
(2015) 07 SHI CK 0096
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 50 of 2011

Hiraban Sahani

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313
Evidence Act, 1872 — Section 27, 59, 8, 8(1), 8(i)
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 07 SHI CK 0096

Hon'ble Judges : Sanjay Karol, J; Piar Singh Rana, J

Bench : Division Bench

Advocate : Surender Verma, for the Appellant; Ashok Chaudhary, V.S. Chauhan, A.A.Gs, Kush Sharma, Deputy Advocate General and J.S. Guleria, Asstt. Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Piar Singh Rana, J—Present appeal is filed against the judgment and sentence passed by learned Additional Sessions Judge, Solan HP in Session Trial No. 06/NL/7 of 2009 titled State of HP v. Hiraban Sahani decided on 30.10.2010.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that accused was working as servant of PW1 Ajeet Singh in village Jharmajari where PW1 Ajeet Singh was having his shop of junk dealer. It is alleged by prosecution that PW1 Ajeet Singh was residing with his deceased wife Chhinder Kaur and accused was also residing in adjoining shed provided to accused by PW1 Ajeet Singh. It is further alleged by prosecution that on dated 26.11.2008 PW1 Ajeet Singh had gone to Chandigarh in connection with court proceedings and his deceased wife Chhinder Kaur and accused were present in the residential shed. It is further alleged by prosecution that PW1 Ajeet Singh came back at about 8.30 A.M on dated 27.11.2008 from Chandigarh and found that his wife was murdered with

hammer. It is further alleged by prosecution that accused had committed murder of deceased Smt. Chhinder Kaur wife of PW1 Ajeet Singh with the help of hammer Ext. P6. It is further alleged by prosecution that during investigation blanket Ext. P2, bed sheet Ext. P3, dhoti (Garment) Ext. P8 and nip Ext. P4 were recovered from place of incident and FIR Ext. PW12/B was registered. It is further alleged by prosecution that thereafter investigating agency prepared inquest report Ext. PW1/F and body of deceased was handed over vide memo Ext. PW1/H. It is further alleged by prosecution that after committing murder of deceased Chhinder Kaur accused took away Rs. 12,000/- (Twelve thousand), mobile phone Ext. P9 and golden ear rings of deceased. It is further alleged by prosecution that on dated 26.11.2008 deceased met PW4 Varun Kumar at Barotiwala and accused told him that accused was going to Chandigarh. It is further alleged by prosecution that after arrest of accused on dated 19.7.2009 accused identified the spot in the presence of PW4 Varun Kumar and PW5 Vishal. It is further alleged by prosecution that call details of mobile phone were obtained and spot map Ext. PW10/A was prepared and jamabandi Ext. PW10/B was obtained. It is further alleged by prosecution that parcels were deposited in the office of FSL Junga. It is further alleged by prosecution that as per testimony of PW16 Dr. Anand Kumar who conducted post mortem of deceased Chhinder Kaur on dated 27.11.2008 the death of Chhinder Kaur could be possible with the help of hammer Ext. P6. It is further alleged by prosecution that photographs of dead body Ext. PW18/A to Ext. PW18/H and Ext. PW18/J to PW18/M were taken with digital camera. Charge was framed against accused under Section 302 IPC by learned Additional Sessions Judge Solan camp at Nalagarh on dated 9.6.2010. Accused did not plead guilty and claimed trial.

3. Prosecution examined twenty one witnesses in support of its case.
4. Prosecution also produced following piece of documentary evidence in support of its case:--
5. Statement of accused was also recorded under Section 313 Cr PC. Accused has stated that he is innocent. Accused did not lead any defence evidence.
6. Learned trial Court convicted appellant under Section 302 IPC and sentenced accused to undergo life imprisonment. Learned trial Court also imposed fine to the tune of Rs. 25,000/- (Twenty five thousand). Learned trial Court further directed that in default of payment of fine accused shall further undergo simple imprisonment for two years.
7. Feeling aggrieved against the judgment and sentence passed by learned trial Court appellant filed present appeal.
8. We have heard learned Advocate appearing on behalf of appellant and learned Additional Advocate General appearing on behalf of respondent and also gone through the entire record carefully.
9. Point for determination before us is whether learned trial Court did not

properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had committed miscarriage of justice to appellant.

