

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision: March 11, 2011

1. Murder reference No.2 of 2010

1. Gurdev Singh son of Rattan Singh resident of village Jakhauli, Police Station Sadar Kaithal, District kaithal.
2. Suresh Kumar son of Sajjan Kumar, resident of village Karora, Police Station Rajond, District Kaithal.
3. Rajinder Singh son of Nathu Ram, resident of village Karora, Police Station Rajond, District Katihal.
4. Satish Kumar, son of Sube Singh resident of village Jakhauli, Police Station Sadar Kaithal, District Kaithal.
5. Baru Ram son of Musadi Ram, resident of vilage Jakhauli, Police Sadar Kaithal, District Kaithal.

V.

State of Haryana

2. Criminal Appeal No.479 -DB of 2010

1. Mandeep son of Dhoop Singh, residen tof village Bhambhora, Polcie Staton Barwala, District Hissar, Haryana.
2. Gurdev Singh son of Rattan Singh resident of village Jakhauli, Police Station Sadar Kaithal, District kaithal.
3. Suresh Kumar son of Sajjan Kumar, resident of village Karora, Police Station Rajond, District Kaithal.
4. Rajinder Singh son of Nathu Ram, resident of village Karora, Police Station Rajond, District Katihal.
5. Satish Kumar, son of Sube Singh resident of village Jakhauli, Police Station Sadar Kaithal, District Kaithal.
6. Baru Ram son of Musadi Ram, resident of vilage Jakhauli, Police Sadar Kaithal, District Kaithal.
7. Ganga Raj son of Tara Chand, resident of village Karora, Police Station Rajond, District Kaithal, Haryana

V.

State of Haryana

3. Criminal Revision No.2173 of 2010C

Chanderpati widow of late Shri Satbir Singh, resident of \ village and
Post Office Karora, District Karnal.

V.

1. State of Haryana, through Advocate General.
2. Mandeep son of Dhoop Singh, resident of village
Bhambhora, Police Station Barwala, District Hissar, Haryana.
3. Gurdev Singh son of Rattan Singh resident of village Jakhauli,
Police Station Sadar Kaithal, District kaithal.
4. Suresh Kumar son of Sajjan Kumar, resident of village
Karora, Police Station Rajond, District Kaithal.
5. Rajinder Singh son of Nathu Ram, resident of village
Karora, Police Station Rajond, District Katihal.
6. Satish Kumar, son of Sube Singh resident of village
Jakhauli, Police Station Sadar Kaithal, District Kaithal.
7. Baru Ram son of Musadi Ram, resident of vilage Jakhauli, Police
Sadar Kaithal, District Kaithal.
8. Ganga Raj son of Tara Chand, resident of village Karora, Police
Station Rajond, District Kaithal, Haryana

CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr.S.S.Randhawa, Additional Advocate General, Haryana.
Mr.R.S.Cheema, Senior Advocate with Ms.Tarannum
Cheema, Advocate, for respondents No.1 to 3 in Murder ref.
No.2 of 2010 for appellants No.1 to 4 and 7 in CrI. A.
No.479-DB of 2010 and for respondents No.2 to 5 and 8 in
Cl.Revn. No. 2173 of 2010.

Mr.Vinod Ghai, Advocate for respondents No.4,5 in Murder
Ref. No.2 of 2010, for appellant No.5 and 6 in CrI.A.

No.479-DB of 2010 and for respondents No.6 and 7 in
Crl.Revn. No.2173 of 2010.

Mr.R.S.Bains, Advocate for petitioner in Criminal Revision
No.2173 of 2010 and the complainant in Criminal
Appeal No.479-DB of 2010.

M.Jeyapaul,J.

This order shall dispose of Murder reference No.2 of
2010, Criminal Appeal No.479-DB of 2010 and Criminal Revision
No.2173 of 2010 as the facts and law involved in the aforesaid cases
are similar and they also arise from the one and same occurrence.

2. The first accused Mandeep in Sessions case No.29/09
on the file of Additional Sessions Judge, Karnal was convicted for the
offence under Section 364 of the Indian Penal Code and was
sentenced to undergo seven years rigorous imprisonment and also to
pay a fine of Rs.5000/-; in default to undergo a further period of one
year rigorous imprisonment. He was also convicted for the offence
under Section 120-B of the Indian Penal Code and was sentenced to
undergo three years rigorous imprisonment and to pay a fine of
Rs.1000/-; in default to undergo a further period of six months
rigorous imprisonment. Second accused Gurdev Singh, third
accused Suresh Kumar and fourth accused Rajinder Singh, fifth
accused Satish Kumar and sixth accused Baru Ram in the same
Sessions case were convicted under Section 302 of the Indian Penal
Code and were awarded death sentence each. They were also
convicted for the offence under Section 364 IPC and were sentenced
to undergo seven years rigorous imprisonment each and to pay a fine

of Rs.5000/- each and in default to undergo a further period of one year rigorous imprisonment each. They were also convicted for the offence under Section 120-B of the Indian Penal Code and were sentenced to undergo three years rigorous imprisonment each and to pay a fine of Rs.5000/- each and in default to undergo a further period of six months rigorous imprisonment each. Accused Ganga Raj in Sessions Case No.27 of 2009 originated from the very same FIR but based on the supplementary charge sheet filed in that case was convicted for the offence under Section 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo a further period of two years rigorous imprisonment. He was also directed to compensate mother of the deceased Manoj by name Chanderpati to the tune of Rs.1,00,000/- under Section 357 of the Code of Criminal Procedure. He was convicted for the offence under Section 364 of the Indian Penal Code and was sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo one year rigorous imprisonment. He was also convicted for the offence under Section 120-B of the Indian Penal Code and was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo six months rigorous imprisonment.

3. Having imposed death sentence on the accused 2 to 6 in Sessions Case No.26 of 2009, the Additional Sessions Judge, Karnal has referred the matter for confirmation. The accused 1 to 6 in Sessions Case No.26 of 2009 and the accused Ganga Raj in

Sessions Case No.27 of 2009 jointly filed Criminal Appeal No.479 of 2010 challenging the aforesaid order of conviction and sentence recorded.

4. The revision has been preferred by the witness Chanderpati, the complainant in the case praying for enhancement of the life imprisonment imposed on the 7th accused Ganga Raj to death sentence for the offence under Section 302 IPC. She has also prayed for enhancement of compensation of Rs. One lac directed to be paid by him to a reasonably higher amount. A prayer for compensation also has been made against respondents No.2 to 7.

Prosecution version

5. (a) PW25 Chander Pati was the mother. PW26 Seema was the sister and PW2 Narender Singh was the cousin brother of the deceased Manoj. Manoj and Babli left the village on 6.4.2007 and got married on 7.4.2007. Om Pati the mother of Babli enraged by the act of Manoj lodged a complaint against him and his family members with Rajound Police Station. PW 24 SI Jagbir Singh on the basis of the complaint lodged by Om Pati registered FIR No.24 on 26.4.2007 as against Manoj and his family members.

(b) On 12.6.2007 Manoj filed application for anticipatory bail under Section 438 Cr.P.C. in the Court of Sessions. The Sessions Court directed Babli and Manoj to join in the process of investigation on or before 16.6.2007. On 15.6.2007 Babli and Manoj were produced by their Counsel Mr. Bhardwaj before the Investigating Officer. Babli's statement was recorded under Section 161 Cr.P.C. Manoj also joined in the process of investigation. Babli

was produced before the Court of the Addl.Chief Judicial Magistrate and her statement under Section 164 Cr.P.C. was recorded by PW37 Mr. V.P.Sirohi, Addl.Chief Judicial Magistrate.

(c) In the said statement recorded under Section 164 Cr.P.C. Babli has stated that she having married Manoj started living with him at Chandigarh on her own volition. No body had exerted pressure on her. The family members of Manoj were not involved in her affairs. After the statement of Babli was recorded, PW24 SI Jagbir Singh was directed to set them at liberty. Babli and Manoj escorted by HC Dharampal and Constable Satbir boarded in a Haryana Roadway Bus bound for Chandigarh. As some foul play was suspected by PW24 SI Jagbir, he gave a message to HC Dharampal to get down from the bus at some place. PW24 followed them in a zipsy vehicle. The police party along with Babli and Manoj met him at village Malikpur. As per the wish of the couple PW24 SI Jagbir Singh dropped them at Pipli Bus Stand after obtaining their written consent statements Ex.P49 and P50 wherein they expressed their desire to go all alone without any escort facility.

