
(2014) 06 SHI CK 0165
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 411 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Jagjit Singh and Others

RESPONDENT

Date of Decision : 27-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 164, 313
Penal Code, 1860 (IPC) — Section 302, 34, 376, 380, 454

Citation : (2014) 06 SHI CK 0165

Hon'ble Judges : V.K. Sharma, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Shrawan Dogra, Advocate General, Ravinder Thakur and H.K.S. Thakur, Additional Advocates General, Advocates for the Appellant; N.S. Chandel, Advocates for the Respondent

Judgement

Dharam Chand Chaudhary, J.—Appellant-State is aggrieved by the impugned judgment dated 26.6.2007, passed by learned Additional Sessions Judge (Presiding Officer) Fast Track Court, Solan, in Case No. 1FTC/7 of 04/06, whereby both respondents, hereinafter to be referred as "the accused", have been acquitted of the charge under Sections 302, 376 read with Section 511, 454 and 380 read with Section 34 of the Indian Penal Code. Accused Jagjit Singh alias Jaggi has expired during the pendency of the appeal and the appeal against him stands abated, as has been noted in the order passed on 5.12.2012. The appeal, therefore, now survives only against accused Harvinder Singh alias Bachu.

2. The incident has taken place on 17.6.2003, around 3.00 p.m. at village Silhari, Tehsil Kandaghat, District Solan. Deceased Leelawati, aged around 35 years, was the wife of PW-5 Sita Ram. PW-1 Krishan Kumar is the complainant in this case. He also belongs to the same village. He is an employee of Horticulture University, Nauni, District Solan. He was on leave during the period 16.6.2003 to 21.6.2003. On the fateful day, i.e., 17.6.2003, after rains stopped, he went to the slab of his cowshed to drain the water accumulated on it to the water-harvesting tank. He noticed that the planks of window of one of the rooms of the house of Sita Ram

opened. He heard the cries "Mamaji Bachao" coming out from that window. He could recognize the cries to be that of deceased Leelawati. He, therefore, hurriedly rushed towards the house of Sita Ram. He came inside the house and knocked the door of the room from where he heard the cries and called Sita Ram-Sita Ram. However, there was no response from inside, though he could hear some murmuring inside. Thinking that husband and wife might have been quarreling, he came out from the house and proceeded towards the main gate. The moment he came out of the gate and reached on the path, he heard sound of opening of the door. He turned behind and noticed that accused Jagjit Singh alias Jaggi (since deceased), resident of village Silhari and his co-accused Harvinder Singh alias Bachu, resident of village Birni, coming out from the house of PW-5 Sita Ram. Accused Harvinder Singh was cousin of accused Jagjit Singh in relation. When they reached at the gate of the house, he enquired from them as to what they were doing inside. On this accused Jagjit Singh caught hold of him from his neck and asked his accomplice Harvinder Singh to pull him also inside, however, the latter did not do so. He also noticed blood stains on the shirt of accused Jagjit Singh and he was breathing smell of alcohol. His face was also looking horrible. Anyhow or the other, he could manage to get him freed from the clutches of accused Jagjit Singh and the moment he stepped ahead towards his house, the said accused picked up one brick to pelt the same on him, however, he ran away there from and could save himself. Thereafter both accused also ran away on the path in hillside. Mother of Sita Ram was noticed by him coming out from the ground floor of the house. She is hard of hearing. He enquired from her as to where Sita Ram was. She by way of gestures expressed her ignorance.

3. On the way to his house, Smt. Chandrawati was noticed by him to be present in her house. He narrated to her all what had happened and requested her to accompany him to the house of Sita Ram. She, though refused to accompany him alone, however, told that on the arrival of his wife from the school, she will accompany them to the house of Sita Ram. He at the same time noticed his wife on the path coming towards the house from school. He told them that deceased Leelawati has either been beaten or ravished. PW-1 Krishan Kumar further tells that on the arrival of his wife Smt. Dayawanti (PW-2), he accompanied by her and Smt. Chandrawati, went to the house of Sita Ram. They found both sons of Sita Ram having come back from the school and sitting in the adjoining room. They enquired from the children as to where their mother was. They told that she is sleeping in the room inside. They went towards the said room. His wife was ahead of them and she entered in the room. She immediately after her entry in the room told him not to come inside as Leelawati, according to her, being in half naked condition was lying dead on the bed.

4. PW-2 Dayawanti tried to contact Sita Ram over telephone, however, his number could not be reached. She, however, informed police of Police Station, Kandaghat over telephone. Police entered Rapat Ext. PW-10/A in the daily diary. PW-1 Krishan Kumar was of the view that Leelawati has been killed by the

accused during the course of sexual assault they made on her to take revenge on account of old enmity with the family of PW-5 Sita Ram. One sword having stains of blood was also lying adjoining to the bed. They did not tamper with the room in any manner whatsoever and after locking the room waited for the arrival of police.

5. On the receipt of information, PW-16 ASI Narain Singh accompanied by police party reached the spot. He recorded the statement, Ext. PW-1/A under Section 154 of the Code of Criminal Procedure, of PW-1 Krishan Kumar. The same was sent to Police Station through Constable Rajesh Kumar for the registration of FIR, on the basis of which FIR Ext. PW-11/A was registered. He prepared the spot map Ext. PW-16/B and got photographed the scene of crime from PW-15 Naresh Kumar, a private photographer. He thereafter took into possession Salwar, underwear, broken bangles of the deceased, sword and iron rod vide memo Ext. PW-3/A in the presence of PW-3 Rameshwar Sharma and one Dinesh Sharma. The same were duly sealed. The dead body was lying in a pool of blood and in half naked condition on a double-bed in the room. In the room, one big box and fridge were found kept. Blood stains were noticed on the sword. In the adjoining room, two bottles containing some liquor, two tumblers, one bottle of coca-cola and a knife having wooden handle found lying were also taken into possession vide seizure memo Ext. PW-3/B. On the tumblers finger-prints were present. He noticed the neck of deceased Leelawati having been cut with sharp edged weapon. He had taken sample of blood and also taken into possession bed-sheet vide memo Ext. PW-3/C. He prepared the inquest report Ext. PW-9/B and thereafter has taken the dead body to Zonal Hospital, Solan for postmortem where it was kept in dead house being night hours. He moved an application Ext. PW-9/A with the request to conduct the postmortem on the dead body. Postmortem was conducted and he collected the postmortem report Ext. PW-9/C and handed over the dead body to Sita Ram, vide receipt Ext. PW-16/H for performing last rites.