10. ORAL EVIDENCE ADDUCED BY PROSECUTION:

10.1. PW1 Ajeet Singh has stated that he is working as junk dealer in village Jharmajari since last two years. He has stated that he had constructed temporary residential shed with the help of tin near Micro Turner Factory Jharmajari. He has stated that his deceased wife Chhinder Kaur was also residing with him in the shed. He has stated that accused Heeraban present in Court was employed by him as his servant and he was working with him since one month from incident. He has stated that accused was given small shed adjoining to his residential shed. He has stated that on dated 26.11.2008 at about 5 AM he had gone to Chandigarh to attend Court proceedings. He has stated that his wife and accused were present in residential shed. He has stated that on dated 27.11.2008 at about 8.30 AM he came from Chandigarh. He has stated that when he reached Jharmajari in his residential shed he noticed that dead body of his wife Chhinder Kaur was covered with blanket on the cot. He has stated that after removing blanket he noticed that his deceased wife was having several injuries on her head and face and dead body was lying in pool of blood. He has stated that accused had beaten his wife with the help of hammer and blood stained hammer was also lying in the residential shed. He has stated that half filled nip of liquor was also lying in the shed. He has stated that his deceased wife was having Rs. 12,000/- (Twelve thousand) but money was not found. He has stated that he raised alarm thereupon people from market assembled at the place of incident. He has stated that police was called and his statement under Section 154 Cr.PC was recorded. He has stated that blanket, bed sheet and nip half filled were took into possession. He has stated that blanket Ext. P2 and bed sheet Ext. P3 are the same and he also identified nip Ext. P4 in Court. He has stated that hammer Ext. P6 was the same. He has stated that Dhوتي (Garment) of accused stained with blood was also lying nearby the body of Chhinder Kaur. He has stated that police official also prepared inquest report and also took photographs pertaining to dead body of deceased Chhinder kaur at the place of incident. He has stated that post mortem of deceased Chhinder Kaur was conducted in civil hospital Nalagarh. He has stated that thereafter body of deceased Chhinder Kaur was handed over to him vide memo Ext. PW1/H. He has stated that after committing murder of deceased accused took away Rs. 12,000/- (Twelve thousand), mobile phone and golden ear rings of deceased Chhinder Kaur. He has stated that accused had committed murder of his wife for money. He has denied suggestion that he did not engage accused as his servant. He has denied suggestion that accused has been falsely implicated in present case. He has denied suggestion that Dhوتي (Garment) Ext. P8 did not belong to accused. He has denied suggestion that he had not gone to Chandigarh on the day of incident. He has denied suggestion that accused had not stolen anything. He has denied suggestion that accused had not called him on his mobile phone. He has denied suggestion that no photograph was obtained relating to dead body of

Chhinder Kaur. He has stated that mobile phone Ext. P9 is the same which the deceased used to operate in her life time. He has denied suggestion that mobile phone Ext. P9 was not used by deceased Chhinder Kaur during her life time.

10.2. PW2 Lakhvinder Singh has stated that his mother and father were residing at Jharmajri. He has stated that his father was dealing with the business of junk. He has stated that accused was engaged by his father as servant at Jharmajri. He has stated that on dated 26.11.2008 his father had gone to Chandigarh in connection with court case. He has stated that deceased and accused were in residential shed at Jharmajri. He has stated that his father came from Chandigarh early in the morning on dated 27.11.2008. He has stated that his father informed him that accused had murdered his mother Chhinder Kaur. He has stated that thereafter he came to Jharmajri. He has stated that he saw the dead body of his mother. He has stated that face and head of his mother was crushed. He has stated that his mother was having mobile phone. He has stated that accused absconded from the scene of incident on dated 26.11.2008. He has stated that police officials came at the spot and conducted proceedings. He has stated that photographs marked A to H and J to M were taken into possession. He has stated that accused was arrested on dated 19.7.2009 at Kalram in Haryana. He has stated that accused was personally searched and mobile phone of his deceased mother was recovered from him and he identified mobile phone of his mother. He has stated that he had gifted mobile phone to his mother. He has denied suggestion that his deceased mother Chhinder Kaur was not having any mobile phone. He has denied suggestion that accused was not employed by PW1 Ajeet Singh. He has denied suggestion that accused was falsely implicated in present case. He has denied suggestion that mobile phone was not used by deceased. He has denied suggestion that mobile phone was not recovered from the possession of accused.

10.3. PW3 Sahib Singh has stated that PW1 Ajeet Singh is known to him. He has stated that on dated 27.11.2008 he remained associated in the investigation of case. He has stated that in his presence investigating agency lifted blood stained clothes from the spot i.e. one blanket and bed sheet. He has stated that half nip of liquor was also taken into possession. He has stated that blanket Ext. P2, bed sheet Ext. P3 and nip Ext. P4 are the same. He has stated that hammer was lying at the spot and same was also taken into possession vide seizure memo. He has stated that dhoti (Garment) was also taken into possession. He has stated that articles were sealed in a cloth parcel. He has stated that photographs placed on record are pertaining to dead body of deceased Chhinder Kaur and the place of occurrence. He has stated that PW1 Ajeet Singh had raised alarm and thereafter he reached at the spot of incident. He has denied suggestion that all the proceedings took place in police station. He has denied suggestion that his signatures were obtained upon documents in police station.

10.4. PW4 Varun Kumar has stated that he is running a khoka (Temporary shed) for the last three years at Jharmajari. He has stated that PW1 Ajeet Singh was

performing business of junk at Jharmajari near his khoka (Temporary shed). He has stated that he used to sell cigarette etc. He has stated that on dated 27.11.2008 at about 10.30 AM when he came to open his shed he saw that many people were assembled near the residential shed of PW1 Ajeet Singh along with police officials. He has stated that on inquiry he came to know that wife of PW1 Ajeet Singh was murdered. He has stated that on dated 26.11.2008 his shop remained opened from 8 AM to 9 PM. He has stated that accused present in Court was servant of PW1 Ajeet Singh. He has stated that after closing his shop he went to his residence at Madawala. He has stated that accused met him at Barotiwala chowk in the night at 10.00 PM. He has stated that accused was wearing shawl. He has stated that he inquired from accused about his destination and accused told him that he would go to Chandigarh. He has stated that on dated 19.7.2009 accused came with police officials at the spot and identified the place of incident in his presence and memo Ext. PW4/A was prepared. He has denied suggestion that accused was not servant of PW1 Ajeet Singh. He has denied suggestion that accused did not meet him near Barotiwala chowk on dated 26.11.2008 at 10 PM. He has denied suggestion that no conversation took place between him and accused. He has denied suggestion that investigating agency did not visit at the place of incident of murder.

