
(2015) 12 SHI CK 0038
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 4089 of 2013

Shah Jahan Ali

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 428
Evidence Act, 1872 — Section 27, 8
Penal Code, 1860 (IPC) — Section 302, 376, 511

Citation : (2015) 12 SHI CK 0038

Hon'ble Judges : Sanjay Karol and Piar Singh Rana, JJ.

Bench : Division Bench

Advocate : R.K. Bawa, Sr. Advocate and Jeevesh Sharma, Advocate, for the Appellant; V.S. Chauhan, Addl. Advocate General and J.S. Guleria, Assistant Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Piar Singh Rana, J.—Present appeal is filed against judgment and sentence passed by learned Sessions Judge Kinnaur Sessions Division at Rampur Bushahr HP in Sessions trial No. 19 of 2011 titled State of H.P. v. Shah Jahan Ali decided on 26.7.2013.

BRIEF FACTS OF PROSECUTION CASE:

2. It is alleged by prosecution that on dated 11.7.2011 at about 5.30 PM at place Shikari rivulet accused attempted to commit rape upon prosecutrix and thereafter committed murder of deceased Kim Dassi intentionally. It is further alleged by prosecution that incident was witnessed by PW2 Jakmali, PW1 Shyam Lal and PW10 Jiya Lal. It is further alleged by prosecution that salwar of prosecutrix was opened and was rested on her knees and her left eye was damaged and blood was oozing from the head of deceased Kim Dassi. It is further alleged by prosecution that PW10 Jiya Lal identified accused in Court. It is further alleged by prosecution that thereafter information was given to police by

PW10 Jiya Lal. It is further alleged by prosecution that PW8 constable Gopal Singh recorded rapat No. 12 Ext PW8/E. It is further alleged by prosecution that PW18 ASI Dharmesh Dutt police post Sarahan recorded statement of PW10 Jiya Lal Ext PW10/A. It is further alleged by prosecution that thereafter FIR Ext. PW15/F was registered at police station Jhakri by PW15 HC Bhaskra Nand. It is further alleged by prosecution that PW18 ASI Dharmesh Dutt took twenty two photographs of spot which are Ext PX1 to Ext PX22 and negatives are Ext PX23 to Ext PX29. It is further alleged by prosecution that spot map Ext PW18/A was prepared. It is further alleged by prosecution that dead body of deceased Kim Dassi took into possession vide memo Ext PW11/E. It is further alleged by prosecution that PW18 Dharmesh Dutt took into possession leaves of "Ban" tree stained with blood vide memo Ext PW11/D and sealed them in a parcel with seal impression "P". It is further alleged by prosecution that PW18 Dharmesh Dutt took into possession hair which was found in the hands of deceased Kim Dassi vide memo Ext PW11/B. It is further alleged by prosecution that sandal Ext P9 took into possession vide seizure memo and sealed in a parcel. It is further alleged by prosecution that PW18 Dharmesh Dutt prepared inquest reports Ext PW18/C and Ext PW18/D and sent dead body of deceased Kim Dassi to MGMSC Khaneri for post mortem along with Ext PW18/E. It is further alleged by prosecution that dead body was referred for post mortem examination to IGMC Shimla. It is further alleged by prosecution that accused was interrogated and arrested. It is further alleged by prosecution that for medical examination of accused investigating officer moved application Ext PW9/A. It is further alleged by prosecution that accused was medically examined at MGMSC Khaneri. It is further alleged by prosecution that pubic hair, pant, T-shirt and under wear of accused also took into possession. It is further alleged by prosecution that MLC Ext PW9/B was issued by medical officer. It is further alleged by prosecution that final opinion is Ext PW9/C. It is further alleged by prosecution that disclosure statement of accused Ext PW11/F recorded in the presence of witnesses PW11 Diwan Singh and PW17 Devinder Singh. It is further alleged by prosecution that spot map Ext PW18/F was prepared. It is further alleged by prosecution that post mortem of deceased Kim Dassi was conducted in IGMC Shimla on dated 13.7.2011 vide post mortem report Ext PW16/A. It is further alleged by prosecution that on dated 10.7.2011 accused remained present on duty and thereafter on dated 11.7.2011 accused was found absent from duty. It is further alleged by prosecution that copy of jamabandi Ext PW3/A, copy of tatima Ext PW3/B and copy of khasra girdawari Ext PW3/C obtained from Patwari Patwar Circle Sarahan. It is further alleged by prosecution that sickle Ext P2 and rope Ext P1 were took into possession vide seizure memo Ext PW4/A. It is further alleged by prosecution that rope Ext P1 and sickle Ext P2 were found by PW4 Sheela Devi lying in the orchard where her mother-in-law prosecutrix had gone for cutting grass. It is further alleged by prosecution that copy of malkhana register Ext PW6/A, FSL report Ext PW19/F, Ext PW19/G, Ext PW19/H and Ext PW19/J obtained. It is further alleged by prosecution that case property was deposited in malkhana and thereafter case property was sent to FSL Junga

through PW5 constable Rakesh Kumar vide RC No. 102/2011. Charge framed against accused by learned Sessions Judge Kinnaur Sessions Division at Rampur Bushahr HP on dated 30.11.2011 under section 302 IPC and under Section 376 IPC read with section 511 IPC. Accused did not plead guilty and claimed trial.