(d) PW25 Chander Pati received a telephonic message from Manoj at about 4 pm on 15.6.2007 that he and his wife had reached Pipli but the relatives and family members of Babli namely her maternal uncle, her maternal uncle's sons, her father's sister's husband and her father's sister's sons were chasing from Kaithal and had reached Pipli. Manoj also informed PW25 Chander Pati that Babli's maternal uncle's sons and her father's sister's sons were also in the same bus. Therefore, police officials alighted them from the

bus and left them alone at Pipli. He also conveyed that he along with his wife was proceeding to Delhi. PW25 Chander Pati conveyed this message to PW2 Narender Singh the cousin brother of Manoj. PW25 made an attempt to get in touch with Manoj thereafter but the mobile phone was found switched off.

(e) On 15.6.2007 at about 5 pm PW12 HC Ramesh Chand who was on duty in Butana Police Station received a telephonic message that a girl and a boy were forcibly got down from the bus by about 16 persons and were taken in a scorpio vehicle towards Karnal. Upon recording such a message in the log book, he conveyed a VT message to the control room Karnal. The original log book maintained by PW12 was marked as Ex.P24.

(f) PW 25 Chander Pati tried to contact her son Manoj on 16.6.2007 and 17.6.2007 but the mobile phone of her son was found switched off. She and her family members searched for Manoj but they could not locate him. Thereafter she proceeded to Butana Police Station and lodged a complaint Ex.P52 on 20.6.2007 alleging abduction of her son. PW31 ASI Dharam Pal registered a formal FIR Ex.P62 based on the complaint Ex.P52.

(g) PW 31 ASI Dharam Pal proceeded along with HC Surinder Singh and PW15 Constable Shamsheer Singh to the toll plaza Arjeri where PW1 Kuldip Singh, the contractor of the toll plaza along with five persons met him. The spot was inspected by PW31 and at the instance of PW1 Kuldip Singh rough site plan Ex.P64 was prepared. PW1 produced one pair of shoes MO1 and MO2 and the same was recovered vide memo Ex.P2. PW2 Narender Singh

produced a joint photograph of Manoj and Babli vide memo Ex.P3.

(h) PW33 SI Subhash proceeded to the Toll Plaza where Dharampal along with other police team was present. He conducted raid of the house of A-3 Suresh Kumar and A-4 Rajender Singh but those accused could not be traced. A secret information was received regarding the mobile phone bearing sim card No.94660-97435 possessed by A-4 Rajinder Singh and the mobile phone bearing sim card No.94161-11565 possessed by the second accused Gurdev Singh.

(i) On 21.6.2007 PW18 EHC Nahar Singh collected the call details of mobile bearing sim card No.94161-11565 and mobile phone bearing sim card No.94660-97435 from the computer incharge of S.P. Office Karnal. The call details of the mobile possessed by Rajinder Singh was marked as Ex.P66 and the call details of mobile possessed by Gurdev Singh was marked as ExP67.

(j) PW13 Krishna, Chowkidar of village Chota, spotted the dead body of a male while he was going on a stroll on 23.6.2007. Hands, neck and feet of the dead body were found tied with a rope. He gave a statement Ex.P26 to PW27 HC Mahender Singh attached to Police Post Kheri Chowk, Police Station Narnaud. The dead body was found in the canal which was passing through the revenue estate of village Sotha. PW3 Karamvir, Chowkidar of village Sandlana, District Hisar spotted a mutilated dead body of a female in the minor irrigation running in the village Sandlana. Her legs were tied with a rope. He gave a statement Ex.P5 to PW28 ASI Rai Singh who recorded the same. PW28 conducted inquest under Section

174 Cr.P.C. of the dead body of the aforesaid female and prepared inquest report Ex.P34.

(k) On 24.6.2007 PW16 Dr.Rajat Pankaj, Demonstrator in the department of Forensic Medicines PGI M.S.Rohtak conducted post mortem examination on the dead body of an unknown female aged 25 years. The dead body was wrapped in a white gunny nag. The body was emitting foul smell. Maggots of size 5-1” cm were found crawling all over the body. Both the legs of the body were tied by means of two ropes with a fixed knot. All the neck structure was missing. Fingers of right hand and right foot were missing. On the same day, he also conducted post mortem examination on the dead body of an unknown male person aged 26 years. The dead body was wrapped in a gunny bag. The ears, eyes and lips were deformed. Face was not identifiable. Penis and scrotum were distorted. A plastic rope was tied around the neck and the lower of which was tied around both legs and both knee joints by a fixed knot. On dissection the right crone of hyoid bone was found fractured. The doctor opined that the death would have been caused by strangulation. The time of death and post mortem examination was between one to three weeks.

(l) PW29 SI Vinod Kumar based on the post mortem report given by PW16 Dr.Rajat Pankaj registered a case in crime No.1551 dated 26.6.2007 under Section 302 read with Section 201 of the Indian Penal Code (Ex.P38).

(m) PW2 Narender Singh was informed of the scorio bearing HR -05-M 4748 and the name of the driver as Mandeep (A-1)

by his friend Raja. On 26.6.2007 based on the secret information PW33 proceeded along with PW2 and arrested Mandeep Singh.

(n) On 27.6.2007 Mandeep suffered a disclosure statement Ex.P69 to PW33 ASI Subhash. The toll plaza Arjeri where the abduction was committed was demarcated. The place where Babli and Manoj were dropped also was demarcated. Mandeep Singh was thereafter produced before the Additional Chief Judicial Magistrate for remand and he was taken on police custody thereafter. On the basis of his fresh disclosure statement, the scorpio MO18 was recovered vide memo Ex.P72 from its owner Rakesh.

(o) On 1.7.2007 PW25 Chanderpal and PW26 Seema proceeded to Narnaud Police Station along with SI Jaspal and identified the articles/clothes recovered from the dead body of female member as that of Babli and dresses recovered from the male member as that of her son Manoj. PW34 Inspector Amar Dass took up the case for further investigation. He proceeded along with the accused Mandeep in a private vehicle. On his identification accused Rajinder, accused Suresh and accused Gurdev were arrested. They individually suffered disclosure statements.

(p) The place of abduction was demarcated at their instance based on their disclosure statements. On the basis of the information furnished by the accused Gurdev Singh, accused Satish was arrested. On the basis of the disclosure statement given by the accused Satish, the place where Manoj and Babli thrown in the canal was demarcated. On the basis of the disclosure statement of accused Rajinder Singh, the place where indosulpha was

administered by Babli was demarcated. The container of Indosulpha was also recovered on the basis of the disclosure statement given by accused Suresh Kumar. On the basis of the disclosure statement given by accused Gurdev, the purse which was taken out from the pocket of Manoj was recovered. The maruti car driven by accused Baru Ram was intercepted. On the basis of the signal given by the accused Suresh, Babu Ram was arrested. He also suffered disclosure statement Ex.P79. The maruti car 800 bearing registration No.HR-09-6500 was taken into possession vide memo Ex.P80.

(q) On 7.7.2007 PW34 Inspector Amar Dass with the help of vacuum cleaner recovered in the presence of PW6 Gulab Singh, Sarpanch and PW38 Richpal Singh, motor mechanic, Haryana Roadways Karnal burnt pieces of photo, hairs and hairclip from the scorpio vehicle and a batton and a ghoogru made of silver was from the maruti car. Both the vehicles were mechanically examined by PW38 Richpal Singh.

(r) PW35 Inspector Surinder Singh inspected Maruti car bearing registration No.HR-09-6500 and found that there was a blood stain on the right handle door of the rear seat. The portion of the blood stained handle was cut off and was rcovered.

(s) PW39 SI Jaspal Singh laid final report as against the accused 1 to7 in AC No.26 of 2009 on 21.9.2007. PW40 SI Jagpal Singh perused the case diary and laid final report as against the , accused Ganga Ram in Sessions case No.27 of 2009.

6. Statements under Section 313 Cr.P.C.

(a) A-1 Mandeep Singh

He was innocent. He was falsely implicated in this case.

