
(2012) 09 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 361 of 2011

Vishal Kumar and Neelam Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 164, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) 3 ShimLC 1623

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Advocate : Ashwani K. Sharma, for the Appellant; R.K. Sharma, Sr. Additional Advocate General, with Mr. J.S. Rana, Asstt. AG., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—The appellants (convicts) namely, Vishal and Neelam Sharma, are in appeal against the judgment/order dated 28.7.2011, passed by the learned Additional Sessions Judge (II), Kangra at Dharamsala (H.P) in Sessions Case RBT S.C. No. 80-I/III/2010/ S.T. No. 22/11, State versus Vishal and Others, whereby they, alongwith co-accused Rajni Sharma, who was acquitted, were tried for the offences under Sections 302 and 201, read with Section 34 of the Indian Penal Code (in short "IPC") and were ultimately convicted and sentenced to undergo imprisonment for life and pay a fine of Rs. 25,000/- each and in default, to suffer further rigorous imprisonment for two years, for the offence u/s 302 read with Section 34 IPC and rigorous imprisonment for three years and fine of Rs. 5,000/- each and in default, to suffer further rigorous imprisonment for six months. Both the sentences were ordered to run concurrently. On realization, the amount of fine has been ordered to be paid to the parents of the deceased, Kashmir Singh, as compensation. For the sake of convenience, convict No. 1 Vishal and convict No. 2 Neelam Sharma, shall hereinafter be referred to as C-1 and C-2, respectively and acquitted co-accused Rajni Sharma as A-3. C-1 Vishal and C-2 Neelam Sharma are husband and wife and A-3 Rajni Sharma is sister of

C-2 Neelam Sharma.

2. The gravamen of charge against C-1 Vishal and C-2 Neelam Sharma was that during the night intervening 29/30.6.2009, they, in furtherance of their common intention, had committed murder of the deceased, who was allegedly having illicit relations with C-2 Neelam Sharma and had caused the evidence of murder to disappear, in order to escape from the legal punishment. The charge against A-3 Rajni Sharma was that having reason to believe that an offence punishable u/s 302 IPC having been committed, caused the evidence of the said offence to disappear, with the intention of screening the offenders from legal punishment.

3. Shorn of details, factual matrix may be stated thus. On 30.6.2009, at about 11.30 a.m., complainant PW-1 Sudhir Singh Pathania, was telephonically informed by PW-2 Gurmeet Singh, Ward Member, Gram Panchayat, Shekhupura, within the jurisdiction of Police Station, Indora, District Kangra (H.P.), that a blood stained dead body was lying under Bain Attarian bridge. Consequently, the police was informed, which reached the spot and inspected the dead body. Subsequently, it was found that the dead body was of one Kashmir Singh, son of Shri Des Raj (PW-7) of Village Nangal Bhoor, Tehsil Pathankot, District Gurdaspur (Punjab). Accordingly, statement of the complainant, PW-1 Shri Sudhir Singh Pathania, Ex. PW-1/A, was recorded by the police u/s 154 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), on the basis of which formal FIR Ex. PW-28/A came to be registered.

4. Investigation commenced. The dead body of the deceased, alongwith blood stained shirt, jeans, leather belt etc. were taken into possession by the police. A mobile phone, a handkerchief and two unused condoms were also recovered from the jeans of the deceased. Blood stains and blood stained soil were also lifted by the police from the spot. The site plan was prepared.

5. It was revealed during investigation that on 29.6.2009, during night, the deceased was called by C-2 Neelam Sharma to her parental house at Kandrori. He was taken there by one Naresh Kumar (PW-5) on his motor cycle at about 11.15 a.m. C-2 Neelam Sharma had come out of the house to receive the deceased and had taken him inside the house. As per the prosecution, both the convicts and co-accused A-3 Rajni Sharma had committed the murder of the deceased during the night intervening 29/30th June, 2009 at the parental house of C-2 Neelam Sharma at Kandrori. Thereafter, the dead body was wrapped in a bed sheet. It was taken by both the convicts on the scooter, belonging to C-1 Vishal, bearing registration No. PB-02 H-8969 and disposed of, by throwing down from the aforesaid bridge. The convicts and co accused were arrested by the police and in pursuance of the disclosure statements made by them, their blood stained clothes, the aforesaid scooter as well as the weapons of offence, that is, Kirpan, knife and Jhabbal, were recovered. The spot scene and places of recovery were also identified by them, in pursuance of their disclosure statements. The dead body of the deceased was sent for autopsy and post mortem report (PMR) Ex. PW-17/B was obtained, which revealed that the

deceased was having as many as 16 anti mortem injuries/ fractures on his person. In the opinion of PW-17 Dr. P.K. Ahluwalia, the cause of death of the deceased was due to head injury and multiple injuries, leading to death.

