

Before S.S. Saron and S.P. Bangarh, JJ.

MANISH KUMAR AND OTHERS—Appellants

versus

STATE OF PUNJAB—Respondent

CRA No. D- 811-DB of 2002

January 8, 2013

Indian Penal Code, 1860 - Ss. 302, 201, 149, 120-B & 148 - Appellants No. 1, 3 and 4 were convicted and sentenced for commission of offence punishable under Sections 302 and 201 IPC - Appellant No. 2 was convicted and sentenced under Section 120-B IPC - Contention that eye witnesses were not believed by Trial Court - Alleged eye witnesses did not report the occurrence to the Police with promptitude - No direct evidence against appellants and the medical evidence is contrary to the ocular evidence - Held that ocular evidence should corroborate medical evidence - Extra judicial confession also relied upon - If accused acquitted of S.120B then acquittal of appellant No.2 to follow - Appeal of appellant No. 2 allowed and that of appellants No. 1, 3 and 4 dismissed.

Held, that the Ld. Trial Court, thus, wrongly came to the conclusion that Nirmala Rani (appellant No. 2) hatched a conspiracy. Even, other appellants were not convicted for this offence. Ranjit Singh-accused was acquitted. When Ranjit Singh-accused was acquitted, and other appellants were not convicted of offence punishable under Section 120-B IPC, the charge of conspiracy against Nirmala Rani (appellant No. 2) automatically falls to the ground. In view of the acquittal of Ranjit Singh-accused, from the charge under Section 120-B IPC, the acquittal of Nirmala Rani (appellant No. 2) was required to follow. Even, the learned trial Court held that the testimony of Ram Chand PW-7 was not reliable on the point of conspiracy. The learned trial Court, thus, erroneously convicted and sentenced Nirmala Rani (appellant No. 2) for commission of offence punishable under Section 120-B IPC. So, Nirmala Rani (appellant No. 2) is acquitted of the charge framed against her by according her benefit of doubt.

(Para 74)

Further held, that it is case where there is a direct evidence of complicity of Manish Kumar (appellant No. 1), Ashok Kumar @ Channi (appellant No. 3) and Ashok Kumar @ Pappu (appellant No. 4). FIR in this case had already been registered, no delay has taken place. Makhan Singh (PW-3) in the beginning was afraid of the appellants, therefore, he did not report the matter to the police. When he learnt that the murder of Asha Rani (deceased) wife of Manish Kumar (appellant No. 1) is being ascribed to some unknown person, then he suffered statement Ex.P6 before the police, which has been supported by the testimony of Budh Singh (PW-4).

(Para ⁷⁸78)

Further held, that the ocular evidence of Makhan Singh (PW-3) and Budh Singh (PW-4) has been corroborated by the medical evidence of Dr. Ramesh Kumar (PW-1), who found five injuries on the person of the deceased (Asha Rani). He also found ligature mark on the neck of the deceased, which is injury No. 1 on her person. He opined that cause of death in this case was asphyxia due to strangulation, as a result of injury No. 1, which was sufficient to cause death in the ordinary course of nature. So, injury No. 1 was homicidal and Makhan Singh (PW-3) and Budh Singh (PW-4) had seen the appellants Nos. 1, 3 and 4 strangulating the deceased with a turban that was later on recovered. The version of robbery put forth, by the appellants Nos. 1, 3 and 4 has been found to be false during investigation.

(Para ⁷⁹79)

Further held, that this extra judicial confession was rightly relied upon by the learned trial Court for holding Ashok Kumar @ Channi (appellant No. 3) guilty of commission of offences punishable under Sections 302 and 201 IPC, in view of "Munna Kumar Upadhyaya @ Munna Upadhyaya v. State of A.P. Tr. Pub. Prosecutor, 2012 (3) Recent Apex Judgments (R.A.J.) 185.

(Para-86)

Further held, that this extra judicial confession of Ashok Kumar @ Channi (appellant No. 3) before Bhupinder Saneshi (PW10) must be upheld in view of "Chattar Singh and Anr. V. State of Haryana, 2008 (4)

RCR (Criminal) 133; passed by the Hon'ble Supreme Court of India, wherein, it was held that an extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court.

(Para 87)

Vikram Chaudhri, Advocate, *for the appellants.*

P.S. Thethi, Addl. AG, Punjab, *for the respondent.*

S.P. BANGARH, J.

(1) The appellants have assailed the judgment of conviction and order of sentence dated 17.10.2002, passed by the learned Additional Sessions Judge, Ferozepur, in Sessions Case No. 17 dated 10.09.1998 and Sessions Trial No. 106 of 2002, emanating from FIR No. 71 dated 18.05.1998, under Sections 302/149/120-B and 148 of the Indian Penal Code (for short - 'IPC), Police Station Khuyian Sarwar, whereby, Manish Kumar (appellant No.1), Ashok Kumar @ Channi (appellant No.3) and Ashok Kumar @ Pappu (appellant No.4) were convicted for commission of offences punishable under Sections 302 and 201 IPC and sentenced to undergo imprisonment for life each and to pay fine of '3,000/- each and in default of payment of fine, to further undergo imprisonment for two years each for commission of offence punishable under Section 302 IPC and to undergo rigorous imprisonment for three years each and to pay fine of '1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each for commission of offence punishable under Section 201 IPC. While Nirmala Rani (appellant No.2) was convicted for commission of offence punishable under Section 120-B IPC and sentenced to undergo imprisonment for life and to pay fine of '1,000/- and in default of payment of fine, to further undergo imprisonment for Six months for commission of offence punishable under Section 120-B IPC. Vide impugned judgment of conviction, the accomplice of the appellants, namely Ranjit Singh @ Randhir was, however, acquitted.

(2) The case of the prosecution is that the marriage of Manish Kumar (appellant No.1) was performed with Asha Rani (deceased) about three months prior to the occurrence. He had been doing the work of junk dealer near the octroi post Abohar on the Ganganagar road. On 18.05.1998,

the corpse of Asha Rani was brought to Civil Hospital, Abohar by her mother-in-law Nirmala Rani (appellant No.2). Dr. Gurjit Singh Kalra (PW-5) sent memo Ex.P7 to the Police Station City Abohar. Further intimation about that was sent to the Police Station Khui Khera. On receipt of that information SI/SIO Sangram Singh (PW-9) came to the Police Station Khui Khera, where MIIC produced ruqa Ex.P1. and medico legal report of Manish Kumar (appellant No. 1). Thereafter, police party went to the Civil Hospital, Abohar. SI/SIO Sangram Singh (PW-9) moved an application Ex.P18) before doctor to seek his opinion regarding fitness of Manish Kumar (appellant No.1) to make his statement. Dr. Gurjit Singh Kalra (PW-5) declared him (appellant No.1) fit to make statement vide his endorsement Ex.P18/A.

(3) Thereupon, SI/SHO Sangram Singh (PW-9) recorded the statement of Manish Kumar (appellant No.1) Ex.P19 to the effect that on 17.05.2008 at about 7/8 a.m., he had gone to Fazilka, alongwith his wife Asha Rani (deceased) to meet the sister of his father namely Krishna Devi, who was residing in Khula Wali Gali Fazilka. After meeting her, they started back on their motorcycle at about 7.30 p.m. When they reached near the octoroi post Abohar, the fuel in the motorcycle was exhausted. Thereupon, he brought the motorcycle to petrol pump and got the fuel refilled, therein. Thereafter, they started towards Abohar. They were being followed by a Maruti Van having registration number of Haryana State, which could not be read. Some time that van used to be brought in front of the motorcycle and some time on their back. The head light of his motorcycle was on.

