

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

CRA-D No. 391-DB of 2014(O&M)

Date of Decision: January 19, 2024.

Satpal Singh

..... APPELLANT

Versus

State of Haryana

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Rohan Garg, Advocate and
Ms. Supriya Garg, Advocate
for the appellant.

Mr. Sukhdeep Parmar, Sr.DAG, Haryana.

LISA GILL, J.

1. Appellant has filed this appeal challenging judgment dated 21.10.2013 passed by learned Additional Sessions Judge, Sirsa whereby he has been convicted for offences punishable under Section 302 read with Section 201 IPC as well as order of sentence dated 24.10.2013 vide which appellant has been sentenced to undergo rigorous imprisonment for life for offence punishable under Section 302 IPC. It is directed that life imprisonment in this case would mean imprisonment for whole life. Appellant has been sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of ₹75,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months for offence under Section 201 IPC.

2. Brief facts of the case as per prosecution version are that, on 27.10.2010 ASI Raj Kumar (PW16), alongwith HC Pardeep Kumar and other officials were present at Barnala Road, Sirsa for patrolling and crime detection,

when they received a telephonic message that head of a woman was found lying in the tank of Water Works situated at Chhatargarh Patti. ASI Raj Kumar (PW16) alongwith other officials reached at Water Works, Chhatargarh Patti where they met Chakkardhar son of Udmi Dutt, who was posted as Superintendant Water Works, Chhatargarh Patti, Sirsa. Statement of Chakkardhar son of Sh. Udmi Dutt was recorded wherein he stated that on 27.10.2010, he alongwith Dwarka Parshad (co-employee) had come to the Water Works in regard to maintenance of tank. At about 10.30 a.m., they saw head of a woman lying in a decomposed condition at the eastern-southern side. It appears that an unknown person had thrown away the head of woman after murdering her with an intent to destroy it. Legal action against unknown person was sought. Formal FIR No.722 dated 27.10.2010 under Sections 302/201 IPC was registered. Investigation was carried out by PW18 Inspector Mouji Ram. Statement of PW8 Veerpal Kaur (niece of the deceased and appellant), PW9 Vishal (son of the deceased and appellant), PW13 Baldev Singh (brother of the deceased), Anita wife of Baldev and PW15 Rajinder were recorded. Appellant (husband of the deceased) was arrested on 29.10.2010.

3. PW13 Baldev Singh, brother of the deceased, stated that his sister Rani @ Veerpal Kaur was married to Satpal (appellant) 13 years ago. Two daughters and a son were born out of the wedlock. He stated that on 18.10.2010, appellant took his sister Rani @ Veerpal Kaur from Sardulgarh, i.e. where Baldev Singh resides, to Sirsa and that on 22.10.2010, appellant informed that Rani @ Veerpal Kaur (deceased) had left her home and Baldev Singh should find out from the relations as to where she had gone. Baldev Singh stated that he inquired from all his relatives about his sister, Rani @Veerpal Kaur but she could

not be found and that on 29.10.2010 they came to know that a decapitated head of a female had been recovered from a tank of Water Works at Chhatargarh Patti, upon which they came to enquire from Police Station. He and his wife, Anita identified the chopped off head to be of Rani @Veerpal Kaur, his sister from artificial earrings and nose pin which were worn by her. He further stated that he was confident that his brother-in-law (appellant) had chopped off her head with a sharp edged weapon and thrown the same in the tank of Water Works, Chattargarh Patti and had thrown remaining body parts somewhere else. His wife, Anita suffered statement on 29.10.2010 on similar lines.

