
(2019) 04 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 243 Of 2016

Amar Bahadur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 154, 313, 313(4)
Evidence Act, 1872 — Section 114(g)

Citation : (2019) 04 SHI CK 0001

Hon'ble Judges : Dharam Chand Chaudhary, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Ravi Tanta, Vikas Rathore, Narender Guleria, J.S. Guleria, Kunal Thakur

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present appeal is maintained by the appellant/accused/convict (hereinafter referred to as "the accused"), laying challenge to judgment dated 02.05.2016, passed by learned Additional Sessions Judge (II), Shimla, H.P., in Sessions Trial No. 40-S/7 of 2014, whereby the accused was convicted and sentenced for the commission of offence punishable under Section 302 of Indian Penal Code, 1860 (for short "IPC").

2. The factual matrix of the case, as per the prosecution, can tersely be summarized as under:

On 10.07.2014, at about 09:20 p.m., S.I./SHO Police Station, Jubbal, District Shimla, received information from Police Post Saraswati Nagar that a Nepali person killed Krishan Chand and also caused grievous hurt to his mother at Chajpur. Owing to said information a police team rushed to the spot of occurrence. On reaching the spot, the police recorded the statement of Smt.

Nisha (complainant) under Section 154 Cr.P.C. Relevant excerpts of her statement, as also noted by the learned Trial Court, are as under:

"That she is resident of aforesaid address and is house wife and agriculturist by profession. She was married to Krishan Chand six years ago. She is having son four years old and residing with her parents-in-law. They owned an apple orchard. On this, her husband and Roshan Lal neighbour had gone to Nepal to bring Gorkha labour 10 days before. On dated 10.7.2014, her husband along with Gorkha labour had reached in the morning. Her husband, Nepali Gorkha, his wife, two elder daughters aged 15-16 years and three tiny toolers, one son and two daughters had reached. Two infants son and daughter are having mother feed. The Gorkha labour was allotted the room adjoining to their residential house. During day time the Nepali Gorkha had cut the wood with an Axe. At about 7:00 p.m. her father-in-law Sh. Mishru Ram had gone to Chikli. She along with her husband and mother-in-law were cooking meal inside the kitchen then at about 7:30 p.m., Gorkha labour called her husband and asked that electric bulb of the room is not working. Husband of the complainant had gone along with accused. After some interval she heard cries of the children and some noise. On this the mother-in-law Smt. Shobha came out side the kitchen and went to the veranda at once. She heard the noise of someone felling down in the veranda. She immediately came out side and found the accused Gorkha Nepali carrying Axe in his hand. Her husband was lying in the veranda. Her mother-in-law was also lying at the some distance at the veranda. On seeing the complainant, the accused after throwing the Axe alongwith his family members had absconded towards the forest. The complainant went to her husband and found that there were two deep cut injuries on his neck. There was profuse bleeding on the spot. She laid some clothes upon him. The mother-in-law of the complainant had also sustained injuries on her head. She was lying unconscious. She made an attempt to call her father-in-law. She could not place the call as she was frightened. She yelled and called her neighbour Pyare Lal Sharma on the spot, who informed the police and the local inhabitants of the area. Accused had committed the murder of her husband by striking the blow of an Axe twicely on his neck. Accused also made attempt to commit the murder of the mother-in-law by inflicting the blow of an Axe. Nepali citizen was having description of about 5 feet 2 inch in height, whitish complexion wearing black track suit. The name of the accused is not known. The legal action be initiated against him."

Thereafter, the statement of the complainant recorded under Section 154 Cr.P.C. was forwarded to Police Station, Jubbal, alongwith rukka, whereupon FIR was registered and the investigation ensued. The police lifted scientific samples from the scene of crime and also made recovery of articles. The dead body of deceased Krishan Chand was sent for postmortem examination to CH, Jubbal, and Smt. Sodha Devi was shifted to CH Rohru, wherefrom she was referred to Indira Gandhi Medical College, Shimla, but en route she succumbed to her injuries, so her corpse was brought back to CH, Jubbal, for postmortem examination. The clothes worn by both the deceased were taken in possession

and sealed in separate parcels. During the course of postmortem examination, viscera, i.e., parts of various organs, viz., kidney, liver, stomach, blood and urine samples etc. were taken and deposited with MHC. The spot was photographed and spot map was prepared. Inquest reports qua death of the deceased Krishan Chand and Sodha Devi were prepared and the statements of the witnesses were recorded. Police constituted raiding parties for apprehending the accused and on 16.07.2014, SHO, Police Station Chopal informed that a person, having similar description, as disclosed by the complainant, has been apprehended by gujjars, Suffrdin and Kasamdin at Tharoch forest Chajpur, alongwith his family members. Consequently, S.I. Kuldeep went to Tharoch and took over the custody of that person (accused). The accused was brought to Police Station, Jubbal, and identified by the complainant and his father-in-law. The clothes worn by the accused were taken into possession and sealed in a parcel. Track suit of the accused and other incriminating articles were sent to FSL, Junga. Aks sajra of the place of occurrence was obtained from the concerned Patwari. CIPA certificate was prepared and reports received from FSL, Junga, were tagged with the FIR. On 22.07.2015, after receipt of FSL reports on DNA profiling, supplementary challan was presented and on 08.10.2014, on completion of investigation, final report and supplementary report alongwith relevant documents were presented before the concerned Judicial Magistrate, who committed the case to the learned Trial Court, vide its order dated 13.10.2014.

3. The prosecution, in order to prove its case, examined eighteen witnesses. On the closure of prosecution evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, wherein he pleaded not guilty and claimed trial. However, in defence, the accused did not examine any witness.

4. The learned trial Court vide its judgment dated 02.05.2016, convicted the accused for the commission of the offence punishable under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and also to pay fine of Rs. 2,00,000/- (two lacs). In default of payment of fine, he was further ordered to undergo simple imprisonment for five years, in addition to life imprisonment. The fine amount, if realized, was ordered to be paid to the wife of the deceased as compensation.

5. We have heard Mr. Ravi Tanta, Advocate, learned counsel for the appellant/accused and Mr. J.S. Guleria, learned Deputy Advocate General, for the respondent/State.

6. Mr. Ravi Tanta, learned counsel for the appellant has argued that in the case in hand the star prosecution witness is Smt. Nisha (complainant) and her version is not reliable as there is variance what she stated in the Court and her statement recorded under Section 154 Cr.P.C. He has further argued that the complainant gave different versions with regard to the room where the electrical bulb was to be changed by deceased Krishan Chand. He has argued that the true genesis of the alleged crime has not been brought before the Court and the story of the

prosecution is full of contradictions, thus not believable. He has argued that the children and wife of the accused, who were present at the time of the incidence, were not associated as witnesses by the prosecution, so the presumption under Section 114(g) of The Indian Evidence Act, 1872, goes against the prosecution. As far as the death of Sodha Devi is concerned, he has argued that the injuries on her person suggest that it was a case of simple hurt and in all probabilities the accused is required to be acquitted, as the prosecution has failed to prove the guilt of the accused beyond the shadow of reasonable doubt. He has argued that the judgment of the learned Trial Court be set aside and the accused be acquitted. Conversely, Mr. J.S. Guleria, learned Assistant Advocate General, has argued that there were three cut injuries on the throat of deceased Krishan Chand, which were caused by an Axe by the accused. He has further argued that even the injuries on the person of deceased Sodha Devi were sufficient to cause her death in all probabilities and as a result of which she died. He has argued that there is direct evidence against the accused and the prosecution has proved the guilt of the accused beyond the shadow of reasonable doubt. Lastly, he has argued that the accused has been convicted and sentenced after properly appreciating the facts and law, so the judgment of the learned Trial Court needs no interference and the appeal be dismissed.

7. In rebuttal, Mr. Tanta has argued that in the morning of the alleged day of occurrence the accused alongwith his wife, four children, i.e., two grown up daughters, two minors, and deceased Krishan Chand reached from Nepal and the accused had no intention to kill the deceased in the evening. He has further argued that the true geneses of the alleged occurrence have not been brought before the Court, so a presumption will go against the prosecution and in favour of the accused. Thus, the accused is required to be acquitted.