6. It is also the case of the prosecution that at the time of commission of the offences, C-1 Vishal had also sustained injuries on his hand and he had got the incised wound stitched from PW-9 Sanjeev Kumar, a registered medical practitioner (RMP) on 30.6.2009. Blood stains were also lifted by the police from the floor and wall of the room, in which the deceased was allegedly murdered. The police also associated the forensic expert, PW-18 Arun Sharma, during investigation of the case, who lifted blood stains from the aforesaid scooter as also from the scene of the crime, that is, the aforesaid room and the television (TV), calendar, sofa, wall clock, curtains and bed sheet lying in that room. The clue materials were sent for chemical examination to the State Forensic Science Laboratory (FSL) and reports were obtained.

7. Call details of Mobile Phone No. 99880-80278 were also obtained by the police during investigation.

8. On completion of investigation, the accused were sent up to face trial. On being charged, they did not plead guilty and instead claimed trial. The prosecution evidence followed, which examined as many as 31 witnesses.

9. On close of the prosecution evidence, the accused were examined u/s 313 Cr.P.C., wherein they set up defence of total denial, innocence and false implication. In defence, they have examined DW-1 Ajeet Kumari.

10. We have heard the learned Senior Additional Advocate General for the appellant-State and the Learned Counsel for the respondents-accused and perused the record.

11. There being no ocular evidence about the occurrence leading to the death of the deceased, the case is solely based on circumstantial evidence. By now it is fairly settled by a series of judgments rendered by the Hon''ble Apex Court, including Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 Supreme Court Cases 116, that in order to return a finding of guilt in a case based on circumstantial evidence, the following requirements stated in para 153 of the report are liable to be established by the prosecution:-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, where the following observations were made (SCC para 19, p.807: SCC (Cri) p.1047.

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) 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.

(3) the circumstances should be of a conclusive nature and tendency.

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

(5) 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.

12. In *Vithal Eknath Adlinge Vs. State of Maharashtra*, , while reiterating the above principles, annunciated in *Sharad Birdhichand Sarda (supra)*, the Hon''ble Apex Court has further held as under, vide paras 6 to 16 of the report:-

6. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh Vs. State of Rajasthan*, *Eradu and Others Vs. State of Hyderabad*, *Earabhadrapa v. State of Karnataka* (AIR 1983 SC 446), *State of U.P. Vs. Sukhbasi and Others*, *Balwinder Singh alias Dalbir Singh Vs. State of Punjab*, , *Ashok Kumar Chatterjee Vs. State of M.P.*, . The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram Vs. State of Punjab*, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

7. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Others Vs. State of Andhra Pradesh*, , wherein it has been observed thus:

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....

8. In *Padala Veera Reddy Vs. State of Andhra Pradesh and others*, , it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- 1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

9. In *State of U.P. v. Ashok Kumar Srivastava*, (1992 CrLJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

10. Sir Alfred Wills in his admirable book "Wills" Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

- (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*;
- (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;
- (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;
- (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt,
- (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

11. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

12. In Hanumant Vs. The State of Madhya Pradesh, wherein it was observed thus:

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 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.

13. A reference may be made to a later decision in Sharad Birdhichand Sarda Vs. State of Maharashtra, . Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(2) 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;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) 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.

14. These aspects were highlighted in State of Rajasthan Vs. Raja Ram, , State of Haryana Vs. Jagbir Singh and Another, and Kusuma Ankama Rao v State of A.P. (Criminal Appeal No. 185/2005 disposed of on 7.7.2008).

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

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

accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.