(4) When at about 8.15 p.m., he (Manish Kumar - appellant No.1) and his wife Asha Rani (deceased) had gone to a distance about 1 km from bus stand Nihal Khera, they found maruti van lying parked on the kacha portion of the road facing Fazilka. He did not slow down his motor cycle. The van was started and two persons alighted, therefrom, who signalled Manish Kumar (appellant No.1) to stop and he put his motorcycle on stand. Even, so, the van was struck in his motorcycle, as a result of which, it fell down on the left side on the kacha portion of the road. One of the said person of about 25 years of age having height of 5'7" got down from side of the driver seat, whose right arm was amputated near the elbow and took out a knife and asked them to remove the ornaments. When they raised

an alarm, that person tried to give a knife blow towards his abdomen, but he caught hold of the blade, thereof, and broke the same. He was also shoved, as a result of which, his head struck against the tree.

(5) Thereafter, the other person who was about 35 years of age, wearing trouser and a shirt caught hold of Asha Rani (deceased) and took her on one side of the road. He struck her head against the tree with force. When he (Manish Kumar-appellant No. 1) stood up, the person whose arm was amputated, broke a branch of the tree and struck the same in his head. Thereafter, he was dragged to the place where Asha Rani (deceased) was lying and sequelly, he received abrasions on his body. Thereafter, those persons put a turban around the neck of Asha Rani and strangulated her. The fat man removed the gold chain weighing 1 1/2 tolas, the gold necklace weighing 3 tolas, four bangles weighing 4 tolas, two gold rings weighing 1 1/2 tola from the body of Asha Rani and one gold bracelet weighing one tola and one gold ring weighing 3/4 tola, Rs.350/- and a wrist watch mark Titan from him (appellant No. 1). His arms were tied with the help of dupatta of Asha Rani. As a result of injury on the head of Asha Rani, she died at about 1.00 a.m. At about 3.00/4.00 a.m. his relatives Pardeep Kumar, brother-in-law Rajan, mother and one Sandeep came there on a van in their search and removed both of them to Civil Hospital, Abohar.

(6) SI Sangram Singh (PW-9) made his endorsement Ex.P19/A on statement of Manish Kumar (appellant No.1) Ex.P19 ibid and sent the same to the Police Station, where FIR Ex.P20 was recorded. During investigation, inquest report Ex.P4 on the corpse of Asha Rani (deceased) was prepared that was sent to the mortuary through Nirmal Chand Constable for autopsy along with application Ex.P3. Thereafter, SI accompanied by Pardeep Kumar and Ashok Kumar went to the place of occurrence. He got the place of occurrence photographed from Kishori Lal Photographer. He also prepared the site plan Ex.P35. He also collected the blood stained earth from the spot and put the same in a plastic box, which was sealed with the seal bearing impression 'SS' and that parcel was seized vide memo Ex.P14. The pair of sandals of the deceased (Asha Rani) was found lying at the spot, which were converted into a parcel, that was sealed with the seal bearing impression 'SS'. Motorcycle of Manish Kumar (appellant No.1) was also found lying at the spot. The motorcycle and the sealed parcel containing the sandal of the deceased (Asha Rani) were seized vide memo Ex.P15.

The autopsy on the corpse of Asha Rani (deceased) was performed by Dr. Ramesh Kumar (PW-1). In his opinion, the cause of death of Asha Rani was asphyxia due to strangulation. After the autopsy, apparcels found on the corpse of Asha Rani (deceased) were produced by Nirmal Chand Constable before the SI Sangram Singh (PW-9), which were converted into a parcel, that was sealed with the seal bearing impression 'SS' and seized vide memo Ex.P37. On return to the police station, SI Sangram Singh (PW-9) deposited the case property with Ranjit Singh MHC (PW-13)

(7) During the course of investigation, the version of Manish Kumar (appellant No.1) was found to be totally false. It was found that a false version was narrated by him, as a result of the deep rooted conspiracy. On 26.05.1998, Makhan Singh (PW-3) went to the police station and made his statement Ex.P6 before SI Sangram Singh that on 17.05.1998 at about 10.30 p.m., he alongwith Amarjit Singh son of Mithu Singh was going towards the village Ajamalwala from the side of Abohar on a tractor. When they were still at a distant of about 1/2 km from the bus stand of Nihal Khara, they saw Ashok Kumar @ Pappy (appellant No.4) and Ashok Kumar @ Channi (appellant No.3) standing on the eastern side of the road by the side of a moped, who were earlier known to him on account of their visits to the shop of Manish Kumar (appellant no.1), who was also a junk dealer. He asked Amarjit Singh to stop the tractor and in the meantime, Manish Kumar (appellant No.1) alongwith his wife Asha Rani (deceased) came on motorcycle make Rajdoot from the side of Fazilka and stopped the motorcycle near the other appellants and parked the motorcycle at that place. He identified all the appellants in the light of the head beam of the tractor. Ashok Kumar @ Pappu (appellant No.4) struck the brick which was held by him in his hand on the forehead and the face of the wife of

(8) Manish Kumar (appellant No.1) 3-4 times and sequelly, she fell down. Manish Kumar (appellant No.1) removed the turban from his head and put the same around her neck and gave a knot to that turban. One of the side of that turban was pulled by him and the other end was pulled by Ashok Kumar @ Channi (appellant No.3) and both of them strangulated her to death. He (Makhan Singh-PW1) and Amarjit Singh told Manish Kumar (appellant No.1) that he had committed a great sin. They were asked by all the three appellants that they should go silently and in case they talked about this occurrence to any one, they would also meet

the same fate. On account of fear, they went to their respective houses. He also narrated, therein, that he is a poor person and as such, he did not talk about this occurrence to any one. On the next day, he went to the village of his in-laws Ganga located in Haryana, in connection with his personal work. He returned from that place on the night of 25.05.1998 and on the next day in the morning, he came to know from the village that some accused after committing the murder of the wife of Manish Kumar (appellant No.1) committed the theft of her ornaments. Thereafter, he could not conceal the true facts and after taking Harnek Sarpanch with him, he came to the Police Station Khui Khera and narrated the occurrence.

(9) SI Sangram Singh, made his endorsement Ex.P6/A, on the statement supra Ex.P6 of Makhan Singh, which was recorded in the Daily Diary Register. Photographs, those were taken at the spot by Kharaiti Lal Photographer, were produced before SI Sangram Singh, who seized those vide memo Ex.P36. Thereafter, SI Sangram Singh went to the spot and at the instance of Harnek Singh, he prepared the rough site plan Ex.P39 with correct marginal notes.

(10) On 19.05.1998, statement of Ram Chand was recorded under Section 161 Cr.P.C. He also disclosed that on 13.05.1998 at about 10 a.m., he had gone to the shop of Manish Kumar (appellant No.1) for taking an angle iron. At that time, he (Manish Kumar-appellant No.1) was present at the shop along with his servant Ashok Kumar @ Pappu (appellant No.4) and his paternal uncle Ashok Kumar @ Channi (appellant No.3). They were talking to each other. Manish Kumar (appellant No.1) was telling the other appellants that Ram Chand had also come, who was his special person and that they should consult him. Manish Kumar (appellant No.1) told that his wife was of loose character and, therefore, he did not want to keep her with him. His father had gone outside for 2-4 days and he would take his wife Asha Rani to the house of his aunt Krishna at Fazilka and they should stop him near Nihal Khera and that Ashok Kumar @ Pappu (appellant No.4) would strike a brick in her forehead, he himself and Ashok Kumar @ Channi (appellant No.3) would strangulate her and would throw her body in the bushes.

(11) He also disclosed that he would remove the ornaments of Asha Rani (deceased) and those would be handed over to his paternal uncle

and that, thereafter, latter, would disclose all these facts to his mother who would go to taxi stand Abohar, where driver of Maruti Van No. PCF 6401 would meet them and, thereafter, they should pick up the corpse of Asha Rani (deceased) from the said place and would get a case registered with the police, so that the public should not entertain any doubt about him. Ram Chand made all these appellants to understand that they should not commit such a sin and in case Manish Kumar (appellant No.1) had any doubt about the fidelity of his wife Asha Rani, the same should be removed by the intervention of the respectables.