10.5. PW5 Vishal has stated that on dated 27.8.2007 he was running meat shop at Jharmajari. He has stated that PW1 Ajeet Singh was also running business in the shed. He has stated that PW1 Ajeet Singh was residing in the shed along with his wife and his servant. He has stated that accused present in Court was the servant of PW1 Ajeet Singh. He has stated that he came to know about murder of the wife of PW1 Ajeet Singh on dated 27.11.2008 at about 11.30 AM when he came to open his shed. He has stated that police officials and other people have assembled at the place of incident. He has stated that on dated 26.11.2008 he remained present in his shop. He has stated that PW1 Ajeet Singh had gone to Chandigarh on dated 26.11.2008. He has stated that deceased and accused were in the residential shed at Jharmajari. He has stated that he closed his shop at about 8.30 PM. He has stated that accused met him at bus stop Jharmajari. He has stated that bus did not come at 8.45 PM at Jharmajri and thereafter he called his uncle who came on his vehicle. He has stated that when they started moving from Jharmajri then accused also requested for the lift in vehicle which was declined because there was no space in the vehicle. He has stated that he inquired from accused then accused told him that he was going to his native place. He has stated that on dated 19.7.2009 in his presence accused led police officials to the place of incident and identified the shop. He has denied suggestion that accused had not located the place of incident. He has denied suggestion that accused did not meet him at bus spot at Jharmajri. He has denied suggestion that he signed documents in police station. He has denied suggestion that accused was not present at the spot.

10.6. PW6 Ramesh Kumar has stated that he is agriculturist. He has stated that accused present in Court came to him for plantation of paddy crop. He has stated

that accused was engaged by him on contract for plantation of paddy crop. He has stated that investigating agency came in his village on 13th /14th July 2009. He has stated that accused was searched and mobile phone and a wrist watch was recovered from search of accused in his presence. He has denied suggestion that accused was not apprehended in his village. He has denied suggestion that signatures upon recovery memo obtained in police station.

10.7. PW7 Satvir Singh has stated that on 14.7.2009 investigating agency visited in his village. He has stated that accused told Ramesh that he would reach at bus stop Kelram at about 7.08 AM on dated 14.7.2009. He has stated that investigating agency searched accused and mobile phone, wrist watch and some money were recovered from accused. He has stated that mobile recovered from accused was of Tata company and its colour was black. He has stated that mobile phone Ext. P9 is the same which was recovered from accused. He has denied suggestion that memos were not prepared at the spot.

10.8. PW8 Devinder Verma has stated that for the last two and half years he was posted as Nodal officer Bharti Airtel Limited Kasumpti Shimla. He has stated that on the request of police officials he had supplied call details of mobile. He has stated that Ext. P8/A to Ext. PW8/E are the print out copies taken from printer installed in his office which are true and correct as per data saved in computer under the system. He has stated that there was no technical fault in the computer. He has denied suggestion that he had tampered the details of telephone call.

10.9. PW9 Meenu Rana Assistant Nodal Officer has stated that on the request of investigating agency she had supplied name and address of subscriber of cell phone No. 92562-85076 Ext. P9/A. She has stated that she had supplied call details of cell phone. She has stated that she took print out from computer and there was no technical fault in the computer. She has denied suggestion that documents were not issued from her office. She has denied suggestion that computer was not used in regular course of business. She has denied suggestion that statements were tampered. She has denied suggestion that no request was received from S.P Baddi for supply of documents.

10.10. PW10 Sat Pal has stated that since August 2006 to April 2010 he remained posted as Patwari Patwar Circle Bataulikalan. He has stated that village Jharmajri was in his jurisdiction. He has stated that on dated 25.7.2009 at the request of police officials he visited at the place of occurrence and prepared spot map Ext. PW10/A and jamabandi Ext. PW10/B which are correct as per spot and revenue records. He has denied suggestion that he did not prepare the record. He has denied suggestion that map was not prepared as per revenue record and spot position.

10.11. PW11 Constable Satpal Singh has stated that during December 2008 he was posted at police station Barotiwala. He has stated that on dated 8.12.2008 MHC Bashir Mohd. entrusted him three parcels containing hammer, Dhoti

(Garment), blanket, bed sheet and viscera along with requisite documents and sample of seal. He has stated that he deposited articles in the office of FSL Junga on the same day and on return he deposited receipt with MHC vide RC No. 62 of 2008. He has stated that parcel remained intact during his custody. He has denied suggestion that no parcels were handed over to him. He has denied suggestion that he did not deposit parcel in the office of FSL Junga.