6. The accused could not be arrested having been fled away. Statement Ext. PW-1/B of PW-1 Krishan Kumar under Section 164 of the Code of Criminal Procedure was also recorded by Judicial Magistrate 1st Class, Kandaghat. During the course of investigation, it transpired that the accused had stolen two male golden rings, one pair of golden ear pendants, one silver Haar (chain) with necklace, two fixed deposit receipts and two saving bank accounts pass-books.

7. On the completion of investigation, Challan accompanied with the above said evidence collected during the course of investigation was filed against the accused in the Court. Since the accused had fled away and were not traceable, therefore, at the instance of the prosecution, came to be declared as Proclaimed Offenders.

8. Supplementary Challan supported by evidence collected by the investigating agency during the course of further investigation conducted after obtaining the custody of both accused on their surrender before learned Additional Chief

Judicial Magistrate, Kandaghat, was also filed.

9. They both surrendered on 9.1.2006 and ordered to be remanded to judicial custody. However, their remand was obtained by the police. They both were arrested in the case. During their interrogation, it transpired that accused Jagjit Singh was inimical towards the family of the deceased. Both families were not on speaking terms for the last 3-4 years, however; still his sister-in-law had been visiting the house of the deceased off and on. Accused Jagjit Singh was not happy with such visits of his sister-in-law, therefore, on 17.6.2003 accompanied by his co-accused, he planned to visit the house of the deceased and to tell her not to entertain his sister-in-law in her house. They went to the house of deceased. The house allegedly was lying locked. They broke open the lock with iron rod and entered inside the house. They removed the jewelry, cash and passbooks from an Almirah. Thereafter they opened the fridge to have drinking water. They noticed two liquor bottles having been kept inside the fridge. They consumed liquor and in the meanwhile the deceased also came there. Firstly they tried to assault her sexually, however, she did not agree thereto. Irrespective of it, they removed her Salwar forcibly. Anyhow or the other, she got herself freed from their clutches and taken out a sword from inside. She assaulted accused Jagjit Singh with the sword, however, he escaped and to the contrary his co-accused Harvinder Singh succeeded in snatching the same from her and caused her death. Accused Jagjit Singh assaulted the deceased on her back and stomach with knife. Thereafter they came out from the house with one male golden ring, one pair of ear pendants, pass-books and FDRs leaving remaining jewelry behind. While running from the spot, the pass-books and FDRs were thrown away by them in a "Nallah". They boarded Haryana roadways bus from a place nearby Falcon hotel for Chandigarh. They boarded another bus from Chandigarh to Mandi. They worked at Mandi for 20-25 days. Thereafter, they went to Manali and there they started working as labourers by changing their names. Accused Jagjit Singh changed his name as Vijay, whereas accused Harvinder Singh as Sunil.

10. Accused Harvinder Singh while in police custody has made disclosure statement Ext. PW-5/A that one male golden ring and one pair of ear pendants have been pledged by them in Tibetan market near Mandi bus-stand and it is he who alone can get the same recovered. Consequent upon the disclosure statement so made, PW-12 ASI Sohan Singh accompanied by the accused and the witnesses went to Mandi in official vehicle and nearby Mandi bus-stand accused Harvinder Singh pointed out the shop where ring and pair of ear pendants were pledged. That shop was of PW-6 Smt. Pema. Police enquired from PW-6 about the aforesaid articles and asked her to produce the same. She produced the same after bringing from inside the shop. The golden ring was identified by Sita Ram to be of his, whereas the ear pendants that of his deceased wife Leelawati. PW-6 also produced receipt dated 18.6.2003 (Ext. PW-5/C) qua pledging of the said articles in a sum of Rs. 1700/-. The said articles alongwith receipt, were taken into possession vide memo Ext. PW-5/D in

the presence of PW-7 Lok Chand.

11. As per further version of the investigating agency, the accused did not own the theft of other jewelry items. Pass-books, FDRs and blood stained shirt could not be recovered on account of lapse of time. Finger prints though were obtained, however, being not properly taken, could not be developed in Fingers Print Bureau.

12. In view of the evidence so collected during the course of investigation the prosecution of the accused for the commission of an offence punishable under Sections 302, 376 read with Sections 511, 454 and 380 read with Section 34 of the Indian Penal Code, was sought.

13. Learned trial Court after having satisfied qua the existence of prima facie case against the accused has framed the charge under Sections 302, 376 read with Section 511, 454 and 380 with the help of Section 34 of the Indian Penal Code against each of the accused. They, however, pleaded not guilty and claimed trial.

14. Prosecution, in turn, has examined 16 witnesses in all. The material prosecution witnesses are Shri Krishan Kumar (PW-1), his wife Smt. Dayawanti (PW-2) and Sita Ram, husband of the deceased (PW-5). The remaining being the witnesses to various recoveries made during the course of investigation and doctor as well as police officials, are formal in nature and their evidence, as has come on record by way of their respective statements, can only be used as link evidence.

15. On the other hand, the accused in their statements recorded under Section 313 of the Code of Criminal Procedure have denied all the incriminating circumstances appearing in prosecution evidence against them being wrong for want of knowledge. However, in reply to the incriminating circumstance that they fled away after the registration of the case, they both stated as under:

"After coming to know that we have been falsely named as assailants, out of fear we had run away. It is correct that we surrendered before the court and police got the custody from the court."

16. In their defence, they have examined DW-1 SI Rupender Singh, who has proved Exts. D-1 and D-2, the statements of Mohit and Rohit sons of the deceased recorded under Section 161 of the Code of Criminal Procedure during the course of investigation.

17. Learned trial Judge on appreciation of the evidence available on record has arrived at a conclusion that no case against the accused is made out and they have, therefore, been acquitted of the charge. It is seen from the impugned judgment that learned trial Judge has based the findings of acquittal on account of the failure of the prosecution to produce in evidence the report of Finger Prints Bureau, Phillaur where the sample of finger prints lifted from the tumblers were sent for analysis and also non-examination of Mohit and Rohit, sons of the

deceased, who had made the statements Ext. D-1 and D-2 during the course of investigation of the case. Learned trial Judge has further held that Smt. Chandrawati, the immediate neighbour associated by the police during the course of investigation and mother-in-law of the deceased, who could have thrown some light qua the manner in which the occurrence took place, have also not been examined and that taking into consideration the overall conduct of PW-1 it is not safe to place reliance on his statement. Delay in forwarding the FIR to Illaqua Magistrate has also been held to be fatal to the prosecution. Learned trial Judge has also discarded the disclosure statement Ext. PW-5/A and the recovery of golden ring and ear pendants on the ground that prosecution case in this behalf has not been supported by a witness thereto, namely Med Ram (PW-8).

