

---

**(2003) 02 P&H CK 0183**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Murder Reference No. 8 of 2002**

State of Punjab

APPELLANT

Vs

Jasvir Singh alias Jassi and Keema Singh

RESPONDENT

---

**Date of Decision :** 04-02-2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 366  
Evidence Act, 1872 — Section 134, 27  
Penal Code, 1860 (IPC) — Section 302, 34, 376

**Citation :** (2003) 02 P&H CK 0183

**Hon'ble Judges :** Virender Singh, J; R.L. Anand, J

**Bench :** Division Bench

**Advocate :** G.S. Gill, DAG, for the Appellant; H.S. Minhas, Jawala Singh Pattar and G.S. Gurya, for the Respondent

---

## Judgement

R.L. Anand, J.—By this judgment, we dispose of Murder Reference No. 8 of 2002 State of Punjab v. Jasvir Singh alias Jassi and Anr. and CrI.Appeal No. 809-DB-2002 filed by Jasvir Singh alias Jassi and his co-convict Keema Singh, as in our opinion, the Murder Reference and the appeal can be disposed of by the present judgment. Both these lis have arisen from the judgment of conviction dated 24.9.2002 and order of sentence dated 1.10.2002, passed by the Court of Additional Sessions Judge (Adhoc) Patiala vide which the learned trial Court convicted both the accused-appellants u/s 302/34 IPC for committing the murder of a small child by the name of Baby and u/s 376 of the Indian Penal Code for allegedly committing rape upon her. The learned trial Court came to the conclusion that it is a rarest of rare cases, therefore, both the appellants were sentenced to death subject to the confirmation of the High Court. They were also sentenced to undergo imprisonment and pay a fine of Rs. 1,000/- each. In default of payment of fine, each one of them, was directed to undergo R.I. for a period of one month.

2. Jasvir alias Jassi son Sitta Singh aged 27/28 years and co-accused Keema Singh son of Sukhdev Singh, aged 17/18 years, labourer by profession were

charge-sheeted under Sections 376 and 302/34 of the Indian Penal Code on the allegations that on 11.9.1999 at about 11.30 A.M. in the area of Patran, Police-Station, Patran, District Patiala (Punjab) committed rape upon Miss Baby and thereby they allegedly committed an offence punishable u/s 376 of the Indian Penal Code and secondly on the same date time and place and in furtherance of their common intention which was to commit the murder of Baby, they committed murder by intentionally causing her death and thereby committed an offence punishable u/s 302/34 of the Indian Penal Code.

3. F.I.R. Ex.PE, was lodged by Miss Gurmeet Kaur daughter of Amar Singh, Muzbi by caste, aged about 14 years at the time of lodging of the first information report. She is the real sister of Baby. It has been stated by the complainant that she was a resident of Mana Patti, Patran. They are six brothers and sisters. She along with her parents, sister Baby (deceased) her brother Gurjit Singh used to reside in the Chaubara of a house belonging to Shri Gian Singh Ex-Sarpanch. One room was in possession of Mito Widow of Mukhtiar Singh who used to reside in the ground floor of that house. Adjoining that room, one room was lying vacant. The complainant alleged that her father was addicted to take intoxicants and due to that reason her parents used to quarrel with each other. 2/3 days prior to the date of occurrence her father had gone outside the house. Her mother used to work in Katyal Nursing Home, Patran. On the date of occurrence i.e. 11.9.1999 she along with her mother, left the house in order to do the menial work while her sister Baby (deceased) who was handicapped by her leg, remained in the house. The deceased was made to sit on a cot in the court-yard of the house on the ground floor and the complainant left the house. At about 11.30 A.M. the complainant returned to the home in order to serve meals to her ailing sister Baby and she found that her sister was not on the cot. When she entered inside the court-yard, she heard some noise coming from the aforesaid vacant room. She peeped through the frame of door while standing there and saw that Jasvir alias Jassi son of Sitta Singh Chowkidar, Mazbi Sikh by caste and Keema Singh son of Sukha Singh Mazbi by caste, residents of Patran, had caught hold of her sister who was crying for her release. It was further stated by the complainant that within her sight, Keema throttled the neck of her sister with his hands while Jassi gave stone blow which he was holding in his hand, on the head of her sister, who, sustained injury on her right side. Jassi also gave further injury on the other parts of the body of her sister. The complainant became perplexed and she tried to run outside the house by crying. In the meanwhile, Jasbir Singh alias Jassi picked up her sister who was bleeding profusely and threw her into the adjoining vacant place of Jagir Singh and thereafter Jasvir and his co-accused Keema ran away from the place of occurrence and proceeded towards outside the house. In the meantime, her mother appeared at the spot and she also saw both the accused running away from the place of occurrence. Thereafter, she and her mother went nearby Baby and observed that her sister has already expired. She further noticed that the string of the Salwar of her sister was untied and she tied the same. Finally she stated that she had doubt that both the appellants had