10.12. PW12 B.S. Rawat has stated that during the year 2008 and 2009 he was posted as MHC police station Barotiwala. He has stated that on dated 27.11.2008 statement of PW1 Ajeet Singh Ext. PW1/A and rukka Ext. PW12/A received in police station through constable Ashish Kumar. He has stated that FIR Ext. PW12/B was registered in computer installed in police station. He has stated that thereafter case file was sent to investigating officer. He has stated that DD No. 19-A Ext. 12/C was entered in the computer and print was taken out from computer. He has stated that on dated 27.11.2008 SI Raghubir Singh deposited with him parcel containing hammer, dhoti (Garment), blanket and bed sheet. He has stated that a nip half filled with alcohol was also deposited with him. He has stated that on dated 28.11.2008 a jar containing viscera of deceased was also deposited. He has stated that copies of entry of malkhana register Ext. PW12/D and Ext. PW12/E are true and correct as per original record. He has denied suggestion that case property was not deposited with him. He has denied suggestion that entire record was manipulated to falsely implicate the accused.

10.13. PW13 Bashir Mohd. has stated that on dated 8.12.2008 he was working as MHC police station Barotiwala. He has stated that he handed over three parcels duly sealed with seal impression "S" and also handed over five jars containing viscera of deceased duly sealed to constable Satpal vide RC No. 62/2008 along with sample of seal and requisite documents with direction to deposit in FSL Junga. He has stated that articles were deposited in the office of FSL Junga and receipt was handed over to him. He has stated that copy of RC Ext. PW13/A is correct as per original record. He has denied suggestion that nothing was handed over to Satpal. He has denied suggestion that entire record was manipulated at later stage.

10.14. PW14 Gurminder Singh has stated that from April 2007 to May 2010 he remained posted as MC at police station Baddi. He has stated that on dated 27.11.2008 at 9.05 AM telephonic information was received from police station that wife of Ajeet Singh was killed. He has stated that thereafter SI Raghubir Singh along with other police officials rushed to the spot. He has stated that DD No. 17-A was entered by him in computer. He has stated that he took print out of DD No. 17-A Ext. PW14/A and DD No. 19-A Ext. PW12/C which are true and correct as per original record. He has denied suggestion that Ext. PW12/C and Ext. PW14/A were not correctly prepared.

10.15. PW15 Hem Raj has stated that from August 2009 he was posted as SHO police station Barotiwala. He has stated that investigation in FIR No. 133 of 2008 was conducted by SI Raghubir Singh. He has stated that after completion of

investigation FIR was handed over to him for preparation of challan. He has stated that challan was filed in Court and thereafter on receipt of I.D proof and call details supplementary challan was prepared by him and was filed in Court.

10.16. PW16. Dr. Anand Kumar has stated that he was posted as medical officer in FRU Nalagarh. He has stated that on dated 27.11.2008 he conducted post mortem of deceased Chhinder Kaur. He has stated that on examination he found that head, face, skull bones with maxilla bilateral lower jaw, nasal bones were fractured and broken into pieces. He has stated that brain tissue and eyes were also crushed. He has stated that tongue was protruding and lying between broken jaw bones and face was covered with clotted reddish brown blood. He has stated that blood soiled hairs were present on scalp tissue and brains and membrane were crushed. He has stated that injuries were anti mortem in nature. He has stated that death was caused due to head injuries. He has stated that probable duration between injury and death was few seconds and few minutes and between death and post mortem was more than three hours and less than 36 hours. He has stated that MLC is Ext. PW16/A which bears his signature. He has stated that anti mortem injury could be possible by way of blow of hammer Ext. P6.

10.17. PW17 Raghuvir Singh has stated that he was posted as SHO Barotiwala from July 2008 to August 2009. He has stated that he received telephonic call from unidentified person on dated 27.11.2008 that some person had committed murder of deceased Chhinder Kaur at Jharmajri. He has stated that rapat Ext. PW14/A was recorded. He has stated that he along with other police officials visited at the spot. He has stated that statement Ext. PW1/A of PW1 Ajeet Singh was recorded under Section 154 Cr.PC and thereafter he prepared rukka and same was sent to police station through constable Ashish Kumar. He has stated that rukka is Ext. PW12/A. He has stated that thereafter FIR Ext. PW12/B was recorded and photographs also obtained. He has stated that thereafter form No. 25 and 35 Ext. PW1/F & G qua dead body were filled at the spot and dead body was taken into possession and was taken to hospital for post mortem. He has stated that he filed application Ext. PW17/A with request to conduct post mortem of deceased. He has stated that blood stained hammer Ext. P6 was lying at the spot which was taken into possession and sealed in a cloth parcel. He has stated that he had also prepared sketch of hammer Ext. PW1/D. He has stated that he also took into possession blood stained blanket and one double bed sheet. He has stated that he also took into possession one nip of alcohol containing some liquor in it. He has stated that bed sheet and blanket were sealed in a cloth parcel. He has stated that nip was also separately sealed with seal "S". He has stated that blanket Ext. P2, bed sheet Ext. P3 and nip Ext. P4 are the same which were taken into possession vide memo Ext. PW1/B. He has stated that blood stained Dhoti (Garment) belonging to accused was also taken into possession and same was sealed in a cloth parcel. He has stated that he prepared spot map Ext. PW17/B and facsimile was taken on a piece of cloth. He has stated that accused was engaged as servant for the last one month. He has