4. PW8 Veerpal Kaur, niece of appellant and deceased in her statement dated 29.10.2010, Ex.PJ, stated that her marriage was solemnized about three years prior to the incident in question, but due to strained relations with her husband she resided with her father at Chattargarh Patti, Sirsa for the last one year. Four days prior to Dussehra festival, she had gone to the house of her paternal aunt (sister of her father) at Rampura Phul, District Bathinda. When she came back on 23.10.2010 to her parental house, she inquired about the deceased from her uncle (*Chacha*) i.e., the present appellant but he expressed ignorance as to where she had gone. She further stated that 27.10.2010 at about 10/11 O'clock, the appellant confessed that he had murdered her aunt (deceased) on the intervening night of 21st October, 2010 by firstly pressing her neck and thereafter chopping off her head with *Kappa*. He threw the chopped off head after putting it in a plastic bag and threw remaining parts of the body at Jhopra road after tying in a bale and taking it on a bicycle. Appellant stated that he had murdered his wife in a fit of anger and that she should not disclose this fact to anyone as otherwise his children would be ruined and it would not be good for her also in

case she revealed these facts to anyone.

5. Statement of Vishal, eight/nine year old son of the deceased and appellant, was recorded in question-answer form on 29.10.2010 by Prabandhak Officer, Police Station, Sirsa. In response to a question as to who had killed his mother, Vishal replied that his father had killed his mother about 8-9 days ago with *Aara*. He further stated that his father told him not to tell about the incident to anyone and he would give him currency notes of Rs.1000/-. He stated that the body was tied up by appellant and taken on his cycle. Statements of Veerpal Kaur (PW8) and Vishal (PW9) under Section 164 Cr.P.C. were recorded before learned Area Magistrate on 30.10.2010 wherein they reiterated their earlier statements under Section 161 Cr.P.C.

6. After completion of investigation, challan was presented and case committed to the Court of Sessions vide order dated 24.01.2011 of learned Chief Judicial Magistrate, Sirsa. Upon finding a *prima facie* case, appellant was charged for the commission of offence punishable under Section 302 read with Section 201 IPC to which he pleaded not guilty and claimed trial. Prosecution examined as many as 18 witnesses to prove its case.

7. It is to be noted at this stage that on 22.10.2010 headless body of a woman in a naked condition in a gunny bag, was recovered in the area of village Meerpur, Police Station Sadar Sirsa. PW12 Ramji Lal, Sarpanch of village Meerpur, stated that on 21.10.2010 he was informed by Daljit Singh and Ranjit Singh at about 9.00 a.m. that they suspected a dead body in a gunny bag was lying on the road leading Chhatargarh Patti to village Jhopra near the canal passing by their fields. Upon receipt of this information, he summoned Gulab Singh, whose wife Gurmeet Kaur was a member of Gram Panchayat. He

alongwith Gulab Singh went at the spot at about 9.30 a.m. and saw a dead body lying in the gunny bag. Police was accordingly informed and formal FIR No.256 dated 22.10.2010 was registered at Police Station Sadar, Sirsa.

8. PW4 Constable Rajinder Singh deposed that he was summoned by Inspector PW17 Jatinder Kumar, SHO Police Station Sadar Sirsa to the place near Sukhchain Minor in the area of Chhattargarh Patti, where a headless dead body of a woman was found in a naked condition in a gunny bag. Photographs were taken by him with a digital camera. Hands of the deceased were found tied with a pillow cover with blood stained earth contained in the pillow cover and on the chest. PW2 Puran Chand Panwar, DSP Headquarters Sirsa, deposed that on 27.10.2010 he verified facts about FIR No.722 dated 21.10.2010. As he thought that both cases might be related to one murder, the Investigation Officer was asked to obtain opinion of the doctor whether headless body and head are of the same person. FIR No.256 dated 22.10.2010, Police Station Sadar, Sirsa was ultimately cancelled on 20.01.2011.

9. Appellant in his statement under Section 313 Cr.P.C. denied the incriminating evidence put to him, pleaded innocence and false implication. No evidence was, however, led in defence.