3. Prosecution examined twenty oral witnesses in support of its case and also produced documentaries evidence.

4. Statement of accused under Section 313 Cr.P.C. was also recorded and accused has stated that false case has been filed against him. Accused did not lead any defence evidence.

5. Learned trial Court convicted appellant under Sections 302 and 376 IPC read with Section 511 of Indian Penal Code and sentenced accused Shah Jahan Ali under Section 302 IPC to rigorous imprisonment for life and to pay fine of Rs. 50000/- (Fifty thousand). Learned trial Court further directed that in default of payment of fine convict would undergo simple imprisonment for a period of one year. Learned trial Court also sentenced appellant under Section 376 IPC read with Section 511 IPC to rigorous imprisonment for five years and to pay fine of Rs. 25000/- (Twenty five thousand). Learned trial Court further directed that all sentences shall run concurrently and period undergone by convict during investigation and trial would be set off as provided under Section 428 Cr.P.C.

6. Feeling aggrieved against the judgment and sentence passed by learned trial Court appellant filed present appeal.

7. We have heard learned Advocate appearing on behalf of appellant and learned Additional Advocate General appearing on behalf of State and also perused entire record carefully.

8. Points for determination in present appeal are whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court committed miscarriage of justice by way of convicting appellant Shah Jahan Ali.

Reasons for findings.

9. Oral evidence adduced by prosecution.

9.1. PW1 Shyam Lal has stated that he is agriculturist by profession. He has stated that on dated 11.7.2011 he was grazing his sheep by the side of Shikari rivulet. He has stated that at about 5.30 PM Jakmali told him that some person caught hold of one lady. He has stated that thereafter he went to the house of Jiya Lal. He has stated that thereafter he along with Jiya Lal followed accused upto distance of 1 Km. He has stated that despite efforts accused could not be caught. He has stated that thereafter he along with Jiya Lal returned back and found Kim Dassi was lying dead. He has stated that thereafter he went to his house along with his goat. He has stated that thereafter about 1/2 hour when he came back many persons gathered nearby the dead body. He has stated that

dead body was rested on the ground by back and it was half naked as the Salwar was upto the knee of deceased Kim Dassi. He has stated that nearby the dead body of Kim Dassi there were blood stained spots. He has stated that accused present in Court was seen by him earlier in the house of Aklu Ram. He has stated that his house is at a distance of about 25/30 feet from the house of deceased Kim Dassi. He has stated that his house is at a distance of about 10/15 feet from the house of Jiya Lal. He has stated that rivulet where deceased Kim Dassi was grazing sheep is situated at a distance of about 10/15 feet from the house of Jakmali. He has denied suggestion that he falsely implicated accused. He has denied suggestion that he deposed incorrectly at the instance of police officials.

9.2. PW2 Smt. Jakmali has stated that she is housewife as well as agriculturist. She has stated that on dated 11.7.2011 she was cutting grass nearby Dogri of one Diwan. She has stated that at about 5.30 PM she heard cries of deceased Kim Dassi coming from the side of her orchard. She has stated that deceased was dragged by accused present in Court. She has stated that thereafter accused laid upon deceased Kim Dassi on the ground. She has stated that she called her father in law Shyam Lal. She has stated that thereafter Shyam Lal came and in the meanwhile accused ran away. She has stated that thereafter Shyam Lal and Jiya Lal chased accused. She has stated that in the meanwhile villagers gathered at the spot. She has stated that salwar of deceased Kim Dassi was opened and it was rested on her knees and her left eye was damaged. She has stated that blood was oozing out from the head of deceased. She has stated that police officials reached at the spot. She has stated that accused was known to her earlier because accused was residing in the house of one Aklu Ram. She has denied suggestion that she did not see accused on dated 11.7.2011 at the spot. She has denied suggestion that she deposed falsely at the instance of family members of deceased and investigating officer.

9.3. PW3 Ms. Anu Verma has stated that in the year 2011 she was posted as Patwari Patwar Circle Sarahan and she was having additional charge of Jeori. She has stated that as per request of police officials she supplied copy of jamabandi Ext PW3/A, copy of tatima Ext PW3/B and copy of khasra gardawari Ext PW3/C.

9.4. PW4 Smt. Sheela Devi has stated that she was employed in government primary school Humtu as part time worker. She has stated that at about 5 PM when she was taking out cow dung from cowshed in the meantime her mother in law deceased Kim Dassi went to orchard for cutting grass. She has stated that her father in law Shyam Lal was grazing sheep. She has stated that her father in law told that one person wearing T-shirt red in colour and green pant killed deceased Kim Dassi. She has stated that on the next day she went to orchard where she found a sickle and plastic rope of her mother in law Kim Dassi which she took for cutting grass. She has stated that sickle and plastic rope were took into possession vide seizure memo Ext PW4/A which bears her signature. She has stated that rope is Ext P1 and sickle is Ext P2.

9.5. PW5 Rakesh Kumar has stated that he was posted as constable in police

station Jhakri. He has stated that on dated 18.7.2011 MHC Bhaskra Nand handed over to him case property from serial No. 1 to 17 vide RC No. 102 with direction to deposit the same in the office of FSL Junga. He has stated that he deposited articles in the office of FSL Junga on the same day. He has stated that thereafter he handed over receipt to MHC. He has stated that case property remained intact in his custody and was not tampered.