18. The legality and validity of the impugned judgment has been questioned on the grounds, inter alia that the Court below has appreciated the evidence available on record in a slipshod and perfunctory manner, and based its findings on surmises and conjectures. It has been urged that the Court below has gone wrong in holding that the evidence of PW-1 was unnatural and unbelievable, whereas the same is stated to be trustworthy and wholly reliable. The accused having absconded after the commission of the offence and surrendered themselves after more than two years, such conduct of the accused has not been taken into consideration. The undue weight-age is stated to be given to the delay of five hours occurred in forwarding the FIR to Illaqua Magistrate. The Court below is also stated to have gone wrong in ignoring the disclosure statement Ext. PW-5/A and recovery of stolen articles vide memo Ext. PW-5/B. Regarding non-production of finger prints report, it has been submitted that the finger prints could not be lifted properly from the spot and as a result thereof the same cannot be developed.

19. Shri Shrawan Dogra, learned Advocate General duly assisted by Shri H.K.S. Thakur, learned Additional Advocate General while pointing out from the record that both the accused absconded from the place of occurrence immediately after the commission of the offence and they surrendered before the Court after a period of over two years, itself establishes their guilt, however, the findings to the contrary that they may have absconded being under the fear of their implication in this case falsely, are erroneous. Learned Advocate General while inviting our attention to the statements of PW-1 Krishan Kumar, his wife Smt. Dayawanti (PW-2) and that of Sita Ram (PW-5) coupled with the recovery of the stolen jewelry at the instance of accused Harvinder Singh, has contended that it is sufficient to prove that it is the accused who had murdered the deceased, therefore, the impugned judgment has been sought to be quashed and set aside and the accused convicted.

20. On the other hand, Shri N.S. Chandel, Advocate, learned defence Counsel, has vehemently argued that the conduct of PW-1 in not visiting the place of occurrence to take stock of the circumstances prevailing there even on hearing

the call given to him by the deceased to save her life and on seeing both accused coming out from the house and having fled away after manhandling him, demonstrates that he is not dependable nor he has given the true version of the occurrence. The non-examination of mother-in-law of the deceased and also Chandrawati, who later on visited the house of the deceased accompanied by PW-1 and his wife PW-2, according to Shri Chandel, is fatal to the prosecution case. During the inspection of the dead body, long hair was seen in the palm of the deceased, to whom that hair belongs, there is no evidence nor any report from expert obtained. The disclosure statement Ext. PW-5/A and recoveries after about two and half years of the occurrence, are stated to be of no help to the prosecution case. Finger prints report is stated to be withheld being not matching with the finger prints of the accused. According to Mr. Chandel, had the accused murdered the deceased inside the room, they would have not come out from the house immediately after knocking of room by PW-1, that too, with blood stained clothes and thereby created evidence against them. It has also been pointed out that no evidence has come on record that after leaving the house by the husband, i.e., PW-5 Sita Ram, the deceased was seen alive.

21. Admittedly, accused Jagjit Singh and deceased belong to the same village. Accused Harvinder Singh, though belongs to another village namely, Birni, yet he is cousin of accused Jagjit Singh. The enmity between the family of the deceased and accused Jagjit Singh is also not disputed and rather it has come in the prosecution evidence that both families were inimical to each other. The deceased was done away with her life on the fateful day and she died an unnatural death, also stands proved on record beyond all reasonable doubts.

22. Having gone through the record and also taking into consideration the rival submissions, although PW-1 allegedly having seen both accused coming out of the house of deceased as discussed hereinabove, he, however, has not seen them either assaulting the deceased sexually or causing her death. The present, therefore, cannot be treated a case of direct evidence and the same rather hinges on the circumstantial evidence. It is seen that PW-1 Krishan Kumar Sharma is the only star prosecution witness in this case. The reliability of the statement made by a witness depends upon his integrity, socio-economic background, education, over all conduct and also that having regard to the facts of the case and the surrounding circumstances, his version appears to be natural and not tainted with any bias or extraneous consideration. It is in this background, the veracity of the testimony of PW-1 has to be adjudged in the light of given facts and also other surrounding circumstances.

23. It is worth mentioning that PW-1 is working as Senior Technical Assistant Grade-I in Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan. His wife PW-2 is also working as teacher in DAV School, Kandaghat. PW-1, therefore, belongs to a respectable family, socially and economically sound. He was matured enough being 54 years of age at the relevant time. Though, nothing has come about his educational qualification, however, in view of the post he

held in the University seems to be well educated. He belongs to the same village, i.e., village Silhari. Accused Jagjit Singh also belongs to the same village. The deceased was also resident of village Silhari. There is nothing on record to show that PW-1 is inimical towards the accused and friendly/related to PW-5 Sita Ram or his wife deceased Leelawati. True it is that the deceased when raised an alarm to save her, cried loudly "Mamaji Bachao". Nothing, however, has come on record that he is real maternal uncle (Mama) of the deceased. Therefore, he is neither a relative nor friend to PW-5 and other members of his family including the deceased, however, is simply a co-villager. PW-1 also is not a stock witness of the police. His very first version finds recorded in the inquest papers Ext. PW-9/B, the statement under Section 154 of the Code of Criminal Procedure Ext. PW-1/A and the statement under Section 164 of the Code of Criminal Procedure Ext. PW-1/B, amply demonstrates that the same throughout is constant and without there being any improvement qua material aspects in all the above three statements. Therefore, we find that PW-1 is a dependable person and it would be safe for us to place reliance on the statement he made while in the witness box.

24. It is well settled that in a case, which hinges on circumstantial evidence, circumstances on record must establish the guilt of the accused alone and rule out all the probabilities, leading to presumption of innocence of the accused. The law is no more res integral, because Apex Court in Hanumant Vs. The State of Madhya Pradesh, , has laid down the following principles, applicable in a case of circumstantial evidence:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

25. The five golden principles, discussed and laid down, again by Apex Court in Sharad Birdhichand Sarda Vs. State of Maharashtra, , read as follows:

"(i) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established,

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) the circumstances should be of a conclusive nature and tendency,

(iv) they should exclude every possible hypothesis except the one to be proved,

and

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

26. The present is a case where no direct evidence is available and the prosecution case rather hinges upon the circumstantial evidence. The following incriminating circumstances emerge from the scrutiny of the facts and circumstances of this case and evidence available on record:

(i) Homicidal death and not natural, the credibility of the evidence to prove the homicidal nature of death.

(ii) Scene at the place of occurrence and the condition in which the dead body of Leelawati was lying, taken note of by PW-2 Dayawanti accompanied by Chandrawati and PW-1 Krishan Kumar, who made entrance in the room.