(b) A-2 Gurdev Singh and A-5 Satish Kumar

They were innocent. A false case was foisted on them. They had no concern with the deceased Babli and his family. A panchayat was convened in connection with the compromise of the case pertaining to FIR No.54 registered in Rajond Police Station at the behest of Om Pati, the mother of Babli. Chanderpati and his family members were accused in that case. Both of them were appointed as arbitrators on behalf of the panchayat but the matter was not compromised. Therefore, PW25 Chanderpati who was the complainant in this case had a grudge against them. In view of the above they were involved in this case.

(c) A-3 Suresh Kumar

He was innocent. A false case was foisted on him. His mother Om Pati lodged the FIR No.54 in Rajond Police Station under Sections 363/364 of the Indian Penal Code against the complainant PW25 Chandepati and his family members. A-6 Baru Ram and A-7 Ganga Raj were pursuing the matter for the arrest of the accused in the said case. His sister was not married to Manoj. As a pressure tactic the present case was filed against him also.

(d) A-4 Rajinder Singh

He was innocent. A false case was foisted on him. A-6 Baru Ram, A-7 Ganga Raj and himself were pursuing the case relating to FIR 54 in Rajond Police Station. Hence he was involved in the present case by PW25 Chanderpati.

(e) A-6 Baru Ram

He was innocent. A false case was foisted on him. Om Pati got registered FIR No.54 in Rajond Police Station under Sections 363 and 364 of the Indian Penal Code against the complainant and her family. He along with Ganga Ram A-7 was pursuing the matter for the arrest of the accused in the said case. The complainant and her family members were against him. He was the owner of the car bearing No.HR09-A-6500 and the same was used for taxi purpose by his driver. He did not know driving. He was falsely implicated in this case.

(f) A-7 Ganga Raj

He was innocent. He was involved by the complainant Chanderpatti in the present case at the behest of Jasmer Singh resident of Kultara. He along with his cousin got registered a First Information Report in Sadar Police Station, Kaithal against Satbir Singh. He was witness in that case. Jasmer Singh was pursuing the said case on behalf of Satbir. Chanderpatti and Jasmer have good relationship with each other. He also contested election against PW2 Narender Singh who lodged a complaint against him pertaining to the election matter. He was also pursuing the FIR No.54 of 2007 registered against PW25 Chanderpatti and her family. He was not related to Suresh and Rajinder of village Karora. He was also not related to Baru Ram, Satish, Gurdev Singh etc. PW25 Chanderpatti got him involved in this case because of enmity with him.

Defence evidence

7. (a) DW1 Krishan Kumar, Halqa Patwari of village Karora

having brought the summoned record of village Karora, deposed that as per the record maintained by him, the lands of Suresh, Sajjan and Rajinder are not situated between Canal and Road leading from Karora to Rehra. The road leading from village Karora to Rehra was situated from North to South. As per girdawari the land was in self occupation of the owners.

(b) DW2 Bharat Bhushan, Halwa Patwari of Rehra having brought the summoned record of village Raura has deposed that as per the record maintained by him, the land of Zebra was not situated on the road leading from Rehra to Karora. The road leading from village Rehra to Karora is situated from North to South. As per girdawari, the land was in the self occupation of the owners.

Submission on the side of the appellants :

8. (a) Learned Senior Counsel Shri R.S.Cheema, appearing for the appellants 1 to 4 and 7 and learned Counsel Mr. Vinod Ghai appearing for appellants No.5 and 6 would submit that the Sessions Judge has unfortunately mis-appreciated the evidence on record and rendered conviction when there was no legal evidence available on record. There was threat for the deceased Manoj and Babli from both the families but the investigation has been misdirected towards the family members of Babli. The unnatural conduct of PW25 Chanderpati the complainant in this case would go to show that the calender for the prosecution case has been prepared virtually on 20.6.2007, retrospectively from 15.6.2007. No mother would have waited for five long days to lodge a complaint when there was serious threat for the life of Manoj and Babli. Who actually committed

abduction and murder has not been established by the prosecution beyond reasonable doubt.

(b)The trial Court was completely swayed by the vague reference to the family members and relatives made by PW25 both in her statement Ex.P52 and also in her deposition before the trial Court. Further she has come out with a self contradictory version as to the number of persons involved in the crime. Though she had implicated only three persons in the statement she chose to give evidence as against all the seven accused. The first accused Mandeep figured only during the course of investigation. The deposition of PW 25 that she was aware of the involvement of the first accused also even at the time when she gave complaint Ex.P52 does not stand to reason. STD booth is not armed with mobile connection but PW25 Chanderpati would state that her son Manoj contacted her on 15.6.2007 through a mobile in the STD booth. The proprietor of the STD booth namely Vijay was never cited as a witness nor examined before the Court. The call particulars of the mobile alleged to have been used from the STD booth and the mobile allegedly used by PW25 Chanderpati were not recovered. PW24 SI Satbir Singh has come out with a different story with respect to the threat perceived during the course of journey undertaken by Manoj and Babli. In other words PW24 would state that Manoj and Babli had to be alighted from the bus before reaching Pipli. But PW25 has deposed that Manoj and Babli had to get down from the bus after informing the security guard on noticing the relatives of Babli boarded in the very same bus from Pipli to

Chandigarh.

(c) The VT log book Ex.P24 cannot be placed reliance upon as it was silent about the material particulars of the occurrence. The fact that no FIR was registered based on the VT log book would go to show that VT log book was concocted for the purpose of this case. The material witness PW1 Kuldeep Singh had turned hostile to the case of the prosecution. Therefore, the theory of abduction attempted to be projected through PW1 Kuldeep Singh did not take off. No test identification parade was conducted and as a result of which there had been a wide gap in the links in the circumstances spoken to by the witnesses. Unfortunately the driver and conductor of the bus from where Manoj and Babli were abducted were not even examined by the Investigating agency. No passenger travelling in the bus could also be deducted by the investigating agency. As per the evidence of PW31 ASI Dharampal about five persons were found at toll plaza at which place the abduction took place. PW31 had not chosen to record the statement of those five persons under Section 161 Cr.P.C. found at toll plaza.

(d)The recovery of shoes does not advance the case of the prosecution inasmuch as lakhs of people used to wear such shoes. Surprisingly PW25 who was not acquainted with English language had spoken about phase brand shoes worn by Manoj and recovered from toll plaza at the instance of PW1. The role of the first accused surfaced only through the evidence of PW2 Narender Singh. He deposed that he got information about the number of the scorpio vehicle and the name of the driver only from his friend Raja but Raja

was not examined before the Court. The prosecution failed to established the identity of the dead bodies and the cause of death. As far as the personal affects of the deceased, every witness has come out with a different version. No DNA test report was filed before the Court to squarely fix the dead bodies as that of Manoj and Babli. The theory of the prosecution that Babli was poisoned to death was not supported by the medical evidence. The ID caller proof and the call details produced were not established in accordance with the procedure contemplated under Section 65(B)) of the Evidence Act. The learned Senior Counsel also would submit that the case does not squarely falls under the rarest of rare cases and, therefore, the death penalty awarded by the trial Court warrants interference. Therefore, it is his submission that the appellants are entitled to acquittal.

Submission on the side of the State as well as the petitioner in the criminal revision:

9. Learned Additional Advocate General appearing for the State and Mr.R.S.Bains, Advocate appearing for the petitioner in Criminal Revision No.2173 of 2010 would vehemently submit that the prosecution has established beyond reasonable doubt that the accused have committed the offences of criminal conspiracy, abduction and murder by leading cogent, reliable and trust-worthy circumstantial evidence. The VT message received and the recovery of shoes under the recovery statement would go to establish that there was an abduction at the toll plaza which was being constructed by PW1. The witnesses also have spoken to the fact that the

unfortunate victim was witch-hunted by the family members of Babli. The recovery of scorio and the maruti car along with the personal effects of the deceased at the instance of the accused would also go show that the abduction was followed by cruel murder. It is also submitted that the admission portion found in the recovery statements could also be banked upon by the Court for the purpose of clinching the relationship of the parties and the scene of crime. They have also submitted before the Court that the sentence of death awarded by the trial Court will have to be honoured as it was a hollow honour killing which shocked the conscious of the entire society.