16. In Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, it was noted as follows:

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration". (See also Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir,

13. In the present case, the following circumstances were pressed into service by the prosecution to prove its case and the same have been held to be duly proved by the learned trial Court:-

1. The illicit relation of deceased with the accused Neelam.
2. The presence of both accused Neelam and her husband co-accused Vishal together in the intervening night of 29th and 30th June, 2009.
3. The injury of incised wound on the hands of accused Vishal.
4. Blood stains on the floor, wall of the room, in which deceased was lastly seen to have entered by PW5 Naresh Kumar.
5. Blood stains on the curtains, T.V. floor, sofa cover, bed sheet etc. of the aforesaid room.
6. The blood stains on the scooter of accused Vishal as well as its engine cover.
7. The blood stains on the clothes of both the accused, the recovery of which had been effected by the police at the instance of the accused.
8. Both the accused dis-appeared from their residence they remained absconded up till 3rd and 4th July, 2009.
9. The presence of blood on the weapon of offence i.e. Kirpan.
10. The extra judicial confession made by accused Neelam to PW15 Kallash Chand that she alongwith the accused Vishal had killed the deceased.
14. The case is required to be judged in the light of the above legal position, laid down by the Hon"ble Supreme Court, with regard to appreciation of circumstantial evidence and we proceed to undertake the exercise, by taking up the circumstances individually / collectively, keeping in view the nature thereof.

Circumstances No. 1 and 2

15. Both the circumstances, being inter-connected, requiring common appreciation of evidence and law, are taken up together for discussion and decision. Whereas the first circumstance relates to the alleged illicit relations between C-2 Neelam Sharma and the deceased, the second circumstance is in the nature of the deceased having been last seen together, in the company of C-2 Neelam Sharma, at the relevant time, that is, during the night intervening 29/30.6.2009, at her parental house.

16. PW-5 Naresh Kumar is a co-villager and friend of the deceased. He has deposed that in June, 2009 he was working in a Mobile shop at Nangal Bhoor. He knew the deceased, who was of his village. He used to remain in touch with him. According to him, about two years prior to the death of the deceased, he had told him that he was having relations with C-2 Neelam Sharma and both of them had been meeting each other. The witness further goes on to depose that once he had brought the deceased to the house of C-2 Neelam Sharma at Kandrori on his motor-cycle. On 29.6.2009, at about 8/8.30 p.m., the deceased informed him telephonically that he intended to go to C-2 Neelam Sharma's place. Thereafter, again at 10.30 p.m. the deceased telephoned him and asked him to come. It was at about 11 p.m. that the witness took the deceased to Kandrori railway station on his motor-cycle. He remained at the railway station and saw C-2 Neelam Sharma roaming in her courtyard, then the deceased switched on the light of his mobile, upon which C-2 Neelam Sharma came to the gate and took him (deceased) inside. Then the lights of the verandah were switched off. Thereafter, the witness came back. He received a telephone call, when he wanted to talk, the call got disconnected. Then he made a telephone call to the deceased, but he did not pick up the phone. On the next day, at about 1.15 p.m., he received telephonic information that the dead body of the deceased was lying under Bain Attarian bridge. Accordingly, he went there and saw the dead body of the deceased. The witness identified C-2 Neelam Sharma in the Court.

17. In cross examination, the witness has admitted that the deceased and C-2 Neelam Sharma were not class fellows. Kandrori and Nangal Bhoor, which are native places of C-2 Neelam Sharma and the deceased, are situate at a distance of 1 1/2 / 2 kms. from each other. According to the witness, he has studied upto 10+2 standard. He has denied that the deceased was a matriculate and instead has stated that he had also studied upto 10+2 standard. It is also admitted that the deceased was a plumber. Both of them were from the same Caste. At that time, C-2 Neelam Sharma was working as a teacher. The witness has feigned ignorance that her marriage had taken place on 13.10.2008. In further cross examination, the witness has deposed that his statement was recorded by the police. According to him, he had disclosed to the police that from the railway station, he had seen C-2 Neelam Sharma roaming in the courtyard and that when the deceased had switched on the light of his mobile, she had come to the gate. However, when confronted with his statement u/s 161 Cr.P.C., Mark A later

on exhibited as Ex. PW-27/M, the same did not contain these recitals. He has denied that the deceased was not having any relations with C-2 Neelam Sharma. He has also denied that on 29.6.2009, at about 11 p.m., he had not gone to drop the deceased at her house or prior to that also, he had never dropped him there. However, while admitting that he had not lodged any report against the accused, he has denied that he was deposing falsely as the deceased was his friend.