(iii) Scene at the place of occurrence and other attendant circumstances near and around the place of occurrence taken note of by the police on its arrival at the spot.

(iv) The presence of both accused at the scene of occurrence and having come out from the house and also fleeing away after manhandling PW-1.

(v) Ascendance of the accused after the occurrence and surrender before the Court on 16.1.2006.

(vi) The disclosure statement Ext. PW-5/A made by accused Harvinder Singh while in the police custody and recoveries consequent upon the same vide memo Ext. PW-5/B.

Circumstance (i).

27. As a matter of fact, whether in this case death of deceased Leelawati is homicidal, is the most important circumstance for the reason that once it is proved from the evidence available on record that the death is homicidal, whether it is the accused who have done away with her life in the manner as claimed by the prosecution, has to be seen thereafter.

28. The postmortem report Ext. PW-9/C is a material piece of evidence in this behalf. A team of doctors comprising PW-9 Dr. Ashok Handa, Dr. Sudha Sood and Dr. Savita Aggarwal, constituted by Medical Superintendent, Referral Hospital, Solan, has conducted the autopsy on the dead body of deceased Leelawati on 18.6.2003. They noticed the following injuries on the dead body:

"1. There was a spindle shaped incised wound, extending from right upper part to the left lower part of front of the neck. It was 4.5" in length and 3.5" wide at the centre. It was 3" deep at the right upper margin, 2.5" deep in the centre and 2" deep at the left lower margin. The margins were sharp and inverted and there was no contusion or abrasion around the margin. There was incision of the

sternocleidomastoid muscle, anterior scalene muscle, middle scalene muscle, common carotid artery, jugular vein and brachial plexuses on the right side of the neck. There was incision of the cricoid cartilage, trachea and esophagus in the centre of the neck. There was injury to sternocleidomastoid muscle anterior scalene, middle scalene muscle, common carotid artery, jugular vein and brachial plexuses on the left side of the neck. Fracture of C5 and C6 vertebrae was seen on anterior aspect, with injury to the spinal cord at levels of C5 and C6 vertebrae. Dried blood was present around the margins of the wound and inside the wound.

2. There was a small spindle shaped incised wound 1" x 1/2" x 1/4" cm on the left side of the neck, just above the left lower margin of injury No. 1. Margins were sharp and inverted and there was no contusion and abrasion around the margin.

3. A superficial spindle shaped incised wound was seen in the left part of lower back, extending from the middle downwards and outwards towards the left lumbar region. It was 5.5" in length and 2.5" wide at the centre. It was 1 cm deep at the upper end, 1 cm deep in the centre and ? cm deep at the lower end (left side). There was fracture of the 9th and 10th ribs posterior and injury to the muscles and tissues of the back. Margins were sharp and inverted and there was contusion or abrasion around the margins. Beveling of upper margin was seen. Dried blood was present around the margin and inside the wound.

4. A small spindle shaped incised wound 1.5 cm x ? cm x ? cm was noted in the palmar aspect of right hand over the proximal inter pharyngeal joint of the index finger. Margins were sharp and inverted and dried blood was present around the margin.

5. A small spindle shaped incised wound 1.5 cm x ? cm x ? cm was noted in the palmar aspect of the right hand over the proximal inter pharyngeal joint of the middle finger. Margins were sharp and inverted and dried blood was present around the margin.

6. Multiple bruises (greenish blue colour) were seen over the left and right upper arms and over the chest.

7. Multiple contusions were seen on the left and right thighs, left buttock and on the back."

29. On conducting the autopsy, following in the opinion of the team of doctors was the cause of her death:

"In our opinion, grievous injury to vital organs in the neck (injury No. 1) resulted in instantaneous death. This injury was caused due to a sharp edged weapon where sufficient force had been applied while delivering the blow."

30. The cause of death, which in this case, in the opinion of the team of doctors, was injury No. 1.

31. As noticed supra, injury No. 1 was spindle shaped incised wound, extending

from right upper part to the left lower part on front of the neck, having 4.5" in length and 3.5" width at the centre. Its depth was 3" at the right upper margin, 2.5" deep in the centre and 2" deep at the left lower margin. In the opinion of the team of the doctors, this injury was caused with sharp edged weapon with sufficient force. On seeing the sword Ext. P-5, PW-9 Dr. Ashok Handa has stated that injury No. 1 can be caused therewith. Other injuries, i.e., No. 2, 3, 4 and 5 also found to be caused by a sharp edged weapon, whereas injuries No. 6 and 7 with blunt weapon. The team of doctors has, however, ruled out the possibility of rape before causing death of the deceased. PW-9 is cross-examined with regard to appearance of rigor-mortis, may be to show that the occurrence did not take place on the day and time, as claimed by the prosecution. PW-9, however, has nowhere stated the appearance of rigor-mortis in the dead body. The statement of PW-9 that the injuries noticed on the dead body can be caused in any other assault also and not in sexual assault alone, is of no help to the defence. On the other hand, the suggestion that the sword Ext. P-5 had a curved blade and as such no injuries could have been caused therewith, has been denied being wrong.

32. The medical evidence discussed supra, therefore, leads to the only conclusion that the present is a case of homicidal death and not natural. Gravity of the force applied in assaulting the deceased with sword Ext. P-5 is writ large from the nature of the injury, can be taken note of, from the photograph Ext. PW-15/6.

33. The recovery of sword Ext. P-5 and the knife Ext. P-10 has been proved by PW-3 Rameshwar Sharma, as the same together with other articles from the scene of occurrence, was taken into possession vide recovery memos Ext. PW-3/A and PW-3/B, in his presence. It has come in the statements of PW-3 and also PW-5 Sita Ram that blood stains were found on the sword. The evidence as has come on record by way of the testimony of PW-3 and PW-5, finds corroboration from the statement of Investigating Officer Shri Narain Singh (PW-16). Therefore, it is proved beyond all reasonable doubt that fatal injury leading to the death of Leelawati has been inflicted with sword Ext. P-5. It is even not the case of the accused also that her death is not homicidal. Therefore, it is proved beyond all reasonable doubt that the death of deceased Leelawati is homicidal.