committed rape upon her sister and thereafter, killed her. After leaving her mother and other person to guard the dead body of her sister, she along with Gian Singh, Ex-sarpanch, came to Police-Station, Patran, and lodged the First Information Report Ex.PE, vide D.D.R.No. 17 dated 11.9.1999, recorded at 12.30 P.M. by Inspector Rajvir Singh. The offence was registered under Sections 302/376/34 of the Indian Penal Code per endorsement Ex.PW9/A through which the FIR was recorded vide DDR R.No. 18 completed at 1.30 P.M. Special report of this case was despatched to the area Magistrate at Samana and it reached to him at 7.30 P.M. on the same day is evident from the endorsement appearing on the face of the FIR Ex.PE.

4. The investigation of this case was conducted by Shri Rajvir Singh S.I. (PW-9) and after recording FIR Ex.PE, he visited the place of occurrence along with the complainant and Sarpanch Gian Singh. Constable Nirmal Singh was deputed to arrange a Photographer. On reaching the place of occurrence, the Thanedar, observed the dead body which was lying in an open space adjoining to the house in which the complainant used to reside with her mother. The Thanedar prepared inquest report Ex.PB/2. in the presence of Balwan Singh and Prit Pal Singh. It was attested by these witnesses. He drafted Ex.PB, the request for post-mortem examination and the dead body was despatched to Civil Hospital, Samana with a request to the SMO for conducting the post mortem examination. The police papers were received by the doctor at 10.20 A.M. on 12.9.1999 and Dr. Satish Arora was directed to conduct the post-mortem examination vide endorsement Ex.PB/6 but he did not conduct the post mortem examination and made a prayer that let the post mortem may be conducted by the Forensic Experts of Medical College, Patiala. Residently, the dead body was despatched to Rajindra Hospital, Patiala vide endorsement Ex.PB/8.

5. The Thanedar inspected the place of occurrence. He found blood stained earth at two different places; firstly inside the room where the rape was allegedly committed and secondly where the dead body was found lying. From both the places, the blood stained earth was taken into possession and sealed parcel was prepared and vide recovery Memos Ex.PW9/C and PW9/D. those sealed parcels were taken into possession. The Thanedar also observed two tumblers and one half filled bottle of liquor. Upon the tumblers and the bottle, there were finger prints. The tumblers are Exs.P.19 and P.20. The sealed parcels of the tumblers were prepared and these were taken into possession vide memo Ex.PW9/E in the presence of A.S.I. Gurdev Singh, Gian Singh Ex-Sarpanch and Gurmeet Kaur complainant. The half filled bottle of liquor was also taken into possession vide recovery memo Ex.PW9/F in the presence of the aforesaid witnesses. The Investigating Officer also prepared two rough site plans of the place of occurrence as the occurrence was spread at two places. Those rough site plans Exs.PW9/B and Ex.PW9/G. The photographer also took some photographs which are Exs.P.1 to P.8 on the record and their negatives are Exs.P.9 to P.16 and these were taken into possession by the Investigating Officer on 15.9.1999 in the presence of Vijay Kumar Photographer and Head Constable Babu Ram vide

recovery memo Ex.PG.