Discussion

Motive

10. (a) It is the case of the prosecution that the family members and relatives of Babli did not cherish the affairs between Manoj and Babli which ultimately culminated in their marriage and as a result of which Manoj and Babli had been done to death by the family members and relatives of Babli. During the course of proceedings under Section 313 Cr.P.C., accused Gurdev Singh, Suresh, Rajinder Singh and Baru Ram, have come out with a version that there was an enmity with the family members of Manoj as they prosecuted the complaint lodged by Om Pati, the mother of Babli alleging abduction as against Manoj and her family members. PW24 SI Jagbir Singh attached to Rajond Police Station had registered a case vide FIR No.54 dated 26.4.2007 for abduction on the basis of the complaint given by Om Pati, the mother of Babli. In fact PW24 recorded the

statement of Babli under Section 161 Cr.P.C. on 15.6.2007 in connection with FIR No.54 dated 26.4.2007 lodged by her mother when she appeared through her Counsel responding to the notice under Section 160 Cr.P.C. issued by him. Babli also was produced before Shri V.P.Sirohi, Additional Chief Judicial Magistrate for recording her statement under Section 164 Cr.P.C. PW2 Narender Singh would admit that Manoj kidnapped Babli from the village on 6.4.2007. PW25 Chanderpati and PW26 Seema and their other relatives had left their village immediately after the registration of the said case as against them and Manoj.

(b) The bail order Ex.P20 passed by the Sessions Judge would indicate that a submission was made before him during the course of disposal of the bail application filed by Manoj that there was a threat to the life of the petitioner and Babli at the hands of their relatives who were against their marriage. There was no other indication that the family members of Manoj was dead against the marriage of Manoj with Babli. In fact PW25 has deposed before the Court that she had purchased some artificial ornaments for Babli at Chandigarh and presented to her. Those articles worn by Babli also led to the identification of the dead body of Babli. If at all the family members of Manoj had seriously objected to the marriage of Manoj with Babli, they would not have gone under ground the moment an FIR was registered as against them and Manoj for abduction. Further Manoj had been keeping his mother informed of his movements even on the fateful day. If his family members were against the marriage, Manoj would not have the courage to inform his

family members of his movements on the fateful day. In view of the above, we find no merit in the submission of the learned Senior Counsel for the appellants that there was apprehension of threat for the life of Manoj and Babli even from the family members of Manoj. The above facts and circumstances would go to establish that the relatives and family members of Babli had harboured a motive as they had a grouse over the affairs of Manoj with Babli

Identification of dead bodies

11. (i) PW3 Karamvir Chowkidar of village Sandlana spotted the dead body of a female in the area of village Sandlana on 23.6.2007 at 4 pm. The legs of the female dead body were tied with a rope. Water was not flowing in the minor canal but there was stagnation of water therein. PW13 Krishan Chowkidar of village Sotta spotted a dead body of a male at about 3 pm on the said day. Of Course PW13 partially turned hostile. He did not support the case of prosecution that the hands, neck and feet of the male dead body were completely tied with the rope but the fact remains that he spotted a dead body in the minor canal. At any rate the photograph of the male dead body establishes that the hands, neck and feet of the male dead body was completely tied.

(ii) PW28 ASI Rai Singh having recorded the statement of PW23 Karamvir Chowkidar inspected the female dead body, prepared site plan and conducted inquest. In a similar fashion PW27 HC Mohinder Singh having recorded the statement of PW13 Krishna Chowkidar of Sotta transported the dead body to PGI Rohtak and thereafter he conducted inquest and prepared inquest report on the

male dead body.

(iii) PW16 Dr. Rajat Pankaj conducted post mortem examination on both the dead bodies on 24.6.2007. He found maggots crawling on both the dead bodies. Both the dead bodies were found to be tied with rope separately. Both the dead bodies were found highly decomposed. The female dead body was of a young girl aged 17/21 years and the male dead body was of young man aged 26 years. He could not give a definite opinion as to the cause of death of female. He having noted ligature marks around the neck of the male dead body, opined that the cause of death of male was due to strangulation by rope. Of Course he has deposed that both the dead bodies could not be identified. It is to be noted that the age of Babli and Manoj referred to in the Court proceeding in connection with the abduction case matches with the age of the deceased mentioned in the post mortem report.

(iv) PW29 Inspector Vinod attached to Narnaund Police Station registered a case in FIR No.125 dated 20.6.2007 under Sections 302 and 201 of the Indian Penal Code. He also prepared rough side plan Ex.P59. The personal affects found on the dead bodies were carefully recovered there by the Moharrir Head Constable attached to Karnal Police Station.

(vi) PW25 and PW26 proceeded to Narnaud Police Station along with PW29 SI Jaspal Singh attached to CIA Staff Karnal and identified the bangle and clothes of Babli recovered from the female dead body and the pink colour shirt of Manoj recovered from the male dead body. Those personal affects had been

preserved by Narnaund Police Station in connection with the case registered by them in FIR No.125 dated 20.6.2007 under Sections 302 and 201 of the Indian Penal Code.

(vii) The personal affects of the deceased persons could be very well identified by PW25 and PW26 as they were close relatives of Manoj. PW25 has in fact deposed before the Court that she purchased some artificial ornaments at Chandigarh and presented them to Babli. The shirt of the deceased Babli which was of Pink colour was rightly spoken to by PW25. The FSL report Ex.P35 also confirms the fact that the colour of the shirt recovered from the dead body of female was of saffron colour. At any rate some minor discrepancy has arisen as to the colour of the dress found on the dead bodies. We find that such discrepancy has arisen due to the long travel of the dead bodies in the flowing water. Therefore, the defence cannot be permitted to blow out of proportion such a minor discrepancy with respect to the colour of the dress found on the dead body.

(viii) Before the post mortem examination was conducted on both the dead bodies, PW5 Satish Kumar photographer was employed by Narnaund Police Station, he proceeded to the place where the dead bodies were lying and took the photographs of dead bodies. Those photographs of the dead bodies with negative thereof were marked as Ex.P12 to Ex.P16 and negative thereof were marked as Ex.P7 to Ex.P11. PW25 the mother of Manoj was confronted with those five photographs Ex.P12 to Ex.P16 to identify the dead bodies. She had clearly identified the dead bodies as reflected in those

photographs as that of Manoj and Babli. Manoj was found in two photographs and Babli was found in three photographs as per her version. Though the occurrence had taken place on 15.6.2007 it appears that the dead bodies were thrown in a canal and as a result of which it had floated in the water for about seven days. We also scrutinized the photographs Ex.P12 to Ex.P16. We are of the opinion that the close relatives could very well identify those dead bodies with the dresses and personal affects thereof, as the dead bodies were not so putrefied so as to completely rule out the identification of those dead bodies. In view of the above, the lack of DNA test does not go to the root of the matter and the submission of the learned Counsel in this behalf, being devoid of merit, stands rejected. The identification of those dead bodies as that of Manoj and Babli stood established.

Cause of death:

12. (a) The post mortem doctor PW16 Dr. Rajat Pankaj has given a definite opinion as far as the male dead body was concerned that the person had died due to strangulation. He has noted down the fact that there was plastic rope tied around the neck in two piles and the rope was used for tying both the legs and knees jointly. The hyoid bone was also found fractured with infiltration of blood in the fracture segments. He was of the definite opinion that the male had died due to strangulation by ligature. There is no reason to reject such a medical testimony. Therefore, we have no hesitation to hold that Manoj had been done to death by strangulation with the help of ropes.

(b) As rightly pointed out by the learned Senior Counsel appearing for the appellants, PW16 could not give any definite opinion as to the cause of death of the female. In fact the viscera has been sent for chemical examination but the viscera report Ex.P112 submitted by the FSL would disclose that there was no common poison detected in the viscera sent for examination. The occurrence had taken place on 15.6.2007 but the dead bodies with putrefaction were detected only on 23.6.2007. The dead bodies had travelled floating in the water for such a long time. The recovery of container of indosulphas at the instance of accused Suresh Kumar made by the Investigating Officer would indicate that Babli had been done to death by poisoning. There is every possibility of washing off the poisonous substance administered to Babli due to long floating of the dead bodies in the canal. Though the medical opinion does not take us to the definite conclusion that Babli had died due to poisoning, we have no hesitation to conclude based on the disclosure statement suffered by the accused Sursh Kumar and the recovery of the container with remainder of poisonous substance that Babli had been done to death only by poisoning. Thus we find that the prosecution has established that Manoj and Babli had died due to homicidal violence.