8. The prosecution case has two limbs, i.e., direct evidence of PW-13, Smt. Nisha, and circumstantial evidence. At the outset, it would be apt to highlight the law relating to circumstantial evidence, as the major part of the edifice of the prosecution story rests upon circumstantial evidence. The Hon'ble Apex Court, as also this Court, in a catena of judgments culled out the rudimentary principles to deal with cases of circumstantial evidence. In nitty-gritty, the law with respect to circumstantial evidence is that each and every circumstance is required to be proved by the prosecution and the circumstances, as a whole, have to make out a chain in a manner that the only conclusion is that the accused has committed the offence, as alleged by the prosecution. The law on the point of circumstantial evidence is considered and settled by the Hon'ble Courts in the following judgments:

1. State of H.P. vs. Sunil Kumar, Criminal Appeal No. 326 of 2011, decided on 15.06.2017;
2. Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622;

3. Padala Veera Reddy vs. State of Andhra Pradesh and others, AIR 1990 Supreme Court 79;

4. State of Uttar Pradesh vs. Ram Balak & another, (2008) 15 Supreme Court Cases 551, &

5. Rajdev alias Raju & another vs. State of H.P., Criminal Appeal No. 288 of 2015.

9. In State of H.P. vs. Sunil Kumar, Criminal Appeal No. 326 of 2011, decided on 15.06.2017, this Court has held as under:

"13. It is more than settled that in case of circumstantial evidence, the circumstances from which inference as to the guilt of the accused is drawn, have to be proved beyond reasonable doubt and there be a complete chain of evidence consistent only that the hypothesis of guilt of the accused and totally inconsistent with his innocence and in such a case if the evidence relied upon is capable of two inferences then one which is in favour of the accused must be accepted. It is clearly settled that when a case rests on circumstantial evidence such evidence must satisfy three tests:

i) The circumstance from which an inference of guilt is sought to be drawn must cogently and firmly established.

ii) Those circumstances should be of a definite tendency un-erringly pointing out towards the guilt of the accused.

iii) The circumstances taken cumulatively, should form a complete chain so that to come to the conclusion that the crime was committed by the accused.

14. Equally well settled is the proposition that where the entire prosecution case hinges on circumstantial evidence the Court should adopt cautious approach for basing the conviction on circumstantial evidence and unless the prosecution evidence point irresistibly to the guilt of the accused, it would not be sound and safe to base the conviction of accused person.

15. In case of circumstantial evidence, each circumstances must be proved beyond reasonable doubt by independent evidence and the circumstances so proved, must form a complete chain without giving room to any other hypothesis and should be consistent that only the guilt of the accused (See: Lakhbir Singh vs. State of Punjab, 1994 Suppl. (1) SCC 173)."

10. The Hon'ble Supreme Court in Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622, has held as under:

"48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to

exaggerate or add facts which may not have been stated to them at all. Not that is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.

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150. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

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158. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

159. If these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the Court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's case (AIR 1981 SC

765) (supra) where this Court observed thus:

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused."

160. This Court, therefore, has in no way departed from the five conditions laid down in Hanumant's case (supra). Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General."

11. The Hon'ble Supreme Court in Padala Veera Reddy vs. State of Andhra Pradesh and others, AIR 1990 Supreme Court 79, has held as under:

"12. There are certain salient and material features in the present case which are not controverted; they being that A-1 to A-3 and the deceased lived under a common roof, that the deceased had instituted a civil suit against her father, PW-8 and brother PW-9 claiming exclusive possession of the disputed land, that the deceased was found dead on the morning of 7.9.85 and that there were certain visible injuries such as abrasions, nail marks and contusions on the part of the nose, upper lip, chin and neck etc. as noted by the Medical Officers (PWs 5 and 6) in the post-mortem report Ex. P. 9. The appellate Court on the strength of the opinion given by the Medical Officers (PWs 5 and 6) has agreed with the view of the Trial Court that the death of the deceased was of homicidal one and not suicidal and held "therefore suicidal is ruled out." We also very carefully went through the evidence of the Medical Officers and found that the prosecution has convincingly established that the death of the deceased was due to forcible administration of poison and smothering. Hence we are in full agreement with the concurrent findings of the Courts below that it is a clear case of murder.

... ..

15. While considering the above circumstances, the appellate Court has expressed its view that the explanation given by the accused that they were at the marriage house of PW-1 throughout the night is nothing but a false explanation and that the culprits who ever they might have been should have administered the poison to the victim and thereby caused her death and that there is very strong suspicion against the accused persons but the prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof. The relevant portion of the final conclusion of the appellate Court reads thus:

"There is no evidence whatsoever either from the neighbours or from others to show that the accused at any time ill-treated the deceased or treated her cruelly. In these circumstances, it is not possible to hold that the prosecution has established the guilt on the part of A. 1 to A. 3. Thus, there is no conclusive evidence that the accused committed the offence of murder. It is an unfortunate case where cold-blooded murder has been committed and it is difficult to believe that no inmate of the house had any hand in the offence of murder. But that will be only a suspicion which cannot take the place of proof."

16. We, in evaluating the circumstantial evidence available on record on different aspects of the case, shall at the foremost watchfully examine whether the accused 1 to 3 had developed bad-blood against the deceased to the extent of silencing her for ever, that too in a very inhuman and horrendous manner. The appellant wants us to infer that the deceased should have been subjected to all kinds of pressures and harassments and compelled to institute the suit against her father and brother claiming exclusive right over the landed property in order to grab the said property, that this conduct of the accused should have been resented by the deceased and that on that score the accused should have decided to put an end to her life.

In our view, this submission has no merit because there is no acceptable evidence showing that there was any quarrel in the family and that the deceased was ill-treated either by her husband or in-laws. The appellate Court while dealing with this aspect of the case has observed that there is no evidence that the accused ill-treated the deceased, which observation we have extracted above. Hence, we hold that there is no sufficient material to warrant a conclusion that the accused had any motive to snatch away the life threat of the deceased. There is no denying the fact that the deceased did not accompany her husband and in-laws to attend the marriage celebrated in the house of PW-1 and remained in the scene house and that she has been done away with on the intervening night of 6th/7th September, 1985. From this circumstance, the Court will not be justified in drawing any conclusion that the deceased was not leading a happy marital life.

As observed by the appellate Court, the explanation offered by accused 1 to 3 that they remained in the house of PW 1 throughout the night is too big a pill to be swallowed. But at the same time, in our view, this unacceptable explanation would not lead to any irresistible inference that the accused alone should have committed this murder and have come forward with this false explanation. We have no hesitation in coming to the conclusion that it is a case of murder but not a suicide as we have pointed out supra. The placing of the tin container with the inscription 'Democran, by the side of the dead body is nothing but a planted one so as to give a misleading impression that the deceased had consumed poison and committed suicide. But there is no evidence as to who had placed the tin container by the side of the dead body. Even if we hold that the perpetrators of the crime whoever might have been had placed the tin, that in the absence of

any satisfactory evidence against the accused would not lead to any inference that these accused or any of them should have done it. It is the admitted case that the first accused handed over three letters Ex. P. 6 to P. 8 alleged to have been written by the deceased to the Investigating Officer. The sum and substance of these letters are to the effect that the deceased had some grouse against her parents and that the accused were not responsible for her death. The explanation given by accused No. 1 in this written statement is that by about the time of the arrival of the police, one Sathi Prasad Reddy handed over these letters to him saying that he (Reddy) found them near the place where the dead body was laid and that he (A-1) in turn handed over them to the police. PWs 8 and 9 have deposed that these letters are not under the hand writing of the deceased. But the prosecution has not taken any effort to send the letters to any hand-writing expert for comparison with the admitted writings of the deceased with the writings found in Ex. P. 6 to P. 8. Under these circumstances, no adverse inference can be drawn against accused No. 1 on his conduct in handing over these letters.

17. No doubt, this murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances unerringly establish that all the accused or any of them are the real culprits. The circumstances indicated by the learned Counsel undoubtedly create a suspicion against the accused. But would these circumstances be sufficient to hold that the respondents 2 to 4 (accused 1 to 3) had committed this heinous crime. In our view, they are not.

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22. We are of the firm view that the circumstances appearing in this case when examined in the light of the above principle enunciated by this Court do not lead to any decisive conclusion that either all these accused or any of them committed the murder of the deceased, Vijaya punishable under Section 302 read with Section 34 of I.P.C. or the offence of cruelty within the mischief of Section 498-A I.P.C. Hence, viewed from any angle, the judgment of the appellate Court does not call for interference."