(12) Albeit endeavors of Ram Chand, the appellants did not relent. On the same day, statement of Bhag Singh (PW-9) was also recorded by SI Sangram Singh under Section 161 Cr.P.C. He disclosed about the extra judicial confession made before him by Manish Kumar (appellant No.1). He stated that Manish Kumar (appellant No.1) disclosed to him that he had a doubt about the character of his wife and that he himself, his paternal uncle Ashok Kumar @ Channi (appellant No.3) and his servant Ashok Kumar @ Pappu (appellant No.4) entered into a conspiracy at his shop that when his father would go out for 2-4 days, he would take his wife Asha Rani to his aunt at Fazilka from where they would return at 9/10 p.m. and that they should meet him near Nihar Khera, where he would stop his motorcycle.

(13) Thereafter, Ashok Kumar @ Pappu (appellant No.4) would strike a brick on the forehead of Asha Rani, while he himself and his paternal uncle Ashok Kumar @ Channi (appellant No.3) would put a turban around her neck and would strangulate her and later, throw her corpse in the bushes. He also disclosed that he would remove the ornaments from the person of Asha Rani (deceased) and would hand over those to his paternal uncle who would go to his mother to tell that both Manish Kumar (appellant No.1) and Asha Rani (deceased) had not returned and that they should go in search of them and, thereafter, they would hire a taxi from bus stand Abohar.

(14) Thereafter, mother of Manish Kumar (appellant No.1) and Ranjit Singh would come to the spot in that taxi Maruti Van No. PCF 6401, after taking the brother of Asha Rani (deceased) with them. He also disclosed that, however, they were taken to Civil Hospital and he lodged a false report with the police that some unknown persons committed the

crime, whereas, they were seen committing the murder of Asha Rani by Makhn Singh and one other person who came there on a tractor and by another person who was coming from the side of Nihal Khara on a bicycle after selling vegetables. He was requested by Manish Kumar (appellant No.1) to produce him before the police. After about 10 minutes, Ashok Kumar @ Pappu (appellant No.4) also came there and repeated the same extra judicial confession. He took both the appellants to the police station and produced them before SI Sangram Singh, who interrogated them and arrested them in this case. He also went to the bus stand Abohar, where Harnek Singh Sarpanch produced before him, Ranjit Singh-appellant along with maruti van, which was seized vide memo Ex.P40.

(15) During the course of investigation, Nirmala Rani (appellant No.2) was also arrested. On 31.05.1998, SI Sangram Singh interrogated Ashok Kumar @ Pappu (appellant No.4), who made a disclosure statement Ex.P41 that he had kept concealed a blood stained half brick in the bushes near the kacha passage in the area of Nihal Khara and he alone had a knowledge about the same and could get the same recovered. Pursuant to his disclosure statement, he got recovered the brick from that place, which was converted into parcel, that was sealed with the seal bearing impression 'SS' and seized vide memo Ex.P41.

(16) SI Sangram Singh prepared the rough site plan Ex.P43 of the place of recovery with correct marginal notes. On return to the police station, he deposited the case property with the MHC. On 04.06.1998, statement of Bhupinder Sanchi (PW-10) was recorded under Section 161 Cr.P.C., who disclosed that Ashok Kumar @ Channi (appellant No.3) came to him and suffered extra judicial confession that he along with Manish Kumar (appellant No.1) and Ashok Kumar @ Pappu (appellant No.4) hatched a conspiracy and pursuant, thereto, committed the murder of Asha Rani (deceased) wife of Manish Kumar (appellant No.1). He produced Ashok Kumar @ Channi (appellant No.3) before the SI Sangram Singh and the latter, arrested him.

(17) During interrogation, Ashok Kumar @ Channi (appellant No.3) suffered disclosure statement Ex.P44 that he had kept concealed the ornaments under the ground in the room of his residential house and he alone had the knowledge, thereof, and could get the same recovered from that place.

Pursuant to his disclosure statement Ex.P44, he got recovered one necklace of gold, four bangles of gold, two rings of gold and one gold chain MOI to MO8 weighing about 90 grams from the said place, which were put in a plastic box, that was sealed into a parcel with the seal bearing impression 'SS', and that parcel was seized vide memo Ex.P8.

(18) SI Sangram Singh prepared the rough site plan Ex.P45 of the place of recovery of ornaments with correct marginal notes, who on return to the police station deposited the case property with the MIIC. On 16.06.1998, the parcels containing the blood stained brick, blood stained soil and wearing apparels were sent to Forensic Science Laboratory, Punjab, Chandigarh through Balwinder Singh Constable. After analysis, it was reported by the Laboratory vide reports Ex.P46 and Ex.P47 that those were stained with human blood.

(19) After completion of investigation, Station House Officer of Police Station Khui Khara instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C.-for short) against the appellants and their accomplice (who has since been acquitted by the learned trial Court), before the learned Illaqa Magistrate to the effect that it appeared that they have committed offences punishable under Sections 120-B/201 and 302 IPC.

(20) On presentation of police report, copies of documents as required under Section 207 Cr.P.C. were furnished to the appellants and their accomplice by the learned Illaqa Magistrate, who later committed the case to the Court of Session, which was entrusted to the learned trial court, where charge under Sections 120-B and 201 IPC was framed against the appellants and their accomplice and charge under Section 302 IPC was framed against appellants Nos.1, 3 and 4, whereto, they pleaded not guilty and claimed trial.

(21) At the trial, the prosecution examined Dr. Ramesh Kumar as PW-1, Sahib Ram Patwari as PW-2, Makhan Singh as PW-3, Budh Singh as PW-4, Dr. Gurjit Singh Kalra as PW-5, Rakesh Kumar as PW-6, Ram Chand as PW-7, Gurmit Singh as PW-8, Bhag Singh as PW-9, Bhupinder Saneshi as PW-10, Mohan Lal Clerk as PW-11, Baldev Raj Clerk as PW-12, Ranjit Singh HC as PW-13, Balwinder Singh ASI as PW-14, Ashok Kumar as PW-15, Balwinder Singh Constable as PW-16, Nirmal Chand

Constable as PW-17, Beant Singh IIC as PW-18 and Sangram Singh SI as PW-19 and closed the prosecution evidence, later, after tendering in evidence, the reports Ex.P46 and Ex.P47 of the Forensic Science Laboratory.

(22) After the closure of prosecution evidence, appellants were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in this case.

(23) Manish Kumar (appellant No.1) gave his own version that he had gone to Fazilka along with his wife Asha Rani (deceased) to meet his relative and when they were returning back at about 7.30 p.m. from Fazilka to Abohar, then a maruti van of blue colour having Haryana registration number followed them and when they passed bus stand Nihal Khera, it was about 8.15 p.m. and they were made to stop the motorcycle and when they alighted from the motorcycle, the maruti van hit their motorcycle. The occupants were of the age group of 25 to 35 years. One of them was having a knife, who demanded jewellery. They started raising alarm, whereupon, those persons caused injuries to them and also strangulated Asha Rani. The fat man took all the jewellery of his wife Asha Rani. His hands were tied. She died at about 11/12 a.m. The relatives reached that place at about 3/4 a.m and took them to a Civil Hospital, Abohar. Police came to the hospital and recorded his statement, which formed the basis of formal FIR.

(24) Manish Kumar (appellant No.1) further stated in his statement under Section 313 Cr.P.C. that when the police could not trace out the real culprits, they falsely implicated him and his relatives in this case. He further stated that witnesses examined against him are made up witnesses. Nirmla Rani (appellant No.2) also gave her own version that when her son Manish Kumar (appellant No.1) and his wife Asha Rani (deceased) did not return from Fazilka, then, they went in their search after hiring a van of Ranjit Singh. They found Manish Kumar (appellant No.1) and his wife Asha Rani (deceased) in an injured condition near Nihal Khera. They took them to Civil Hospital.