Abduction and murder

Potential threat to life of Babli and Manoj:

13. (a) There is no dispute to the fact that Babli joined Manoj as early as on 6.4.2007 and left the village Karora. A case in FIR No.54 dated 26.4.2007 was registered by PW24 SI Jagbir Singh as

against the deceased Manoj, PW25 Chanderpati and PW26 Seema and two others, on the basis of the complaint given by Om Pati, the mother of Babli on 26.4.2007. The testimony of PW24 would go to establish that Manoj moved an application praying for anticipatory bail invoking the provisions under Section 438 Cr.P.C. in the Sessions Court, Kaithal on 12.6.2007. Ex.P20 is the copy of the order dated 12.6.2007 passed by the Sessions Judge, Kaithal. In the said order itself, the Sessions Judge had recorded the submission made on behalf of Manoj that there was a threat to the life of Manoj and Babli at the hands of their relatives. The Sessions Judge also directed Manoj as well as Babli to join the investigation. Babli and Manoj had appeared before PW24 on 15.6.2007. PW24 examined her under Section 161 Cr.P.C. She was also produced before the Ilaqa Magistrate who recorded the Statement of Babli under Section 164 Cr.P.C. PW22 HC Ram Mehar has spoken to the fact that persons from village Karora gathered outside the Court. They had a talk with Babli. Therefore, Babli was asked to sit inside the Court along with police officials during the course of the proceedings conducted by the learned Ilaqa Magistrate under Section 164 Cr.P.C.

(b) PW24 has disclosed that some security police officials accompanied Babli and Manoj, for Pehwa in an official jeep. After Babli and Manoj boarded the Haryana Roadways bus bound for Chandigarh, PW24 suspected some foul play. In fact PW22 had noticed a Maruti car bearing registration No.HR08-G 3689 reaming in Pehwa Bus Stand. The vehicle was checked and detained. The accused Ganga Raj appeared and made a request to release the

vehicle, but it was declined but thereafter at the intervention of PW24, the car was released. PW24 would further disclose that the police party who accompanied Babli and Manoj got down at Malikpur. They were thereafter taken in a police jeep and were dropped at Pipli bus stand on their written statements requests Ex.P49 and Ex.P50 that they did not require police security.

(c) The evidence of PW25 is also relevant in this context. PW25 received a call at about 4 pm from Manoj informing her that Manoj and Babli had already reached Pipli. Manoj had specifically informed PW25 that the relatives and family members of Babli were chasing them from Kaithal and they in fact reached Pipli. PW25 has also come out with important piece of evidence that the maternal uncle, maternal uncle's sons, father's brother and his son were chasing Manoj and Babli. There is no dispute the fact that accused Baru Ram was the maternal uncle, accused Rajinder Singh was her paternal uncle, accused Gurdev Singh was the son of her maternal uncle and Suresh Kumar was her elder brother. Of Course the prosecution could not establish that Satish Kumar was maternal uncle's son of Babli or her close relative. The above material would go to establish that Manoj and Babli were chased by the above family member and close relatives of Babli

(d) It is true that in the bail order passed by the learned Sessions Judge, the submission made by the learned Counsel appearing for Manoj to the effect that Manoj and Babli were under threat from their relatives was recorded. The fact that Manoj had kept in touch with his mother and had been passing on his

movements on the day of occurrence and that PW25 had come down all the way from her village to Chandigarh and purchased and gifted some artificial ornaments to Babli would go to show that the family of Manoj was not dead against the marriage of Manoj with Babli. In view of the above discussion, we hold that Manoj and Babli who had joined as husband and wife against the wishes of family members of Babli were under constant threat to their life by the family members and relatives of Babli.

V.T.Message

14. (a) PW12 HC Ramesh Chand attached to the wireless Cell of Police Station, Bhutana on 15.6.2007 got a message conveyed by MHC on 15.6.2007 that a girl and a boy were forcibly got down from a bus by about 15/16 persons and were taken in a scorpio vehicle towards Karnal. Upon receipt of such a message, he recorded the same in the log book at 5 pm on the said day. The log book was exhibited as Ex.P24 before the trial Court. If such a VT message had been immediately acted upon by the police, the occurrence would have been thwarted. To our surprise no step was taken by the Bhutana Police Station based on such a VT message with respect to abduction. We do not approve such an inaction on the part of the police force.

(b) It is true that VT Message did not contain the particulars regarding the name of the vehicle, the number of the vehicle, and the place from where the girl and the boy were forcibly taken down and abducted. The time and place of abduction was not specifically given in the VT Message. That was the reason why we

find that no FIR was registered based on such a sketchy information received by Bhutana Police Station on 15.6.2007. Just because MHC who received the message was not examined before the Court, the VT message recorded in the log book Ex.P24 by PW12 cannot be ignored by this Court. We do not entrained any suspicion as regard the VT Message received by Bhutana Police station on 15.6.2007. Of course there was some delay on the part of the investigating agency in recording this VT Message. In fact the log book Ex.P24 was recovered under memo Ex.P25 only on 25.9.2007 by PW25 who took up the case for further investigation. If at all the VT message was fabricated arbitrarily by the police officials as contended , the VT Message would have been fabricated with meticulous particulars regarding the place and time of abduction and the place from where the abduction took place. The innocuous VT message would go to show that there was no concoction of the VT message Ex.P24. The VT message would prove the fact that there was an abduction of a girl and a boy at about 5 pm on 15.6.2007.

(c) It is true that PW1 Kuldeep who allegedly witnessed the abduction at toll plaza resiled from his original verison before police but the prosecution could establish through PW25 that a memo Ex.P2 was prepared for the recovery of the sport shoes from the custody of PW1.The other aspects referred to in the recovery memo would clinchingly establish that at about 5/5.30 pm near the Raipur Rehi in front of the new toll plaza under construction, a young boy and a girl who was forcibly alighted the bus coming from the Pipili and are thereafter boarded in a Scorpio vehicle and were taken

away towards Karnal side. The recovery memo also supplies a potential clue that the VT message received and recorded by PW12 is not a fabricated one as projected by the learned senior counsel appearing for the appellants. It is true that PW1 Kuldeep who allegedly witnessed the abduction at toll plaza resiled from his original version before police but the prosecution could establish through PW25 that a memo Ex.P2 was prepared for the recovery of the sport shoes from the custody of PW1. The other aspects referred to in the recovery memo would clinchingly establish that at about 5/5.30 pm near the Raipur Rehi in front of the new toll plaza under construction, a young boy and a girl who were forcibly alighted from the bus coming from Pipili were boarded in a Scorpio vehicle and were taken away towards Karnal side. The recovery memo also supplies a potential clue that the VT message received and recorded by PW12 is not a fabricated one as projected by the learned senior counsel appearing for the appellant.

recovery of shoes

15. (a) PW1 a star witness in this case has turned hostile to the version of the prosecution. We, in fact, called for the record relating to the proceedings initiated by the Sessions Judge Kaithal as against PW1 Kuldeep. We found on perusal of the proceedings of the learned Sessions Judge that perjury proceedings initiated by him against PW1 Kuldeep is pending determination.

(b) PW1 has categorically admitted that he was the contractor of toll plaza which was being constructed near village Malik Majra on G.T.Road. He used to be at the toll plaza between 8

am and 6 pm daily. To our surprise he would depose that there was no occurrence in the evening on 15.6.2007, inspite of the fact that he had candidly admitted his signature in the recovery memo prepared by the Investigating officer to establish the recovery of shoes from him.

(c) PW25, the mother of Manoj has deposed before the trial Court that on 20.6.2007 she went along with PW2 Narender Singh and the police officials attached to Bhutana Police Station and witnessed the recovery of one pair of sport shoes, inscribed with a brand name 'phase'. She has in fact signed as a witness to the recovery memo Ex.P2. She had further deposed before the trial Court that it was only Kuldeep who produced one pair of sports shoes MO1 and MO2 belonging to her son Manoj. It is true that PW25 Chanderpati was not well conversant with English language. But it is not an abnormal thing for a person not well conversant with English language, to keep in mind certain English words. It is not surprising that she could specify the brand name of the sports shoes. Though PW1 Kuldeep turned hostile and refused to support the memo Ex.P2 prepared in his presence, the said memo Ex.P2 was established by the prosecution through PW25 Chanderpati who was one of the recovery witnesses along with PW1. Hence the recovery of shoes stood established by the prosecution.