6. On 12.9.1999, at about 12.50 P.M. Dr. D.S. Bhullar, PW-1, SMO, Department of Forensic Medicine Government Medical College, Patiala, conducted the post mortem examination on the dead body of Miss Baby daughter of Amar Singh, aged about 6 years, when she was brought by Head Constable Ram Sarup. The dead body was identified by Balwan Singh and Prit Pal Singh. The length of the body was 3' -6". It was moderately built/nourished of a female child wearing red while Bootidar Kamiz and Salwar. Rigor mortis was present on all the part of the body and post mortem staining were present on the dependent body parts, except tip of nose and lips. Tongue was protruding out. It was swollen. It was bitten and bruised with haemorrhagic spots. The doctor found the following 8 injuries on her person:-

1. Contusion 3.5 x 2 cms on right side of forehead.
2. Contusion 3 x 2.5 cm on right cheek.
3. Contusion 4 x 2 cms on right cheek. 2 cms below injury No. 2.
4. Contusion 4 x 3 cms on the middle part of forehead.
5. Contusion 4 x 3 cm on left ear.
6. Abrasion 4 x 3 cms on front of left shoulder.
7. Abrasion 3 x 2.5 cms on left side of forehead above the eye brow.
8. Lacerated wound 6 x 4 cms into bone deep with underneath bone fractured on anterior side of middle part of right arm.
7. All these injuries were ante mortem in nature.
8. The doctor further noticed two more injuries which can be described as Injuries No. 9 and 10. These injuries were also declared ante mortem in nature.
9. On dissection of the neck sub-cutaneous tissues underneath injuries No. 9 and 10 showed extravasation of blood. Hyoid bone and laryngeal cartilages were showing fractures. Larynx was injured. Base to tongue contused and showed petechial haemorrhage. Both the chambers of the heart were empty. Stomach contained 300 cc of liquid food material. Large intestines had faecal matter. Thoracic and abdominal viscera were congested.
10. External genitalia showed multiple contusions and few abrasions including medical aspect of both the thighs. Vulva was swollen and contused. Hymen showed fresh tears, vaginal mucosa was swollen, congested and showing multiple abrasions and haemorrhages.
11. The cause of death in the opinion of the doctor was found asphyxia due to strangulation which was ante mortem and sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injury and

death was immediate and between death and post-mortem it was between 24 to 36 hours. After post mortem examination, the doctor handed over to the police the sutured dead body, sealed packet containing clothes sealed packet containing vaginal swab in a glass test tube, sealed envelope for examination of vaginal swab and the sample seal besides the police papers.

12. On 14.12.1999, ASI Gurdev Singh of Police-Station, Patran, submitted application Ex.PB/4 before the doctor who gave his opinion Ex.PB/5 to the effect that from the post mortem findings and Report No. 2617 dated 26.11.1999 of Chemical Examiner of vaginal swabs, (showing as Exs.IV and No.V(A), having semen) it suggests sexual intercourse committed before death. It was also opined by the doctor Bhullar vide endorsement Ex.PB/5 that all the injuries No. 1 to 10 mentioned in the post mortem report were ante mortem.

13. The finger impressions appearing of the tumblers and the bottle were developed. After the post mortem examination the Investigating Officer took into possession the sealed parcel containing the clothes of the deceased vide recovery memo Ex.PW9/11. Jasvir and Keema Singh were arrested on 17.9.1999 by the Investigating Officer who prepared Jamatalsi Memo Ex.PW9/K and Ex.PW9/L, Ex.PW9/M and Exs.PW9/N are the grounds of arrest which were supplied to the accused at the time of their arrest.

14. The Investigating Officer Rajvir Singh interrogated Jasvir Singh accused on 17.9.1999 in the presence of ASI Gurdev Singh and Jagir Singh and on interrogation he disclosed that he had kept concealed a stone made of bricks in the court-yard of the house of Gian Singh Ex-Sarpanch and he could get the same recovered by pointing out the place of concealment. The disclosure statement Ex.PW9/J was recorded which was read over and explained to Jasvir Singh who signed the same and it was attested by ASI Gurdev Singh and Jagir Singh. Thereafter, he led the police party and the witnesses to the specified place of concealment and got recovered the stone which was taken into possession. Both the accused were produced before the area Magistrate, Samana on 7.10.1999 in order to take their finger prints but they refused to give the finger prints and the Magistrate made the endorsement in this regard Ex.PF.