9.6 PW6 Suresh Kumar has stated that he was posted as constable in police station Jhakri. He has stated that one sickle and plastic rope was handed over to him and he recorded entry in register No. 19. He has stated that copy of malkhana register is Ext PW6/A which is correct as per original record.

9.7. PW7 Diwan Chand has stated that he was posted as constable in police station Jhakri since 2010. He has stated that on dated 22.8.2011 he along with Lalsain and Sheela Devi remained associated in investigation of case. He has stated that Sheela Devi produced one sickle and one plastic rope at Shikari rivulet which was took into possession vide seizure memo Ext PW4/A. He has stated that length of sickle was one feet and 1.5 inches and rope was 20 feet.

9.8 PW8 constable Gopal Singh has stated that in the year 2011 he was posted as MC police post Sarahan. He has stated that on dated 11.7.2011 he recorded rapat No. 12 Ext PW8/A. He has stated that Ext PW8/A is the true and correct copy of roznamcha brought by him in Court.

9.9. PW9 Sh. B.D. Negi has stated that he was posted as medical officer in MGMSC Khaneri since 2003. He has stated that he medically examined accused Shah Jahan Ali. He has stated that at the time of examination accused was well oriented person. He has stated that he was not under influence of any drug or alcohol. He has stated that on examination he observed as follows. He has stated that external genitalia organs were well developed and pubic hair well grown. He has stated that he did not observe any scratch mark, any visible blood clot or seminal fluid with naked eye. He has stated that pubic hair was preserved. He has stated that clothes of accused i.e. pant, T-shirt underwear and vest were preserved. He has stated that blood sample was preserved for chemical examination. He has stated that after receipt of report of FSL Junga he had given his final opinion that blood resembled with that of human being found on the pant and T-shirt of accused. He has stated that accused was not incapable of performing sexual intercourse. He has stated that he issued MLC Ext PW9/B. He has stated that final opinion Ext PW9/C bears his signature. He has denied suggestion that he did not examine accused clinically. He has stated that tear marks were present on T-shirt and pant of accused.

9.10 PW10 Jiya Lal has stated that he has three brothers and all are residing separately. He has stated that his deceased mother Kim Dass used to reside with his elder brother Bir Singh. He has stated that on dated 11.7.2011 at about 5.30 PM Shyam Lal came to him and said that one person was dragging a woman on the path. He has stated that when he reached at the spot he saw that his mother

was resting on the ground by backside and her left eye was protruded and her salwar was lowered down up to knee. He has stated that accused fled away from the spot the moment he saw persons came at the spot. He has stated that he chased accused upto a distance of 2 Kms. but accused escaped. He has stated that villagers came at the spot and in the meantime his mother had died. He has stated that person who ran away from the spot was Bihari. He has stated that he could identify the accused. He has stated that he informed police officials through telephone and police came at the spot. He has stated that his statement Ext PW10/A was recorded under Section 154 Cr.P.C. which bears his signature. He has stated that photographs of spot obtained by investigating officer. He has stated that a pair of sandal was found lying near the dead body which was identified by his brother Bir Singh. He has stated that parcels were sealed and took into possession vide seizure memo Ext PW10/B which bears his signature. He has stated that recovered black hair placed in a plastic envelope and thereafter sealed in a parcel. He has stated that blood was found on the leaves of oak tree near right side of dead body. He has stated that dead body of his mother took into possession vide seizure memo. He has stated that hair Ext P10 took into possession by police officials. He has stated that blood stained oak leaves Ext P11 are the same which took into possession by police officials from the spot. He has stated that on dated 15.7.2011 police brought accused at the spot and he identified accused. He has stated that accused is the same person who resided in the house of Alku Ram. He has denied suggestion that accused was not present at the spot. He has denied suggestion that accused has been falsely implicated in present case. He has denied suggestion that he along with his brother and villagers went to the site of L&T Company and assaulted labourers and accused Shah Jahan Ali.

9.11. PW11 Diwan Singh has stated that on dated 11.7.2011 he along with Bir Singh and Jiya Lal remained associated in investigation. He has stated that on identification of Jiya Lal police took photographs of spot and prepared site plan. He has stated that police officials recovered pair of sandal and placed in a parcel of cloth. He has stated that specimen of seal impression took on a piece of cloth. He has stated that seal after use was handed over to Bir Singh. He has stated that parcel of sandal took into possession vide seizure memo Ext PW10/B in his presence and in the presence of Jiya Lal. He has stated that black coloured hair was recovered from the spot which was placed in a plastic envelope and plastic envelope was wrapped in a cloth parcel with eight seals impression "A". He has stated that seal after use was handed over to Bir Singh and parcel took into possession vide seizure memo Ext PW11/B which bears his signature and that of Bir Singh. He has stated that blood stained was found upon oak leaves near the dead body of deceased Kim Dassi. He has stated that blood stained oak leaves were collected from the spot and placed in a plastic envelope vide seizure memo Ext PW11/D. He has stated that police officials took into possession dead body of deceased Kim Dassi vide seizure memo Ext PW11/E. He has stated that accused had given disclosure statement that he had concealed blood stained stone behind

grass and could get the same recovered from the spot. He has stated that disclosure statement of accused Ext PW11/F was recorded. He has stated that sample of oak leaves was obtained upon a piece of cloth Ext PW11/H. He has stated that police officials obtained photographs of spot and stones. He has stated that police officials took into possession oak leaves in his presence. He has stated that sandal of deceased Kim Dassi were lying near the dead body of deceased at a distance of about 3/4 feet. He has stated that dead body remained intact till arrival of police officials. He has denied suggestion that police officials have prepared seizure memo in police station and not at the spot. He has denied suggestion that no disclosure statement of accused under Section 27 of Indian Evidence Act was recorded in his presence. He has denied suggestion that no recovery was effected by police officials at the instance of accused.

