 Rajinder Kumar. The photographs and the plan of the draftsman would go on to show that at the turn where the car had come off the main road and taken the parallel road to the canal, there was a room constructed whereby the tubewell was installed and it was constructed on the berm of the gang canal. We have also seen the site plan both of the ones which have been made by the prosecution and also by the defence and which match as such. Apparently, the portion of road had got constricted at the point where the car had gone into the canal behind the said room which was obstructing the free flow of traffic on account of the location being right after the turn. This aspect has also not been examined as DW-5 had specifically mentioned that the breadth between the room and the canal is less as compared to the other rooms and the canal brims. This fact was also admitted by PW-4 Gurnishan Singh in his cross examination. Unnecessary weightage has, thus, been given that why the said route was preferred whereas it is apparent that the reason to take the route was that it was shorter in point of time. It was important to note that at the time when the bodies were taken away on 20.06.2015 at 4.30 p.m. by the relatives as such, it was noted by the doctor that the injured patients' relatives i.e. Palwinder Singh, the appellant, had taken away the dead bodies. At that point of time, nothing had been stated regarding or any suspicion had been raised regarding the accident which had taken place. Gurnishan Singh was present throughout of these proceedings at that point of time and as

noticed, it was his version that he was present alongwith his father and the car suddenly lost control and fell into the canal.

65. Keeping in view the above discussion, we are of the considered opinion that the prosecution case suffers from a lot of infirmities and keeping in view the settled principle that in the case of circumstantial evidence, one is to look for the complete chain of circumstances, the same having not been proved beyond reasonable doubt, the conviction being based on the same is in contradiction to the law laid down by the Apex Court on several occasions. Reliance can be placed upon the judgment in *Hanumant Govind Nargundkar and another vs. State of Madhya Pradesh, AIR 1952 SC 343* wherein, it was held that the fact established should be consistent with the hypothesis of the guilt of the accused and the circumstances should be of conclusive nature. Reliance can also be placed upon *Musheer Khan @ Badshah Khan and another vs. State of Madhya Pradesh, (2010) 2 SCC 748* and a three-Judge Bench judgment of the Apex Court in *Munikrishna @ Krishna and others vs. State by Ulsoor PS, 2022 (4) RCR (Crl.) 794*.

DECISION

66. Keeping in view the above, we allow CRA-D-406-2020 and CRA-D-381-2020 and acquit the appellants of the charge which was framed against them on 15.07.2016 by the trial Court. Resultantly *Murder Reference No.3 of 2020 is also answered in favour of the appellants* and the judgment of conviction is not confirmed of the death sentence awarded to appellant-Palwinder Singh. They be released from custody forthwith, if not arrested in any other case.

67. Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.12.2023
nitin

Whether Speaking	Yes
Whether Reportable	Yes