Recovery of scorpio vehicle

16. (a) The fact remains that PW1 who turned hostile did not choose to furnish the particulars of the scorpio vehicle which transported the abductees Manoj and Babli. PW2 the cousin brother

of Manoj having come down from Panchkula on receipt of information from PW25 Chanderpati had started searching Manoj and Babli. He having verified from Bhutana Police Station that a VT message was received about the abduction of a girl and a boy near the toll plaza near Raipur Rohan by intercepting a bus approached PW2 Kuldeep on 18.6.2007 and showed the photograph of Manoj and Babli to him.

(b) It appears that Investigating officials were completely sleeping over the matter even when the abductors forced the family members of Manoj to plunge head long into the search of Manoj and Babli. No wonder PW2 received information from his friend Raja about the registration number of the scorpio vehicle and the name of the driver. The investigating officials had shamelessly come out with a version that it was only PW2 who gathered such a vital information about the scorpio vehicle number and name of the driver thereof passed on to him for the purpose of investigation. The police officials had not woken up from their deep slumber till the dead bodies were identified.

(c) In all fairness PW33 Inspector Subhash who got information with respect to the scorpio vehicle which transported the abductees and the driver who drove the said vehicle at that relevant point of time, should have further interrogated PW2 as to the source of information and subjected to interrogation the author of such information, provided to PW2 but unfortunately PW33 showed complacency after receipt of the name of the driver and the number of the scorpio vehicle from PW2. He had not shown any interest to

further investigate the matter by examining the author of such a vital information furnished to PW2. As the scorpio vehicle was recovered and the driver thereof was also arrested later on, we find that the non-examination of one Raja who allegedly furnished information to PW2, does not belie the version of the prosecution.

(d) Certain disclosures were made by the accused in this case with respect to the place of first phase of abduction, second phase of abduction and the places where the poison was administered to Babli and the dead bodies were thrown. As rightly pointed out by the learned Senior Counsel appearing for the appellants, such disclosure statements are squarely hit by Section 26 of the Indian Evidence Act, 1972. The disclosure statements are found to be confessions which are hit by the provision of Section 26 of the Indian Evidence Act, 1872. No confession made by any person whilst he was in the custody of the police officer unless it was made in the presence of a Magistrate, shall be proved as against such person. Of course Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26 of the said Act. As per the proviso found under Section 27 of the Evidence Act, the information which has led to the discovery of a material fact alone would be proved as against the accused who comes out with a confession.

(e) PW33 Inspector Subhash after collecting the information with respect to scorpio vehicle and the name of the driver namely A-1 Mandeep Singh arrested Mandeep Singh vide arrest memo Ex.P68. PW33 has recorded the disclosure statement Ex.P70 from the A-1 Mandeep on 28.6.2007. He has come out with a

revelation as to the location of the scorpio vehicle. On the basis of the disclosure statement made by A-1 Mandeep, the scorpio vehicle bearing registration No.HR-05-M-4748 was recovered from the house of Rakesh, resident of Kaithal. There is no reason to reject the recovery of scorpio vehicle based on the disclosure statement given by the first accused on 28.6.2007. Let us revert back to the VT message found in the log book Ex.P24. It has been categorically referred to in the VT message recorded by PW12 that a boy and a girl who had been forcibly taken down from the bus were taken in a scorpio vehicle towards Karnal. The above circumstances would persuade us to infer that the first accused Mandeep who was the driver of the scorpio vehicle owned by Rakesh was involved in abduction of Manoj and Babli.

Recovery of Maruti car, a purse with photo and container of indosulphas

17. (a) PW34 inspector Amar Dass attached to the CIA Staff-II Karnal who took up the investigation, arrested second A-2 Gurdev Singh, A-3 Suresh Kumar and A-4 Rajinder Singh on 1.7.2007 at the instance of the first accused Mandeep Singh. On 2.7.2007, he arrested A-5 Satish Kumar at the instance of A-2 Gurdev Singh. In view of the bar under Section 26 of the Evidence Act, which we have discussed earlier, the disclosure statement given by A-2 to A-5 with respect to the place where the abduction took place, the place where the abductors were dropped, the place where the dead bodies were dumped cannot at all be accepted as legal evidence, inasmuch as such a disclosure does not lead to discovery of any material fact.

Therefore, the demarcation made at the instance of A-2 to A-5 with respect to the aforesaid scene of occurrence loses its evidentiary value.

(b) A-3 Suresh Kumar has suffered a disclosure statement Ex.P77, where under he has disclosed that he would show the place where container of indosulphas was concealed. Accordingly the same was taken out and handed over to PW34 who recovered it.

(c) Gurdev A-2 suffered a disclosure statement Ex.P78 in the presence of witness SI Jaspal Singh and ASI Mukesh Kumar. Based on such disclosure statement, A-2 Gurdev Singh took PW34 to the place where he had concealed the black purse under the brick and handed over the same to PW34. A photograph MO22 was found in the purse recovered at the instance of A-2 Gurdev Singh. The purse MO21 was recovered vide memo Ex.P90. At the instance of A-3 Suresh, A-6 Baru Ram was apprehended by PW34 while he was driving the Maruti car 800 bearing registration No HR-09-6590. The said Maruti car was also recovered vide memo Ex.P80. The recovery of purse with photograph of Manoj and Babli at the instance of accused Gurdev Singh, the recovery of indosulphas container at the instance of accused Suresh Kumar and the recovery of Maruti car at the instance of Baru Ram A-6 would establish their involvement in the crime of abduction.

Articles recovered from scorpio vehicle and maruti car

18. (a) On 7.7.2007 PW34 has gone along with SI Jaspal Singh, PW6 Sarpanch Gulab Singh and PW38 Richhpal motor

mechanic, Haryana Roadways Karnal and cleaned the scorpio car already recovered at the instance of A-1 and parked in the Bhutana Police Station. During the cleaning of scorpio car they found torn pieces of photograph of Manoj and Babli, a bunch of hairs and clips which was used for setting hairs MO 23 to MO25 vide recovery memo Ex.P18. On sweeping of the Maruti car bearing registration No.HR09-M-6500, a botton MO26, a gungroo made of silver MO27, a piece of glass bungles MO28 and some hairs MO29 were recovered vide recovery memo Ex.P19. PW38 Richhpal Singh attached to Haryana Roadways Karnal has clearly spoken to the above material objects recovered from the scorpio vehicle and Maruti car parked in the Police Station.

(b) True it is PW38 Richhpal Singh would disclose that the the glasspane of the dicky portion of the Maruti Car was found completely broken. We do not suspect any foul play in the matter of recovery of those material objects from the scorpio vehicle as well as from the Maruti car. Of course it was argued that there was every possibility for implanting some material objects inside the vehicle which were found broken. If at all the investigating agency had thought of implanting material objects inside the vehicle, they would have concocted telling material objects to clinch the case as against the accused. It is to be noted that those articles could be deducted only by sweeping with the aid of vacuum clearner. Therefore, we do not find any reason to reject the evidence of PW34 with respect to those recovery of material objects inside the scorpio vehicle and the Maruti Car in the presence of Rachhpal Singh, motor mechanic

attached to the Haryana Roadways,Karnal. The recovery of those material objects would persuade us to infer that the Scorpio vehicle was used for the purpose of abduction of Manoj and Babli and the Maruti car was used for the purpose of transporting their dead bodies.

F.S.L. Report

19. Ex.P13, the FSL report would categorically disclose that the button recovered from the Maruti car was found similar to the button in the shirt recovered from in the dead body. Gungroo recovered from the Maruti car could be the part of wrinkle recovered from the dead body of Babli. The torn piece of photograph recovered from the Scorpio vehicle and the photograph recovered at the instance of Gurdev Singh had been developed from the same negative. The FSL report Ex.P113 establishes the the personal affects of the deceased were found in the Scorpio vehicle used for abduction and the Maruti car which was used for the purpose of transporting the dead bodies.

Telephone calls

20. (a) PW21 Constable Pardeep Kumar has collected from the Computer Incharge of the S.P.Office karnal the ID proof qua mobile No.94161-11565 belonged to A-4 Rajinder Singh and I.D. proof qua mobile No.9466097435 belonged to A-2 Gurdev Singh. The same has been recovered by PW33 SHO of Bhutana Police Station vide memo Ex.P40. PW18 SI Nahar Singh has collected from the Computer Incharge S.P.Karnal call details of mobile No.94161-11565 Ex.P67 of A-2 Gurdev Singh and the call details

Ex.P66 of mobile No.9466097435 of A-4 Rajinder Singh . Those two documents were recovered by PW33 SHO of Bhutana Police Station vide memo Ex.P37.PW33 has also spoken about the ID proof and call details relating to the mobiles used by A-2 Gurdev Singha nd A-4 Rajinder Singh collected through the Incharge Computer, S.P. Office,Karnal.