9.12. PW12 Aklu Ram has stated that he is agriculturist by profession. He has stated that his house is situated near Shikari rivulet. He has stated that accused was his tenant. He has stated that accused stayed in his house only for eight days. He has stated that accused used to work in L&T Company. He has stated that villagers came to his house and told that accused had killed a lady. He has stated that name of deceased woman was Kim Dassi. He has stated that accused did not return to his rented house on the day of incident. He has denied suggestion that accused did not reside in his house. He has denied suggestion that he falsely implicated accused at the instance of investigating officer. He has denied suggestion that he falsely claimed that accused was tenant in his house just to extort money from L&T Company.

9.13 PW13 constable Jiya Lal has stated that he was posted as constable on general duty at police post Sarahan. He has stated that he brought following articles from IGMSC Shimla to police station Jhakri. (1) One jar plastic which contained stomach intestines of deceased. (2) Two jars plastic containing liver, spleen, kidney of deceased. (3) Clothes of deceased along with sample seal and one C.D and 5 parcels sealed with seal impression DKG which contained jewellery. (4) One more parcel containing pubic hair, another parcel containing preservative, one sample containing blood, another envelope containing vaginal swab. He has stated that aforesaid articles were sealed with seal impression "DKG". He has stated that parcel remained intact in his possession and he did not tamper case property.

9.14 PW14 Hira Singh has stated that he was posted as HHC in police station Jhakri since 2010. He has stated that on dated 12.7.2011 he collected following articles from MGMSC Khaneri to police station Jhakri and handed over the same to MHC police station Jhakri. (1) Air dried blood sample, pubic hair, sample hair along with sample seal MGH/RB, one parcel sealed with seal impression MGH/RB containing clothes of accused Shah Jahan Ali along with sample seal, one envelope sealed with seal of MGH/RB addressed to chemical examiner FSL Junga. He has stated that case property remained intact in his possession and was not tampered. He has denied suggestion that he did not collect and deposit parcel.

9.15 PW15 HC Bhaskar Nand has stated that he remained posted as MHC police station Jhakri w.e.f. 2008 to July 2012. He has stated that on dated 12.7.2011 ASI Dharmesh Dutt deposited with him one parcel sealed with seal impression "A". He has stated that articles were entered in relevant register and sent case property vide RC No. 102/2011 dated 18.7.2011 through constable Rakesh Kumar to FSL Junga. He has stated that case property remained intact in his custody.

9.16. PW16 Dr. Sangeet Dhillon has stated that she was posted as Assistant Professor in department of forensic medicines in IGMC Shimla. She has stated that she conducted post mortem of deceased Kim Dassi aged about 62 years. She has stated that dead body was brought by police officials and wrapped in a white sheet. She has stated that rigor mortis of deceased disappeared from all joints of body. She has stated that she observed following ante mortem external injuries.

"1. Red contusion 3 x .7 cm present on the anterior aspect of the forehead. Central portion is 3 cm. above the nasion.

2. Red contusion on the right upper eyelid, right lower eyelid, extending from inner canthus to the outer canthus of the eye. Periorbital haematoma on the upper, lower aspect of eyelids. Clotted blood present on the upper aspect of right side of forehead. Conjunctival hemorrhage present throughout the right eye, corneal portion seen as a black area. The periorbital haematoma was extending to eyebrow superiorly and 2.4 x .9 cm. inferiorly.

3. Red contusion of the left eye involving the upper eyelid, lower eyelid extending from inner canthus to outer canthus of left eye. Periorbital haematoma 3 x .8 cm. at the upper eyelid and 1.2 x .4 cm at the lower eyelid. Clotted blood present on the nose, upper aspect of forehead. Conjunctival hemorrhage present at the periphery with corneal portion as black area. The left eye had fallen towards the lateral side due to ligamentary detachment at the posterior aspect, irregularly underlying orbital cavity has clotted blood.

4. Red contusion 2 x 7 cm. on the bridge of nose 1.5 cm. below nasion and other red contusion 5 cm. inferior to the earlier one measuring 2.1 x .9 cm. fracture of the underlying bone present.

5. Red contusion 1 x 2 x .5 cm. near left side of nose.

6. Red contusion 2.2 x 1 cm. extending from left alae of nose towards the left side.

7. Multiple red contusions on the lower aspect of left cheek in an area 6 x 5 cm.

8. Multiple red contusions on the lower aspect of right cheek in an area 7 x 5 cm.

9. Horizontal red contusion on the chin 3.2 x .8 cm. another red contusion 1 cm. lateral left side of face .9 x 1 cm. and another red contusion .9 cm. lateral to previous contusion measuring .8 x 1.2 cm.