stated that accused was missing from the shed of PW1 Ajeet Singh. He has stated that thereafter accused was searched at Chandigarh and Bihar. He has stated that mobile phone of deceased was kept under observation to locate accused. He has stated that call details of mobile phone were obtained. He has stated that as per location mobile phone was used in District Kurukshetra in Haryana and thereafter accused was located. He has stated that accused came to Haryana for plantation of paddy crop in the field. He has stated that accused was apprehended and mobile phone of deceased was recovered from the possession of accused. He has stated that thereafter accused was arrested on dated 19.7.2009. He has stated that accused led investigating agency to the place of incident and identified the spot. He has stated that he recorded the statement of witnesses under Section 161 Cr.PC as per their versions. He has stated that nothing was added or deleted. He has stated that case property was deposited with MHC on dated 27.11.2008 and field map got prepared at the spot from Patwari. He has stated that he also obtained copy of jamabandi and field map. He has stated that dead body of deceased after post mortem was handed over to PW1 Ajeet Singh. He has stated that he also obtained post mortem report Ext. PW16/A. He has stated that he had also received report of FSL Junga Ext. PW17/G & H. He has stated that on his transfer he handed over case file to SHO Hem Raj Poswal. He has denied suggestion that he did not record the statement of witnesses as per their versions. He has denied suggestion that accused was not working as servant with PW1 Ajeet Singh. He has denied suggestion that he did not arrest accused from village Kailram. He has denied suggestion that dhoti (Garment) was not owned by accused. He has denied suggestion that dhoti (Garment) was not recovered from bed inside residential shed. He has denied suggestion that no case property was deposited with malkhana. He has denied suggestion that mobile phone was not recovered from accused. He has denied suggestion that spot map was not correctly prepared. He has denied suggestion that no requisition was made to obtain call details from mobile company. He has denied suggestion that accused was falsely implicated in present case.

10.18. PW18 Arun Kumar has stated that for the last four years he is running a photo studio at Burawala. He has stated that on dated 27.11.2008 on the request of police officials he visited place of incident at Jharmajri near Micro Turner Factory and clicked photographs of dead body Ext. PW18/A to PW18/H and PW18/J to PW18/M from his digital camera. He has stated that photographs are true and correct as per situation prevailing at the spot. He has denied suggestion that he did not visit at the spot. He has denied suggestion that he did not take photographs.

10.19. PW19 Bhajan Singh has stated that he is junk dealer. He has stated that PW1 Ajeet Singh is known to him. He has stated that Ajeet Singh requested him to obtain mobile connection of Airtel company. He has stated that he procured SIM card No. 98166-46191 in his name. He has stated that SIM card was not used by him and SIM card was used by PW1 Ajeet Singh. He has denied suggestion that he did not obtain SIM card. He has denied suggestion that he did

not hand over SIM card to PW1 Ajeet Singh for use.

10.20. PW20 Manpreet Singh has stated that he was holding driving licence No. 1233 issued by District Transport Officer Samrala Ludhiana Punjab. He has stated that during January 2008 he lost his driving licence. He has stated that photocopy of driving licence is Ext. PW20/A. He has stated that he did not apply for mobile connection of cell No. 92562-85076 nor the same was used by him. He has stated that forms Ext. PW20/B and Ext. PW20/C were not submitted by him to Tata Indicom company. He has stated that he had gone to police station for lodging missing report of his licence. He has stated that report could not be lodged for want of licence number which was not with him.

10.21. PW21 Heera Lal has stated that he remained posted as investigating officer in police station Barotiwala from June 2010 to August 2010. He has stated that during investigation case file was handed over to him on dated 10.6.2010 and he procured call details, identity proof Ext. PW20/B and Ext. PW20/C and also procured affidavit of PW20 Manpreet Singh. He has denied suggestion that he did not conduct investigation. He has denied suggestion that he did not record the statements of Bhajana, Ajeet and Manpreet as per their versions.

11. Submission of learned Advocate appearing on behalf of appellant that accused was not employed as servant by the husband of deceased Chhinder Kaur and on this ground appeal filed by appellant be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that fact can be proved by way of oral evidence as per Section 59 of Indian Evidence Act 1872. PW1 Ajeet Singh has specifically stated in positive manner that accused was employed by him as servant one month prior to incident of murder. Testimony of PW1 Ajeet Singh is corroborated by PW2 Lakhvinder Singh relating to employment of accused as servant by husband of deceased. Testimony of PW1 is further corroborated by PW4 Varun Kumar who has stated in positive manner that accused was employed as servant by PW1 Ajeet Singh. Similarly testimony of PW1 is also corroborated by PW5 Vishal. PW5 has specifically stated in positive manner that accused was employed as servant by the husband of deceased on the day of incident of murder. Testimonies of PW1 Ajeet Singh, PW2 Lakhvinder Singh, PW4 Varun Kumar and PW5 Vishal that accused was employed as servant at the time of murder of deceased Chhinder Kaur are trustworthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW1 Ajeet Singh, PW2 Lakhvinder Singh, PW4 Varun Kumar and PW5 Vishal to the effect that accused was employed as servant in the residential shed of deceased at the time of criminal offence of murder. Accused did not adduce any positive, cogent and reliable rebuttal evidence on record in order to prove that on dated 26.11.2008 accused was employed somewhere else.