(b) The admissibility of those I.D. proof and call details of those mobile phones used by A-2 Gurdev Singh and A-4 Rajinder Singh was challenged by the leaned Senior Counsel appearing for the appellants.

(c) As per Section 65(B) of the Indian Evidence Act,1872 any information contained in an electronic record which is printed on a paper, stored, recorded or copies in optical or magnetic media produced by a computer shall be deemed to be a document only if the certain conditions mentioned therein were satisfied. As the aforesaid documents reflecting the ID proof and the call details were not authenticated by a responsible official of the company who was concerned with the operation of the computer, the aforesaid documents cannot be admitted as primary evidence. But Section 65 does not impose any restriction to lead secondary evidence with respect to the electronic record. Section 65(d) of the Act would read that secondary evidence may be given of the existence of a document when the original is of such a nature as not to be easily movable. As per Section 63(2) of the Evidence Act, secondary evidence includes, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy.

(d) On a perusal of those documents it is found that those documents were procured by the SP office from the mobile company. Those particulars had been directly drawn by the SP Office from the electronic device maintained for storing those particulars by the mobile company. Of course a personnel from S.P. Office should have been examined with respect to the manner in which those particulars had been down loaded by the SP office from the computer device maintained by the mobile company. But at any rate,we find that PW18 and PW21 who had collected those particulars from the SP office directly are competent witnesses to speak about those documents. Further we have no reason to doubt the veracity of those documents running into several pages. We are not convinced with the submission made by the learned senior counsel appearing for the appellants that those documents were concocted for the purpose of this case. A thorough perusal of those document would go to establish that those details could not be concocted out of imagination. Therefore, we have no hesitation to rely upon ID proof and details produced by the prosecution through PW18, PW21 and PW33 as secondary evidence under Section 65(d) read with Section 63(ii) of the Evidence Act. We gave our anxious consideration to those call details and found that A-2 Gurdev Singh and A-4 Rajinder Singh had been in and around the scene of occurrence namely Kaithal,Pipli and Nilokheri at the crucial point of time. Their presence at the toll plaza,at the relevant point of time using their respective mobile phones stood established by the prosecution.

(e) As far as the cell details of A-7 Ganga Raj was

concerned, PW41 Bhushan Kumar attached to the Legal Cell of BSNL Karnal was examined. He proved Ex.P110 to establish that the cellphone No.94165-63752 belonged to Ganga Raj.Ex.P110 produced by PW41 was attested by Sub Divisional Engineer (Commercial).The call details of the said mobile phone possessed by A-7 Ganga Raj were also attested by the concerned responsible officer but on the careful perusal of the call details of the mobile phone used by Ganga Raj, we find found that it was not active between 3.53 pm to 5.08 pm. Further the mobile details of A-7 Ganga Raj also does not disclose that he was roaming around the exact places where the abductees were transported. Therefore the call details relating to the mobile phone of A-7 Ganga Raj do not in any way advance the case of the prosecution.

Charges not made against A-5 Satish Kumar

21. The prosecution, as rightly pointed out by the learned Senior Counsel appearing for the appellants has failed to establish that Satish Kumar was maternal uncle's son of Babli. In the statement under Section 313 Cr.P.C. accused Satish Kumar has specifically stated that he was not related to the family of Babli, neither PW2 nor PW25 nor PW26 Seema did speak about the relationship of A-5 Satish Kumar with Babli. Nothing also has been recovered from A-5 Satish Kumar at the instance of the disclosure statement allegedly given by him. When it was not established that Satish Kumar was the maternal uncle's son of Babli, no inference can be drawn against Satish Kumar based on the information furnished by the deceased to his mother PW25. Mere suspicion,

howsoever, strong it may be, cannot take the place of proof. Therefore, we are of the firm view that the prosecution has miserably failed to establish that A-5 Satish Kumar was involved in the crime alleged as against him.

Charges not made against Ganga Raj A-7

22. PW22 Ram Mehar was the only witness who spoke about the role of A-7 Ganga Raj. PW22 would depose that when he was at Pehwa bus stand along with other police officials, he spotted the Maruti car bearing registration No. HR-8G-3689 As per the directions issued by his higher officials, the said car was detained. A-7 Ganga Ram approached PW22 and asked him to release the car. He did not release the car at the first instance. Thereafter as per the instructions of the SHO he freed the car of Ganga Raj. . A-7 Ganga Raj might have chased the young couple up to Pehwa but thereafter it appears that the said Maruti car was never spotted by any one of the witnesses. Further no other witness has spoken to the role of A-7 Ganga Raj. As there is no legal evidence as against A-7 Ganga Raj we find that he is entitled to acquittal of the charges levelled against him. As rightly pointed out by the learned Counsel A-7 Ganga Raj also could not have reached the scene of occurrence at 4.45 am on 15.6.2007 from Pehwa where he was spotted by PW22 HC Ram Mehar at about 4.30 pm on that day. As per the evidence of PW22 on the very same day the vehicle was detained for about 15 minutes. After initial objections, the said vehicle was released at about 4.45 pm. The occurrence is said to have taken place at about 4.45/5.00 pm on 15.6.2007. There is no dispute to

the fact that the toll plaza where the occurrence took place is located about 60 kms away from Pehwa. Therefore, A-7 Ganga Raj would not have been present at the scene of occurrence as he was found loitering in the Maruti car by about 4.45 pm on the said day at Pehwa itself. The above circumstances also would rule out the involvement of A-7 Ganga Raj in the occurrence.

Charge under Section 120-B of the Indian Penal Code:

23. There is no material to convict the accused for the offence punishable under Section 120-B of the Indian Penal Code. No evidence was let in to establish that two or more persons agreed to do an illegal act. The design allegedly hatched by the accused to commit the crime has not been spoken to by any of the witnesses. Therefore, we hold that the offence under Section 120-B of the Indian Penal Code was not made out as against any of the accused.

Charges established against A-1 Mandeep, A-2 Gurdev Singh, A-3 Suresh Kumar, A-4 Rajinder Singh and A-6 Baru Ram

24. (a) The prosecution could establish by the recovery of Scorpio vehicle with the personal affects of the deceased that the Scorpio vehicle driven by A-1 Mandeep Singh was used for the purpose of abducting the deceased Manoj and Babli. A-2 Gurdev was none other than the maternal uncle's son of Babli. PW25 has cogently spoken to the information furnished by the deceased Manoj about the involvement of maternal aunt's son of Babli. Admittedly Gurdev Singh was maternal uncle's son of Babli. As per the disclosure statement suffered by him a purse with photograph of the

young couple was recovered from him. The recovery also connects him to the crime of abduction and murder. Suresh A-3 was none other than the elder brother of Babli. The deceased Manoj had informed his mother before his death that the family members of Babli also was chasing them. It is found that he was the only family member arrayed as an accused in this case. He suffered a disclosure statement. As per his disclosure statement indosulphas container was recovered from his possession . The recovery also connects him to the crime of abduction and murder. A-4 Rajinder Singh was the paternal uncle of Babli. The deceased Manoj has informed his mother PW25 Chanderpati that his paternal uncle was also chasing him. He was the only paternal uncle shown as accused in this case. We do not doubt his involvement in the offence of abduction and murder of the deceased couple.

(b) A-6 Baru Ram was the only maternal uncle shown as accused in this case. PW25 has spoken to the fact that the deceased Manoj before his death informed her that his maternal uncle 's son was chasing Manoj and Babli. Further he suffered a disclosure statement based on which Maruti car was recovered. In the Maruti car the personal affects of the deceased also were recovered. Such a recovery also connects A-6 Baru Ram to the offence of abduction and murder.