12. The Hon'ble Supreme Court in State of Uttar Pradesh vs. Ram Balak & another, (2008) 15 Supreme Court Cases 551, has held as under:

"12. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish, it was noted as follows:

"22. The last seen theory comes into play where the time- gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that

the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

13. In *Ramreddy Rajesh Khanna Reddy v. State of A.P.*, it was noted as follows:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

Even in such a case the courts should look for some corroboration."

(See also *Bodhraj v. State of J&K*, (2002) 8 SCC 45)

14. A similar view was also taken in *Jaswant Gir v. State of Punjab*, 2005 12 SCC 438. Factual position in the present case is almost similar, so far as time gap is concerned.

15. Out of the circumstances highlighted above really none is of any significance. Learned Counsel for the appellant-State highlighted that the extra judicial confession itself was sufficient to record the conviction. On a reading of the evidence of CW-1 it is noticed that accused Ram Balak did not say a word about his own involvement. On the contrary he said that he did not do anything and made some statements about the alleged act of co-accused. Additionally, in his examination under Section 313 of Code, no question was put to him regarding his so called extra judicial confession. To add to the vulnerability, his statement is to the effect that after about 11 days of the incidence the extra judicial confession was made. Strangely he stated that he told the police after three days of the incidence about the extra judicial confession. It is inconceivable that a person would tell the police after three days of the incidence about the purported extra judicial confession which according to the witness himself was made after eleven days. Learned Counsel for the State submitted that there may be some confusion. But it is seen that not at one place, but at different places this has been repeated by the witness.

16. Learned Counsel for the appellant also refers to a judgment of this Court in *Abdul Razak Murtaza Dafadar v. State of Maharashtra*, more particularly para 11 that the Dog Squad had proved the guilt of the accused persons. In this context it is relevant to take note of what has been stated in para 11 which reads as follows: (SCC pp. 239-40)

"11. It was lastly urged on behalf of the appellant that the lower courts ought not to have relied upon the evidence of dog tracking and such evidence was not admissible in order to prove the guilt of the appellant.

The evidence of tracker dogs has been much discussed. In Canada and in Scotland it has been admitted. But in the United States there are conflicting

decisions:

'There have been considerable uncertainty in the minds of the Courts as to the reliability of dogs in identifying criminals and much conflict of opinion on the question of the admissibility of their actions in evidence. A survey of the cases however, reveals that most Courts in which the question of the admissibility of evidence of- trailing by blood-hounds has been presented take the position that upon a proper foundation being laid by proof that the dogs were qualified to trail human beings, and that the circumstances surrounding the trailer were such as to make it probable that the person trailed was the guilty party, such evidence is admissible and may be permitted to go to the jury for what it is worth as one of the circumstances which may tend to connect the defendant with the Crime.' (para 378, Am. Juris. 2nd edn. Vol. 29, p. 429.)

There are three objections which are usually advanced against the reception of such evidence. First, since it is manifest that the dog cannot go into the box and give his evidence on oath, and consequently submit himself to cross-examination, the dog's human companion must go into the box and report the dog's evidence, and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inferences. And, thirdly, it is suggested that even if such evidence is strictly admissible under the rules of evidence it should be excluded because it is likely to have a dramatic impact on the jury out of proportion to its value. In *R. v. Montgomery*, 1866 NI 160 a police constable observed men stealing wire by the side of a railway line. They ran away when he approached them. Shortly afterwards the police got them on a nearby road. About an hour and half later the police tracker dog was taken to the base of the telegraph pole and when he had made a few preliminary sniffs he set off and tracked continuously until he stopped in evident perplexity at the spot where the accused had been put into the police car. At the trial it appeared that other evidence against the accused that they had been stealing the wire was inconclusive and that the evidence of the behaviour of the tracker dog was crucial to sustain the conviction. In these circumstances the Court of Criminal Appeal ruled that the evidence of the constable who handled the dog on its tracking and reported the dog's reactions was properly admitted. The Court did not regard its evidence as a species of hearsay but instead the dog was described as "a tracking instrument and the handler was regarded as reporting the movements of the instrument, in the same way that a constable in traffic case might have reported on the behaviour of his speedometer. It was argued in that case that the tracker dog's evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of bacilli. The comparison does not, however, appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But Dogs are intelligent animals with many thought processes similar to the thought processes of human beings and wherever you have thought processes there is always the risk of error, deception and even self-

deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight. It is submitted by learned Counsel for the appellant that in the said case this Court had upheld the conviction. Though in the said case the conviction was upheld, but that was done after excluding the evidence of Dog Squad. This Court found that the rest of the prosecution evidence proved the charges for which the appellants therein had been convicted."

13. After touching the different facets relating to the law laid down by Hon'ble Courts on the subject of circumstantial evidence, the testimonies of the prosecution witnesses need to be examined on the touchstone of veracity and credibility. Besides this, the testimony of PW-13, Smt. Nisha, which is in the shape of direct evidence, also needs meticulous examination so as to reach on a conclusion qua guilt or innocence of the accused.

14. At the very outset, it would be apt to examine the deposition made by PW-17, Dr. Vivek Sahajpal, Assistant Director (DNA), SFSL, Junga, who opined in his report qua DNA profiling as under:

"1. The DNA profile obtained from Exhibit-1 (Axe) matches completely with the DNA profile obtained from Exhibit-9 (blood sample, Krishan Chand).

2. The partial DNA profile obtained from Exhibit-3 (blood scrapped from the spot) is consistent with the DNA profile obtained from Exhibit-16 (blood sample, Shoda Devi).

3. Identical DNA profile was obtained from Exhibit-11a (pants, Krishan Chand) and Exhibit-11b (T-shirt, Krishan Chand) and this DNA profile matches completely with the DNA profile obtained from Exhibit-9 (blood sample, Krishan Chand).

4. Identical DNA profile was obtained from Exhibit-2 (cloth piece/dhatu), Exhibit-18a (jacket, Shoda Devi) and Exhibit-18d (vest, Shoda Devi) and this DNA profile matches completely with the DNA profile obtained from Exhibit-16 (blood sample, Shoda Devi).

5. The partial and mixed DNA profile obtained from Exhibit-1-1a (upper, Amar Bahadur) is not consistent with the DNA profile obtained from Exhibit-9 (blood sample Krishan Chand) and Exhibit-16 (blood sample, Shoda Devi).

6. Exhibit-1-1b (lower, Amar Bahadur), yielded highly degraded DNA that did not show amplification with Powerplex 21 PCR Amplification kit, hence no DNA profile could be generated."

15. Now, the statement of Dr. Ankush Sharma, Medical Officer, Civil Hospital Jubbal, who appeared in the witness box as PW-4, is required to be scrutinized. As per this witness, he alongwith Dr. Sunish Chauhan and Dr. Gagan Sharma, conducted the postmortem examination of the deceased persons and as per postmortem report No. 9 of 2014, dated 11.07.2014, deceased Krishan Chand

died due to ante-mortem injuries and had sustained incised wound 3rd on chin of half inch x half inch. He also sustained incised wound of 5 inch x 1 inch and 1 inch in depth, incised 5 c.m. external juglar vein. He further sustained incised wound 2.5 inch x 1 inch, and 1 inch in depth incised and external juglar vein and 5 c.m. muscle. The scalp, skull and vertebrae normal membranes-brain congested walls, ribs, cartilages, pleurae, larynx, trachea, lungs, heart, large vessels normal. The abdomen part, i.e. walls, peritoneum, mouth, pharynx, stomach, intestines, liver, spleen, kidneys, bladder and generation organs normal. He deposed that as per the report of chemical analysis of viscera blood, urine received from FSL, Junga, No.-1408-ASFSL Chem(684)/14, dated 08.08.2014, no poison/alcohol was detected in viscera, blood and urine. In their final opinion, the death has occurred due to massive hemorrhage from wounds sides leading to cerebral anoxia and cardio-pulmonary arrest. This witness has further deposed that as per postmortem report No. 10 of 2014, dated 11.07.2014, deceased Sodha Devi died due to ante-mortem injuries and she sustained depressed fracture tempo-parietal region of size 3 inch x 2 inch with ENT bleeding positive. Bruise over the scalp left size 3 inch x 2 inch. Membranes-brain congested. Walls, ribs, pleurae, larynx, trachea normal. Lungs are blackish in colour. Heart grossly normal. Lungs. Abdomen walls peritoneum mouth normal. Stomach contains digested food material, intestines contain semi digested food material, liver, spleen, kidneys, bladder and generation organs grossly normal. He deposed that as per the report of chemical analysis of viscera blood, urine received from FSL, Junga, No.-1408-ASFSL Chem(684)/14, dated 08.08.2014, no poison/alcohol was detected in viscera, blood and urine. In their final opinion, the death has occurred due to cardio-pulmonary arrest. He issued postmortem reports, Ext. PW-4/C and PW-4/D, which bear his signatures and that of Dr. Gagan and Dr. Sunish. This witness, in his cross-examination, denied that the injuries sustained by deceased Krishan Chand are possible by way of fall on sharp object from a distant height and injuries sustained by deceased Sodha Devi are possible by way of fall on hard object. He deposed that postmortem examination was conducted during 6 to 10 hours of the death.