18. As far as the first circumstance regarding illicit relations between C-2 Neelam Sharma and the deceased and the second circumstance that PW-5 Naresh Kumar had dropped the deceased at the house of C-2 Neelam Sharma, at the relevant time, that is on 29.6.2009, at about 11 p.m. and thus having seen both of them last together, are concerned, the Learned Counsel for the convicts has very strenuously argued that the testimony of PW-5 Naresh Kumar cannot be safely relied upon, as it is not shown as to how he was acquainted to C-2 Neelam Sharma. However, this submission does not carry any weight, for the reason that it was suggested to PW-5 Naresh Kumar, in the opening lines of his cross examination, that the deceased and C-2 Neelam Sharma were not classmates, which suggestion has been admitted by him to be correct, meaning thereby that even as per the defence, PW-5 Naresh Kumar was knowing both the deceased and C-2 Neelam Sharma, to the extent that it was within his knowledge that they were not classmates. It was further elicited from the witness that at that time, C-2 Neelam Sharma was working as a teacher, meaning thereby that he knew her well.

19. Now while coming to another aspect of the case, whether C-2 Neelam Sharma was having illicit relations with the deceased, though PW-5 Naresh Kumar has not specifically stated that such relations were in the nature of an illicit physical relationship, yet a combined and harmonious reading of the deposition of the witness would go to show that there was definitely an intimate relationship between the two and they had been meeting each other. To this extent, the witness has not at all been cross examined on behalf of the defence. According to PW-5 Naresh Kumar, the deceased had disclosed to him about two years prior to his death that he was having relations with C-2 Neelam Sharma and they had been meeting each other. Indisputably, the death of the deceased had occurred on 29/30.6.2009, meaning thereby that he had confided in PW-5 Naresh Kumar about his relations with C-2 Neelam Sharma, somewhere in 2007, that is, prior to her marriage with C-1 Vishal, in the year 2008 and it appears from the evidence on record that such relations also continued after her marriage.

20. Insofar as the other aspect of the case, regarding dropping of the deceased at the parental house of C-2 Neelam Sharma by PW-5 Naresh Kumar on 29.6.2009, at about 11 p.m. is concerned, except that PW-5 Naresh Kumar had not stated to the police, in his statement u/s 161 Cr.P.C., that he had seen C-2 Neelam Sharma roaming in the courtyard and that when the deceased had switched on the light of his mobile, she had come upto the gate, the witness has categorically stated that the deceased was taken inside the house by C-2 Neelam

Sharma and thereafter, the lights in the verandah were switched off. This part of his statement has also not been challenged by the defence during cross examination. Thus, it is established that on 29.6.2009, at about 11 p.m., PW-5 Naresh Kumar had dropped the deceased at the parental house of C-2 Neelam Sharma on his motor-cycle. It is also made out that PW-5 Naresh Kumar had also seen her taking the deceased inside the house at that time.

21. As per prosecution, the deceased was done to death at the parental house of C-2 Neelam Sharma at Kandrori, during the night intervening 29/30.6.2009, after 11 p.m. It is also made out from the deposition of PW-12 Sardari Lal that C-1 Vishal is son of his brother-in-law. According to PW-12 Sardari Lal, he had retired as Block Primary Education Officer. During the night intervening 29/30.6.2009, his dogs started barking. Accordingly, he woke up and sat up on the bed. In the meantime, one scooter came near the temple, outside his house, where the light was on. C-1 Vishal and his wife C-2 Neelam Sharma came towards him and the former touched his feet. The witness asked him angrily as to from where he had come at that late hour in the night. The witness has further stated that his wife was sleeping in the adjoining room. When he told C-1 Vishal that he would wake her up, he asked him not to do so and told that he would meet her in the morning. According to the witness, his son was sleeping in the upper storey. Then both the convicts went to the adjoining room to sleep. In the morning, at about 6.30 a.m., all the family members had seen the scooter near the temple. When in the morning, tea was served to C-1 Vishal, the witness saw that there was a bandage on his right hand. According to him, C-1 Vishal told him that during the previous night, when he was coming, the scooter had skidded and as a result, he had sustained injury. It was further stated by the witness that both the convicts took meal in the afternoon and went away. On 30.6.2009, at about 9.30 p.m., the police came to his house in search of the convicts. The witness disclosed the aforesaid facts to the police. On 30.7.2009, while the witness was making some purchases from the shop, situate adjacent to the shop of PW-9 Sanjeev Kumar, the police, which was also present there at that time, had called him and had taken into possession photo copy of the treatment register of PW-9 Sanjeev Kumar, in his presence, vide memo Ex. PW-12/A, which was signed by him and PW-9 Sanjeev Kumar. It is lastly stated by the witness that he had got his statement (under Section 164 Cr.P.C.) recorded in the Court of Judge Sahib (Judicial Magistrate 1st Class), Indora and the same is Ex. PW-12/B, which is as per the version stated by him.