10. Learned trial court on considering the evidence on record, found the present appellant guilty of the offence as charged and convicted him as detailed in para 1. Learned trial court while noting the fact that PW8 Veerpal Kaur and PW9 Vishal as well as PW15 Rajinder Kumar had been declared hostile, however, concluded that evidence on record was sufficient to convict the appellant/accused of the offences as charged. It has been further held by learned trial court that when evidence of hostile witnesses is consistent with the other

evidence on record, then that part of evidence of hostile witnesses can be used by the court which supports the prosecution case. It was observed that disclosure statement by the appellant had led to recovery of the weapon of offence i.e., *Kappa* as well as the blood stained clothes of the deceased, besides, bicycle upon which he had taken the dead body, for disposal.

11. Aggrieved from the verdict by learned trial court, present appeal has been filed.

12. Learned counsel for appellant vehemently argued that evidence on record is woefully insufficient to sustain conviction of appellant. Evidence, in this case is purely circumstantial in nature and does not form a complete link to indicate that it is the appellant alone who is author of the crime. It is contended that the star witnesses of the prosecution have not supported its version. Conduct of brother of the deceased is highly improbable in the given circumstances as he did not even make any attempt to lodge a complaint when the appellant purportedly reported his wife missing. Furthermore, there can be no reliance on the statement of PW13 Baldev as there are substantial improvements in his statement. There is no evidence of any acrimony between the deceased and appellant in 13 years of their marriage. There were other members of the family residing in the house of the accused, but this fact has been ignored by learned trial court. There is no evidentiary value of the so-called disclosure statement of appellant as he was admittedly in police custody at that time. Alleged recoveries from the appellant are not proved by the evidence on record and same, in any case, do not connect appellant with the commission of offence as alleged. Reliance by learned trial court upon so-called extra judicial confession before PW8 Veerpal Kaur is stated to be misplaced as PW8 Veerpal Kaur has denied

that appellant ever made such statement before her. Learned counsel for appellant also submitted that there is no evidence on record to indicate that headless dead body recovered on 22.10.2010 and the head recovered on 27.10.2010 were of the same person and that said person was wife of the present appellant. Identification by PW13 Baldev and PW8 Veerpal Kaur on the basis of artificial nose pin and earrings which are commonly available in market, it was contended, is not proved on record in the absence of any particular identification marks thereon. PW8 Veerpal Kaur has completely denied having identified the head so recovered to be of wife of the present appellant. In the given circumstances, it was submitted that appellant should be acquitted of the charges against him.

13. Learned counsel for the State had refuted the arguments raised on behalf of appellant while submitting that there is clear and cogent evidence on record which proves complicity of appellant in commission of the crime. It is submitted that recovery of blood-stained clothes and weapon of offence on the disclosure statement of appellant is duly proved on record. Furthermore, merely because son of the appellant, Vishal (PW9) and his niece, Veerpal Kaur (PW8) have not supported their initial version is of no avail to the appellant because on earlier occasion their statements were duly recorded under Section 164 Cr.P.C. PW13 Baldev, brother of the deceased, has duly supported the prosecution case. It is, thus, submitted that this appeal being devoid of any merit, be dismissed.

14. We heard learned counsel for the parties and have carefully scrutinized the evidence on record.

15. Decapitated head of a woman in decomposed condition, was recovered on 27.10.2010 from the tank of Water Works at Chhatargarh Patti.