34. It is seen that the present is a case of circumstantial evidence, as there is no direct evidence qua both accused having entered in the house of the deceased by breaking open lock of the main door in the manner as claimed by the investigating agency. It is PW-1, who, as he deposed while in the witness box, had seen them coming out of the house at such a stage when on hearing cries and alarm "Mamaji Bachao", he came to the door from where he heard the alarm and cries, while on the slab of his cowshed. In the spot map Ext. PW-16/B his cowshed has been shown at mark "J", which is adjoining to the house of the deceased. The room where the occurrence has taken place at mark "A" in the map and its window opens towards the cowshed of PW-1. The location of the house and the cowshed reveals that cries/alarm coming out from the room could have been heard clearly by a person on the slab of the cowshed of PW-1. PW-1

further states that when there was no response on knocking of door of the room and calling Sita Ram-Sita Ram, he returned back to his house assuming that Sita Ram and his wife, the deceased, may be quarreling on some issue. However, according to him, when he was only on the main gate of the house beyond courtyard and on the path leading to his house, he heard sound of opening of the door of house by someone and when turned behind, he noticed both accused coming out of the house. It was somewhat natural to this witness to have enquired from them as to what they did inside the house, particularly when the deceased had cried for help. He tells us that the moment he put this question to the accused, accused Jagjit Singh caught hold him from his throat and asked his co-accused Harvinder Singh to pull him also inside the house. As per his further version, accused Harvinder Singh did not obey such command of his co-accused and on the other hand, he could manage to get himself freed from the clutches of accused Jagjit Singh, but the said accused picked up one brick and attempted to assault him therewith, however, he ran away towards his house and after covering little distance when he turned behind, noticed that both accused also ran away from that place towards hill-side. PW-1 further tells us that accused Jagjit Singh was smelling alcohol, his shirt stained with blood and his face was looking horrible.

35. We pause here and deem it proper to express our view qua veracity of the statement made by PW-1. We have already examined the integrity and reliability of PW-1 viz-a-viz his educational and socio-economic background. There is nothing on record to show that he has any axe to grind against the accused. There is also nothing suggestive of the fact that he is friendly or otherwise interested in the success of the prosecution case. We are afraid that any person can implicate someone falsely that too with the charge of murder, a heinous crime for which the sentence may even be the death penalty also. The version of PW-1, therefore, is absolutely natural and he seems to be a God fearing person and influenced by his inner senses, came forward with true version qua the manner in which the occurrence took place. Had he been a liar, would have introduced the story qua having seen both the accused while entering in the house. He, however, is found to have stated only which actually happened and which he saw on the spot with his own eyes. Therefore, it is safe for us to place reliance on the testimony of PW-1 which rather is supported by the statements of his wife (PW-2) as well as PW-5 Sita Ram and also the link evidence having come on record by way of the testimony of the witnesses to various recoveries made on the spot. Therefore, the presence of both accused that too under the influence of liquor with blood stained shirt of one of them, i.e., accused Jagjit Singh is proved on record.

Circumstance (ii).

36. The condition and circumstances prevailing upon the place of occurrence can be bifurcated into two parts, i.e., one taken note of by PW-2 Dayawanti, who accompanied by her husband (PW-1) and Chandrawati, had an occasion to visit

the place of occurrence first of all. PW-2 is also a mature lady being 49 years of age at the relevant time and teacher by profession. According to her, on 17.6.2003 after school hours, i.e., 3.00 p.m. while on the way to her house and at a distance of about half kilometer, her husband (PW-1) and daughter standing in the courtyard beckoned her to come soon. The moment she reached at house, she was apprised by her husband that accused Harvinder Singh and Jagjit Singh had perhaps assaulted Leelawati (deceased) sexually in her house. According to her, PW-1 also apprised her about the fact that he was caught hold of from throat by accused Jagjit Singh. PW-2 further tells us that she accompanied by her husband PW-1 and Chandrawati, their neighbour, went to the house of Sita Ram and then entered in a room, there she noted the deceased lying on the bed and her body was naked and soaked in blood. A blood soaked sword curved in shape was lying near the bed. One iron rod again curved was lying under the table. Blood stains were on the iron rod also. She covered dead body of deceased by putting a cloth and then came out. It is thereafter she informed the police over telephone, which has resulted in recording of rap at Ext. PW-10/A in Police Station. She also informed Ramesh, Vice President, who also belongs to the same village. PW-1 corroborates the version of PW-2 that their daughter called PW-2 to hurry-up and that on her arrival in the house they accompanied by Chandrawati, went to the house of the deceased. PW-1 further testifies that he told PW-2 that Leelawati has either been beaten or ravished. He also states that it is PW-2, his wife, who being ahead of them entered the room and on seeing the body of deceased half naked asked him not to come inside. Thereafter Sita Ram was also called.

37. Another witness PW-5 Sita Ram, the husband of the deceased, also substantiated the prosecution case that his wife was lying naked on the bed and her cloths worn torn, sword, iron rod with curved edge stained with blood lying in the room. When he came out, the people gathered there were talking with each other that deceased was killed by the accused. As per his further version, he was told by PW-1 that his wife was killed by the accused. The statement of PW-1 that he was caught hold from throat on the gate of the house by the accused has also been corroborated by him, as according to him, it was so revealed to him by PW-1 himself.

38. The evidence discussed hereinabove leaves no manner of doubt qua the fact that dead body of deceased was lying half naked in a pool of blood in the room on bed. Sword Ext. P-5 and iron rod Ext. P-10 having curved edge and smeared with blood were also lying in the room. The photographs Exts. PW-15/1 to PW-15/15 also substantiate the prosecution case qua the condition, as discussed hereinabove in which manner the dead body of deceased was lying in the room on bed. The condition of the dead body and the injury on the neck as can be seen from the perusal of the photographs, particularly Ext. PW-15/6, leads us to the only conclusion that it is a case of gruesome murder where the deceased has been slaughtered brutally. Therefore, the circumstance prevailing on the scene of occurrence seen by PW-2 at the first instance which finds corroboration from the

statement of PW-5 Sita Ram, stands satisfactorily proved.

Circumstance (iii).

39. In proof of this circumstance, we can have an idea from the inquest report, Ext. PW-16/F [form No. 25.35(1)(B)], prepared by PW-16 ASI Narain Singh, the Investigating Officer. As per this document, the throat has been cut with sharp edged weapon in right side. On back again there is cut injury caused with sharp edged weapon and few abrasions are there on the right side of the thigh. Besides blood clots, blood is also in existence on the spot. Sword is also lying there. According to this document, the deceased was found to have been killed by causing injury on the neck with sharp edged weapon.

40. The second part of inquest report, i.e., form 25.35(1)A, Ext. PW-9/B reveals that shirt on the person of deceased was torn at the breast, bra was also torn, Salwar in torn condition is lying in the room on a chair, underwear of black colour lying at a distance of ten feet, sword and iron rod also lying on the floor of the room. The inquest papers have been prepared in the presence of PW-3 Rameshwar Sharma and one Dinesh Sharma by PW-16. PW-16, the Investigating Officer while in the witness-box states that in the room besides a big box, one fridge having cut with some sharp edged weapon was also kept. The dead body was in naked condition and sword with blood stains was also lying there.