12. Another submission of learned Advocate appearing on behalf of appellant that present case is based upon circumstantial evidence and it is not proved on record that accused had committed murder of deceased Chhinder Kaur and on this ground appeal be accepted is also rejected being devoid of any force for the

reasons hereinafter mentioned. It is proved on record that on dated 26.11.2008 after 5 PM husband of deceased namely Ajeet Singh went to Chandigarh in connection with court case. It is proved on record that murder of deceased Chhinder Kaur aged 45 years was committed on dated 26.11.2008 during night period upon the bed in residential shed of deceased situated at Jharmajri in brutal manner with hammer. It is proved on record that as per post mortem report head, face, skull bones, nasal bones, brain tissue and eyes of deceased Chhinder Kaur were crushed and fractured. It is proved on record that as per post mortem report and as per testimony of PW16 Dr. Anand Kumar that death was anti mortem in nature. It is proved on record that time period between injury and death was few seconds and few minutes. It is proved on record that death of deceased Chhinder Kaur was caused within four walls of residential shed. It is proved on record that at the time of death of deceased accused was present in the residential shed of deceased. It is proved on record that at the time of death of Chhinder Kaur no other persons were present in residential shed of deceased except accused and deceased. There is no evidence on record in order to prove that some other persons entered inside the residential shed of deceased at the time of murder of deceased. Access of third person in four walls residential shed for commission of criminal offence is ruled out in present case on dated 26.11.2008. Hence offence against accused is proved in present case beyond reasonable doubt under Section 302 IPC on the concept of last seen theory.

13. Another submission of learned Advocate appearing on behalf of appellant that there is no positive, cogent and reliable circumstantial evidence against accused relating to murder of deceased and on this ground appeal filed by appellant be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that after committing murder of deceased Chhinder Kaur on dated 26.11.2008 during night period in four walls of residential shed accused absconded from residential shed of deceased despite the fact that accused was employed as servant. The factum of absconding of accused on dated 26.11.2008 immediately after the commission of offence of murder is proved as per testimony of PW4 Varun Kumar. Shed of PW4 Varun Kumar is also situated nearby the residential shed of deceased Chhinder Kaur and PW4 used to sell cigarette in the shed. PW4 Varun Kumar has specifically stated in positive manner that on dated 26.11.2008 accused met him at Barotiwala Chowk at 10 PM and told him that he would go to Chandigarh. As per testimony of PW4 Varun Kumar it is proved on record that accused on dated 26.11.2008 during night period at 10 PM had absconded from the scene of occurrence after committing murder. PW5 Vishal was also running meat shop near the residential shed of deceased. PW5 Vishal has specifically stated in positive manner that on dated 26.11.2008 during night period accused met him at bus stop Jharmajri. PW5 Vishal has stated that on dated 26.11.2008 accused requested for lift at Jharmajri but PW5 refused to give lift to accused due to non availability of space in the vehicle. PW5 Vishal has specifically stated in positive

manner that accused told that he would go to his native place. As per testimonies of PW4 Varun Kumar and PW5 Vishal it is proved on record that accused had absconded immediately after the commission of offence of murder. It is proved on record that accused did not remain present at the place of incident after commission of crime and accused left the place of occurrence immediately after the commission of criminal offence. It is proved on record beyond reasonable doubt that accused had absconded immediately after commission of murder of deceased Chhinder Kaur with hammer during night period and after causing several brutal injuries to deceased upon her head, face, skull bones, nasal bones, brain tissues and eyes. As per section 8 of Indian Evidence Act 1872 subsequent conduct of accused of absconding is relevant fact under Section 8(1) of Indian Evidence Act 1872. Even disclosure statement of accused under Section 27 of Indian Evidence Act 1872 Ext. PW4/A placed on record is proved as per testimony of PW4 Varun and as per testimony of PW5 Vishal. It was held in case reported in Darbari Kamar Vs. State of Orissa, AIR 1970 Ori 54 : (1970) CriLJ 580 that fact of absconding from the place of incident is itself a relevant incriminating circumstance against accused under Section 8(i) of the Indian Evidence Act 1872. Also see AIR 1969 Goa Daman & Diu 116 titled Rama alias Dhaktu Worak v. State.