15. Finally the sealed parcel of the blood stained earth, brick, swabs, shirt and Salwar of the deceased were sent to the office of the Chemical Examiner who vide report Ex.PB/3 found the semen on the swabs and the shirt of the deceased. The blood was also found on the sealed parcel of the blood stained earth and the brick and the pieces were sent to the Serologist. However, no spermatozoa were found on the Salwar. Finally, on the completion of the investigation of the case, both the accused-appellants were challaned in the Court of Area Magistrate who supplied the copies of the documents as relied upon by the prosecution and vide commitment order dated 15.12.1999, accused were committed to the Court of Session under Sections 302/376/34 of the Indian Penal Code for facing the trial.

16. Vide order dated 13.3.2000, the Court of additional Sessions Judge, Patiala,

framed charges against the accused under Sections 376 and 302/34 of the Indian Penal Code. The charges were read over and explained to the accused to which they pleaded not guilty and claimed trial. Later on, this case was transferred to the Court of additional Sessions Judge (Adhoc), Patiala.

17. In order to prove the charges the prosecution examined Dr. D.S. Bhullar, Senior Medical Officer, Department of Forensic Medicine, Government Medical College, Patiala who on 12.9.1999 at 12.50 P.M. conducted the post-mortem examination on the dead body of Miss Baby and found 10 injuries on her person which have already been described by us in the earlier portion of this judgment. The observations of the doctor have also been noted by us. He issued Ex.PA carbon copy of the post-mortem report and the post-mortem was conducted on the police requested Ex.PB. In the cross-examination this witness deposed that possibility of tears in hymen due to self scratching by a finger cannot be ruled out and possibility of injuries No. 1 to 8 on the body of the deceased having been suffered due to fall cannot be ruled out if the deceased had fallen from a reasonable height and had struck against the hard objects corresponding to injuries No. 1 to 8. He further stated in the cross-examination that he did not notice any finger prints around the neck of the deceased and the deceased might have survived for few minutes after receipt of injuries No. 9 to 10. He also stated that he did not observe marks of nail or bite on the body of the deceased.

18. PW-2 is Dr. S.d. Pandhi, who on 12.9.1999, marked the case for post-mortem examination to Dr. Satish Arora and later on Satish Arora made an endorsement that let the post mortem may be conducted by a Forensic Expert, Dr. Satish Arora appeared as PW-3. PW-4 is Head Constable Satnam Singh who gave his statement on affidavit Ex.PC. PW-5 is Ranbir Singh who also gave his statement on affidavit Ex.PD as his statement was of formal character. PW-6 is Miss Gurmeet Kaur the complainant, eye witness and the real sister of the deceased. PW-7 is Shri Baldev Singh Reader who simply identified the signatures of Shri Kuljeet Pal Singh, Judicial Magistrate Ist Clas, Samana on his order dated 7.10.1999. PW-8 Shri Vijay Kumar who took the photographs Exs.P.1 to P.8 of the place of occurrence and also proved negatives Exs.P.9 to P.15. PW-9 is S.I. Rajveer Singh, the Investigating Officer and the Investigation part of this case has already been reproduced above. Finally the prosecution tendered in evidence the report of the Chemical Examiner and closed the case.

19. The statement of the accused was recorded u/s 313 Cr.P.C. and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. Jasvir Singh appellant took the stand that he has been falsely implicated in this case and that a false case has been registered against him. Keema Singh appellant also adopted the stand of his co-accused.

20. In defence, the accused-appellants did not lead any evidence.

21. The learned trial Court vide impugned judgment and order referred to above convicted and sentenced the appellants in the manner as stated above and

aggrieved by their conviction and sentence the present criminal appeal has been filed by the appellants and Murder Reference has been made by the State of Punjab.

22. We have heard S/Shri H.S. Man has Jawala Singh Pattar and G.S. Guraya, Advocates, appearing on behalf of the appellants and Shri G.S. Gill, learned Sr.D.A.G. appearing on behalf of the State and with their assistance have gone through the record of the case.

23. It is a case where firstly the rape has been committed and then the assailants committed the murder by way of strangulation and then in the same process and in the same transaction the dead body of Baby was thrown in the open space from the height.

24. In order to prove all the charges, the prosecution has examined only Gurmeet Kaur who is none else but the real sister of the deceased. The point for consideration before us is whether the sole testimony of Gurmeet Kaur PW-6 can be relied upon or not. As per the provisions of Section 134 of the Indian Evidence Act, no particular number of witnesses is necessary in any case to prove a particular fact. The law in this regard is well settled and conviction can be based on the solitary statement of witness provided the statement of such witness inspires confidence in the mind of the Court.