41. According to him, in the adjoining bed-room bottles of liquor, tumblers, coca-cola bottle and knife were seen lying and taken into possession vide seizure memo Ext. PW-3/B. Finger prints, according to him, were available on the tumblers. The same were sealed and taken into possession in the presence of witnesses. He had taken sample of the blood and blood stained bed-sheet was also taken into possession vide memo Ext. PW-3/C. It is, thereafter, according to him, he prepared the inquest reports Exts. PW-9/B and PW-16/F referred to hereinabove. There is no cross-examination except for finger prints qua which he has admitted the same having been taken and sent for comparison with the finger prints of the accused to the Laboratory.

42. Another witness of the inspection of the scene of crime associated by the police is PW-3 Rameshwar Sharma. According to him, on the arrival of the police, he remained associated with the investigation. He further testifies the prosecution evidence qua taking in possession various articles including Salwar, under-garments and weapon of offence and broken pieces of bangles etc. by the police from the spot vide memo Ext. PW3/A. He has identified the articles so taken in possession in his presence when produced by learned Public Prosecutor with the permission of the Court. He has also supported the prosecution case qua recovery of bottles of liquor and knife from the adjoining room vide memo Ext. PW-3/B and identified the same. He admits the presence of Dinesh Sharma and further states that recovery memos were signed by him also. In his cross-examination though an effort has been made to prove that PW-3 is not trustworthy, being residing at a distance of half kilometer from the place of

occurrence, as is apparent from the trend of his cross-examination, however, unsuccessfully, as his testimony remained un-shattered. It has further come in his cross-examination that he was called to come to the spot by PW-2 Dayawanti around 3.15-3.30 p.m. The suggestions that deceased and her husband Sita Ram used to quarrel with each other and that no one on the spot were naming the accused to be assailants have been denied being wrong. PW-1 also entered the room with the police alongwith other villagers including PW-3 Rameshwar Sharma, Vice President. According to him, they noticed that an attempt was made to break open the locker of Godrej Almirah with a view to commit theft. Though, during his cross-examination he has been confronted with portions "C" to "C" and "D" to "D" of his statement made by him in his examination-in-chief, however, hardly of any help to the defence for the reason that as per his version, the statement in portions "C" to "C" and "D" to "D" of his examination-in-chief was made by him before the police. In case the police has not recorded the same, the fault lies with the police and as already said faulty investigation does not extend any benefit to the accused. Therefore, no fault can be found with his version so come on record in his examination-in-chief. They also noticed the hook of wooden Almirah and the hook of the door of the bed-room broken. Fridge lying in the room damaged with sword. The blood stained sword was also lying there. He also states that all such articles lying in the room are taken into possession by the police. PW-1 has also been cross-examined qua this aspect of the matter.

43. PW-5 Sita Ram, husband of the deceased, arrived, after the arrival of the police on the spot. Besides his statement referred to hereinabove while discussing second Circumstance supra, he has further stated that when he entered the room noticed the safe of Godrej Almirah bent and found ornaments, i.e., ear pendants of his wife (golden), two golden rings, one pair Gajra (silver), one Haar (silver), two ladies rings (silver), two gents rings (silver), one watch, money and two FDRs of Rs. 25,000/- each missing therefrom. When cross-examined, he admits that some golden and silver jewelry was lying scattered near sofa-set. The evidence as has come on record oral as well as documentary discussed above, therefore, satisfactorily proves the circumstances which were prevailing at the place of occurrence at the time of arrival of the police and conducting of spot inspection.

Circumstance (iv).

44. The evidence as has come on record by way of testimony of PW-1 in proof of this circumstance has already been discussed in details hereinabove while recording finding on second Circumstance, hence need not to be discussed again in order to avoid repetition. Suffice would it to say that PW-1 has proved the presence of both accused in the house of the deceased. Not only this, but he has even disclosed this fact to his wife also. In cross-examination, he has clarified that his statement made to the police qua his having seen both the accused coming out of the room, he means to say that they were seen by him coming out

from the door of the house which leads to the gallery. He admits that in Ext. PW-1/A, he has not used the words "Kamra" (room). According to him, he has used the word "Ghar" (house). He further tells us that outside the door which leads to the gallery/corridor of the house, there is a courtyard; meaning thereby that he noticed both the accused coming out from the door of the house which leads to the house through gallery/corridor from the courtyard. According to him, he told the police that both accused were seen by him coming out from the room/house, however, whether the police actually recorded so or not, he cannot say anything about it. No doubt, in his statement under Section 164 of the Code of Criminal Procedure it has not been recorded as to whether accused were coming out of the room or house, however, as per him, accused were seen by him coming out of the door. The door is one from which there is entry to the gallery inside the house from courtyard. The cross-examination of PW-1, therefore, does not at all help the accused, as learned defence Counsel has failed to shatter this witness qua this aspect of the matter.

45. PW-2 Dayawanti has also stated that her husband PW-1 told her that he was caught hold of from his throat by accused Jagjit Singh. In her cross-examination, she states that this fact was disclosed by her to the police also. No doubt, it is not so recorded in her statement, however, when she told so to the police and the police did not record, at the most it amounts to faulty investigation on that count, of which the accused cannot take any advantage.

46. Another witness is PW-5 Sita Ram. He has also stated that PW-1 Krishan Kumar told that the deceased was killed by the accused and that they even caught hold him (PW-1) from his throat at the gate of the house when they were coming out. In cross-examination, this witness has stated that PW-1 had told him about both the accused coming out of the room and he (PW-5) even stated so before the police also. The suggestion that PW-1 did not tell him about the accused coming out of the room of the house, has been denied being wrong. It is thus seen that nothing could be elicited by learned defence Counsel from cross-examination of PW-5 to infer otherwise that PW-2 did not disclose to him about the accused having been seen by him coming out of his house on the day of occurrence. Besides, as per further version of PW-5 and also PW-3 people present on the spot were saying that it is the accused who had murdered the deceased. PW-1 has also seen both of them fleeing away on the path towards hillside. In view of the evidence available on record adjoining to the main gate (connecting courtyard of the house with the path), there exists a public path. On such path there is a descent towards the house of PW-1, whereas there is an ascent in the other direction from that point. Therefore, the factum of both accused coming out of the house of the deceased having been proved beyond all reasonable doubt, leads to the only conclusion that they were present inside the house and fled away towards hill side and as such none else except them can be said to have caused the death of the deceased.

Circumstance (v).