14. Another submission of learned Advocate appearing on behalf of appellant that there is contradiction between the testimony of prosecution witnesses and on this ground appeal filed by appellant be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. In the present case it is proved on record that criminal offence of heinous murder was committed on dated 26.11.2008 during night period in the four walls of residential shed. It is proved on record that deceased Chhinder Kaur was master of accused at the time of her death. It is proved on record that death of deceased was caused in four walls of residential shed upon a bed on dated 26.11.2008. It is proved on record that on dated 26.11.2008 only deceased Chhinder Kaur and accused were in the residential shed during night period. It is proved on record that residential shed where the criminal offence of heinous murder was committed was covered with four walls and there was no possibility of any third person entering into the residential shed of deceased at the time of her death. It is proved on record that immediately after committing criminal offence of heinous murder of master accused who was servant absconded from the place of incident during night period on dated 26.11.2008 and thereafter accused was arrested on dated 19.7.2009 from Haryana and thereafter statements of prosecution witnesses were recorded on dated 30.9.2010, 1.10.2010, 6.10.2010, 19.10.2010 and 26.10.2010 after sufficient gap of time. It is well settled law that minor contradictions are bound to come in criminal case when testimony of witnesses recorded after a gap of sufficient time. Learned Advocate appearing on behalf of appellant did not point out any major contradiction in present case which goes to the root of case. It is well settled law that minor contradictions in criminal case should be ignored when testimony of prosecution witnesses recorded after a gap

of sufficient time. See C. Muniappan and Others Vs. State of Tamil Nadu, AIR 2010 SC 3718 : (2010) 9 JT 95 : (2010) 9 SCC 567 : (2010) 10 SCR 262 . See Sohrab and Another Vs. The State of Madhya Pradesh, AIR 1972 SC 2020 : (1972) CriLJ 1302 : (1972) 3 SCC 751 : (1972) SCC(Cri) 819 : (1973) 1 SCR 472 : (1973) 5 UJ 43 , see State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48 : (1985) CriLJ 493 : (1984) 2 SCALE 728 : (1985) 1 SCC 505 , see Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753 : (1983) CriLJ 1096 : (1983) 2 Crimes 232 : (1983) 1 SCALE 665 : (1983) 3 SCC 217 : (1983) 3 SCR 280 , see State of Rajasthan Vs. Om Prakash, AIR 2007 SC 2257 : (2007) 8 JT 620 : (2007) 8 SCALE 576 : (2007) 8 SCR 1000 : (2007) AIRSCW 3937 : (2007) 4 Supreme 642 , see Prithu @ Prithi Chand and Another Vs. State of H.P., AIR 2009 SC 2070 : (2009) 3 JT 440 : (2009) 3 SCALE 192 : (2009) 11 SCC 588 : (2009) 2 SCR 765 , see State of U.P. Vs. Santosh Kumar, (2009) 11 JT 592 : (2009) 12 SCALE 269 : (2009) 9 SCC 626 : (2009) 15 SCR 106 : (2009) 8 UJ 3992 , see AIR 2009 SC 151 titled State v. Saravanan and another, see Appabhai and Another Vs. State of Gujarat, AIR 1988 SC 696 : (1988) CriLJ 848 : (1988) 1 Crimes 606 : (1988) 1 JT 249 : (1988) 1 SCALE 228 : (1988) 2 UJ 27 , see Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, AIR 1999 SC 3544 : (1999) CriLJ 4561 : (1999) 7 JT 247 : (1999) 6 SCALE 69 : (1999) 8 SCC 649 : (1999) 3 SCR 1 Supp : (1999) AIRSCW 3546 : (1999) 8 Supreme 364 , see State of Himachal Pradesh Vs. Lekh Raj and Another, AIR 1999 SC 3916 : (2000) CriLJ 44 : (1999) 4 Crimes 337 : (1999) 9 JT 43 : (1999) 7 SCALE 86 : (2000) 1 SCC 247 : (1999) 4 SCR 286 Supp : (1999) AIRSCW 4008 : (1999) 9 Supreme 155 r, see Laxman Singh Vs. Poonam Singh and Others, AIR 2003 SC 3204 : (2003) 96 CLT 782 : (2003) CriLJ 4478 : (2003) 1 JT 61 Supp : (2003) 7 SCALE 334 : (2004) 10 SCC 94 : (2003) 3 SCR 528 Supp : (2004) 1 UJ 116 : (2003) AIRSCW 4566 : (2003) 6 Supreme 644 also See Dashrath Singh Vs. State of U.P., (2004) 6 JT 505 : (2004) 7 SCALE 3 : (2004) 7 SCC 408 : (2004) 3 SCR 561 Supp . See Kuria and Another Vs. State of Rajasthan, AIR 2013 SC 1085 : (2012) CriLJ 4707 : (2012) 4 JCC 2644 : (2012) 9 JT 296 : (2013) 2 RCR(Criminal) 108 : (2012) 9 SCALE 42 : (2012) 10 SCC 433 : (2012) AIRSCW 5259 .

15. Another submission of learned Advocate appearing on behalf of appellant that learned trial Court did not properly appreciate oral as well as documentary evidence placed on record is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused judgment and sentence passed by learned trial Court. Learned trial Court had discussed oral as well as documentary evidence placed on record with positive, cogent and reliable reasons. Present case is a case of circumstantial evidence and in circumstantial evidence there are five golden principles. (1) That circumstances from which the conclusion of guilt is to be drawn should be fully established (2) That facts so established should be consistent only with the hypothesis of the guilt of accused. (3) That circumstances should be of a conclusive nature.(4) That chain of circumstantial evidence should be completed. (5) That innocence of accused