16. PW-1, Lahori Singh, Patwari, visited the spot and prepared Aks sajra, Ex. PW-1/A. This witness, in his cross- examination, deposed that spot was identified to him by the police. PW-2, Shri Sufferdin, Shepherd, deposed that on 12.07.2014, when he was in forest, he came to know that a Nepali (Gorkha) killed a person and his mother during the night of 10.07.2014. On 12.07.2014 he was informed by the police that that Gorkha alongwith his family members fled and he is wearing black clothes. On 15.07.2014, at about 09:00 a.m., when he alongwith his brother Kasimdin, Talib Hussain were present outside their dera, they noticed the accused alongwith his wife and five children coming towards the dera. They inquired about his whereabouts and told him that a Nepali after committing murder at Chajpur had fled. He has further deposed that the accused confessed his guilt. They caught hold of the accused and took him to the dera. As per the version of this witness, the accused tried to run

away. Subsequently, they informed the police and the police arrived there at about 01:00-01:30 p.m. The custody of the accused was handed over to the police. This witness, in his cross-examination, deposed that on 12.07.2014, at about 02:30 p.m., police visited his dera. He came to know about the occurrence from the local people of the area. He has further deposed that his statement was recorded by the police after 10-15 days. The police did not show photograph of the accused to him. Sant Ram, police official, visited his dera on 12.07.2014 and gave his number to him. As per the version of this witness, he called the police.

17. PW-2, Sufferdin, has deposed that on 12.07.2014 he was informed by the police that a Nepali after committing double murder fled away from the spot, who is wearing black clothes and having five children. He further deposed that on 15.07.2014, at about 9.00 a.m., when he alongwith his brothers was standing outside the dera, they noticed a person alongwith his wife and five children coming towards the dera. When they inquired from him about his whereabouts, the person told them about the murder committed by him and confessed his guilt. Thereafter, they caught hold of him, took him to the dera and informed the police. At about 1.00-1.30 p.m., the custody of the accused was handed over to the police. This witness, in his cross-examination has deposed that the police had not conducted identification parade of the accused in his presence.

18. PW-3, HHC Rajesh Kumar, deposed that on 10.07.2014, at about 09:15 p.m., Shri Pyare Ram Sharma, the then BDC Member, informed the police that murder has been committed in the house of one Shri Mishru Ram, Village Chajpur. As a sequel thereof, Rapat No. 15 roznamcha dated 10.07.2014, was entered in Daily Diary Register at Police Post Saraswati Nagar. Subsequently, he alongwith ASI Ranjeet, HC Gopal, HHC Surinder, Constable Vinod rushed to the spot. When they reached the spot, Pyare Lal Sharma, Mishru Ram and Nisha Devi alongwith others were on the spot. The dead body of deceased Krishan Chand was lying in the veranda in front of a room next to the residential house of Mishru. The oozed blood of the deceased was found on the floor and there was a cut injury mark on the neck of the deceased. Thereafter, SI/SHO Viri Singh came on the spot and inspected the corpse. Statement of the complainant, Smt. Nisha Devi was recorded under Section 154 Cr.P.C. and he took the same to Police Station Jubbal, whereupon FIR No. 27 of 2014 was registered. He returned to the spot with the case FIR, which he handed over to SI/SHO Viri Singh. This witness, in his cross-examination, deposed that on 13.08.2014, his statement was recorded. He has further deposed that he returned to the spot on 11.07.2014, during early hours of morning. He feigned his ignorance whether the departure report was entered at Police Station Jubbal qua carrying the case FIR from Police Station Jubbal to the spot. He has stated that in his presence, the statement of the complainant was recorded and she gave proper identification of the accused, who perpetrated the crime.

19. PW-5, HHG Bhim Singh, deposed that on 14.07.2014, he being MHC, Police Station, Jubbal, collected the viscera, blood and urine samples alongwith clothes

of the deceased persons from Civil Hospital, Jubbal, and handed over the same to MHC, Police Station, Jubbal. This witness, in his cross-examination, denied that he did not collect the viscera, blood and urine samples and clothes.

20. PW-6, Sh. Mishru, husband of deceased Sodha Devi, deposed that he has two houses one at Chajpur and another at Chikli. His son (deceased Krishan Chand) alongwith one Roshan Lal went to Nepal for engaging labour. He has further deposed that on 10.07.2010, they returned home with a Nepali Gorkha alongwith his wife, two daughters and three small children. As per the version of this witness, a separate room was given to them. The Nepali went to the forest to collect fuel wood and he was having an Axe. As per this witness, at the time of the occurrence, he was at Chikli and when he received a telephonic call from Pyare Lal that a Nepali citizen had murdered his son and also inflicted a blow of Axe on the head of his wife, he rushed to village Chajpur. When he reached at the spot, he saw his wife lying unconscious and the blood was oozing from her mouth. Thereafter, he saw his son, having sustained two deep cut wounds on his neck. He was dead. His wife was rushed to the hospital. The police conducted the inquiry from the wife of deceased Krishan Chand and recorded her statement. The rough sketch of the axe was prepared and the axe was sealed after using six seal impressions 'H' and taken into possession vide seizure memo, Ext. PW-6/B. The blood samples of deceased Krishan Chand, which was lying on the wooden plank and floor, were collected and taken into possession vide memo, Ext. PW-6/D. The head wear gown of his wife was sealed and taken into possession vide memo, Ext. PW-6/F. A mobile alongwith battery and sim was taken into possession vide memo, Ext. PW-6/G. All these memos bear his signatures, encircled in circle 'A'. This witness, in his cross-examination, denied having seen the accused prior to 10.07.2014. As per this witness, the statement of the wife of the accused and his children were not recorded by the police before him. He denied having any dispute between his son and the accused. He also denied that his son misbehaved with the daughters of the accused on the way to Chajpur from Nepal and attempted to rape the daughter of the accused inside the room given to them. He further denied that the accused inflicted the blows of axe to his wife and son in defence.

21. PW-7, Roshan Lal, has deposed that on 02.07.2014, he alongwith deceased Krishan Chand went to Nepal for bringing the Gorkha labour and they reached Nepal on 03.07.2014, at about 1.00 a.m. On 08.07.2014 they returned from Nepal and reached Chajpur on 10.07.2014, at about 6.30-7.00 a.m. Thereafter, he alongwith his labour left to his Village Sambhard. Whereas, deceased Krishan Chand left for Chajpur alongwith the family members of the accused. As per this witness, Shri Raj Kumar, Ward Member, telephonically informed him about the death of deceased Krishan Chand and Sodha Devi. When he reached the spot, he found the dead body of Krishan Chand lying in the veranda, having deep cut injury on his throat with sharp edged weapon. The accused also inflicted blow of axe to deceased Sodha Devi, who died en route IGMCI, Shimla. This witness, in his cross-examination, has deposed that his statement was recorded by the

Police on 10.07.2014. He further deposed that when he reached the spot, axe was lying there. He deposed that Nisha Devi (wife of deceased Krishan Chand) did not tell him about the cause of occurrence. He denied that he and deceased Krishan Chand misbehaved with the daughters of the accused. He feigned his ignorance that the accused, so as to save his daughter and in defence, inflicted the blows of Axe to the deceased persons.

22. PW-8, Constable Jagdeep Singh, has deposed that on 16.07.2014, he remained associated in the investigation of the case. On the same day, accused produced one track suit before the police and the same had blood stains, which were identified by Nisha Devi, wife of the deceased. The track suit was sealed after using five seals having impression 'X' and was taken into possession vide seizure memo, Ext. PW-6/H, which bears his signatures, encircled in circle 'B'. This witness, in his cross-examination, has deposed that the track suit produced by the accused was not worn by him. He further deposed that in his presence, the statements of the wife and children of the accused were not recorded.