(25) Ashok Kumar @ Channi (appellant No.3) also gave his own version that he was innocent and was not on talking terms with the family of Manish Kumar (appellant No.1) because of family dispute.

(26) Ashok Kumar @ Pappu (appellant No.4) stated that he was innocent and was falsely implicated in this case.

(27) Appellants were called upon to enter in defence, but they closed the defence evidence without examining any witness.

(28) After hearing both the sides, the learned trial Court vide impugned judgment of conviction and order of sentence, convicted and sentenced the appellants, as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court have come up in this appeal with prayer for acceptance, thereof, and for their acquittal of the charge framed against them for the commission of offences punishable under Sections 302, 120-B and 201 IPC.

(29) We have heard learned counsel for the appellants and learned Additional Advocate General for the respondent and perused the record of the learned trial Court with their assistance.

(30) PW-1 Dr. Ramesh Kumar conducted the autopsy on the corpse of Asha Rani (deceased) on 18.05.1998 at 5.50 p.m. He deposed that the corpse of Asha Rani (deceased) was brought by Nirmal Chand Constable No. 1258 and Jaswant Singh ASI No. 128, which was identified by Subhash Chander son of Murari Lal and Manoj Kumar son of Suraj Bhan. He testified that the length of the body was 5'7", which was moderately built and moderately nourished female person lying on its back with eyes closed and mouth half open; her face was smeared with blood, mud and straw. She was wearing a green shirt, light green salwar and chunni, white brassiere and skin coloured underwear, a brown dabidar safa and white plastic chura on each wrists (15 plastic white bangles on each wrist), post mortem staining on the back were present and rigor mortis were present in all the four limbs.

(31) PW-1 Dr. Ramesh Kumar testified that he found following injuries on the person of Asha Rani (deceased):

1. Ligature mark 20 cm x 4 cm starting from the left sub-mandibular region and going in front of the neck and extending upto hair line on the right side, the base of the groove was reddish and the margins

were occluded. On dissection, underlying subcutaneous tissues were congested and there was effusion of blood in the soft tissue. Carotid sheath on the right side was ruptured and there was fracture of hyoid bone. Tracheas were congested and contained froth.

2. Lacerated wound 7 cm x 4 cm on the middle of forehead and extending upto left eye brow, clotted blood was present. On dissection subcutaneous tissues and muscles under the injury were congested, a hematoma 2 cm x 2 cm was present in the frontal area of the brain meninges and brain tissues were congested.

3. Swelling 4 cm x 3 cm on the upper and lower eye lid encircling the right eye, sub-conjunctival hemorrhage in the right eye was present.

4. Reddish contusion 10 cm x 4 cm on the face covering both cheeks and nose, clotted blood was present in the right nostril.

5. Reddish contusion 10 cm x 4 cm on the chin and extending upto middle of right cheek.

(32) He further testified that skull vertebrae and spinal cord were healthy. Chest walls ribs and cartilages healthy, pleura congested, larynx congested; right and left lung congested and excluded dark fluid blood on cutting, pericardium was congested, left side of the heart was empty and right side was full of dark fluid blood. Abdominal wall and partition were healthy, pharynx and oesophagus were congested. Stomach was healthy and contained about 200 cc partially digested food particles along with gastric fluid. Small intestines were healthy and contained chyme, large intestines were healthy and contained faecal matter and foul smelling gases, liver spleen and kidneys were congested, bladder was healthy and contained about 150 cc of urine, organ of generation was healthy.

(33) He further testified that in his opinion, the cause of death in this case was asphyxia due to strangulation, as a result of injuries *ibid*, which were sufficient to cause death in an ordinary course of nature. He also testified that he handed over to the police duly stitched dead body after conducting postmortem examination along with its belongings; a carbon copy of the autopsy report, all police papers (1 to 12 in number) duly signed by him.

(34) He further testified that probable time between the injuries and death was within few minutes and between the death and the postmortem was 6 to 24 hours. He brought the original postmortem report and proved its carbon copy Ex.P1. He also proved the pictorial diagram showing the receipt of injuries. He also proved the police request Ex.P3 for conducting the autopsy on the corpse of Asha Rani (deceased). He also proved the endorsement of SMO Ex.P2/A, whereby, he was directed to conduct the autopsy on the corpse of Asha Rani (deceased). He also proved his endorsements Ex.P3/B and Ex.P3/C. He also proved inquest report Ex.P4. He also testified that possibility of the injuries Nos. 2 to 5 having been caused with a brick bat cannot be ruled out.

(35) PW-2 Sahib Ram Patwari prepared the site plan Ex.P5.

(36) PW-3 Makhan Singh testified that on 17.05.1998 at 10.30 p.m. he was coming from Abohar to Ajamwala on a tractor being driven by Amarjit Pappu. When they were still half a kilometer behind the bus stand Nihal Khera, they noticed on the road, Ashok Kumar @ Channi (appellant No.3) and Ashok Kumar @ Pappu (appellant No.4) standing near the moped, who were known to him. He asked the driver Pappu to stop the tractor to know as to why they were standing there. In the meantime, Manish Kumar (appellant No.1) came there on motorcycle with his wife, from the side of Fazilka and he parked his motorcycle on its stand. He further testified that Ashok Kumar @ Pappu (appellant No.4) was having a brick in his hand, wherewith, he caused repeated injuries to the wife of Manish Kumar (appellant No.1) on her forehead and face. She fell down. Manish Kumar (appellant No.1) took a safa from his head and put it around her neck and it was pulled from one side by Manish Kumar (appellant No.1) and from the other side by Ashok Kumar @ Pappu (appellant No.4) and he was standing at a distance of 5 to 6 karams and told them that they have committed a sin. The appellants told him to leave the place otherwise he shall be dealt with in the same manner.

(37) He further testified that, thereafter, they went to the their houses and being poor they did not talk to any body. Thereafter, he went to his inlaws' village Ganga in Haryana. He heard that wife of Manish Kumar (appellant No.1) was killed by some unknown persons who removed her ornaments. Since he had seen the occurrence, he could not digest. Therefore,

he went to Harnck Singh Sarpanch and alongwith him, he went to the Police Station Khui Khera, where he made a statement Ex.P6 to the police, which was signed by him.

(38) PW-4 Budh Singh testified that on 17.05.1998 at about 9.30 p.m. after selling vegetables, he was going from the side of Nihal Khera towards Abohar. When he reached 1/2 or 3/4 km ahead of Nihal Khera towards Abohar, he noticed Manish Kumar (appellant No.1), Ashok Kumar @ Pappu Bhaya (appellant No.4) and Ashok Kumar @ Channi (appellant No.3). Ashok Kumar @ Pappu Bhaya (appellant No.4) causing brick bat injuries on the forehead of the wife of Manish Kumar (appellant No.1). He further testified that on receipt of the injuries, the wife of Manish Kumar (appellant No.1) fell down on the ground and Manish Kumar (appellant No.1) took the safa from his head and wrapped it around the neck of his wife. It was pulled from one side by Manish Kumar (appellant No.1) and from the other side by Ashok Kumar @ Channi (appellant No.3). He further testified that Ashok Kumar @ Channi (appellant No.3) is the uncle of Manish Kumar (appellant No.1).

(39) He further testified that at the time of occurrence, he dissuaded the appellants from this, but they did not relent and on the contrary, told him to leave the place, failing which he would meet the same fate. He further testified that this occurrence was witnessed by him in the headlight of the tractor, which had come from the side of Abohar. The persons on the tractor had also dissuaded the appellants from doing this, but they did not relent and replied them in the same words. He further testified that out of fear, he came and went to Nihal Khera and made a statement before the police on 06.06.1998. He further testified that he did not make the statement earlier, as he was afraid.

(40) PW-5 Dr. Gurjit Singh Kalra, Medical Officer, Civil Hospital, Abohar testified that on 18.05.1998, corpse of Asha Rani (deceased) was brought to hospital by Smt. Nirmala wife of Mukand Lal, whereupon, vide letter Ex.P7 intimation was sent to the SHO, Police Station City Abohar.