25. Though there is no direct evidence for the commission of offence of murder by A-2 Gurdev Singh, A-3 Sursh Kumar, A-4 Rajinder Singh and A-6 Baru Ram, it has been clearly established that they abducted Manoj and Babli through the circumstantial

evidence.. Under Section 106 of the Evidence Act those accused are bound to explain as to what happened to the abductees. Failure to give explanation gives rise to an inference that they had in fact murdered the abductees Manoj and Babli and threw them in the canal. Therefore, we also draw an inference that they also committed murder as they had not come out with any explanation as to what happened to the abductees who were in their possession. Thus, the prosecution could establish that A-2 Gurdev Singh, A-3 Suresh Kumar, A-4 Rajender Singh and A-6 Baru Ram not only committed the offence of abduction but also the offence of murder of Manoj and Babli. But as far as A-1 Mandeep is concerned the offence of abduction alone was established by the prosecution.

Criminal Revision

26. We have rendered a verdict that the case of abduction criminal conspiracy and murder was not made out as against A-7 Ganga Raj. Therefore, the question of enhancement of sentence sought for by the complainant (Chanderpati PW25) does not survive consideration. Hence the revision stands dismissed.

Murder reference

27. Even in the 21st century such a shameful act of hollow honour killing is perpetrated in our society. We feel that it is really a slur on the fine fabric of the Indian society. Abduction is really cruel and that too murder of the abductees is barbaric. But unfortunately in this case there is no eye witness to the occurrence. The entire case of the prosecution depends on the circumstantial evidence. The court was left with the option of inferring certain facts from the

circumstances projected by the prosecution. As we have rendered the verdict based on the circumstantial evidence, our conscious does not permit us to confirm the death sentence awarded to the accused A-2 Gurdev Singh, A-3 Suresh Kumar, A-4 Rajinder Singh and A-6 Baru Ram. It is not out of place to mention here that we have already held that no offence was made out as against A-5 Satish Kumar.

28. It is beneficial to refer to the recent decision of the Supreme Court in Dalip Premnarayan Tiwari and another V. State of Maharashtra (2010) 1 Supreme Court Cases 775. That was a similar case where four murders of a family members of young girl who got married another community boy had been committed. In fact death sentence was imposed on the accused by the trial court and the same was confirmed by the High Court. But the Hon'ble Supreme Court took a different view inspite of the fact that it was a hollow honour killing of four persons and awarded 25 years of actual imprisonment to three accused and 20 years of actual imprisonment to one of the accused, converting the death sentence given by the Sessions Court and confirmed by the High Court. It is very much relevant to refer to some of the observations made in paras 60,66 and 67 of the aforesaid judgment:

“60. All murders are foul, however, the degree of brutality, depravity and diabolic nature, differ in each case. It has been held in the earlier decision of this Court which we may not repeat that the circumstances under which the murders took place, differ from case to case and there cannot be a straitjacket formula for deciding upon

the circumstances under which the death penalty is a must.”

“66. The disturbed mental feeling or the constant feeling of injustice has been considered by this Court as a mitigating circumstance in Om Prakash V. State of Haryana where the accused had committed the murder of seven persons. That is also an indicator to the fact that mere number of persons killed not by itself a circumstance justifying the death sentence.....”

“67. In a death sentence matter, it is not only the nature of the crime but the background of the criminal, his psychology, his social conditions and his mindset for committing the offence are also relevant.”

29. The family members of Babli were deprived of the love and affection of Babli for about two long months. A neighbour had taken away the girl and got her married. They had been confronted with a disturbed mental feeling. There was no criminal antecedents brought to our notice qua the accused. Nothing has been shown before this Court that the accused could not be reformed during jail sentence. Just because it is a case of hollow honour killing, we cannot jump to a conclusion that the case squarely shall not choose to incline that it is squarely falls under the category of rarest of rare cases.

30. Further applying the ratio laid down by the Hon'ble Supreme Court in the above decision and also in the facts and

circumstances of this case, we are disinclined to confirm the sentence of death awarded to A-2 Gurdev Singh, A-3 Suresh Kumar and A-4 Rajinder Singh and A-6 Baru Ram. A-5 Satish Kumar acquitted of all charges.

Quantum of sentence and final decision in Reference, Appeal and Revision:

31. The prosecution has established beyond reasonable doubt that A-1 Mandeep has committed the offence punishable under Section 364 IPC. He is convicted for that offence only and the sentence imposed by the trial court as against him for the said offence is maintained. The prosecution has failed to establish the offence under Section 120-B of the Indian Penal Code as against the first accused Mandeep. Therefore, he is acquitted of the offence under Section 120-B of the Indian Penal Code. As the charge of abduction and murder have been established as against A-2 Gurdev Singh, A-3 Suresh Kumar, A-4 Rajinder Singh and A-6 Baru Ram, we convict them for the offence under Section 302 IPC and sentence them each life imprisonment. But we direct that they shall not be released unless each of them completes 20 years of actual imprisonment sans remission. They shall also pay a fine of Rs.5,000/- each failing which they shall further undergo RI for a period of six months each. They also have been convicted for the offence punishable under Section 364 IPC. The sentence imposed thereunder by the trial Court as against them is maintained. A-2 Gurdev Singh, A-3 Suresh Kumar, A-4 Rajinder Singh and A-6 Baru Ram are found not guilty of the offence under Section 120-B of the

Indian Penal Code and, therefore, they are acquitted of the said charge. A-5 Satish kumar, and A-7 Ganga Raj are acquitted of all the charges framed as against them and they be set at liberty forthwith if not required in any other case. Consequently the appeal is dismissed in the aforesaid terms and the murder reference is answered accordingly. As we have acquitted A-7 Ganga Raj from all the charges as against him, the prayer for enhancement of compensation from Rs. one lac directed to be paid by him stands rejected. Similarly the prayer for payment of compensation by respondents No.2 to 7 being devoid of any merit, stands rejected. As we have already held that neither charge of abduction, nor criminal conspiracy nor murder was not made out against A-7 Ganga Raj, therefore the grant of prayer of the petitioner in Criminal Revision regarding enhancement of sentence does not arise. The revision stands dismissed accordingly.

Before parting with the case:

32. We find that the Investigating agency in such a sensational case has bungled at each and every stage. Firstly PW24 SI Jagbir Singh who in fact perceived a threat for the life of Manoj and Babli should not have withdrawn security in the guise of a written statement given by them to withdraw the same. Till their departure at Pipli, there had been a real threat to their life from the family members of Babli. Very strangely PW24 obtained some statements of Manoj and Babli and virtually landed them in a death trap.

33. VT Message was received at Butana Police Station by

PW12 HC Ramesh Chand as regards the abduction of Manoj and Babli on 15.6.2007 itself but the entire police force attached to Bhutana Police Station was in deep slumber up to 20.6.2007 when PW26 lodged a complaint alleging abduction of her son. Had the SHO Bhutana Police Station woken up on receipt of such VT message, he would have saved the precious life of innocent young couple.

34. Neither PW31 ASI Dharampal attached to Bhutana Police Station nor PW33 Inspector Subhash who recorded the statement of about five other persons who were present at toll plaza Ajheri could not deduct the bus from where Manoj and Babli were brought down from the bus and abducted. Neither the driver nor the conductor of the vehicle could be traced by PW33, or any other police officials who took up the case for further investigation. We are constrained to infer that in fact the police official had been hand in glove with the accused party and provided loop hole at each and every stage of investigation. None of the mobile phones was seized by the investigating agency. One Vijay, the proprietor of a booth from where Manoj lastly made a call to his mother, was not cited as a witness as his statement under Section 161 Cr.P.C. was not recorded. The passengers in the bus who witnessed the horrific occurrence of abduction could have been easily zeroed in on, if efficient investigation had been done in time. On a careful perusal of the entire process of investigation embarked upon by the investigating officials, we find that they had just investigated the matter for the purpose of giving disposal to the investigation. They

have not evinced any interest as warranted in this case, to collect telling materials as against the accused in a crime which has virtually thrown a challenge to the society itself. A team of the Police officials should have been employed considering the gravity of the offence to collect fool-proof evidence but quite unfortunately novices in the investigation field have been employed to detect the shocking crime for the reasons best known.

35. Keeping the above facts in view, the Director General of Police Haryana is directed to initiate disciplinary proceedings against PW 24 Jagbir Singh the then Sub Inspector of Rajound Police Station, PW31 Dharampal and PW33 Inspector Subhash who investigated this case in a very casual fashion. The action taken report be sent to this Court within three months form the date of receipt of a copy of this judgment.

(M. Jeyapaul)
Judge

March 11,2011

(Satish Kumar Mittal)
Judge

1. To be referred to the Reporter or not ?