23. PW-9, Dr. Rajesh Kumar, Scientific Officer, FSL, Junga, has deposed that on 16.07.2014, HHC Babu Lal, brought twelve sealed parcels bearing three seals having impression of 'CHJ'. Seals were intact and tallied with specimen seals. On examination, in laboratory he and Dr. V.S. Jamwal, prepared report No. 1408-A SFSL Chem.(684)/14, Ext. PW-9/A, which bears his signatures and that of Dr. V.S. Jamwal, encircled in circle 'A'. This witness, in his cross-examination, has admitted that in case the samples are not properly preserved, the possibility of variation of results cannot be ruled out.

24. PW-10, HC Kartar Singh, has deposed that on 14.07.2014, HHG Bhim Singh deposited 16 sealed parcels, sealed with seals having impression 'CHJ', containing viscera of deceased persons, including organs such as heart, lungs kidney, liver etc. alongwith two Khakhi envelop in the name of Director FSL, with him, which were entered at Sl. No. 34 in malkhana register. On 16.07.2014, SHO Viri Singh deposited one sealed parcel, sealed with five seals having impression 'X', containing track suit of the accused having blood stains and seal sample, which was entered at Sl. No. 37 in malkhana register. The case property, which was deposited in the malkhana, vide entry No. 33 and 34, except mobile phone and pithu bag, were sent to FSL, Junga, vide RC No. 24/14 through HHC Babu Lal. Copy of road certificate is Ext. PW-10/C. On 19.07.2014, the case property, entered vide entry No. 37/14, dated 16.07.2014, was sent to FSL, Junga, vide RC No. 25/14 with HHC Prem Singh. This witness, in his cross-examination, has deposed that there is a cutting in entry No. 35 to 39, which has been done by him. However, he has not appended his initial to verify this cutting.

25. PW-11, HHC Prem Singh, has deposed that on 11.07.2014, Constable Rajesh brought rukka to the police station, on the basis of which FIR No. 27/14, dated 11.07.2014, was registered. The endorsement qua FIR is Ext. PW-11/C. On the same day, SI/SHO deposited six sealed parcels, sealed with seal impression 'H', containing axe, head gown, blood samples, mobile and pithu bag, which were

entered at Sl. No. 33/14. On 19.07.2014, MHC Kartar Singh handed over one sealed parcel, containing clothes, sealed with five seals having impression 'X', vide RC No. 25/14, which were deposited by him with FSL Junga on the same day. As per this witness, he issued CIPA certificate, which Ext. PW-11/E.

26. PW-13, Nisha (wife of deceased Krishan Chand), has deposed that on the day of occurrence, she alongwith her mother-in-law (deceased Yashoda Devi) was cooking meal in the kitchen, at about 7.00 p.m., the accused called my husband and asked that the electric bulb is not functioning properly, upon which, her husband went outside and after some time, she heard the cries of children. When she went outside, she saw the accused carrying axe in his hand. Her husband was lying in the veranda on his back on the ground, while her mother-in-law was lying in the veranda at some distance. She deposed that the dead body of her husband was lying beneath the electric bulb in front of the room allotted to the accused, whereas, the dead body of her mother-in-law was lying in the veranda towards kitchen side. When she saw the accused, he threw the axe and ran towards the forest alongwith his family members. Thereafter, she called her neighbor Pyare Lal Sharma, who informed the police and the villagers about the occurrence. The police came to the spot and clicked the photographs. The axe was sealed in a parcel by using six seals having impression 'H' and taken into possession, vide seizure memo, Ext. PW-16/B. A bag was recovered from the room of the accused, from which, the clothes and a mobile phone were found, which were taken into possession vide memo, Ext. PW-6/D. On 16.07.2014, one track suit, black in colour was produced vide identification memo, Ext. PW-6/H, which she identified to be worn by the accused at the time of the occurrence. The track suit was having blood stains. Her mother-in-law was rushed to Civil Hospital, Jubbal, wherefrom she was referred to IGMCM, Shimla, and en route Shimla she succumbed to her injuries. This witness, in her cross-examination, has deposed that her husband went to Nepal alongwith Roshan Lal on 02.07.2014 in a bus. They returned back after eight days. She feigned ignorance at which places they stayed during to and fro from the native place to Nepal and back. She has further deposed that no identification parade was conducted in this case. She denied having seen the accused prior to 10.07.2014. She deposed that when she identified the accused, he was not wearing the black colour track suit. She denied that her husband tried to commit rape upon the daughter of the accused.

27. PW-14, Joginder Singh, has deposed that on 10.07.2014, at about 9.30 p.m., he received a telephonic call from Pyare Ram, who informed him that one gorkha had murdered Krishan Chand and also caused grievous hurt to deceased Sodha Devi by inflicting axe blow on her head. The dead body of deceased Krishan Chand was lying on the spot with deep cut injury on his neck. Deceased Sodha Devi was lying towards the kitchen and blood was oozing out from her head. As per this witness, he alongwith his son Kuldeep and Virender shifted Shoda Devi to Civil Hospital Rohru, wherefrom she was referred to IGMCM Shima and when they reached Pujarali No. 4, deceased Shoda Devi succumbed to her injuries.

This witness, in his cross-examination, denied that deceased Krishan Chand molested the daughters of the accused. As per this witness, daughters of the accused were 13-14 years old. He denied that the accused murdered deceased Krishan Chand in a spur of moment and in order to save the girls from the clutches of the deceased.

28. PW-15, Pyare Ram Sharma, has deposed that on 10.07.2014, around 9.00 p.m., when he was in his house, he heard screams of Nisha Devi. When he reached her house, he saw dead body of deceased Krishan Chand lying in the veranda, whereas Sodha Devi was lying near the kitchen. He was told by Nisha Devi that the incident occurred at the instance of Gorkha Nepali, who was brought from Nepal by her husband for being engaged as a labourer. She also told him that the accused assaulted his husband and mother-in-law with an axe. As per this witness, he informed the neighbours, so also the police about the occurrence. Deceased Sodha Devi was breathing, so she was rushed to Civil Hospital Rohru, wherefrom she was transferred to IGMCH, Shimla. The police visited the spot and carried out the investigation. This witness, in his cross-examination, denied that axe was not taken into possession in his presence. He also denied that his signatures on the seizure memos were obtained in the police station. This witness has also denied that deceased Krishan Chand molested the daughter of the accused.

29. PW-18, SHO Viri Singh, has deposed that on 10.07.2014, at about 9.30 p.m., he received information from Police Post, Saraswati Nagar, that a Gorkha residing in the house of Mishru Ram, murdered his son and caused grievous hurt to his wife. On such information, an entry was carried out in rapat rojnamcha, vide No. 26, dated 10.07.2014. Thereafter, a team consisting of ASI Raj Kumar, HHC Tek Chand, Constable Jagdeep and Constable Attar Singh, left for the spot. On their arrival on the spot, he met Mishru Ram, his daughter-in-law, Pyare Lal and other residents of the village. He went to the spot of occurrence and found the dead body of Krishan Chand, having two sharp deep cut marks on throat. He recorded the statement of Nisha Devi, Ext. PW-13/A, who provided him the description of the accused. The statement of Nisha Devi was sent through Constable Rajesh Kumar alongwith rukka, Ext. PW-11/A. The information was given to SDPO, Rohru, who was requested to send the information about the tracing of accused with the aforesaid description. On identification of Nisha Devi, axe, Ext. PW-6/A, was taken into possession vide seizure memo, Ext. PW-6/A, which was sealed by using six seals having impression 'H'. The spot was photographed. The blood samples of deceased Krishan Chand were lifted, which were sealed by using three seals having impression 'H' and taken into possession vide seizure memo, Ext. PW-6/D. The head wear gown of deceased Sodha Devi was also lifted from the spot and sealed by using three seals having impression 'H', vide seizure memo, Ext. PW-6/F. From the room of the accused one bag was recovered and searched, in which, a mobile, make Karbonn, and female clothes were found. The mobile phone was sealed into a separate sealed parcel by using three seals having impression of 'H' and the bag was again put in a parcel, which was sealed