(41) PW-6 Rakesh Kumar, Gold Smith, testified that on 06.04.1998, he had gone towards Nai Abadi to receive payment from Des Raj, where there was a gathering and police was also present there. He further testified

that, later on, gold ornaments were shown to him and he was requested to identify those and he was taken to a room. He further testified some unknown persons had got recovered these ornaments i.e. one necklace, four bangles, one chain after digging a pit and after seeing those ornaments, he told that these were got prepared from him by the brother of Asha Rani (deceased) in the month of January 1998. He further testified that after identification of the gold ornaments, the same were put into a box, that was converted into a parcel which was seized vide memo Ex.P8. This parcel was opened during deposition of this witness and he identified those ornaments i.e. MO-1 to Mo-8. He also identified the handkerchief MO-9.

(42) PW-7 Ram Chand also testified that on 13.05.1998 at about 10.00 a.m., he had gone to the shop of Mukand Lal to bring angles of iron, Ashok Kumar (appellant No.4), Manish Kumar (appellant No.1) and Ashok Kumar @ Channi (appellant No.3) were present there and they were talking with each other that Asha Rani (deceased) is characterless and Manish Kumar (appellant No.1) was saying that, whenever, Mukand Lal is to go outside, they will go to the house of his aunt at Fazilka and he will murder Asha Rani and they will name the robbers. He further testified that Mansih Kumar (appellant No.1) is the husband of Asha Rani (deceased) and he was saying that at the same place, where dead body of Asha Rani is to be thrown, at that place after tying his arms, he is to be thrown and after that, he had gone to Chandigarh and came back on 29.05.1998 and learnt about the death of Asha Rani (deceased). He further testified that the appellants murdered Asha Rani, as per their scheme.

(43) PW-8 Gurmit Singh Junior Assistant testified that Van No. PCF 6401 was registered in the name of Tirlok Singh, Kamaljit Singh residents of Opposite Chattar Singh Park, Ludhiana on 30.11.1987. He identified the signatures of Sh. K.K. Sharma, the then DTO, Ludhiana on the registration certificate Ex.P9.

(44) PW-9 Bhag Singh also testified that in the year 1997, he was Sarpanch of village Malook Pura and on 29.05.1998, Manish Kumar (appellant No.1) came to his house at about 11.00 a.m. and stated that he was married to Asha Rani (deceased) against his wish and he suspected that she is characterless. He further testified that on 17.05.1998 at about 9/10 p.m., he along with other appellants, as per their scheme had murdered

Asha Rani and they got registered a case regarding robbery, so that they are not defamed. He further testified that Manish Kumar (appellant No.1) requested him to produce him before the police and after that Pappu Bhaya (appellant No.4) came to his house and made a similar statement, that was made by Manish Kumar (appellant No.1). He further testified that Pappu Bhaya (appellant No.4) is also known as Ashok Kumar. He further testified that on the same day, he produced both these appellants before the police at Police Station Khui Khera and his statement was recorded.

(45) PW-10 Bhupinder Saneshi also testified that he was the Executive Member of Bhartiya Janta Party and on 04.06.1998, at about 8.00 a.m., he was present in his house, when Ashok Kumar @ Channi (appellant No.3) came to him and told that his nephew was married to Asha Rani and latter, is characterless and the former told him that he had talk with Nirmala Rani (appellant No.2) that Manish Kumar (appellant No.1) intends to commit suicide and Channi (appellant No.3) also told him that he along with Nirmala (appellant No.2), Ashok Kumar @ Pappu Bhaya (appellant No.4) and Manish Kumar (appellant No.1) had hatched a conspiracy to murder Asha Rani.

(46) He further testified that he told him that as per planning Manish Kumar (appellant No.1) and his wife during night time were to visit Fazilka on motorcycle and as per planning near Nihal Khera they were to meet Manish Kumar (appellant No.1) near the bushes and as per planning at about 9/10 p.m., they were present near Nihal Khera. Manish Kumar (appellant No.1) along with his wife came from the side of Fazilka and stopped near Nihal Khera, Channi (appellant No.3) and Pappu (appellant No.4) were also present there. He also confessed before him that Asha Rani was murdered and Pappu (appellant No.4) gave a brick bat blow on the head of Asha Rani.

(47) He further testified that Manish Kumar (appellant No.1) and Ashok Kumar @ Channi (appellant No.3) strangulated the neck of Asha Rani and after tying the hand of Manish Kumar (appellant No.1), he (appellant No.1) was thrown by the side of Asha Rani. After that, he had gone to the house of Manish Kumar (appellant No.1) and disclosed Nirmala Rani (appellant No.2) that as per planning, they have murdered Asha Rani

and after that Nirmala Rani (appellant No.2) had gone to the parents of Asha Rani and requested them to trace her and Manish Kumar (appellant no.1) as they had not returned from Fazilka.

(48) He further testified that from the bus stand, a van was hired and on that van, they had gone to trace Asha Rani and Manish Kumar (appellant No.1). He further confessed that as per planning, they had gone to Nihal Khera and recovered the corpse of Asha Rani (deceased). He further confessed his guilt and requested him to produce him before the police. He also confessed that ornaments of Asha Rani were with him and those were handed over to him by Manish Kumar (appellant No.1). He further testified that he had produced Ashok Kumar @ Channi (appellant No.3) before Sangram Singh SHO in Bodi Wala Police Station and his statement was recorded.

(49) PW-11 Mohan Lal, Clerk testified that motorcycle No. PB-15-A 2682 was registered in the name of Manoj Kumar s/o Mukand Lal r/o Street No. 7-AA Bohar and Maruti Van No. PCF 6401 was registered in the name of Randhir Singh s/o Kartar Singh, but on 09.09.1997 this vehicle was transferred in the name of Kartar Singh s/o Bishan Singh, r/o Street No.3, Bohar. He proved the registration certificate of Maruti Van Ex.P9 and registration certificate of motorcycle Ex.P10.

(50) PW-12 Baldev Raj Clerk testified that driving licence (Ex.P11) was issued to Randhir Singh s/o Kartar Singh r/o Wairka, Tehsil Jagraon and was valid up to 15.12.2011. He identified the signatures of Sh. Narinder Singh Bath, SDM-cum-Registration Authority, Jagraon on the Ex.P11.

(51) PW-13 Ranjit Singh HC tendered in evidence his affidavit Ex.P12.

(52) PW-14 Balwinder Singh ASI also testified that he recorded the FIR Ex.P13 and sent its copy to the Illaqa Magistrate and higher authorities through Balwinder Singh Constable.

(53) PW-15 Ashok Kumar testified that Asha Rani (deceased) was his sister, who was married to Manish Kumar (appellant No.1). Ashok Kumar s/o Punjab Rai (appellant No.3) is the uncle of Manish Kumar (appellant No.1). While Nirmala Rani (appellant No.2) is the mother of

Manish Kumar (appellant No.1); Ranjit Singh is the driver of van and Ashok Kumar @ Pappu (appellant No.4) was serving on the shop of Manish Kumar (appellant No.1). He further testified that on 17.05.1998 at about 2.00 a.m. during night time, Nirmala Rani (appellant No.2) came to his residence in a van of white colour and informed them that Manish Kumar (appellant No.1) along with Asha Rani (deceased) on a motorcycle had gone to Fazilka to see her aunt, but had not returned and requested him to enquire about them and, thereupon, he along with Nirmala Rani (appellant No.2) on a Van went towards Fazilka side; Ranjit Singh was the driver of van and oneman was also in the van, who was the relative of Nirmala Rani (appellant No.2).