22. In cross examination, PW-12 Sardari Lal has stated that C-1 Vishal is the son of his brother-in-law. He used to visit his house. The witness was taken to Judge Sahib by the police. He has admitted that when the police had come to his house during the night, they had taken his son alongwith them. However, he has denied that the police had released his son in the morning and has volunteered to state that he had come back, after half an hour. It is denied that his statement before Judge Sahib was as a result of the pressure, exerted upon him by the police. It is also denied that he was making statement in the Court under pressure of the

police.

23. In reply to question No. 42 of their respective statements recorded by the learned trial Court u/s 313 Cr.P.C., both the convicts have categorically admitted that during the evening / night intervening 29/30.6.2009, they had visited the house of PW-12 Sardari Lal on the scooter of C-1 Vishal DW-1 Ajeet Kumari is the mother of C-1 Vishal and mother-in-law of C-2 Neelam Sharma. She has stated that "on 29 June, 2009 my son and daughter in law had come to my house and between 8 and 9 P.M. they had gone to the house of their aunt (Bua). At 10/11 P.M. I received telephone from Vishal that he had met with an accident and he had reached the house of aunt. On 1st July both of them came to the house at 2.30/3 P.M. On 3rd July in the evening police came and took scooter and its documents with them. Police had obtained my signatures on blank papers. From Kandrori Railway Station the house of in-laws of Vishal is not visible."

24. Thus, the case set up by the convicts was that on 29.6.2009, both of them had started from the house of their mother/ mother-in-law, DW-1 Ajeet Kumari, situate at Sujampur, Tehsil Pathankot, District Gurdaspur (Punjab) between 8 and 9 p.m. on a scooter. However, from the evidence of PW-5 Naresh Kumar and PW-12 Sardari Lal, coupled with other circumstantial evidence on record, it is made out that instead of proceeding directly to Bua's house, that is, the house of PW-12 Sardari Lal, situate at Nadaun, Tehsil Indora, District Kangra, H.P., they had firstly gone to their in-laws /parental house, situate at village Kandrori, Tehsil Indora, District Kangra, H.P. and it was only thereafter that they had gone to the house of PW-12 Sardari Lal during late in the night.

Circumstance No. 3

25. It is also admitted by both the convicts, in reply to question No. 43 of their respective statements, u/s 313 Cr.P.C., that in the following morning, PW-12 Sardari Lal had seen a bandage on the right hand of C-1 Vishal.

26. In reply to question No. 40, C-1 Vishal has also admitted that on 30.6.2009, at Bain Indorian, he had got the wound on his hand stitched from PW-9 Sanjeev Kumar. However, he has tried to explain that he "sustained injury because of skidding of the scooter". However, PW-9 Sanjeev Kumar, who though is not a professionally qualified doctor and is only a Registered Medical Practitioner, has stated that in his opinion the injury appeared to have been caused by some sharp edged weapon. Though, according to the learned defence counsel, the testimony of PW-9 Sanjeev Kumar, to this effect, cannot be believed, for the reason that he is not competent to offer such opinion, yet, the submission again is without any force, for the simple reason that even a layman can distinguish between an injury caused by sharp edged weapon and resulting out of a motor vehicle accident, as a result of skidding of scooter.