FIR No.722 dated 27.10.2010 at Police Station City Sirsa was registered on the statement of Chakardhar, an official of Water Works department. Chakardhar had passed away before his statement could be recorded before learned trial court. Statements of Baldev Singh – brother of the deceased, his wife – Anita, Veerpal Kaur – niece of appellant & the deceased and Vishal – son of appellant and the deceased, were recorded on 29.10.2010. Baldev Singh stated that marriage of his younger sister, Rani @Veerpal Kaur (deceased) was solemnized with present appellant about 13 years ago. Two daughters and a son were born out of this wedlock. He further stated that on 18.10.2010, the appellant took his sister Rani @Veerpal Kaur from Sardulgarh (where Baldev Singh resides) to Sirsa and on 22.10.2010 appellant, i.e. his brother-in-law, informed him that Rani (deceased) had left her home and he (Baldev Singh) should find out from her relations as to where she had gone. Thereafter, Baldev Singh enquired from all his relatives about his sister, Rani but she could not be found and that they came to know on 29.10.2010 that a decapitated head of a female had been recovered from tank of Water Works at Chhatargarh Patti, upon which they came to enquire at the Police Station. He and his wife, Anita identified the chopped off head to be of his sister, Rani. They identified her by artificial earrings and nose pin which were worn by her. He further stated that he was confident that his brother-in-law (appellant) had chopped off her head with a sharp edged weapon and thrown the same in the tank of Water Works, Chattargarh Patti and that he had thrown remaining parts of body somewhere else. Statement of Anita on similar lines was recorded on 29.10.2010. Statement of Veerpal Kaur, niece of appellant and the deceased (appellant is the paternal uncle *Chacha* of Veerpal Kaur) was recorded on 29.10.2010. Veerpal Kaur stated that her marriage was solemnized

about three years prior to the incident in question, but due to strained relations with her husband she resided with her father at Chattargarh Patti, Sirsa for the last one year. Four days prior to Dussehra festival, she had gone to the house of her paternal aunt (sister of her father) at Rampura Phul, District Bathinda. When she came back on 23.10.2010 to her parental house, she inquired about the deceased from her uncle (*Chacha*) i.e., the present appellant but he expressed ignorance as to where she had gone. She further stated that on 27.10.2010 at about 10/11 O'clock, the appellant confessed that he had murdered her aunt (deceased) on the intervening night of 21st October, 2010 by firstly pressing her neck and thereafter chopping off her head with *Kappa*. He threw the chopped off head after putting it in a plastic bag and threw remaining parts of the body at Jhopra road after tying in a bale and taking it on a bicycle. Appellant stated that he had murdered his wife in a fit of anger and that she should not disclose this fact to anyone as otherwise his children would be ruined and it would not be good for her also in case she revealed these facts to anyone.

16. Statement of Vishal, son of the deceased and appellant, was recorded in question-answer form on 29.10.2010 by Prabandhak Officer, Police Station, Sirsa. In response to a question as to who had killed his mother, Vishal replied that his father had killed her mother about 8-9 days ago with *Aara*. He further stated that his father told him not to tell about the incident to anyone and he would give him currency notes of Rs.1000/-. He stated that the body was tied up by appellant and taken on his cycle. Statements of PW8 Veerpal Kaur and PW9 Vishal under Section 164 Cr.P.C. were recorded before learned Area Magistrate on 30.10.2010 wherein they reiterated their earlier statements under Section 161 Cr.P.C.

17. PW15 Rajinder Kumar, a neighbour of appellant recorded his statement (Ex.PP) to the extent that on the night of 21.10.2010, he had gone to village Jhopra for his personal work on his motorcycle. When he was returning back to his house, he saw Satpal (appellant) going towards village Jhopra on his bicycle in the light of motorcycle. He saw a bundle on the carrier of the bicycle. PW15 Rajinder Kumar stated that he enquired from appellant as to where he was going and what was placed on the bicycle, upon which appellant responded that he was going to deliver some goods at village Jhopra and appellant went towards village Jhopra on his bicycle while PW15 came home. PW15 Rajinder Kumar stated in his statement (Ex.PP) that he later came to know that wife of Satpal (appellant) was missing on that day. Headless body of a female was found near village Jhopra on 22.10.2010 and head of a woman was recovered from the tank of Water Works, Chattargarh Patti on 27.10.2010 and that he was sure that on the night of 21.10.2010 appellant was carrying dead body of his wife on his bicycle in a gunny bag (*gathri*) and going towards village Jhopra on his bicycle.