with six seals having impression 'H' and was taken into possession vide seizure memo, Ext. PW-6/G. The seal, after its use, was handed over to Pyare Lal. The inquest form of the deceased was filled in on the spot. Site plan was prepared. The statements of the witnesses were recorded. At the time of carrying out the investigation, he was told by Nisha Devi that deceased Sodha Devi succumbed to the injuries nearby Pujarali, en route IGMC Shimla. The inquest report of deceased Shoda Devi was filled in at Civil Hospital, Jubbal. The postmortem examinations of both the dead bodies were conducted at Civil Hospital, Jubbal. On 16.07.2014, SHO, Police Station, Chopal, revealed that a similar person alongwith family members with given description was apprehended by the Gujjars in Tharoch/Chajpur forest, upon which, ASI Kuldeep Singh alongwith police team went to Throach/Chajpur, where SHO, Police Station, Chopal, handed over the custody of the accused to him. On the same day, Nisha Devi came to the police station and identified the accused to be the same person, who murdered the deceased persons. The clothes, which the accused was wearing on the day of occurrence, were taken into possession and sealed by using five seals having impression 'X', vide seizure memo, Ext. PW-6/H. He moved an application before Naib Tehsildar for identification of the place of occurrence. The concerned Patwari prepared Aks Sajra, Ext. PW-1/A, before him on the spot. This witness, in his cross-examination, deposed that he had not recorded the statements of wife and daughters of the accused. He further deposed that electric bulb of veranda was not in working order. As per this witness, family members of the accused did not corroborate the story of replacement of electric bulb. He deposed that the motive in the alleged occurrence, as revealed to him during investigation that the deceased was under the influence of liquor and an altercation took place between him and the accused, owing to which, the accused, who was carrying an axe, assaulted the deceased persons. He admitted that he did not record anywhere that the deceased was consuming liquor. He also admitted that there was no deep cut injury on the person of deceased Sodha Devi.

30. Besides aforesaid witnesses, the prosecution has also examined PW-12, HHC Babu Lal and PW-16, Inspector Mathura Dass, however, they are formal witnesses.

31. After discussing the prosecution evidence in entirety, as the case of the prosecution mainly rests on the deposition of PW-13 and circumstantial evidence, at the cost of repetition, the relevant excerpts of the deposition of PW-13, Smt. Nisha, wife of deceased Krishan Chand, who was present in the house at the time of occurrence, worth thread bare discussion. She has deposed that her husband (deceased Krishan Chand) alongwith one Roshan Lal had gone to Nepal for bringing Gorkha labourers and on 10.07.2014, around 07:00 a.m., he returned alongwith Amar Bahadur (accused) and his family members. She has further deposed that accused was with his wife, two elder daughters, three younger children, including a son and two daughters. The accused was given a room and he cut the wood with an axe. As per the deposition of this witness, her father-in-law, Sh. Mishru Lal (PW-6), at about 07:00 p.m., went to Village Mitli.

At about 07:30 p.m. when she alongwith her husband (deceased Krishan Chand) and mother-in-law (deceased Sodha Devi) was cooking meal in the kitchen accused called her husband and asked that the electric bulb is not working properly. Her husband went outside and subsequently she heard cries of children, so her mother-in-law also went outside. She heard the clamor of someone calling and when she went outside she saw the accused carrying axe in his hand and her husband was lying in the verandha. She has further deposed that she also found her mother-in-law lying in the verandha at some distance. The accused threw the axe and fled away towards the forest alongwith his family members. As per the version of this witness, there were two deep cut injuries on the person of her husband wherefrom blood was oozing, so she laid a cloth over him. Her mother-in-law also sustained injuries on her head and she was lying unconscious. She tried to contact her father, but she could not contact out of fear. She called Shri Pyare Ram Sharma, their neighbour, who informed the police and villagers. She has further deposed that the accused murdered her husband. This witness fully corroborated the investigation part of the prosecution case. She, in her cross-examination, has deposed that the accused did not behave badly with her husband and father-in-law. As per this witness, the occurrence took place at abut 07:30 p.m. and it was not dark outside. The room of the accused was lit and the electric bulb of verandha was not working. The accused and his wife were obeying the orders. She has further deposed that she disclosed to the police that the accused called deceased Krishan Chand by complaining that the electric bulb is not working. She heard the cries of the children. When she saw the axe and its handle, blood marks were present thereon. This witness denied that the children of the accused cried for help. As per the version of this witness the children of the accused cried on seeing the murder of her husband. When the occurrence took place she was inside the kitchen.

32. After meticulous examination of the testimony of PW-13, Smt. Nisha, it can be said that her version is not marred by discrepancies and contradictions. However, her version fully supports the circumstantial evidence, which has emanated after thread bare scrutiny of the testimonies of other prosecution witnesses.

33. Mr. Ravi Tanta, learned counsel for the accused highlighted some discrepancies, which, according to him, go to the root of the case and renders the prosecution story doubtful. First discrepancy, as per Mr. Tanta, is with respect to the fact that the Investigating Officer did not notice that what clothes the daughters of the accused were wearing. As per the Investigating Officer family members of the accused did not corroborate the story of replacement of the electric bulb and the motive behind the crime was also altercation. At the same point of time no injury with the sharp edged weapon was found on the person of deceased Sodha Devi. There are contradictions with respect to change of the electric bulb in the room or in the verandha by the deceased on the asking of the accused. So, as per Mr. Tanta, all these discrepancies are not ignorable and if these are examined with care, they render the prosecution case doubtful and in

all probabilities benefit of doubt is required to be given to the accused.

34. In order to deal with the discrepancies, as pointed out by the learned counsel for the accused, it would be apt to first highlight some of the answers given by the accused in his statement under Section 313 Cr.P.C.:

Q.2. It has come in the prosecution evidence led against you that on 10.07.2014 at about 9.20 PM a telephonic information was received from Chajpur one Gorkha labour murdered Krishan Chand local resident with the help of axe and also gave grievous hurt on the person of his mother Sodha Devi. What you have to say about it?

Ans. Yes Sir.

...

Q.4. It has further come in the prosecution evidence against you that complainant informed the police that Krishan Chand, her husband and Roshan Lal neighborer had gone to Nepal to bring Gorkha Labour 10 days before. What you have to say about it?

Ans. Yes Sir.

Q. 5. It has come in the prosecution evidence led against you that you accused had reached the spot at place Chajpur in the morning hours of 10-07-2014 alongwith your family members exclusive of wife, four daughters and one son. What you have to state about it?

Ans. Yes Sir.

Q. 6. It has come in the prosecutuion evidence led against you that deceased Krishan Chand had allotted one residential room to you near by his residential house. What you have to sate about it?

Ans. Yes Sir.

...

Q.17. It has further come in the prosecution evidence against you that the description of you accused was also delimited by the complainant to be 5 feet 2 inches in height, whiteshing black bearing black track suit. What you have to state about it?

Ans. Yes Sir.

Q.18. It has further come in the prosecution evidence led against you that on the basis of ruka (PW-11/A) which was sent to P.S. Jubal along with C. Rajesh for the registration of the crime. What you have to state about it?

Ans. Yes Sir.

Q.19. It has further come in the prosecution evidence led against you that on the

statement of the complainant FIR No. 27/14 (PW-11/B) was registered with P.S. Jubbal. What you have to state about it?

Ans. Yes Sir.

...

Q.28. It has further come in the prosecution evidence led against you that during search of the room in which the accused was residing one bag P-5, clothes P-6, Mobile phone P-2, sim P-3 were also recovered which were taken into possession vide memo (PW-6/G) which were sealed into a parcel with six seals having impression 'H'. What you have to say about it?

Ans. It is correct.

Q.29. It has further come in prosecution evidence led against you that the case property remained deposited with MHC P.S. Jubbal by the I.O. which was entered into malkhana register the abstract of which is (PW-11/D). What have you to say about it?

Ans. It is correct."

It is settled law that answers given by the accused under Section 313 Cr.P.C. can be used for proving his guilt as much as the evidence given by the prosecution witnesses. In the wake of what has been discussed hereinabove, it would be apt to extract Section 313 Cr.P.C., which provides as under:

"313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

The bare reading of Section 313 Cr.P.C. makes it abundantly clear that sub Section (4) of Section 313 Cr.P.C. permits that answers given by the accused may be taken into consideration in the inquiry or trial.

35. In view of the statement made by the accused under Section 313 Cr.P.C. and also noticing the relevant provisions of Section 313 Cr.P.C., it can be safely held that the accused himself proved some of the circumstances, viz., on the day of occurrence he reached Chajpur and deceased Krishan Chand allotted him a residential room.