should be ruled out. See Prakash Vs. State of Rajasthan, (2013) 4 AD 252 : AIR 2013 SC 1474 : (2013) CriLJ 2040 : (2013) 2 Crimes 245 : (2013) 2 RCR(Criminal) 526 : (2013) 4 SCALE 613 : (2013) 4 SCC 668 : (2013) AIRSCW 1900 : (2013) 3 Supreme 494 . We are of the opinion that in circumstantial cases there are two kinds of murder (1) Murder committed in four walls of house. (2) Murder committed in open place. It is well settled law that when murder is committed in open place then Court should be very conscious in connecting the accused with commission of offence. It is well settled law that when murder is committed inside the four walls of house then Court should consider the access of accused and court should rule out the access of third person in the commission of crime. In the present case murder of deceased was committed inside the four walls of residential shed and in the present case only access of accused who was servant of deceased at the time of commission of criminal offence is proved and the access of third person from outside is ruled out at the time of commission of criminal offence. Involvement of accused in the commission of offence of murder in present case is proved beyond reasonable doubt because accused had immediately absconded from the residential shed of deceased on dated 26.11.2008 after commission of criminal offence of murder of deceased Chhinder Kaur. No explanation has been given by accused that why he did not report the matter of death of deceased Chhinder Kaur to police station which was situated at a distance of about 2 Km. from the place of incident. Accused who was servant instead of informing the heinous murder of master to investigating agency on dated 26.11.2008 preferred to abscond from residential shed of deceased and thereafter accused was caught at Haryana on dated 19.7.2009. We are of the opinion that no leniency should be shown to dishonest person who left alone the dead body of deceased master without informing investigating agency despite fact that police station was situated at a distance of about 2 Km. from the place of incident of heinous murder. It is well settled law that servant is under legal obligation to protect his female master when female master was alone in her residential shed during night period at the time of heinous murder.

16. We have also carefully perused the photographs placed on record Ext. PW18/A to Ext. PW18/M. It is proved on record that deceased was brutally murdered in the residential shed of deceased on dated 26.11.2008 during night period. As per testimony of PW16 Dr. Anand Kumar who conducted post mortem of deceased death was caused due to anti mortem injuries. As per post mortem report time gap between injuries and death was few seconds to few minutes. As per post mortem report head, jaws, skull bones, nasal bones, brain tissues and eyes of master deceased were crushed and were broken into pieces. Even as per chemical analyst report Ext. PW7/G placed on record human blood of group "A" was found upon hammer, blanket and bed sheet of deceased Chhinder Kaur. Even as per SFSL report hairs of deceased Chhinder Kaur found upon hammer were matched with the hairs of deceased. Hence it is proved on record that murder of deceased was committed in heinous manner with hammer by accused when

accused was servant in the residential shed of deceased and when deceased Chhinder Kaur was alone in her residential shed during night period on dated 26.11.2008. In the present case murder of deceased Chhinder Kaur was not committed in open place and dead body of deceased was also not found in open place which was accessible to all. On the contrary in the present case heinous murder of deceased Chhinder Kaur aged 45 years was committed in four walls of residential shed on dated 26.11.2008 when only access of accused was available in the residential shed. In the present case it is proved on record that on dated 27.11.2008 at 8.30 AM husband of deceased Chhinder Kaur came from Chandigarh and he found dead body of deceased in the residential shed and the statement of husband of deceased was recorded under Section 154 Cr.PC. It is proved on record that accused is permanent resident of Nepal and it is also proved on record that after absconding on dated 26.11.2008 accused did not join service of the husband of deceased but on the contrary after absconding accused who was servant of deceased at the time of heinous murder of deceased joined service at Haryana and performed paddy work. In the present case seizure memo of blanket, double bed sheet stained with blood and hammer clotted with blood proved on record beyond reasonable doubt.

17. Another submission of learned Advocate appearing on behalf of appellant that as per prosecution case three mobile SIM cards were used i.e. SIM Nos. 98166-46191, 92562-85076 and 97291-75175 and prosecution has not given any explanation as to why primary evidence was not brought on record and on this ground appeal filed by appellant be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. PW8 Devinder Verma Nodal officer Bharti Airtel Limited Kasumpti Shimla and PW9 Meenu Rana Assistant Nodal Officer Tata Tallies Service Shimla have specifically stated in positive manner that call details of mobile were supplied strictly as per available record in the computer. The fact of supply of call details is proved on record by prosecution as per testimony of PW8 Devinder Verma and PW9 Meenu Rana. It is well settled law that facts can be proved by way of oral evidence as per section 59 of Indian Evidence Act 1872.

18. Another submission of learned Advocate appearing on behalf of appellant that no motive is proved on record in order to commit murder of deceased and on this ground appeal filed by appellant be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. In the present case PW1 Ajeet Singh has specifically stated when he appeared in witness box that accused had committed heinous murder of deceased Chhinder Kaur aged 45 years for money. Testimony of PW1 Ajeet Singh that accused had committed murder of deceased for money remains un-rebutted on record. It is proved on record that accused had committed murder of deceased for money when deceased was alone in her residential shed during night period.

19. In view of above stated facts it is held that learned trial Court has properly appreciated oral as well documentary evidence placed on record and it is held

that no miscarriage of justice has been caused to appellant. Appeal filed by appellant is dismissed and judgment and sentence passed by learned trial Court are affirmed. Appeal is disposed of. Pending applications if any also disposed of.