47. There is no denial to this circumstance for the reason that the accused themselves have stated in their statements recorded under Section 313 of the Code of Criminal Procedure reproduced in this judgment in verbatim in para supra that on coming to know about their false implication, they absconded and even there is no denial also to their having surrendered before learned Additional Chief Judicial Magistrate on 16.1.2006. They were not available to the Investigating Officer for the purpose of interrogation, as he has stated while in the witness box as PW-16. Even, PW-5 has also stated while in the witness box that the accused were not seen in the village after the occurrence. In our considered view an offender after having committed an offence normally absconds, if could not be overpowered immediately after the commission of the offence. An innocent person can reasonably be believed to have no occasion to flee away having no apprehension of his involvement in a case or arrest. The ascendance of an offender is also to be seen in the light of other evidence available on record. In this case, the other evidence coupled with the fact that the deceased was lastly seen in the house with the accused because she called PW-1 "Mamaji Bachao" and when the said witness came to her house and on finding no response from inside, noticed both the accused at such a stage when on the way to his house he was on the path near the main gate of the house of deceased coming out of the house. He further noticed that accused Jagjit Singh was under the influence of liquor and his face looking horrible, whereas blood stains were on his shirt. Such evidence amply demonstrates that the deceased was alive when she called PW-1, but later on found dead in the room and it is the accused who alone and none else has done away with her life.

Circumstance (vi).

48. One pair of golden ear pendants and one golden male ring have been recovered from the shop of PW-6 Smt. Pema, consequent upon the disclosure statement, Ext. PW-5/A, allegedly made by accused Harvinder Singh while in custody, on 18.1.2006. PW-5 has also stated such statement having been made by the said accused. PW-8 Med Ram, however, turned hostile and did not support the prosecution case at all, as according to him, though he signed one paper on that day in the Police Station, however, he has not stated that the disclosure statement was made by accused Harvinder Singh. Rather as per his version, it is accused Jagjit Singh who was called by the Investigating Officer from some room in the Police Station and his signatures were obtained on that paper. The statement, however, is not signed by accused Jagjit Singh. PW-5, in his cross-examination states that shop of PW-6 at Mandi is a little behind to Mandi bus stand on a small road which bifurcates from the main road. According to him, that small road leads to the shop of PW-6. They went on foot and reached there in 4-5 minutes. Other shops are on both sides of the shop of PW-6. According to him, the seizure of ear pendants and ring had taken place in the shop itself and no person was called from the adjoining shops. He also supports the production of receipt Ext. PW-5/C and taking in possession the same by the police, however, denied the suggestion that no disclosure statement was made in his presence nor

anything recovered.

49. Another witness is PW-12 ASI S.S. Chauhan, who states that disclosure statement was made by accused Harvinder Singh and pursuant to that recovery of one pair of golden ear pendants and one golden male ring was effected from the shop of PW-6 at Mandi. As per his version, the accused made the vehicle to stop at a place near the bus-stand and then led the police party to the shop of PW-6 Smt. Pema in Tibetan market. On asking, PW-6 produced ear pendants and ring from her shop and PW-5 identified the ring to be of his own and ear pendants to be that of his deceased wife and the same thereafter taken into possession vide recovery memo Ext. PW-5/B. He admits in his cross-examination that there exists many houses near Police Station at Kandaghat, however, no one was called from there as Sita Ram and Med Ram were already called. According to him, PW-7 Lok Chand and Rajinder belong to a place situated at a distance of 15 kilometers away from Police Station, Kandaghat. Though, PW-5 and PW-12 have supported the recording of disclosure statement Ext. PW-5/A at the instance of accused Harvinder Singh, however, PW-8 Med Ram denied the same. Recovery of the jewelry articles, i.e. ear pendants and ring from the shop of PW-6 Pema, though finds support from the statements of PW-5 Sita Ram, PW-7 Lok Chand and PW-12 ASI S.S. Chauhan, the Investigating Officer, however, it is accused Harvinder Singh and accused Jagjit Singh alone, who had pledged the same with PW-6, it is difficult to believe so because such articles, as per the receipt Ext. PW-5/C, were pledged on 18.6.2003, whereas the recovery thereof was effected on 19.1.2006 at the instance of accused Harvinder Singh, who with the passage of time could not have been identified the same person having pledged the jewelry articles with PW-6 Pema. Otherwise also, the prosecution story qua theft of golden/silver jewelry by the accused from the house of PW-5 is not proved beyond all reasonable doubt for the reason that PW-5 himself admits that jewelry articles were lying in the room near sofa-set when he entered the room. The prosecution case that the accused taken away with them only one pair of ear pendants and ring and left the remaining jewelry in the room, has no legs to stand. Had the accused been come for committing theft in the house, they would have taken all jewelry articles with them and not partly. PW-5, no doubt, has identified the ring to be of his own, whereas ear pendants to be that of his deceased wife, however, in view of our discussion hereinabove it is difficult to believe so.

50. On the other hand, had these jewelry articles been stolen one, the accused would have sold the same out rightly and not pledged with PW-6 for a sum of Rs. 1,700/-, because no man of ordinary prudence would prefer to retain stolen articles with him. Assuming that it is the accused, who pledged these articles with PW-6, the same, in our opinion, seem to be of their own and not stolen one from the house of PW-5. Surprisingly, enough PW-12 had not opted for associating an independent witness to be a witness of recording disclosure statement and rather associated PW-5, husband of the deceased and PW-8 Med Ram, who happens to be his fellow-employee. Similarly, Rajinder and Lok Chand

(PW-7) were associated to witness the recovery of the stolen articles from the shop of PW-6 Pema, who as per PW-12, belong to a place 15 kilometers away from the Police Station. This all reveals that the prosecution story qua disclosure statement having been made by accused Harvinder Singh and recovery of ring and ear pendants pursuant to the same hardly inspires any confidence. Otherwise also, the disclosure statement Ext. PW-5/A having been recorded after such a lapse of time, is a weak piece of evidence, as has been held by the Apex Court in *Mani versus State of Tamil Nadu*, 2008 (1) Crimes 174 (SC), relevant portion of which reads as follows:

"21. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. We have already held that the prosecution has failed to prove that the house where alleged blood stains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the Courts below have ignored this very important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory. We also fail to understand the finding of the High Court in respect of the motive. In our opinion, there was no motive whatsoever much less entertain able by the present appellant. He had nothing to do with the straying cattle nor was he a party to subsequent altercation between P.W. 1 Arunachalam and the accused No. 2 Moyyasamy. Lastly, there is nothing on record to show that he was a henchman set up to take revenge by accused No. 2 Moyyasamy and he was set up by the accused No. 1 to revenge. We also did not understand that if there was no motive for Moyyasamy, how could there be any motive entertain able by the appellant. Therefore, even for that circumstance has to go."