36. PW-13, in her version unequivocally stated that she saw the accused holding an axe in his hand and the deceased persons were lying on the verandha. This witness has further categorically deposed that when the accused saw her, he threw the axe and fled away from the spot alongwith his family members. It has also come in the version of PW-13 that at the time of occurrence she was cooking meal in the kitchen and when she heard cries of children she came outside. Therefore, after careful scrutiny of the testimony of PW-13 coupled with other available material, it is more than safe that the version of PW-13 is not marred by discrepancies, contradictions and lacunae, hence the same is reliable and credible.

37. The next limb of the prosecution case is circumstantial evidence, which form a complete chain of circumstances, so as to rule out any possibility, except the guilt of the accused. The learned Trial Court has rightly framed the incriminating circumstances, which emanates from the prosecution story, so the same are extracted hereunder:

"1. The deceased Krishan Chand had received deep cut injuries on his neck and his body was lying in the pools of blood on the spot.

2. The deceased Sodha Devi had received fatal injury on her head and she succumbed to the injury on her way to IGMCH, Shimla.

3. On dated 10.7.2014, during morning hours the deceased alongwith his family members had arrived in the house of the accused to be engaged as labour.

4. The accused was seen with an Axe in his hand by Smt. Nisha Devi (PW-13) and accused on seeing Nisha Devi (PW-13) after throwing Axe (P-8) had managed to flee or absconded from the spot along with his family members wearing black track suit.

5. The accused was apprehended by Sufferdin (PW-2) and Kasamdin on 15.7.2014 alongwith family members at Tharoch forest, Chajpur.

6. The postmortem examination of the deceased Krishan Chand and Sodha Devi with ante-mortem injuries allegedly proved the use of weapon of offence.

7. The accused after commission of offence made extra judicial confession before (PW-2) Sufferdin which proves on record that deceased were murdered by the accused.

8. The alleged recovery of bag containing clothes and mobile of the accused person.

9. Medial evidence coupled with DNA profile and other scientific evidence connected the accused with the commission of alleged crime.

10. Opportunity of the accused to commit offence of double murder.

11. conduct of the accused.

12. Motive for the commission of crime."

38. FSL report, Ex. PW-16/A, clearly proves that deceased Krishan Chand received injuries with axe (Ex. P-1), as the DNA profile obtained from axe matched completely with the DNA profile obtained from Ex. P-9 (blood sample of deceased Krishan Chand). So, the scientific evidence clearly demonstrates that the deceased received injuries with axe Ex. P-1.

39. PW-4, Dr. Ankush Sharma, deposed that deceased Sodha Devi died as a result of ante mortem injuries and he admitted it to be correct that such injuries are possible by way of fall on hard object. It is on record that deceased Sodha sustained depressed fracture temporo-parietal region of size 3 inch x 2 inch with ENT bleeding positive. Bruise over the scalp left size 3 inch x 2 inch. In view of the above it can be held that the deceased Sodha Devi also died owing to injuries sustained by her.

40. Another circumstance which emanates from the record is that on 10.07.2014, during the morning hours the deceased alongwith his family members reached the house of the deceased persons, as he was engaged as labourer. The accused, while answering question No. 5 in his statement recorded under Section 313 Cr.P.C. admitted that on 10.7.2014 he alongwith his family members reached Chajpur. Thus, this circumstance also stands proved against the accused.

41. PW-13, Smt. Nisha (wife of deceased Krishan Chand) clearly deposed that when she came outside the kitchen after hearing the cries of the children, the accused was holding an axe in his hand and his husband (deceased Krishan Chand) and mother-in-law (deceased Sodha Devi) were lying on the verandha. When the accused saw her, he threw the axe and fled away alongwith his family members. Nothing has come on record, which could disprove the testimony of PW-13. In fact, the testimony of PW-13 provides valuable aid to the circumstances, which ultimately rule out any possibility of innocence of the accused.

42. It has also come in the prosecution evidence that on 15.07.2014 PW-2 Sufferdin and Kasamdin apprehended the accused alongwith his family members in Tharoch forest, Chajpur. It stands fully established that he was present on the spot on the day of occurrence and it is also amply clear that after the occurrence he fled away from the spot and was apprehended by some gujjars in the forest.

In the wake of this, the deposition of PW-2, Shri Sufferdin, is very important. He categorically deposed that on 12.07.2014, when he was in forest, it came to his notice that during the night of 10.07.2014 a Nepali (Gorkha) killed someone and his mother. On 12.07.2014 he was informed by the police that a Gorkha alongwith his family members fled and he is wearing black clothes. He has further deposed that on 15.07.2014, at about 09:00 a.m., when he alongwith his brother Kasamdin, Talib Hussain were present outside their dera, they noticed the accused alongwith his wife and five children coming towards the dera. They inquired about his whereabouts and told him that a Nepali after committing murder at Chajpur had fled. He has further deposed that the accused confessed his guilt. They caught hold of the accused and took him to the dera. As per the version of this witness, the accused tried to run away. Subsequently, they informed the police and the police arrived there at about 01:00-01:30 p.m. The custody of the accused was handed over to the police. There is nothing on record which is contrary to the deposition of PW-2. Thus, the prosecution has successfully proved that on 15.07.2014 PW-2 and Kasamdin apprehended the accused alongwith his family members in Tharoch Forest, Chajpur.

43. Now, advertng to postmortem examinations of the deceased persons. PW-4, Dr. Ankush Sharma, deposed that the deceased persons died owing to ante-mortem injuries. The material on record clearly proves that the accused used axe Ex. P- 1 to inflict injuries on the deceased persons. Thus, there is nothing on record which could subtly give air to any other possibility.

44. PW-2, Sufferdin, who allegedly apprehended the accused in Tharoch forest, deposed that the accused before him confessed his guilt, so they apprehended him. Though, this confession of the accused before PW-2, in stricto sensu, cannot be termed as extra judicial concession, but in the absence of any concrete material against the same, it cannot be lightly overlooked. Thus, this circumstance is also against the accused.

45. The accused in his statement made under Section 313 Cr.P.C., while answering Question No. 28 admitted it to be correct that during the search of the room of the accused a bag (Ex. P-5), clothes (Ex. P-6), mobile phone (Ex. P-2), sim (Ex. P-3) were recovered, which were taken into possession vide memo, Ex. PW-6/G. Now, in view of this, the accused himself proved the recovery of bag from his room and the same bag contained clothes and mobile of the accused. Again, this circumstance is also proved against the accused.

46. The DNA report, Ex. PW-16/A, coupled with other medical evidence, clearly demonstrates that the deceased persons died due to the injuries sustained by them. The DNA profile of the deceased Krishan Chand fully matched with the blood sample collected from axe (Ex. P-1). The DNA report as also the medical evidence has been meticulously discussed above and the combined reading of both brings us to hold that medical and scientific evidence clearly establish that the deceased persons died due to the injuries sustained by them and those injuries were inflicted with axe (Ex. P-1). Thus, the prosecution has successfully

established this circumstance as well.

47. The accused had enough time and opportunity to commit double murder, as the circumstances which appear clearly point out that the accused gave fatal blows with axe (Ex. P-1) on the neck of deceased Krishan Chand and on the head of deceased Sodha Devi. Now, if sketch, Ex. PW-6/A, of axe (Ex. P-1) is seen alongwith the photographs, Ex. PW-18/B-1 and Ex. PW-18/B-2, it is clear that injuries caused with axe (Ex. P-1) are sufficient to cause death of two persons successively in a short span of time. Therefore, the prosecution has again successfully proved that the accused had ample time and opportunity to commit the murders of the deceased persons.

48. As noticed above, the accused after committing murders fled away from the spot alongwith his family members and he was apprehended by PW-2, Sufferdin and one Kasamdin in Tharoch Forest. Thus, the conduct of the accused is highly suspicious, as if the accused had not committed the crime, he could not have absconded from the spot. Again, this circumstance also goes against the accused and in turn provides a valuable link in the chain of circumstances.

49. It is a settled law that motive behind the commission of the crime provides valuable aid for concluding innocence or guilt of the accused. However, where there is positive corroborative material against the accused, absence of motive does not render the prosecution case doubtful and on this score only, the accused cannot escape from the clutches of law.