18. PW8 Veerpal Kaur, PW9 Vishal and PW15 Rajinder Kumar have not supported the prosecution case. PW8 Veerpal Kaur in her testimony before learned trial court, stated that deceased left the house without informing anybody and her whereabouts were not known to them. She denied that appellant ever confessed to the commission of offence in her presence. When confronted with her statement (Ex.PJ) and the statement (Ex.PK) suffered by her before the learned Area Magistrate, she took a categorical stand that she had given an incorrect statement under pressure of the maternal uncle, Baldev Singh and his wife, Anita. She denied that any compromise had been arrived at with the accused. She categorically stated that she was deposing before the learned trial

Court out of her own free will without any kind of pressure. PW9 Vishal, who was aged 9 years at the time of recording his statement before learned trial Court, stated that he had not seen any offence being committed by the appellant and that deceased had been missing from the last Dussehra/Diwali festival and her whereabouts were not known. He further stated that statement earlier made by him before the learned Area Magistrate on 30.10.2010 had been made under pressure of his maternal uncle and aunt. He denied that he was pressurized or won over to make the statement before the learned trial court.

19. PW15 Rajinder Kumar while stating before learned trial court that appellant was known to him being neighbour, stated that he did not know anything about the case. PW15 Rajinder Kumar was declared hostile. In his cross-examination, he completely denied ever having seen appellant-Satpal on the night of 21.10.2010 on his bicycle with one bundle wrapped in plastic sheet. He denied that his statement was ever recorded by the police or that he had been pressurized to make an incorrect statement before the learned trial court.

20. Prosecution tried to connect appellant with the commission of offence on the basis of statements made by PW8 Veerpal Kaur and PW9 Vishal as well as recovery of blood-stained clothes and alleged weapon of offence, *Kappa*. Having carefully scrutinized the evidence on record, in our considered opinion, learned trial court has erred in convicting the appellant of the offences in question. Learned trial court concluded that appellant murdered his wife by first throttling her and then beheading her with a *Kappa* while observing as under:-

“72. So in the instant case what is made out from the aforesaid discussion is that the accused had killed his wife (i) he made telephonic call to his brother-in-law regarding the missing of his wife, (ii) that headless body of an adult female was found near Jhopra at the instance of Ramji Lal, (iii) after some days a skull of adult female was found and which was

identified by Smt. Veerpal Kaur when she was called to mortuary, (iv) the head with face though decomposed and putrefied was recognized from the ear-rings and nose-pin that the head belonged to her aunt, (v) prior to this accused made extra judicial confession to his niece Veerpal Kaur regarding the manner of killing of Rani, (vi) that Vishal the son of deceased had witnessed the occurrence whose statement u/s 164 Cr.P.C. was got recorded before the Magistrate, similarly statement of Veerpal Kaur was also got recorded u/s 164 Cr.P.C. wherein she adhered to her previous statement i.e. to extra judicial confession made by accused before her, (vii) the accused gets the recovery of Kappa used for the commission of offence and clothes of the deceased and the cycle used by him on his arrest, (viii) as per MLR headless body was subjected to post mortem examination and it was found the body of adult female, similarly the skull recovered was also subjected to post mortem examination, it was found to be a head of an adult female and as per FSL findings Rani was not given poison, Rani was not subjected to rape, therefore as per medical opinion and FSL opinion Rani was chopped off with some heavy sharp weapon. As per FSL findings the Kappa and clothes had human blood stains. Thus all these facts go to show that Rani was killed by the accused. Firstly he pressed her neck, thereafter he cut her throat with the help of Kappa and which things he had got recovered as per his disclosure statements. Thus, the recovery by the accused from the place known to him and also the evidence of Veerpal Kaur and Vishal and one neighbourer Rajinder go to show that it was the accused who was the author of the crime but it was nobody else other than the accused.”

21. It was then observed by learned trial court that deceased was with accused on the date of occurrence, thus, it was incumbent upon him to explain the circumstances. Rigours of Section 106 of Evidence Act, it was held, would apply in the present case. While referring to the judgment of Hon’ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra, 1984(4) SCC 116**, it was held that circumstances in the matter conclusively pointed to guilt of the appellant.