10. Horizontal red contusion on the inner aspect of lower lip 3.2 x .8 cm. The teeth and gums were normal.
11. Red contusion on the right upper aspect of the neck 5 cm. interior to lower end of right ear 7 x 4 cm. at maximum width ranging 2, 3 cm. at places extending towards mid of neck.
12. Red contusion on the middle anterior aspect of neck 1.2 x 3 cm. inferior to the chin.
13. Red contusion on the left lateral aspect of upper area of neck 1.5 cm. below the inferior aspect of left ear.
14. Red contusion on the dorsal aspect of right hand second finger 1.2 x 5 cm.
15. Red contusion on the dorsal aspect of left hand, 1.7cm inferior to wrist 9.1.2 cm.
16. Red contusion on the lateral aspect of left wrist dorsum, 1.3 x 9 cm.
17. Red contusion on the lateral aspect of right thigh 21 cm. below the interior superior iliac spine 8 x 9 cm another red contusion medial to earlier contusion 4cm. medially 3 x 6 another contusion 1.7 cm. inferior to first contusion 7 x 5 cm.
18. Red contusion 2.2 x 1.8 cm. on the lateral aspect right side of chest 2.3 cm. below mid of right clavicle."

She has stated that deceased had died due to ante mortem injuries and hemorrhage to brain. She has stated that probable time that elapsed between injuries and death was immediate and time between death and post mortem was around two days. She has stated that 35 photographs obtained during autopsy on a CD. She has stated that viscera was sent for examination along with blood, pubic hair, vaginal swab and clothes along with sample seal and preserved it. She has stated that deceased had died as a result of ante mortem injuries to eyes and hemorrhage to brain. She has stated that shirt had struggle marks and salwar had graze marks. She has stated that she issued post mortem report Ext PW16/A. She has stated that final opinion is Ext PW16/B. She has denied suggestion that she did not receive request from police officials for conducting post mortem. She has denied suggestion that she has conducted post mortem only on the request of police officials.

9.17. PW17 Devinder Kumar has stated that he was Vice President Gram Panchayat Badhal. He has stated that on dated 15.7.2011 he along with Diwan Singh and accused who was in custody of police joined investigation of case. He has stated that accused made a disclosure statement before him that stone which was stained with blood was concealed by accused in bushes. He has stated that statement under Section 27 of Evidence Act was recorded by police officials. He has stated that thereafter he along with other witnesses and accused went to spot where stone was recovered at the instance of accused and the same was took into possession vide seizure memo Ext PW11/G. He has denied suggestion

that he did not join investigation. He has denied suggestion that accused did not make any disclosure statement in his presence. He has denied suggestion that no recovery of stone was effected in his presence.

9.18 PW18 ASI Dharmesh Dutt has stated that he was posted as ASI in police post Sarahan. He has stated that on dated 11.7.2011 he received telephonic message from police station Jhakri that mother of Jiya Lal was raped and he should visit at the spot. He has stated that after receiving information he visited spot and also seen dead body of deceased Kim Dassi. He has stated that he also recorded statement of Jiya Lal under Section 154 Cr.P.C. Ext. PW10/A and same was sent to police station Jhakri for registration of FIR. He has stated that FIR Ext PW15/F was recorded at police station Jhakri. He has stated that he also obtained twenty two photographs at the spot Ext PX1 to Ext PX 22 and also obtained seven negatives Ext PX23 to Ext PX29. He has stated that he prepared spot map Ext PW18/A. He has stated that thereafter dead body of Kim Dassi was took into possession vide seizure memo Ext PW11/E. He has stated that he took into possession leaves of Ban tree on which blood stains were present vide memo Ext PW11/D. He has stated that hair of deceased Kim Dassi was also took into possession vide memo Ext PW11/B. He has stated that hair is Ext P10 which was sealed with seal impression "A". He has stated that he took into possession sandal Ext P9 vide seizure memo Ext PW10/B. He has stated that he also recorded supplementary statement of complainant and also recorded statements of other witnesses as per their versions. He has stated that he filled up inquest forms Ext PW18/C and Ext PW18/D and thereafter sent dead body of deceased Kim Dassi for post mortem to IGMC Shimla. He has stated that he filed application for medical examination of accused. He has stated that parcels were deposited in malkhana. He has stated that accused had given disclosure statement Ext PW11/F. He has stated that as per disclosure statement stone Ext P13 was recovered from bushes. He has stated that he prepared spot map Ext PW18/F. He has stated that salwar of deceased was rested upto knee and clothes were torn. He has stated that dead body was directly sent to MGMSC Khaneri from the spot with letter addressed to conduct post mortem. He has denied suggestion that villagers gathered in the office of L&T site and started beatings labourers and when accused objected then villagers caught accused and handed over to police. He has denied suggestion that accused did not make any disclosure statement. He has denied suggestion that accused was forced to sign blank papers. He has denied suggestion that stone Ext P13 was not recovered at the instance of accused. He has denied suggestion that he fabricated false evidence. He has denied suggestion that accused did not commit any offence. He has denied suggestion that accused was falsely implicated in present case.