50. The learned defence counsel tried to create a doubt in the mind of this Court by arguing that there is major contradiction qua electric bulb. As per the learned counsel the electric bulb was in the verandha or in the room is a question which remains unanswered. He has further argued that as per the prosecution the electric bulb is the very root of the incident. He has argued that as per the prosecution story the accused allegedly called deceased Krishan Chand at 07:30 p.m. on the pretext that the electric bulb is not working properly. It has been argued that the electric bulb has not been taken into possession.

51. The contradictions which the learned counsel for the accused tried to highlight contradictions which appear in the statement of Smt. Nisha recorded under Section 154 Cr.P.C. and in the testimonies of PW-6, Shri Mishru, PW-13, Smt. Nisha (when she deposed in the Court) and PW-18, SHO Viri Singh. We have meticulously examined all these contradictions and these are trivial and minor contradictions. On the basis of these trivial contradictions the case of the prosecution cannot be thrown as a whole. In fact, such types of minor contradictions are bound to occur, as portrayal of an incident cannot be expected to be with mathematical precision and one cannot repeat in verbatim what he has stated earlier. So, it is held that the contradictions as highlighted by the learned counsel for the accused are trivial in nature and they do not affect in any manner the chain of circumstances, which is complete and emanates from the testimonies of the prosecution witnesses. As far as the story qua electric bulb is

concerned, no doubt police did not take into possession the said electric bulb, but on this score only whole of the prosecution case cannot be said to be bale of lies and the accused cannot reap any benefit out of the same.

52. It is cardinal principle of criminal justice that conduct of the accused is material in deciding his guilt or innocence. In the case in hand there is ample evidence which clearly establish that before the occurrence the accused was present at the place of occurrence and after the occurrence he fled alongwith his family members. Subsequently, the accused alongwith his family members was apprehended by one Sufferdin (PW-2) from Tharoach Forest. The conduct of the accused, especially after the occurrence, is highly doubtful and the other circumstances, which form a complete chain of events, clearly points out towards the guilt of the accused. PW-13, Smt. Nisha (wife of deceased Krishan Chand) categorically deposed that when she, after hearing the cries of children, came out, she saw the accused holding axe, Ex. P-1, in his hand and the deceased persons were lying on the verandha.

She has further deposed that on seeing her, the accused alongwith his family members fled away from the spot. The DNA report further provides a link in the chain of circumstances, as it lucidly says that blood on axe (Ex. P-1) completely matched with the blood sample of deceased Krishan Chand. So, as a whole, all the above enumerated circumstances, which emanate from the testimonies of the prosecution witnesses, clearly establish the guilt of the accused.

53. The learned counsel for the accused, in order to fortify his case, has placed reliance on the following judicial pronouncements:

1. Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622;
2. Samadhan Dhudaka Koli vs. State of Maharashtra, AIR 2009 Supreme Court 1059;
3. Musauddin Ahmed vs. State of Assam, AIR 2010 SC 3813;
4. Paramjeet Singh Alias Pamma vs. State of Uttarakhand, (2010) 10 Supreme Court Cases 439; &
5. State vs. Mahender Singh Dahiya, 2011 (3) Supreme Court Cases 109.

54. In Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622, the Hon'ble

Supreme Court has held that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It has also been held that the rudimentary principle of criminal jurisprudence is that prosecution must lead certain and explicit evidence. In the present case, the prosecution has clearly established the guilt of the accused by leading certain and explicit evidence. So, the judgment (supra) is not applicable to the facts of the present case.

55. In *Samadhan Dhudaka Koli vs. State of Maharashtra*, AIR 2009 Supreme Court 1059, the Hon'ble Supreme Court has held that prosecution must be fair to the accused and fairness in investigation as also trial is a human right of an accused. However, in the case in hand, nothing has come on record which remotely provides a clue that the accused has become a victim of unfair investigation. Therefore, the judgment (*supra*) is not applicable to the facts of the present case.

56. The learned counsel for the accused has placed reliance on another judgment of Hon'ble Supreme Court rendered in *Musaaddin Ahmed vs. State of Assam*, AIR 2010 Supreme Court 3813, wherein vide para 13 it has been held as under:

"13. It is the duty of the party to lead the best evidence in its possession which could throw light on the issue in controversy and in case such a material evidence is withheld, the court may draw adverse inference under Section 114, Illustration (g) of the Evidence Act notwithstanding that the onus of proof did not lie on such party and it was not called upon to produce the said evidence (vide *Gopal Krishnaji Ketkar v. Mohamed Haji Latif & Ors.*, AIR 1968 SC 1413)."

The judgment (*supra*) is also not applicable to the facts of the present as, as it is evident that no material has been withheld and the prosecution has examined all the material witnesses. As such, there is nothing on record to draw adverse inference against the prosecution case.

57. In *Paramjeet Singh vs. State of Uttarakhand*, (2010) 10 Supreme Court Cases 439, the Hon'ble Supreme Court vide para 31 has held as under:

"Abscondence of accused

31. In *Matru v. State of U.P.*, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person, observing as under:

"19. The appellant's conduct in absconding was also relied upon. Now, mere abscondence by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self- preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. normally the Courts are declined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind

attempting to evade justice. It is not inconsistent with his innocence."

The judgment (supra) is not applicable to the facts of the present case, as the facts of the case in hand are entirely different. In the case in hand, the manner the accused alongwith his family members fled away from the spot and the fact that he had been apprehended from Tharoach Forest and other circumstantial evidence clearly point out towards reasonable hypothesis qua the guilt of the accused. So, the judgment (supra) is of no help to the accused.

58. The learned counsel for the accused has placed reliance on another judgment of Hon'ble Supreme Court rendered in State vs. Mahender Singh Dahiya, (2011) 3 Supreme Court Cases 109, wherein vide para 24 it has been held as under:

"24. We have examined the submissions made by the learned counsel for the parties, particularly keeping in view the gruesome nature of the crime and the complexities presented in the investigation, as also at the trial of this particular case. Undoubtedly, this case demonstrates the actions of a depraved soul. The manner in which the crime has been committed in this case, demonstrates the depths to which the human spirit/soul can sink. But no matter how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused. Given the tendency of human beings to become emotional and subjective when faced with crimes of depravity, the courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust. It is in such cases that the court has to be on its guard and to ensure that the conclusions reached by it are not influenced by emotion, but are based on the evidence produced in the court. Suspicion no matter how strong cannot, and should not be permitted to take the place of proof. Therefore, in such cases, the courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in court."

True it is, no matter how diabolical the crime is, onus always remains on the prosecution to prove the guilt of the accused. Similarly, it is also true that the Courts have to be extra cautious not to be swayed by strong sentiments of repulsion and disgust in matters of gruesome and horrific crimes. In the case in hand, the judgment (supra) is not applicable, as the circumstantial evidence is of such a quality that it forms an unbreakable chain of events encircling the accused. On the other hand, direct evidence of PW- 13, Smt. Nisha (wife of deceased Krishan Chand) is not marred by any infirmity and the same in turn provides valuable aid to the circumstantial evidence and further strengthens it. So, after balanced reappraisal of the intrinsic value of the evidence with the aid of law, it is more than safe to hold the accused guilty. Thus, the judgment (supra) is of no help to the accused.

59. After analyzing the evidence on the parameters of veracity, credibility and genuineness and also keeping in mind the settled principles of law, it is more than safe to hold that the accused committed gruesome crime by eliminating two lives. His demonic act has manifestly been proved with the degree of evidence required to prove the same.

60. In view of what has been discussed hereinabove, it is clear that the prosecution has proved the guilt of the accused conclusively and beyond the shadow of reasonable doubt. Thus, we are left with no other option to hold that the learned Trial Court has appreciated the facts and law in right and correct perspective, therefore, we find no reason to interfere with well reasoned judgment of the learned Trial Court. However, we deem it apt to modify the sentence, as the learned Trial Court has ordered that in default of payment of fine of Rs.2,00,000/-, the accused shall further undergo simple imprisonment for five years. Thus, we find that the sentence awarded by the learned Trial Court in default of payment of fine of Rs.2,00,000/- is required to be modified. So, it is ordered that the accused (convict) in default of payment of fine of Rs.2,00,000/- shall undergo six months' simple imprisonment. The rest of the sentence awarded by the learned Trial Court remains unchanged. Accordingly, the appeal, which sans merit, deserve dismissal and is dismissed.

61. The appeal, as also pending application(s), if any, stand(s) disposed of.