22. Though extremely attractive at first flush, but a close scrutiny of the matter reveals that such a conclusion is not warranted by evidence on record. Admittedly, in the present case, star witnesses of the prosecution, i.e. PW8 Veerpal Kaur, PW9 Vishal and PW15 Rajinder Kumar have not supported the prosecution version. PW8 Veerpal Kaur and PW9 Vishal have categorically stated that their statements under Sections 161 and 164 Cr.P.C. were recorded due to influence of their maternal uncle and his wife. PW15 denied ever having recorded his statement to the effect that he had seen the appellant on the night of 21.10.2010 carrying the gunny bag (*gathri*) on the carrier of his bicycle. In the given factual matrix, in order to convict the accused, it is to be determined as to whether the chain of events is so complete with every link in place that there can be no other conclusion except that which is in consonance with the guilt of the accused.

23. In **Sharad Birdhichand Sarda's** case (supra) it was held that the circumstances must not only be individually proved or established, but they must form a consistent chain, so conclusive, as to rule out the possibility of any other hypothesis, except the guilt of the accused. Five golden principles were enunciated, which are as follows:-

- (1) the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) the circumstances should be of a conclusive nature and tendency.
- (4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

24. This position has been reiterated by the Hon'ble Supreme Court in Criminal Appeal No.1338 of 2010 (Pradeep Kumar v. State of Haryana) decided on 05.01.2024. Thus clearly suspicion however strong can never take the place of proof.

25. Invocation of rigours of Section 106 of Evidence Act by learned trial court in our considered opinion is erroneous. Section 106 of Evidence Act is clearly an exception to the general rule under Section 101 of Evidence Act. Section 106 of Evidence Act wherein the burden of proving a fact especially within knowledge of any person is upon him, is designed to meet certain exceptional cases in which it would be impossible or disproportionate for the prosecution to establish facts which are especially within the knowledge of the accused and which he can prove without difficulty or inconvenience. It is equally well settled that rigours of Section 106 of Evidence Act would apply to those cases where prosecution has succeeded in establishing the foundational facts where a reasonable presumption can be drawn regarding existence of other facts which are in the special knowledge of the accused. It is only when such foundational facts are first duly proved by the prosecution that rigours of Section 106 of Evidence Act would be invoked. In the present case, prosecution has relied upon statements of Veerpal Kaur, Vishal, Rajinder Kumar and Baldev Singh at the initial stage to build up its case against the appellant and then proceeded to rely upon the alleged recovery of *Kappa*, blood-stained clothes of deceased and bicycle.

26. It is to be noted that as per statement of PW13 Baldev Singh, marriage of the appellant took place with his sister (deceased) 13 years prior to the incident in question. There is admittedly no evidence on record to indicate that relations of appellant with the deceased were strained. PW13 Baldev Singh, himself did not mention any such thing in his initial statement. It is only in his deposition before the learned trial court, he stated that relations were strained between them. There is admittedly no evidence, whatsoever, to indicate such strained relations or any complaint in this regard ever having been filed either by deceased, her brother or any other person in this long period of 13 years, in which three children were also born to appellant and deceased. It is further to be noted that PW13 Baldev Singh stated that appellant on 22.10.2010 informed about the deceased being missing from home and, in fact, called upon Baldev Singh to make inquiries from amongst relations as to where she had gone. In case there had been strained relations between the deceased and appellant, in all normal probability brother of the deceased, Baldev Singh, would have immediately lodged a complaint in this respect. It is against all probabilities that he would wait till 29.10.2010 after decapitated head is recovered, to take any action. This fact by itself indicates that there could not have been any such acrimony between appellant and deceased as otherwise Baldev Singh would have raised an alarm immediately. Conduct of Baldev Singh, the brother of the deceased is, in fact, opposed to all normal probabilities in case there had been strained relations between appellant and deceased. Leela Ram, father of the deceased nor any other family member/neighbour etc. has even been examined in respect to any strained relations between appellant and deceased.