Circumstances No. 4, 5, 6, 7 and 9

27. All these circumstances, being interlinked, are taken up together.

28. Presence of blood stains on the floor, wall, curtains, TV, sofa cover and bed sheet etc. in the room of parental house of C-2 Neelam Sharma, in which the deceased was lastly seen to have entered, by PW-5 Naresh Kumar, blood stains on the scooter of C-1 Vishal, blood stains on the clothes of the convicts recovered by the police at their instance and presence of blood on the weapon of offence, that is, Kirpan Ex. P-14, taken into possession by the police during investigation and in pursuance to the disclosure statements made by the convicts, vide memos/ statements, Exts. PW-3/C, PW-8/A, PW-8/B, PW-10/E, PW-11/A, PW-11/C, PW-13/B, PW-20/A and PW-21/A, duly stand proved in evidence, in the statements of PW-3 Makhan Singh, PW-8 Surjit Singh, PW-11 Sulakhan, PW-13 Bharat Bhushan, PW-18 Arun Sharma, PW-20 HHC Kewal Kumar and PW-21 Constable Dinesh Kumar.

29. On chemical analysis vide FSL report Ex. PC, the sample of blood of the deceased, Kashmir Singh, (Parcel-9 Exhibit-7) was opined to be of group "A", as is apparent from the finding at Sr. No. (1) of the said report, under the heading "RESULT". As per the same report, human blood of group "A" was also found on the pants and shirt of the deceased, clue materials lifted by the police from the place of occurrence and the place where the dead body of the deceased was spotted lying below Bain Attarian bridge, such as, blood stained soil and blood, and clothes of the convicts, such as, pants, T-shirts, vest, salwar, shirt and bed sheet, table cloth and Chappal. Human blood was also found, under the same report, on some other clothes belonging to the convicts, such as, lower / pajama, dupatta, handkerchief and the clue materials, such as, blood lifted from the place of occurrence. The report also reveals that the samples of blood of both the convicts were opined to be of human origin, but the result to determine blood group thereof, remained inconclusive.

30. Though it has been argued quite vehemently on behalf of the defence that in case the result with regard to blood group of the samples of blood of the convicts was inconclusive, it was incumbent upon the investigating agency to have taken fresh samples and sent the same for analysis and since it was not done, it cannot be ruled out that they were also having the same blood group, that is, group "A". However, the argument is quite far fetched and does not deserve any favourable consideration.

31. Vide FSL report Ex. PD, human blood of group "A" was also found on blood scrapings taken from the engine cover of the scooter belonging to C-1 Vishal and some other clue materials, such as, cushion covers. The report further reveals that human blood was also found on some other clue materials, such as, blood lifted from the aforesaid scooter, calendar, bed sheet and cushion cover, but either the result was inconclusive in respect of blood group or the same was insufficient for further examination.

32. Presence of human blood of group "A" and human blood on their clothes and

on the above clue materials, is a very strong circumstance against the convicts, which convincingly connects them with the crime, alleged against them.

Circumstance No. 8

33. The evidence on record reveals that after commission of the offence during the night intervening 29/30.6.2009, both the convicts had first gone to the house of PW-12 Sardari Lal, during late hours in the night and had spent the night there and had thereafter left that place on the next day, after taking meals in the afternoon. This part of the evidence has also not been challenged on their behalf, during cross examination and instead, as already noticed, they have admitted the same in quite categorical terms, in their statements u/s 313 Cr.P.C.

34. It is also in evidence in the statement of PW-15 Kailash Chand, a cousin of C-2 Neelam Sharma that on one day in the month of June/July, 2009, at about 3-4 p.m., both the convicts had visited him at Jallandhar and had told that "a telephone was received from Indora and police was searching them as there was a case against them". On this, he had told C-1 Vishal to surrender before the police. Accordingly, C-1 Vishal went away and C-2 Neelam remained with him. Thereafter, the witness received a telephone that C-2 Neelam is also involved in that case. So he sent C-2 Neelam Sharma also. Thereafter, he also came to Indora. According to the witness, he alongwith C-2 Neelam went to the police station at Indora. The witness further goes on to depose that he narrated the aforesaid facts on telephone to one Ashwani, who was in Delhi, who told him to hand over C-1 Vishal to the police and he followed suit, but did not accompany C-1 Vishal. The record reveals that whereas C-1 Vishal had surrendered before the Superintendent of Police, Kangra at Dharamsala on 3.7.2009, C-2 Neelam Sharma had surrendered before the police of Police Station, Indora on 4.7.2009. Thus, it is made out that after the occurrence, up-till 3 / 4.7.2009, both the convicts had been absconding. This is also a strong circumstance against them and stands duly proved on record.