25. Let us examine the statement of Miss Gurmeet Kaur with care and caution. She was aged about 18 years when she gave her statement on oath before the learned trial Court on 15.5.2001. She has categorically stated that during the days of occurrence she knew Jasvir Singh and Keema Singh who were the residents of her village. She further stated that she along with her brother Gurjit, father and mother and other brothers and sisters used to live in Chaubara of the house belonging to Shri Gian Singh Ex-sarpanch and on the ground floor of the house Mito widow of Mukhtiar Singh used to live and the room adjoining her room was vacant. She further stated that her father was an addict and he used to quarrel with her mother and he had gone out of house three days earlier to the present occurrence. In such a situation, the statement of Miss Gurmeet Kaur is very natural when she deposed that her mother used to work in a Nursing Home which was situated in the Bazar of Patran. This witness further stated that on 11.9.1999 she and her mother had left the house in order to do the labour work. The deceased who was her younger sister and who was handicap by leg was left in the home and she was made to sit on a cot in the court-yard of the house on the ground floor. At about 11.30 A.M. she returned to home in order to feed her ailing sister and when she entered the house she found that her sister Baby was not available on the cot where she was left. Then she heard some sound coming from the aforesaid vacant room of the house which was on the ground floor and on going ahead she saw that both the appellants were pressing her sister Baby who was lying down on the floor of the room. Keema Singh was sitting towards the head of her sister while Jasvir Singh was sitting towards the legs of her sister who was crying for help. She categorically stated that within

her sight, Keema Singh strangled her sister by neck with his hands and Jasvir Singh caused injuries on the head and other parts of the body of her sister with stone which he was holding in his hands. The learned counsel appearing on behalf of the appellants vehemently submitted that no-reliance can be placed on the statement of Gurmeet Kaur who is a chance witness as per the story of the prosecution. We are not convinced with this submission. There is no magic in making a comment that a particular witness is a chance witness. Even a most natural witness can be a chance witness in his own house but we have to see whether the story which has been given by Gurmeet Kaur is full of probabilities or not. It is the case of the prosecution that the mother and the sister used to go out of the house for livelihood. It is the proved case on the record that Baby deceased was a handicap girl and she was hardly six years old. Responsibility was upon Gurmeet Kaur to provide meals to her sister and if she had returned to the house at 11.30 A.M. in order to prepare the meals not only for herself but also for her sister, it is not an improbability. This girl Gurmeet Kaur was tested by way of cross-examination. She deposed in the cross-examination that she had come a little earlier to her mother as she was to cook food for the family. The explanation which has been furnished by this young girl, is convincing and plausible. PW-6 Gurmit Kaur deposed that she cried out of fear and ran towards outside the house and in the meantime, Jasvir Singh appellant picked up her sister and throttled her into the adjoining land of Jagir Singh. The deceased was having blood on her body and clothes and accused were also having blood stains on their clothes. Both the accused ran away towards outside and in the meantime, her mother Rano also came at the spot, and she also saw both the accused fleeing from the spot. It has further been stated by the witness that she narrated the incident to her mother and both of them went near the victim and saw that she had already expired.

26. The learned counsel appearing on behalf of the appellants submitted that Rano was the most material witness in this case who could give corroboration to the statement of Gurmeet Kaur and in the absence of the examination of Smt. Rano and the Sarpanch who accompanied the complainant to the Police-Station, the statement of Miss Gurmeet Kaur should not be acted upon. We are not convinced with this submission again. There was a genuine cause for the prosecution for the non-examination of Rano.

27. Repeated efforts were made for her service of Rano, unfortunately she had left the house without giving any address to her family members. In these circumstances, if the prosecution has not been able to examine Rano, no adverse inference can be drawn against it. One cannot lose sight of the fact that the victim and the witness belonged to a poor section of the society. They are Mazbi Sikh by caste which is a very poor section of the society in this part of the country. If Rano had left the house by giving no clue to any person how the prosecution will be able to examine that witness. Moreover, if the Ex-sarpanch Gian Singh as not been examined by the prosecution, again no inference can be drawn against the prosecution because he was not the eye witness of the case.