27. Much stress had been laid by learned counsel for the State on initial

statements of PW8 Veerpal Kaur and PW9 Vishal, i.e. niece and son of the appellant including their statements under Section 164 Cr.P.C., to submit that they had subsequently been prevailed upon to retract from the truthful statements. It is to be noted that both these witnesses had stated that they earlier made incorrect statements on being influenced by Baldev Singh and his wife. It is indeed opposed to all natural probabilities that son of appellant and deceased would have kept quiet for such long days and no hue and cry was created at the time of the incident itself by the son. Similarly, there was no occasion for appellant to have made a confession before his niece on 27.10.2010, i.e. the day on which decapitated head of a woman was discovered from the Water Works. Statement of Chakkardhar was recorded on 27.10.2010 at 10.30 a.m. Statement of Veerpal Kaur was recorded on 29.10.2010. It is opposed to all probabilities that on hearing such a shocking confession, she would have kept quiet for such number of days. It is relevant to note that even in their earlier statements, Veerpal Kaur and Vishal have not indicated any discord as such between appellant and deceased.

28. Furthermore, it has come on record that there were other family members residing in the house where appellant and deceased were living alongwith their three children. Investigating Officer, PW18 Mouji Ram stated that there were about 7/8 family members who were residing in the house. A doubt is created regarding probability of the appellant carrying out such a grotesque task in the presence of all family members. Two other children (daughters) of the deceased and appellant are stated to have kept sleeping throughout this incident, which again does not appear palatable. Age of the other children is also not forthcoming on record and neither had the said children been

examined. It appears to be far-fetched that appellant could have carried out the act as alleged without a hue and cry in the house and further also managed to wipe out any trace of commission of the offence in the house in the presence of other family members.

29. It is to be noted at this stage that residence was not in the exclusive possession of the appellant. There were admittedly other people residing in the house. There is nothing on record that any sign of the incident having taken place on the intervening night of 21/22.10.2010 was found at the spot. It is indeed doubtful that appellant on his own in the presence of a young child would have been able to carry out the whole process of firstly strangulating his wife, then decapitating her, take all of her clothes, pack her in a gunny bag and tow away the head and body on a bicycle, in the dead of night without anybody coming to know of the same and wipe all traces of offence in the house. PW15 Rajinder Kumar has denied having recorded any statement on 29.10.2010. PW8 Veerpal Kaur while deposing before learned trial court stated that her statements recorded on 29.10.2010 and 30.10.2010 were suffered by her under pressure from Baldev Singh and his wife. She has admittedly not supported the prosecution case.

30. Vishal, son of the deceased and appellant has categorically stated that the statement suffered by him under Section 164 Cr.P.C. was under influence of maternal uncle and his wife. Conclusion drawn by learned trial court that witnesses in question have turned hostile due to the son (PW9 Vishal) being persuaded by other members of the family to the extent that the accused would be sent to jail and then who would bring him up, Veerpal Kaur (PW8) turned hostile in order to save the appellant because she is related to him being niece

and Rajinder Kumar (PW15) has been won over by the members of the family of accused being co-villager, is based entirely on assumptions and presumptions. There is no such evidence on record to justify such a finding. It is, at best, what it is, i.e. a presumption.

31. We do not find any merit in the arguments raised by learned counsel for the State that statements made by PW8 Veerpal Kaur, PW9 Vishal and PW15 Rajinder Kumar before the learned trial court should be ignored while accepting the statements made by the said witnesses before learned Area Magistrate. Statements under Section 164 Cr.P.C. can only be used for the purpose of corroboration and contradiction. In the given factual matrix reliance on the said statements for the purpose of convicting the accused, is not a safe option, especially, when both the said witnesses have categorically stated that statements so suffered by them, were incorrect.