Circumstance No. 10

35. This circumstance relates to the alleged extra judicial confession, said to have been made by C-1 Neelam Sharma to PW-15 Kailash Chand, that she alongwith C-1 Vishal had killed the deceased. However, the evidence led by the prosecution to establish this circumstance is tainted by the categorical admission, made by PW-15 Kailash Chand in the last lines of his chief examination as also during cross examination, that he was pressurized by the police to give statement, Ex. PW-15/A, u/s 164 Cr.P.C. before the learned Judicial Magistrate 1st Class, Indora, District Kangra, H.P., as it is settled that a statement made by a witness u/s 164 Cr.P.C. under pressure of police is of no legal value in the eyes of law, as has been held in State v. Phagla and another, 1973 Volume LXXV PLR 613, Head Note (ii). However, even in the absence of proof of this circumstance, the net result would not vary, as other circumstances, which are of conclusive nature and form a complete chain to return a finding of guilt against the

convicts, stand convincingly proved.

36. True it is that as per prosecution, the last calls made by the deceased from his mobile phone were to one Ajay, who though was cited as a witness by the prosecution, yet was not examined. It is contended on behalf of the defence that non examination of said Ajay is fatal to the prosecution case and adverse inference is liable to be drawn against it on this count. However, in the facts and circumstances of the case, in our view, non examination of this witness (Ajay), who though could have shed some light on the background of the case, does not cause any dent in the case of the prosecution in the existence of other overwhelming evidence on record to establish the guilt of the convicts.

37. It is next contended on behalf of the defence that PW-1 Sudhir Singh and PW-2 Gurmeet Singh, who had reached the spot earlier, have not stated anything about recovery of two unused condoms from the pocket of jeans of the deceased. However, according to PW-3 Makhan Singh, who had reached the spot later on, has stated about recovery of the condoms. According to the learned defence counsel, the condoms have been introduced by the police only with a view to establish illicit relations between the deceased and C-2 Neelam Sharma. However, in the facts and circumstances of the case, this aspect of the matter is of little significance.

38. The presence of alcohol in the viscera of the deceased, as per FSL report Ex. PA, is also not significant, as the cause of death of the deceased as stated by PW-17 Dr. P.K. Ahluwalia, was due to head injury and multiple injuries leading to death and alcohol had not contributed towards the same.

39. It was also contended on behalf of the defence that as per prosecution, after killing the deceased, his dead body was disposed of by throwing below the Bain Attarian bridge. However, the dead body was lying straight in the river bed, without there being any post mortem injury. It being so, the prosecution version regarding disposal of the dead body, cannot be believed and it casts a serious doubt on the very genesis of the prosecution case. This aspect of the matter has been dealt with by the learned trial Judge, in quite detail, vide relevant portion of para 26 of the impugned judgment as follows, which cannot be faulted:

Ld. Defence Counsel has argued that the post mortem of dead body of deceased Kashmir Singh was carried out by PW7 Dr. P.K. Ahluwalia, and it is the prosecution story that accused persons had thrown dead body from the Baien Attarian Bridge, so there could be post mortem injury on the dead body, but, PW17 did not notice any post mortem injury and he has stated that all the injuries were ante mortem. After due consideration to my mind no benefit of the aforesaid fact can be given to the accused. First of all there is no specific and convincing evidence on record to establish that the accused persons had thrown dead body from the bridge and as the result, it was found subsequently on 30th June below the Baien Attarian Bridge. It could be possible that accused might have put the dead body below the bridge without throwing it from the height.

40. The time gap between the deceased having been last seen, during the night intervening 29/30.6.2009, at about 11 p.m., in the company of C-2 Neelam Sharma and by necessary implication in the company of C-1 Vishal as well, keeping in view the evidence on record, as already discussed hereinabove in detail, and spotting of his dead body below Bain Attarian bridge on the next day, that is, 30.6.2009, at about 11.30 a.m., is also not significant, in the peculiar facts and circumstances of the case.

41. The above discussion brings us to hold that the circumstances, pressed into service by the prosecution to bring home guilt against the convicts, except circumstance No. 10 which has been held by us not to have been proved, which are of conclusive nature and form a complete chain, stand fully established. The proved circumstances lead us to conclude that the same are consistent only with the hypothesis of the guilt of the convicts and it can be safely concluded that in all human probability, they alone are the authors of the crime alleged and proved against them. In view of the above, the appeal, being without any merit, is accordingly dismissed.