The only eye witness of this case was Gurmeet Kaur and we have to see whether her statement is probable and natural and whether it inspires confidence in the mind of the Court or not? We have already stated above that all the three tests are fulfilled in the present case if one goes to the statement of Gurmeet Kaur. There is no animus of Gurmeet Kaur with any of the appellants.

28. It was then argued by the learned counsel for the appellants that Mito could be the best witness who could depose about the rape and about the violence if any met to the deceased. We again also not convinced with this argument. The case of the prosecution is that Mito was not in the house at that time. There was a vacant room adjoining to the room of Mito on the ground floor. Therefore, the accused took the advantage of the helplessness of Baby. PW-6 in the cross-examination had categorically stated that Mito was not available on that day and had gone out from the house. So she did not ask her to take care of her sister. She also stated that Mito was not present in the home when she returned to the house on the date of occurrence. It was also submitted that the complainant had a brother by the name of Gurjit Singh but he too has not been examined and therefore, the case of the prosecution is doubtful. We are not convinced with this submission. It has been stated by Gurmeet Kaur that her brother Gurjit Singh used to do the work of labour in some Hotel and he used to leave in the morning and return in the night. In such a situation the non-examination of Gurjit Singh either by the Investigating Officer or by the prosecution is immaterial.

29. Let us see what is the case of the accused-appellants in this regard. A suggestion was given to the witness that Baby had fallen from the roof as she was alone at home and was unable to walk and in this manner she has sustained injuries accidentally. This suggestion. If examined in depth, would show that it is without any merit. The medical evidence establishes that a rape has been committed upon the minor child. We know that suggestions even if they are found to be false, on such suggestions conviction cannot be based but when a false defence has been taken by the accused to their knowledge then certainly this Court can draw an adverse inference that the accused has no defence to offer. A searching cross-examination was conducted against Miss Gurmeet Kaur PW-6 in order to dislodge her with regard to the recovery etc. but she has categorically stated that she did not see the stone lying in the room or in the court-yard of the house when she came to the house after lodging the FIR. In fact, the stone was recovered u/s 27 of the Indian Evidence Act.

30. Another argument was raised by the counsel for the appellants that PW6 did not try to rescue her sister. The submission of the counsel for the appellants cannot be accepted. We cannot lose sight of the fact that Gurmeet Kaur was aged about 14 years at the time of the occurrence where the accused were young persons. They were healthy and stout persons. They were under influence of liquor. In such a situation what a poor girl of 14 years can do and to what extent she can offer resistance against the might of two persons but nevertheless as per the statement of this girl, she cried.

31. As we stated earlier that there is no bar to record the conviction on the solitary statement of witness provided it is truthful and inspires confidence in the mind of the Court. In the present case the statement of Gurmeet Kaur finds corroboration from the medical evidence of Dr. D.S. Bhullar Senior Medical officer who conducted the post-mortem examination. A cursory look to the injuries of Baby would show that she had injuries on the forehead, right cheek, middle part of the forehead. So much so she suffered a fracture on the anterior side of middle part of the right arm. All these injuries are suggestive of the fact that it was a case of violence and after the commission of the rape and strangulation the deceased must have been thrown from some height. Injuries No. 9 and 10 again are suggestive of the fact that deceased must have been strangled before her death. There was a contusion 4.5 cm x 2 cm obliquely going upwards on the upper part of the right lateral side of neck and similarly, there were four obliquely parallel contusions mingled with one another which were going obliquely upwards on the anterior lateral side of the left side of the neck. All these injuries were ante mortem in nature. There is enough evidence with regard to the rape also. As per the opinion of the doctor the external generators showed multiple contusions and few abrasions including medial aspect of both the thighs. The vulva was swollen and contused. Hymen showed fresh tears. Vaginal mucosa, was swollen and congested and there was a multiple abrasions and haemorrhages. Even after the receipt of the report of the Chemical Examiner the doctor deposed vide opinion Ex.PB/5 that sexual intercourse was committed with the deceased before her death. The report Ex.PB/3 of the Chemical Examiner further strengthen and gives corroboration to the statement of Gurmeet Kaur when it certifies that semen was present on the swabs and also on the shirt of the deceased. The recovery of the stone stained with blood at the instance of Jasvir Singh is yet another additional circumstance which completes the chain. The Hon'ble Supreme Court in 2002 (1) R.C.R. 768 State of Maharashtra v. Bharat Fakira Dhiwar, observed that a conviction can be based even on the statement of a child witness in a case of rape with murder if such statement remained unshaken in the cross-examination and if there are other circumstances which support the version of the prosecution.