32. Similarly, reliance by the prosecution on recovery of blood-stained clothes and *Kappa*, is of no avail. It is admitted by Investigating Officer, PW18 Mouji Ram that he had not called any reputed/independent person of the area at the time of alleged recovery. In cross-examination, he even stated that he did not remember whether the clothes and *Kappa* which were recovered, were stained with blood. He did not even remember as to whether that he had taken the samples of the seal and affixed the same on recovery memos. Blood-stained clothes are alleged to have been recovered from cotton fields which admittedly did not belong to the appellant. Statement of owner of the said fields was not recorded. Recovery of the bicycle from residence of appellant is of no avail, as appellant's bicycle normally would also be lying at his residence.

33. Alleged recovery of *Kappa* from the house of appellant by itself, is

not sufficient to conclusively prove that appellant had murdered his wife. As noted in foregoing paras, the place of alleged recovery was not in exclusive possession of appellant. Admittedly, other family members were living in the house from where alleged weapon of offence *Kappa*, which is otherwise a common tool found in rural households, and bicycle were recovered. Blood-stained clothes were allegedly recovered from open fields, not belonging to appellant.

34. It would indeed be a far-fetched to conclude in the given circumstances that an adverse inference should be drawn against the appellant because he failed to explain the circumstances in which his wife left the matrimonial home and convict him for her murder. Judgment of the Hon'ble Supreme Court in Trimukh Maroti Kirkan v. State of Maharashtra, 2006(10) SCC 681 would not come to the aid of prosecution in this case because in the said matter there was cogent evidence on record to prove that the deceased was ill-treated and subjected to harassment, with death having taken place in the matrimonial home which is not so in the present case.

35. It is further to be noted that decapitated head was not in an identifiable condition. Reference in this regard can be made to the statement of PW10 Dwaraka Prasad, who was present alongwith Chakkardhar, when the head was recovered from the tank of Water Works at Chattargarh Patti. PW5 Dr. Pawan Mittal had conducted the autopsy on the headless body on 23.10.2010 as well as the head on 30.10.2010. PW5 Dr. Pawan Mittal in his cross-examination has stated that the body was in a total state of decomposition. Cause of death in the case was opined to be decapitation with any other possibility of death being ruled out. It is to be noted that there is nothing on record to indicate that the

weapon allegedly recovered from appellant, was ever presented before the said doctor for his opinion.

36. Identification of the head was purportedly carried out by brother of the deceased and his wife, on the basis of earrings and nose pin worn by the deceased. Reference was made to a photograph of the deceased (Ex.P5) where she is stated to be wearing the said articles. Insofar as the headless body recovered on 22.10.2010 and the head being of same person, i.e. Rani w/o appellant is concerned, same could not be proved as is evident from the report (Ex.PO). It was found that necessary DNA profile could not be obtained from the articles as sent for DNA. It is mentioned in Ex.PO that blood sample collected from Leela Ram, father of the deceased was also sent alongwith, however, PW5 Dr. Pawan Mittal stated that he had never collected any such samples. There is nothing on record to indicate as to who had collected the said blood samples. Perusal of the record reveals that as per photographs of headless body, certain rings are found reflected on the fingers of same, but surprisingly there is nothing on record to indicate whether the same were of Rani @ Veerpal Kaur.

37. Even if it is to be accepted that the head and headless body recovered, did indeed belong to same person and that said person was wife of the appellant, it is difficult to conclude and hold appellant to be guilty of the offence in question beyond reasonable doubt.

38. Keeping in view the facts and circumstances as above, it is apparent that the learned trial court has erred in convicting the appellant for offence punishable under Section 302 read with Section 201 IPC. Definite and strong doubt is cast on the prosecution version, benefit of which necessarily has to

accrue to the appellant. In our considered opinion, appellant is entitled to the benefit of doubt in the given factual matrix.

39. Accordingly, judgment of conviction dated 21.10.2013 and subsequent order of sentence dated 24.10.2013 passed by learned Additional Sessions Judge, Sirsa are set aside. Appellant is acquitted of the charges against him being afforded the benefit of doubt.

40. Appeal is accordingly accepted.

41. In case he is not required in any other criminal case, appellant be released forthwith.

42. Pending applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

January 19 , 2024.
'om'

(RITU TAGORE)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No