(54) He further testified that the van was taken to some other streets, near railway crossing on the Abohar-Fazilka road where police officials were standing and Nirmala Rani (appellant No.2) enquired from the police, as to whether they had seen a man and girl on motorcycle or not, but they did not reply to the question of Nirmala Rani (appellant No.2) and in the meantime, driver of van replied that one motorcycle was seen parked by the side of road leading from Nihal Khera to Abohar. They went to the spot, where motorcycle was spotted by the driver of van. By the side of motorcycle, they had searched her sister and brother-in-law, but they failed to trace them and when they were going to start van, they heard a voice of Manish Kumar (appellant No.1) for supply of water and then Nirmala Rani (appellant No.2) and her relative went towards the side from where the voice was heard. Driver of van had diverted the light of van towards that side, then they found Asha Rani (deceased) in injured condition and piece of cloth was found around her neck and she was found to be dead.

(55) He further testified that hands of Manish Kumar (appellant No.1) were tied but he was not having any injury on his person and Manish Kumar (appellant No.1) was lying near the corpse of Asha Rani, which was lifted by Nirmala Rani (appellant No.2), Manish Kumar (appellant No.1) and their relative and was put into the van. He further testified that he had restrained Manish Kumar (appellant No.1) and his mother Nirmala Rani (appellant No.2) from taking the dead body without intimation to the police and then Manish Kumar (appellant No.1) became nervous and the corpse of Asha Rani was brought to Civil Hospital Abohar and was kept in the

mortuary and Manish Kumar (appellant No.1) was got admitted there. On 18.05.1998, he came to the spot along with the police and in his presence blood stained earth, simple earth were lifted and were separately sealed with the seal bearing impression 'SS' and both the parcels were seized vide memo Ex.P14. He further testified that motorcycle make Razdoot without number plate along with parcel of sandle was seized vide memo Ex.P15.

(56) PW-16 Balwinder Singh Constable tendered in evidence his affidavit Ex.P16.

(57) PW-17 Nirmal Chand Constable also tendered in evidence his affidavit Ex.P17.

(58) PW-18 Beant Singh HC testified that on 18.05.1998, he was posted as Head Constable at Police Station Khui Khera; on that day, he along with some other police officials joined the police party headed by Sangram Singh SI. He further testified that the police party was present at the place of occurrence in the area of village Bhazidpur and in his presence, Sangram Singh SI picked up blood stained, as also, simple earth from the place of occurrence and prepared separate parcels, thereof, and those were sealed by him with the seal bearing impression 'SS'. Later, these parcels were seized vide memo Ex.P14. He further testified that one motorcycle mark Rajdoot of black colour without number bearing engine No. 1551907-D-97 and chasis No. 1551977-D-97, having no scratch, one pair of sandles (shoes of Asha Rani-deceased) was also seized vide memo Ex.P15 and both the memos i.e. Ex.P14 and Ex.P15 were witnessed by him, as also, by Ashok Kumar PW and his statement was recorded in this regard.

(59) He further testified that on 04.06.1998, he again joined the police party headed by Sangram Singh SI and in his presence, Ashok Kumar @ Channi (appellant No.3) was taken out of the police lock up and interrogated by Sangram Singh SI, who during interrogation suffered disclosure statement Ex.PB and disclosed that, he had kept concealed one gold necklace, two gold rings, four gold bangles and one gold chain on the eastern side of his house near wall under the ground by digging a pit and could get those recovered and pursuant, thereto, he got recovered the above-said articles and those were were taken in possession after getting them identified from Rakesh Kumar Gold Smith (PW-6).

(60) PW-19 Sangram Singh SI deposed as per his investigation, which has been reproduced in the earlier parts of this judgment.

(61) On the basis of evidence of the aforementioned witnesses, learned Additional Advocate General, Punjab for the respondent contended that the learned trial Court rightly convicted and sentenced the appellants vide impugned judgment and order of sentence, therefore, there is no ground to interfere, therein. He also contended that initially FIR (Ex.P13) was wrongly got registered by Manish Kumar (appellant No.1), who in connivance with the other appellants committed the murder of his wife Asha Rani (deceased), as he was doubting his fidelity and he could not swallow that and, therefore, he planned to kill her. He also contended that the criminal conspiracy for slaying the deceased (Asha Rani) was hatched by the appellants at the shop of Manish Kumar (appellant No.1/husband of Asha Rani-deceased) and this version, regarding hatching of conspiracy was overheard by Ram Chand (PW-7). He also contended that Sahib Ram (PW-2) and Makhan Singh (PW-3) in candid words testified that Asha Rani (deceased) was murdered by Manish Kumar (appellant No.1) and his servant Ashok Kumar @ Pappu (appellant No.4) and his paternal uncle Ashok Kumar @ Channi (appellant No.3).

(62) Learned Additional Advocate General, Punjab, further contended that Manish Kumar (appellant No.1) suffered extra judicial confession before Bhag Singh (PW-9) and Ashok Kumar @ Channi (appellant No.3) suffered extra judicial confession before Bhupinder Saneshi (PW-10). He also contended that Ashok Kumar @ Channi (appellant No.3) got recovered gold ornaments of the deceased (Asha Rani), which were removed from her person at the time of occurrence and later these ornaments were identified by Rakesh Kumar (PW-6) from whom these were got prepared by the brother of Asha Rani (deceased). So, he contended that the impugned judgment of conviction and order of sentence may be upheld and affirmed.

(63) Learned counsel for the appellants contended that eye witnesses Ram Chand (PW-7), Bhag Singh (PW-9) and Bhupinder Saneshi (PW-10) were not believed by the learned trial Court who also did not believe the recovery of brick, which was allegedly used for causing injuries to Asha Rani (deceased). Even, he contended that the alleged eye witnesses did not

report the occurrence to the police with promptitude, as also, they did not disclose these facts to any one. He also contended that their statements were recorded by the police after lapse of many days and, therefore, their role becomes suspicious and they cannot be held to be truthful witnesses. He also contended that, if the occurrence had been witnessed by the prosecution witnesses, they would have reported the matter to the police with promptitude. He also contended that it is highly improbable that any one would commit such a crime in the presence of others. He also contended that Makhan Singh (PW-3) in between, visited Fazilka to appear in the Court, but he did not disclose the occurrence either in the Court or to any one else. So, he contended that, if he had witnessed the occurrence in the manner alleged by him, he would have disclosed the same either in the Court or to some other person. So, he contended that evidence of Makhan Singh (PW-3) was wrongly believed by the learned trial Court.

(64) Learned counsel for the appellants also contended that Budh Singh (PW-4) had made improvements in his statement and, therefore, his testimony is not worth credence and is liable to be repelled. He also contended that there is no direct evidence against the appellants and medical evidence is contrary to the ocular evidence, as ligature mark was not found around whole of the neck of Asha Rani (deceased). He also contended that injury No.1 on the person of the deceased (Asha Rani) contradicts the ocular evidence. He also contended that indeed some unknown persons waylaid Manish Kumar (appellant No.1) and Asha Rani (deceased) and removed ornaments from her person and caused injuries to both of them and Asha Rani (deceased) succumbed to her injuries received in this occurrence. So, he contended that the police wrongly repelled the version of Manish Kumar (appellant No.1) and wrongly substituted its own, which was wrongly believed by the learned trial Court. He also contended that the recovery of gold ornaments of the deceased (Asha Rani) from the possession of Ashok Kumar @ Channi (appellant No.3) is doubtful, as the handkerchief, which was allegedly used for burying the gold ornaments in the ground was not found to be soiled with earth and, therefore, this recovery of gold ornaments cannot be held to be proved against Ashok Kumar @ Channi (appellant No.3). So, the learned counsel for the appellants contended that benefit of doubt may be accorded to the latter and they be acquitted of the charge framed against them.

(65) We have given our thoughtful consideration to the contentions raised by the learned counsel for the parties.