32. Men may tell lie but the circumstances will not. Photograph Ex.P.1 would show that there are tumblers and half filled bottle of liquor is lying inside the room. In this very room there is a presence of blood as is evident from the site plan prepared by the Investigating Officer and also as per the photograph Ex.P3. The photographs Exs.P.4.P.6 and P.7 conclusively establish that the dead body of the deceased was thrown in an open space adjoining to the house of which one of the room was in occupation of the complainant party. The examination of these photographs would further show that deceased must have been thrown from a height of about 8 to 10 feet and in this manner she must have received some of the injuries on her body including the fracture of the arm.

33. Learned counsel appearing on behalf of the appellants vehemently submitted that the medical evidence in this case is contradictory with the ocular account of

Miss Gurmeet Kaur but we are not convinced with this submission. At the cost of repetition we may state that as per the allegations of the prosecution the occurrence had taken place in the manner that the statement of Gurmeet Kaur is fully in consistence with the medical evidence of Dr. Bhullar. As per allegations firstly the deceased became the victim of rape and for that reason there was a blood spread on the floor of the room in which this rape was committed. Thereafter, it is alleged by the prosecution that deceased was strangled. Thirdly the deceased was thrown in the open space from the roof. All the above three allegations fully fit in with the medical evidence and the ocular account given by Miss Gurmeet Kaur.

34. As per the case of prosecution, the occurrence took place at about 11.30 A.M. The police-station was at a distance of about one kilometer from the place of occurrence, the first information report in this case was lodged without any delay. Of course, the special report of this case reached the area Magistrate at Samana at 7.30 P.M. but that delay will not make much difference because in this case the investigation had already started and in the inquest report also the name of both the accused did figure. We had already stated above that there was no animus on the part of Gurmeet Kaur to falsely implicate any one of the appellants.

35. The resume of the above discussion is that the statement of Gurmeet Kaur is reliable. She is a truthful witness. Her statement cannot be rejected on a weak argument that she was a chance witness. On the contrary, her presence is very probable and natural in the house as the occurrence had taken place inside the house of which the complainant party used to reside in one of the room. The oral statement of Gurmeet Kaur finds corroboration not only from the circumstances but also from the medical evidence. The guilty conscience on the part of the appellants was writ large when they refused to give their finger impressions before the Judicial Magistrate. This is again another circumstance which goes in favour of the prosecution.

36. Lastly the point for consideration before us is whether it is a case of extreme penalty or not. Both the appellants were young boys. To satisfy their lust they must have committed that crime and in order to destroy the evidence they strangled the deceased.

37. What is a rare of rarest cases will always be a question of fact? Considering all pros and cons of this case, we are of the considered opinion that the learned trial Court was not justified in awarding the death penalty to the appellants. Resultantly, we do not approve the Murder Reference as we are inclined to convert the sentence of both the appellants to life imprisonment and it is ordered accordingly. So far as the appeal both the appellants against the conviction is concerned it is hereby dismissed.

38. The net result is that the Murder Reference is hereby declined and the substantive sentence of both the appellants is hereby converted into life

imprisonment u/s 302 read with Section 34 IPC and they are also directed to pay a fine of Rs. 1,000/- each in default of payment of fine each one of them shall undergo R.I. for two months. So far as the sentence imposed upon the appellants u/s 376 IPC is concerned. It is hereby maintained. Both the sentences shall run concurrently.

39. With this modification in the matter of sentence. Murder Reference is declined and the criminal appeal of S/Shri Jasvir Singh and that of Keema Singh, so far as conviction is concerned. It is hereby dismissed. The appellants must be in the condemned cell. Therefore, the Registry is directed to send an intimation immediately to the jail authorities concerned to take out both the appellants from the condemned cell to serve the life sentences which have been imposed upon them by us. Intimation to this effect be also sent to the Chief Judicial Magistrate concerned.