9.19 PW19 SI Bhagat Ram has stated that he remained posted as SHO police station Jhakri. He has stated that he had partly investigated present case. He has stated that he took demarcation of the spot from Patwari and obtained tatima Ext PW3/B, jamabandi Ext PW3/A and khasra girdawari Ext PW3/C. He has stated that Sheela Devi had produced one sickle Ext P2 and rope Ext P1 which

were taken into possession vide memo Ext PW4/A. He has stated that sickle and rope were handed over by him to MHC and same were deposited in malkhana. He has stated that he took into possession attendance card Ext PW19/A, appointment card Ext PW19/B, wages sheets Ext PW19/C and attested copies of muster rolls for the months of June and July 2011 Ext PW19/D and Ext PW19/E. He has stated that he took into possession certified copy of malkhana register. He has stated that he recorded statements of witnesses as per their versions and after completion of investigation he prepared challan. He has denied suggestion that he prepared attendance card, muster rolls and other documents of accused as per his own convenience. He has denied suggestion that accused was present at his working place on 11.7.2011. He has denied suggestion that he filed false case against accused.

9.20. PW20 Naval Kishore Sharma has stated that since 2011 he was posted in L&T Company as Administrative Incharge Jeori. He has stated that he had given documents relating to employment of accused Shah Jahan Ali. He has stated that accused present in Court was posted as fitter on daily wages in L&T Company Jeori. He has stated that accused was on duty upto 10.7.2011. He has stated that thereafter he was found absent from his duty. He has stated that total amount of wages which were due to him was Rs. 4200/- (Four thousand two hundred). He has stated that he had given attendance cards, wages sheet, employment card and muster roll. He has denied suggestion that accused was on his duty on 11.7.2011. He has denied suggestion that he submitted false documents regarding duty of accused.

10. Prosecution also tendered following documentaries evidence. (1) Ext. PW3/A copy of jamabandi for the year 1996-97 (2) Ext. PW3/B field map (3) Ext. PW3/C copy of khasra girdawari for April 2010 (4) Ext. PW4/A seizure memo of sickle & plastic rope (5) Mark DX statement of Jakmali Devi (6) Ext. PW6/A extract of malkhana register (7) Ext. PW8/A rapar No. 12 dated 11.7.2011 (8) Ext. PW9/A application for conducting medical examination of accused. (10) Ext. PW9/B MLC of accused (11) Ext. PW10/A statement under section 154 Cr.P.C. of Jiya Lal (12) Ext. PW10/B seizure memo of sandal (13) Ext. PW11/A seal impression upon cloth (13) Ext. PW11/B recovery memo of hair found in the hand of deceased (14) Ext. PW11/C seal impression upon cloth (15) Ext. PW11/D seizure memo of blood clotted dead body of deceased (16) Ext. PW11/E seizure memo of dead body of deceased aged 65 years (17) Ext. PW11/F disclosure statement of accused under section 27 of Evidence Act (18) Ext. PW11/G recovery memo of blood clotted stone (19) Ext. PW11/H seal impression upon cloth (20) Ext. PW15/A to Ext. PW15/D extract of malkhana register (21) Ext. PW15/E copy of road certificate (22) Ext. PW15/F copy of FIR No. 97 dated 12.7.2011 (23) Ext. PW16/A post-mortem report (24) Ext. PW16/B final opinion of medical officer relating to cause of death (25) Ext. PW18/A site plan (26) Ext. PW18/B seal impression upon cloth (27) Ext. PW18/C & Ext. PW18/D inquest reports (28) Ext. PW18/E application for conduction of post-mortem of deceased (29) Ext. PW18/F site plan (30) Ext. PW18/G sapurdari memo (31) Ext. PX1 to PX22 photographs of

dead body of deceased (32) Ext. PX23 to PX29 negatives of photographs (33) Ext. PW19/A copy of attendance card of accused issued by Larsen & Toubro Limited (34) Ext. PW19/B copy of employment card issued by Larsen & Toubro Limited relating to accused (35) Ext. PW19/C copy of muster-roll relating to accused issued by Larsen & Toubro Limited (36) Ext. PW19/C-1 copy of muster-roll of accused issued by Larsen & Toubro Limited (37) Ext. PW19/F to Ext. PW19/H & Ext. PW19/J FSL reports.

11. Submission of learned Advocate appearing on behalf of appellant that learned trial Court has illegally relied upon testimony of PW1 Shyam Lal is rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused testimony of PW1 Shyam Lal. PW1 Shyam Lal has specifically stated that he along with Jiya Lal followed accused up to the distance of 1 Km. PW1 Shyam Lal has stated in positive manner that deceased Kim Dassi was lying dead and dead body of deceased was half naked and salwar was up to knees. PW1 Shyam Lal has specifically stated in positive manner that nearby the dead body of Kim Dassi there was blood stained spots. There is no evidence on record in order to prove that PW1 Shyam Lal had hostile animus against accused. PW1 had identified accused before learned trial court during proceedings of case. There is no reason to disbelieve the testimony of PW1 Shyam Lal. Testimony of PW1 Shyam Lal is trust worthy, reliable and inspires confidence of Court.

12. Submission of learned Advocate appearing on behalf of appellant that learned trial Court has illegally relied upon the testimony of PW2 Jakmali is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused testimony of PW2 Jakmali placed on record. PW2 Jakmali has specifically stated in positive manner before learned trial Court that she heard cries of deceased Kim Dassi from orchard side. PW2 Jakmali has stated in positive manner that accused dragged deceased Kim Dassi. PW2 Jakmali has stated in positive manner that accused laid deceased on the ground and thereafter accused ran away by making the body of deceased dead. PW2 has specifically stated in positive manner that Salwar of deceased was opened and was rested upon her knees. PW2 Jakmali has stated in positive manner that left eye of deceased was damaged and blood was oozing out from the head of deceased. PW2 has stated in positive manner that accused was known to her as accused was residing in the house of Alku Ram. There is no evidence on record that PW2 Jakmali had hostile animus against accused at any point of time. Testimony of PW2 Jakmali is trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW2 Jakmali.