51. In view of the above discussion, this circumstance, therefore, does not prove against the accused.

52. Anyhow, in view of the findings hereinabove recorded on incriminating Circumstances (i) to (v), we have already held that it is the accused, who have murdered the deceased. We are not in agreement with learned trial Court that failure on the part of the prosecution to produce the finger prints report in evidence renders the prosecution case improbable for the reasons that there are statements of PW-1 and P-2 and they have explained while in the witness box that sample of finger prints obtained from the tumblers were sent to Finger Prints Bureau, Phillaur, however, since the sample was not found to be lifted properly, i.e. in a scientific manner, no report could be obtained and moreover, no fruitful purpose would be served by withholding the report. Otherwise also,

the sample of finger prints of the accused could have been obtained only after they had surrendered on 18.1.2006. Therefore, on the comparison of the samples of finger prints obtained on the spot on 17.6.2003 with the sample of finger prints of the accused obtained in 2006, obviously the comparison with all accuracy was not possible with the passage of time. However, in our opinion, the findings of acquittal against the accused on this score are not legally sustainable and in view of the other evidence discussed supra, their involvement in the case stands established.

53. True it is that one hair in the length of 6" was noticed in one of the hands of the dead body, which was preserved by the team of doctors and as per version of PW-9, it was handed over to the Investigating Officer. No report in this behalf has also been proved in evidence, but in our opinion, the same is also not a circumstance, which should have weighed so heavily in the mind of learned trial Judge to have recorded the findings of acquittal in utter disregard to the other evidence available on record and discussed hereinabove, which is cogent and reliable.

54. Non-examination of Smt. Chandrawati and non-association of mother-in-law of the deceased has been held to be fatal to the prosecution case by learned trial Judge. The record reveals that Smt. Chandrawati was given up being unnecessary and also an old lady, whereas, mother-in-law of the deceased was not associated with the investigation of the case. It was for the Prosecutor to see as to which of the witnesses were to be examined. The mother-in-law of the deceased was not associated being hard of hearing. Above all, it is not the number of witnesses, but quality of evidence which needs to be taken into consideration. In this case, the evidence which has been discussed hereinabove is quite satisfactory to establish the guilt of the accused.

55. The non-examination of Mohit and Rohit, sons of deceased, is not fatal to the prosecution case for the reason that their statements Exts. D-1 and D-2 proved by DW-1 SI Rupinder Singh, only reveal that they had seen their mother sleeping naked in the room and then went to the lintel of the house when called by PW-1 and asked to tell their mother that what is happened with her, she should narrate the same to the police. Their testimony, therefore, reveals that something had happened to their mother and at that time when PW-1 called them, he was also not sure as to what happened to their mother as on hearing cry "Mamaji Bachao", when he visited the house of deceased, on finding no response from inside and assuming that the deceased and PW-5 may be quarreling with each other, he came back to his house. Though, he had seen both the accused coming out of the house and fleeing away after assaulting her, however, not knew that they had killed the deceased. Thereafter when PW-1 went again accompanied by his wife PW-2 and Smt. Chandrawati, he could know only at that time that the deceased was killed and her dead body lying naked. Therefore, there is nothing special in the statements Exts. D-1 and D-2, which lends any support to the defence and the same rather supports the prosecution case qua deceased was

lying in naked condition on the bed. They both being of tender age, have presumed that she was sleeping. Since PW-1 was having the knowledge that something wrong had happened with the deceased, therefore, it was somewhat natural to have enquired from Mohit and Rohit, the minor sons of deceased, as to what happened to their mother and that she should inform the police, as by that time he was also not knowing that she was no more.

56. There is no delay in forwarding the FIR to the Illaqua Magistrate because FIR has been registered on 17.6.2003 at 6.30 p.m. and its copy was received by Judicial Magistrate, Kandaghat on the same day at 11.45 p.m., i.e., within five hours. True it is that Police Station and Judicial Court Complex, as per evidence on record, are nearby situated, however, at least this much time was required in sending the FIR to the Magistrate and such delay, therefore, is not at all fatal.

57. The enmity admittedly was there between the family of the deceased and with accused Jagjit Singh. The present, however, seems to be not a case where it is on account of enmity, accused have been implicated falsely that too in a case which pertains to the commission of heinous offence. Otherwise also, enmity is a double edged weapon and the possibility of the accused having entered into the house of the deceased under the influence of liquor to commit an offence may be with an intention to have sexual intercourse with the deceased, cannot be ruled out.

58. The reappraisal of the given facts and circumstances and also the evidence available on record, lead to the only conclusion that both accused on finding the deceased alone in the house entered there intentionally to ravish her sexually. She, however, protested and resisted such an act on their part and struggled also, but they both by applying force succeeded in removing her Salwar and also underwear. She rescued herself from their clutches and not only raised alarm "Mamaji Bachao", but also brought sword Ext. P-5 from room inside the room where occurrence took place. She even hit accused Jagjit Singh with sword, however, unsuccessfully and to the contrary accused Jagjit Singh snatched the sword from her and inflicted fatal blow on her neck in the right side therewith. It remains in the heart of the accused as to who out of them have inflicted the blow. The fact, however, remains that they both were hands in glove to assault her sexually and when she resisted and protested, they killed her. The story of theft of golden and silver jewelry and also recovery of golden ring and golden ear pendants from the shop of PW-6 Pema pursuant to disclosure statement Ext. PW-5/A, is not proved beyond all reasonable doubt and discarded by us in earlier para of this judgment supra. The offence of rape is not proved. The present, however, is a case of attempt to rape.

59. The prosecution, therefore, has been able to prove charge under Section 302 read with Section 34, Section 376 read with Section 511 and Section 454 read with Section 34 of the Indian Penal Code against each of the accused. Accused Jagjit Singh alias Jaggi, as noted at the outset, however, is no more being passed away and as such this appeal stands abated against him. Therefore, we convict

accused Harvinder Singh alias Bachu for the commission of offence punishable under Section 302 read with Section 34, Section 376 read with Section 511 and Section 454 read with Section 34 of the Indian Penal Code. No case for commission of offence punishable under Section 380 read with Section 34 of the Indian Penal Code, however, is found to be made out against either of the accused. The acquittal of accused Harvinder Singh alias Bachu of the charge under Section 380 read with Section 34 of the Indian Penal Code is, however, maintained.

60. Accused-convict Harvinder Singh alias Bachu is directed to surrender to his bail bonds and appear in this Court on 11.7.2014 on which date he will also be heard on the quantum of sentence.

61. Judgment to continue.