(66) So far as, Nirmala Rani (appellant No.2) is concerned, suffice it to say that, there is no evidence against her of hatching conspiracy with the other appellants. There is no evidence on the record, as to when she hatched conspiracy with the other appellants. So, hatching of such conspiracy was not preceded by the commission of murder of Asha Rani (deceased). No such prior meeting of minds for slaying Asha Rani (deceased) was followed by her murder. There is nothing on the record that the PWs examined in this case saw Nirmala Rani (appellant No.2) hatching conspiracy with the other appellants. Only Manish Kumar (appellant No.1) son of Nirmala Rani (appellant No.2) doubted the fidelity of his wife, which he could not swallow. At no point of time, he shared this information with his mother Nirmala Rani (appellant No.2).

(67) To prove conspiracy part, respondent has relied upon the testimony of Ram Chand (PW-7), which has been reproduced in the earlier parts of this judgment. This witness nowhere testified that Manish Kumar (appellant No.1) ever told him that he had told about the conspiracy to kill his wife Asha Rani (deceased) to his mother Nirmala Rani (appellant No.2). Evidence of Ram Chand (PW-7) could be used against the appellants, if he in candid words testified that he had seen Nirmala Rani (appellant No.2) in the company of others discussing plan to kill Asha Rani (deceased). The other appellants were present at the shop of Mukand Lal on 13.05.1998 at 10.00 a.m. and Ram Chand (PW-7) heard them talking that Asha Rani (deceased) was characterless and they would murder her. So, the evidence of Ram Chand (PW-7) cannot be used for holding Nirmala Rani (appellant No.2) as a conspirator in this occurrence.

(68) Even the evidence of Ashok Kumar (PW-15), who is the brother of the deceased (Asha Rani) cannot be used for holding Nirmala Rani (appellant No.2) as conspirator in this occurrence, as this witness did not testify in candid words that he saw the appellants hatching conspiracy to kill Asha Rani (deceased). There is nothing on the record that when Nirmala Rani (appellant No.2) went to the house of Ashok Kumar (PW-15) on the intervening night of 17.05.1998 at about 2.00 a.m., she was already knowing about the commission of murder of Asha Rani (deceased)

by the other appellants. She requested Ashok Kumar (PW-15) to enquire about the whereabouts of Manish Kumar (appellant No.1) and Asha Rani (deceased). Her request might have been genuine one and she may not be knowing at that time about the commission of murder of Asha Rani (deceased) by the other appellants.

(69) The van in which Nirmala Rani (appellant No.2) travelled was being driven by Ranjit Singh, who was arraigned as accused and was acquitted vide impugned judgment. The case of Nirmala Rani (appellant No.2) must be treated on the same footing, as that of Ranjit Singh's case (driver of the van). Whatever, Ashok Kumar (PW-15) saw and stated was correct, but his testimony reveals that he testified nothing about the complicity of Nirmala Rani (appellant No.2) in this occurrence. So, the learned trial Court wrongly relied upon the testimonies of Ram Chand (PW-7) and Ashok Kumar (PW-15) for holding Nirmala Rani (appellant No.2) as conspirator in the commission of murder of Asha Rani (deceased).

(70) It is no doubt true that Manish Kumar (appellant No.1) got lodged a false report with the police by stating, therein, that his mother Nirmala Rani (appellant No.2) and others came to the place where he and Asha Rani (deceased) were thrown by the assailants, but this does not reveal that he had at any point of time had hatched a conspiracy with Nirmala Rani (appellant No.2) to kill his wife. Indeed, Nirmala Rani (appellant No.2) did not participate in the occurrence. Only she appeared on the scene along with Ashok Kumar (PW-15) and Ranjit Singh-accused (since acquitted). It was required of the respondent to nominate a place where all the appellants hatched a conspiracy to kill Asha Rani (deceased).

(71) As already held, the scheme for killing the deceased (Asha Rani) was discussed by Manish Kumar (appellant No.1) with Ashok Kumar (a) Channi (appellant No.3) and Ashok Kumar (a) Pappu (appellant No.4) and not with Nirmala Rani (appellant No.2) and Ranjit Singh-accused, driver of the van, wherein, Nirmala Rani (appellant No.2) travelled to the place of occurrence. In these circumstances, it was required of the learned trial Court to accord benefit of doubt to Nirmala Rani (appellant No.2), as had been accorded to Ranjit Singh-accused.

(72) The learned trial Court, thus, wrongly came to the conclusion that Nirmala Rani (appellant No.2) hatched a conspiracy. Even, other appellants were not convicted for this offence. Ranjit Singh-accused was acquitted. When Ranjit Singh-accused was acquitted, and other appellants were not convicted of offence punishable under Section 120-B IPC, the charge of conspiracy against Nirmala Rani (appellant No.2) automatically falls to the ground. In view of the acquittal of Ranjit Singh-accused, from the charge under Section 120-B IPC, the acquittal of Nirmala Rani (appellant No.2) was required to follow. Even, the learned trial Court held that the testimony of Ram Chand PW-7 was not reliable on the point of conspiracy. The learned trial Court, thus, erroneously convicted and sentenced Nirmala Rani (appellant No.2) for commission of offence punishable under Section 120-B IPC. So, Nirmala Rani (appellant No.2) is acquitted of the charge framed against her by according her benefit of doubt.

(73) So far as the other appellants are concerned, they were seen by Makhan Singh (PW-3) at the place of occurrence. He in candid words testified that on 17.05.1998 at about 10.30 p.m. he was coming from Abohar to Ajanwala on a tractor being driven by Amarjit @ Pappu. When they were at a distance of 1/2 km from bus stand Nihal Khera, they noticed Ashok Kumar @ Channi (appellant No.3) and Ashok Kumar @ Pappu Bhaya (appellant No.4) standing near the moped. They stopped the tractor and asked them, as to why they were standing. In the meantime, Manish Kumar (appellant No.1) along with his wife Asha Rani (deceased) came there on a motorcycle from the side of Fazilka and he parked his motorcycle on its stand.

(74) This evidence of Makhan Singh (PW-3) during cross-examination could not be shattered. No motive can be ascribed to him to testify falsely in this case. This witness saw the appellants together along with the deceased (Asha Rani). It was for them to explain the circumstances, whereunder, Asha Rani (deceased) turned into a corpse. The version given by Manish Kumar (appellant No.1) is false. If the occurrence had taken place in the manner alleged by him in the FIR (Ex.P13), in that event, there would have been no strangulation of the deceased. If the intention of the persons who waylaid them would have been robbery, they were not to strangulate Asha Rani (deceased). On the contrary, they would have decamped with her ornaments.

(75) Even there was no dent on the motorcycle. If the van of other appellants had hit the motorcycle, then there would have been dent on it. Manish Kumar (appellant No.1) failed to explain in his examination under Section 313 Cr.P.C., as to how by hitting vehicle against his motorcycle, dent could not be caused, thereon. It has come in the testimony of Makhan Singh (PW-3) that Manish Kumar (appellant No.1) took out his turban and put the same around the neck of Asha Rani (deceased) and that was pulled from the one side by him and from the other side by Ashok Kumar @ Channi (appellant No.3). When, Makhan Singh (PW-3) told them that they were committing a sin, he was told to leave that place and under fear Makhan Singh (PW-3) along with Amarjit @ Pappu, who was driving the tractor came back to the house. Possibly because of fear, this witness did not report the matter to the police. When he came after 5/6 days from Haryana, he heard that the wife of Manish Kumar (appellant No.1) was killed by some unknown persons, who removed her ornaments, then this witness rose to the occasion and went to Harnek Singh Sarpanch and then went to the police station, where he made his statement Ex.P6 before the police mentioning, therein, the manner in which the occurrence had taken place.