13. Submission of learned Advocate appearing on behalf of appellant that learned trial Court has illegally relied upon testimony of PW10 Jiya Lal is also rejected being devoid of any force for the reasons hereinafter mentioned. PW10 Jiya Lal has specifically stated in positive manner that blood was found nearby the dead body and PW10 Jiya Lal had identified accused in Court. PW10 Jiya Lal has specifically stated that accused was employed in L&T Company and was

residing in the house of Alku Ram. There is no evidence on record that PW10 Jiya Lal had hostile animus against accused at any point of time. There is no reason to disbelieve the testimony of PW10 Jiya Lal. Testimony of PW10 Jiya Lal is trust worthy, reliable and inspires confidence of Court.

14. Submission of learned Advocate appearing on behalf of appellant that PW1 Shyam Lal is the brother-in-law of deceased, PW2 Jakmali is daughter-in-law of deceased and PW10 Jiya Lal is the son of deceased Kim Dassi and above stated witnesses are close relatives of deceased Kim Dassi and their testimonies were illegally relied by learned trial Court is rejected being devoid of any force for the reasons hereinafter mentioned. There is no evidence on record that there was previous enmity between accused and relative witnesses of deceased. It was held by Hon''ble Apex Court of India in case reported in Mst. Dalbir Kaur and Others Vs. State of Punjab, that close relative who on the circumstances of case is very natural witness is not an interested witness of deceased. It was held by Hon''ble Apex Court of India in case reported in Molu and Others Vs. State of Haryana, that mere fact that witnesses were close relatives of deceased is not sufficient to discard them. Also see Sarwan Singh and Others Vs. State of Punjab and Others, . It is held that PW1 Shyam Lal, PW2 Jakmali and PW10 Jiya Lal are natural witnesses and their testimonies cannot be disbelieved simply on the ground that PW1 Shyam Lal, PW2 Jakmali and PW10 Jiya Lal are close relatives of deceased Kim Dassi.

15. Submission of learned Advocate appearing on behalf of appellant that learned trial Court has illegally relied upon disclosure statements of PW11 Diwan Singh, PW17 Devinder Kumar and PW18 Dharmesh Dutt is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused the testimony of PW11 Diwan Singh, PW17 Devinder Kumar and PW18 Dharmesh Dutt. PW11 Diwan Singh has specifically stated in positive manner that disclosure statement of accused was recorded in his presence. He has stated that blood stained stone was recovered as per disclosure statement given by accused. PW17 Devinder Kumar has specifically stated in positive manner when he appeared in witness box that stone was concealed in bushes and same fact was disclosed by accused in his disclosure statement. PW18 Dharmesh Dutt has specifically stated that stone Ext P13 was recovered from bushes as per disclosure statement given by accused. He has stated that hairs of deceased also took into possession. Testimonies of PW11 Diwan Singh, PW17 Devinder Kumar and PW18 Dharmesh Dutt are trust worthy, reliable and inspire confidence of Court. There is no reason to disbelieve the testimony of PW11 Diwan Singh, PW17 Devinder Kumar and PW18 Dharmesh Dutt. There is no evidence on record that PW11, PW17 and PW18 have hostile animus against accused prior to incident at any point of time.

16. Submission of learned Advocate appearing on behalf of appellant that learned trial Court has illegally held that death of deceased Kim Dassi was homicidal in nature is also rejected being devoid of any force for the reasons

hereinafter mentioned. We have carefully perused testimony of PW16 Dr. Sangeet Dhillon who conducted post mortem of deceased Kim Dassi. PW16 Dr. Sangeet Dhillon has specifically stated in positive manner that deceased Kim Dassi died as a result of ante mortem injuries to eyes and hemorrhage to brain. PW16 medical officer has stated in positive manner that shirt of deceased had struggle marks and salwar of deceased had graze marks. PW16 medical officer has observed following 18 (eighteen) ante mortem external injuries upon the body of deceased Kim Dassi. As per final opinion of medical officer Ext PW16/B placed on record deceased died as a result of ante mortem injuries to eyes and hemorrhage to brain. As per final opinion of medical officer shirt of deceased had struggle marks and salwar of deceased had graze/drag marks. Hence it is held that deceased had died due to homicidal death due to ante mortem injuries sustained by deceased. It is held that injuries were caused by accused because only accused was present nearby deceased Kim Dassi as per testimonies of PW1 Shyam Lal and PW2 Jakmali who identified accused in court. Possibility of commission of death by third person is ruled out in present case keeping in view oral as well as documentary evidence placed on record.

17. Submission of learned Advocate appearing on behalf of appellant that motive to kill deceased is not proved on record and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. PW12 Alku Ram has specifically stated in positive manner that accused was his tenant. PW12 Alku Ram has specifically stated that accused was working in L&T company. PW12 has specifically stated that accused did not come to rented house on the day of incident. Even PW20 Naval Kishore Sharma Administrative Incharge of L&T Company has stated in positive manner that accused was posted as fitter on daily wage in L&T Company Jeori. PW20 has stated in positive manner that accused was on duty upto 10.7.2011 and thereafter he was absent from duty. Testimony of PW20 Naval Kishore Sharma is also corroborated with duty chart documents placed on record. Even PW9 Sh. B.D. Negi who medically examined accused has stated that tear marks were present upon T-shirt and pant of accused. Motive to kill deceased was reason because deceased resisted sexual assault upon her by accused. As per Section 8 of Indian Evidence Act 1872 previous and subsequent conduct of accused is relevant fact. It is held that connection of accused for the commission of criminal offence as alleged by prosecution is proved beyond reasonable doubt in present case as per oral as well as documentary evidence placed on record beyond reasonable doubt.