(76) Budh Singh (PW-4) also testified likewise. He also saw the three appellants committing the murder of Asha Rani (deceased). No motive can be ascribed to these witnesses to testify falsely in this case. PW-3 and PW-4 were subjected to searching cross-examination by the learned counsel for the appellants before the learned trial Court, but the long cross-examination failed to elicit anything worth the name which could possibly cause any dent in their testimonies. So, it is a case where there is a direct evidence of complicity of Manish Kumar (appellant No.1), Ashok Kumar @ Channi (appellant No.3) and Ashok Kumar @ Pappu (appellant No.4). FIR in this case had already been registered, no delay has taken place. Makhan Singh (PW-3) in the beginning was afraid of the appellants, therefore, he did not report the matter to the police. When he learnt that the murder of Asha Rani (deceased) wife of Manish Kumar (appellant No.1) is being ascribed to some unknown person, then he suffered statement Ex.P6 before the police, which has been supported by the testimony of Budh Singh (PW-4).

(77) The ocular evidence of Makhan Singh (PW-3) and Budh Singh (PW-4) has been corroborated by the medical evidence of Dr. Ramesh Kumar (PW-1), who found five injuries on the person of the deceased (Asha Rani). He also found ligature mark on the neck of the deceased, which is injury No.1 on her person. He opined that cause of death in this case was asphyxia due to strangulation, as a result of injury No. 1, which was sufficient to cause death in the ordinary course of nature. So, injury No.1 was homicidal and Makhan Singh (PW-3) and Budh Singh (PW-4) had seen the appellants Nos.1, 3 and 4 strangulating the deceased with a turban that was later on recovered. The version of robbery put forth, by the appellants Nos. 1, 3 and 4 has been found to be false during investigation.

(78) There is no flaw in the investigation having been conducted by Sangram Singh SI (PW-19), who made recovery of the gold ornaments from Ashok Kumar @ Channi (appellant No.3). These were identified by Rakesh Kumar (PW-6), who prepared those at the instance of the brother of the deceased. Makhan Singh (PW-3) and Budh Singh (PW-4) were stated to be chance witnesses as per contention of the learned counsel for the appellants who had no business to be at the place of occurrence. Regarding this contention, suffice it to say that testimonies of these witnesses i.e. Makhan Singh (PW-3) and Budh Singh (PW-4) cannot be repelled on the naive ground that they did not report the matter to the police, pronto after seeing the same and that they did not divulge the occurrence to any one till reporting, thereof, to the police.

(79) Of course, their statements have to be scrutinized very carefully in order to reach at the conclusion as to whether reliance can be placed, thereon, or not. It is no doubt true that these witnesses did not report the matter to the police with promptitude, but that cannot be made a ground for rejection of their statements, as they have explained that the appellants threatened them that, if they reported the matter to any one, they will meet the same fate. When the testimonies of Makhan Singh (PW-3) and Budh Singh (PW-4) could not be shattered during cross-examination, and these withstood the scrutiny, these must be held to be correct and truthful one.

(80) The learned trial Court rightly did so and rightly placed reliance, thereon, for coming to the conclusion that there is no reason to disbelieve

the same. In his statement Ex.P19, Manish Kumar (appellant No. 1) stated that the persons followed them in a van, when they were returning on motorcycle from Fazilka to Abohar. When they reached near the bus stand Nihal Khera, two persons alighted from that van and one of them gave a blow with a knife in his abdomen, but he caught hold of the blade of the knife and broke the same. That person gave a push to him, as a result of which his head struck against the tree and he was dragged to the place where Asha Rani was lying. He further stated that, that person broke one of the branches of that tree and gave blow with the same on his head. If this statement would have been truthful, there would have been injury on his hand when he caught hold of the blade of the knife and broke it.

(81) There are three alleged injuries on the person of Manish Kumar (appellant No. 1) as per testimony of Dr. Gurjit Singh Kalra (PW-5). First injury on the right forearm; second injury, abrasion on the right arm and third injury, abrasion on the right side of the abdomen. If, there would have been truthful version, in his statement Ex.P19, appellant No. 1 must have received injury on his hand, when he caught hold the blade of the knife and broke it. Injury No.2 would have been at the back side of his hand when he was given a push. His head was struck against the tree. But there is no head injury on his person. So, medical evidence provided through the testimony of Dr. Gurjit Singh Kalra (PW-5) falsifies the version of Manish Kumar (appellant No. 1) regarding the injuries received by him and that fallacy resurrects the prosecution version provided through the testimonies of Makhan Singh (PW-3) and Budh Singh (PW-4).

(82) Before PW-10 (Bhupinder Saneshi) on 04.06.1998 at about 8.00 a.m., Ashok Kumar @ Channi (appellant No.3) suffered his extra judicial confession and disclosed that he along with appellants Nos. 1 and 4 hatched a conspiracy to murder Asha Rani and that as per planning, Manish Kumar (appellant No.1) along with his wife during night time was to visit Fazilka on motorcycle and they were to meet Manish Kumar (appellant No.1) near Nihal Khera. He further disclosed that at about 9/10 p.m., they were present near Nihal Khera, when Manish Kumar (appellant No.1) along with his wife came from the side of Fazilka and stopped his motorcycle and they murdered Asha Rani. He also disclosed that Ashok Kumar @ Pappu (appellant No.4) gave brick bat on the head of Asha Rani, while he himself and Manish Kumar (appellant No.1) strangulated her and, thereafter, they tied the hands of Manish Kumar (appellant No.1), who was

also thrown by the side of Asha Rani (deceased). He further disclosed that as per planning, they went to the house of the Manish Kumar (appellant No.1) and disclosed Nirmala Rani (appellant No.2) that as per planning, they have murdered Asha Rani. Thereafter, they went to the parents of Asha Rani and requested them to trace Asha Rani and Manish Kumar (appellant No.1), as they had not returned from Fazilka.

(83) This witness was subjected to searching cross-examination by the learned counsel for the appellants before the learned trial Court, but the long cross-examination failed to elicit anything worth the name which could possibly cause any dent in his testimony. He used exact words used by Ashok Kumar @ Channi (appellant No.3). He being member of Bhartiya Janta Party had every opportunity to get better treatment for Ashok Kumar @ Channi (appellant No.3) from the police after his arrest. So, he produced Ashok Kumar @ Channi (appellant No.3) before the investigating officer of this case.

(84) This extra judicial confession was rightly relied upon by the learned trial Court for holding Ashok Kumar @ Channi (appellant No.3) guilty of commission of offences punishable under Sections 302 and 201 IPC, in view of "*Munna Kumar Upadhyaya @ Munna Upadhyaya versus State of A.P. Tr. Pub. Prosecutor (1)*."

(85) This extra judicial confession of Ashok Kumar @ Channi (appellant No.3) before Bhupinder Saneshi (PW10) must be upheld in view of "*Chattar Singh and Anr. versus State of Haryana (2)*", passed by the Hon'ble Supreme Court of India, wherein, it was held that an extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court.

(86) The learned trial Court, thus, rightly relied upon the testimony of Bhupinder Saneshi (PW-10) and rightly held Ashok Kumar @ Channi (appellant No.3) guilty of commission of offences punishable under Sections 302 and 201 IPC. The learned trial Court also rightly held Manish Kumar (appellant No.1) and Ashok Kumar @ Pappu (appellant No.4) guilty of commission of offences punishable under Sections 302 and 201 IPC.

(1) 2012 (3) R.A.J.185

(2) 2008 (4) RCR (Cr.) 133

(87) There is, thus, no illegality or impropriety in the impugned judgment and order of sentence, which are upheld and affirmed so far as appellants Nos.1, 3 and 4 are concerned.

(88) However, the impugned judgment and order of sentence qua appellant No.2 are set aside and she is acquitted of the charge framed against her by according her benefit of doubt.

(89) Resultantly, the appeal of appellants Nos. 1, 3 and 4 is dismissed and they are ordered to be taken in custody for undergoing the remaining portion of their sentence. So far as, the appeal of appellant No.2 is concerned, the same is allowed; impugned judgment and order of sentence qua her are set aside and she is acquitted of the charge framed against her. Personal bond and surety bond furnished by her at the time of suspension of her sentence under Section 389 Cr.P.C. are discharged.