18. Submission of learned Advocate appearing on behalf of appellant that statement of accused under Section 313 Cr.P.C. was not recorded by learned trial Court in accordance with law is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused statement of accused recorded by learned trial Court under Section 313 Cr.P.C. Learned trial Court had put all material incriminatory questions to accused when statement of accused was recorded under Section 313 Cr.P.C. It is held that no miscarriage of justice has been caused to appellant while recording statement of accused under Section

313 Cr.P.C. by learned trial Court.

19. Submission of learned Advocate appearing on behalf of appellant that there is material contradictions and improvements in the testimonies of prosecution witnesses and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. We have carefully perused entire testimonies of oral witnesses produced by prosecution. There is no material contradiction and improvement in the testimonies of prosecution witnesses which goes to the root of case. It is well settled law that minor contradictions are bound to come in criminal case when statement of prosecution witnesses recorded after a gap of sufficient time. In the present case incident took place on dated 11.7.2011 at about 5.30 PM at place Shikari rivulet and statement of prosecution witnesses recorded on dated 9.5.2012, 10.5.2012, 11.5.2012, 8.8.2012, 9.8.2012, 28.9.2012, 29.9.2012, 24.11.2012, 19.12.2012 and 17.1.2013 after a gap of sufficient time. It is well settled law that minor contradictions in criminal case should be ignored when testimony of prosecution witnesses is recorded after a gap of sufficient time. See C. Muniappan and Others Vs. State of Tamil Nadu, . See Sohrab and Another Vs. The State of Madhya Pradesh, , see State of U.P. Vs. M.K. Anthony, , see Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , see State of Rajasthan Vs. Om Prakash, , see Prithu @ Prithi Chand and Another Vs. State of H.P., , see State of U.P. Vs. Santosh Kumar, , see State rep. by Inspector of Police Vs. Saravanan and Another, , see Appabhai and Another Vs. State of Gujarat, , see Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, , see State of Himachal Pradesh Vs. Lekh Raj and Another, , see Laxman Singh Vs. Poonam Singh and Others, also See Dashrath Singh Vs. State of U.P., . See Kuria and Another Vs. State of Rajasthan, . It is well settled law that concept falsus in uno falsus in omnibus is not applicable in criminal case. See Bhe Ram Vs. State of Haryana, . Also See Rai Singh Vs. The State of Haryana, .

20. Submission of learned Advocate appearing on behalf of appellant that testimony of prosecution witnesses is not sufficient for conviction is also rejected being devoid of any force for the reasons hereinafter mentioned. It was held in case reported in Jose alias Kolli Jose Vs. The State of Kerala, that conviction can be based on the sole testimony of a single witness if testimony is trustworthy, reliable and inspire confidence of Court. See Vadivelu Thevar Vs. The State of Madras, and also see Masalti Vs. State of U.P., .

21. Testimony of oral witnesses adduced by prosecution witnesses is corroborated by documentary evidence i.e. seizure memo Ext PW4/A, Ext PW10/B, Ext PW11/B, Ext PW11/D, Ext PW11/E, disclosure statement Ext PW11/F, Ext PW11/G, post mortem report Ext PW16/A, final opinion given by medical officer Ext PW16/B, site plan Ext PW18/A, inquest reports Ext PW18/C and Ext PW18/D, photographs Ext PX1 to Ext PX22 along with negatives, chemical analyst report Ext PW19/F placed on record. Even as per chemical examination report Ext PW19/F placed on record DNA profile of pant and T-shirt of accused Shah Jahan Ali and

stone matched completely with DNA profile of deceased Kim Dassi. Even as per chemical report Ext PW19/H there was struggle marks upon the shirt of deceased and there was drag marks upon the salwar of deceased.

22. As per chemical analyst report Ext PW19/F placed on record DNA profile obtained from pant, T-shirt of accused and from stone matches completely with DNA profile obtained from blood sample of deceased Kim Dassi.

23. Even as per chemical analyst report Ext PW19/H placed on record struggle marks were observed upon shirt of deceased and drag marks were observed upon salwar of deceased. Even as per chemical analyst report Ext PW19/J placed on record human blood was detected upon the blood stained leaves lifted from the spot, human blood was detected on pant and T-shirt of accused and blood was also detected upon shirt of deceased Kim Dassi and jacket of Kim Dassi. Blood was also detected upon salwar of deceased Kim Dassi.

24. In view of the above stated facts and case law cited supra appeal filed by appellant is dismissed and the judgment and sentence passed by learned trial Court are affirmed. It is held that learned trial Court has properly appreciated oral as well as documentary evidence placed on record. It is held that no miscarriage of justice is caused to appellant. File of learned trial Court along with certify copy of judgment be sent back forthwith and file of this Court be consigned to record room. Appeal is disposed of. Pending application(s) if any also disposed of.