

Before S.S. Saron & Darshan Singh, JJ.

NAFE SINGH @ BOBY—Appellant

versus

STATE OF HARYANA—Respondent

CRA-D No.946-DB of 2009

March 10, 2017

Indian Penal Code, 1860 – S. 302 – Motive insignificant – Direct Evidence – Deceased wife stopped husband appellant/accused from drinking – Led to beatings, threats to kill – Accused/appellant attacked her with sharp edged weapon – Death on the spot – Contention – Motive not established – Immaterial – Overwhelming evidence to establish guilt – Motive hidden in the heart and mind – When there is direct evidence, motive pales into insignificance.

Held that, the other contention of the learned counsel for the appellant is that there was no motive for the appellant to commit the murder of his wife Sneh Lata. Motive, as is well known, is hidden in the heart and mind of the offender and it is difficult to ascertain as to what was in the heart and mind of the person when he committed the criminal act. It is the offender alone who knows as to why and how he acted in a particular manner. In a case like the present one, where there is direct evidence, the motive would not play an important part. The motive is to be adjudged from the surrounding circumstances that are available on record. When there is direct evidence, the motive pales into insignificance.

(Para 44)

Further held that, the evidence on record which includes the deposition of the complainant - Banarsi (PW5), his nephew Subhash (PW11) and that of the eyewitness Karma (PW7); besides, the affidavit Ex. P5 of Dr. Jagtar Singh (PW3) which mentions the cause of death due to the injuries, which were inflicted by the appellant on his wife - Sneh Lata as also the recovery of 'gandasi' (Ex. P13) on the disclosure statement (Ex. P21) of the appellant and the FSL report (Ex. PX) with the serological analysis of the blood on the 'gandasi' that was recovered to be human, clearly goes to establish the guilt of the appellant and his having committed the murder of his wife - Sneh Lata. In the circumstances, there is no material to dislodge the judgment and order

of the learned Additional Sessions Judge, Karnal convicting and sentencing the appellant.

(Para 45)

Sukhdeep Parmar, Advocate
for the appellant.

S.S. Pannu, DAG, Haryana
for the respondent.

S.S. SARON, J.

(1) This appeal has been filed by Nafe Singh @ Bobby (appellant) against the judgment of conviction dated 16.09.2009 and order of sentence dated 18.09.2009 passed by the learned Additional Sessions Judge, Karnal whereby the appellant has been held guilty for the offence punishable under Section 302 of the Indian Penal Code ('IPC'-for short) and has been sentenced to undergo life imprisonment; besides, pay a fine of Rs.5,000/- and in default of payment thereof, undergo rigorous imprisonment for a period of one year.

(2) FIR (Ex. P19) in the case has been registered on the statement (Ex. P15) of Banarsi (PW5) (complainant) son of Neki Ram, resident of village Pundrak, Police Station Sadar Karnal on 24.07.2008. According to the complainant, he is a resident of village Pundrak and works as a labourer. He has a son and had a daughter namely Sneha Lata (deceased in the case). His daughter - Sneha Lata, aged 28 years, was married with Nafe Singh @ Bobby (appellant) about ten years earlier. His daughter had two sons and a daughter. His son-in-law, namely, Nafe Singh (appellant), it is alleged, used to frequently consume liquor and when his daughter stopped him from drinking, he used to beat her; besides, he held out threats to kill her. His daughter had complained to him in this regard. He had also tried to make his son-in-law understand. It is alleged that in his presence also, Nafe Singh (appellant) held out threats to the life to his daughter - Sneha Lata.

(3) A day earlier to his making the statement, i.e. on 23.07.2008 at about 09:00 p.m., the complainant received information on telephone that his daughter - Sneha Lata had been injured by Nafe Singh (appellant) and he had been called there. On receiving the information, the complainant and his nephew Subhash (PW11) son of Jai Singh, resident of Pundrak, reached the house of Sneha Lata at village Balu. There he found out that his son-in-law Nafe Singh (appellant) with a sharp edged weapon with the intention to kill his daughter - Sneha Lata

had inflicted deep injuries on the right side above her lips and on the left side of her cheek and had killed her. The complainant on his own satisfied himself fully that Nafe Singh (appellant) on being stopped from consuming drinks by his daughter had killed her by inflicting injuries with the intention to kill her with a sharp edged weapon. She succumbed to her injuries at the spot. Delay had occurred in reporting the matter as he was being pressurized by the residents of village Balu and relatives. He had made his statement at the spot before SI Dilbag Singh, Police Station Nissing (PW12), which he thumb marked and it was attested by the latter on 24.07.2008. Besides, SI Dilbag Singh (PW12) recorded the police proceedings (Ex. P18).

(4) The police proceedings (Ex. P18) were to the effect that on 24.07.2008 on receiving a telephone message at Police Station Nissing, he (SI Dilbag Singh PW12) along with ASI Rajbir Singh, HC Surender Singh, EHC Jagtar Singh on a government vehicle No. HR45A-0161 driven by Constable Rajnish reached the place of occurrence at village Balu. There Banarsi - complainant (PW5) met him and he got his statement (Ex. P15) recorded which was reduced into writing and read over to him. He was made to understand his statement and he (complainant) after admitting the same to be correct put his thumb impressions which were attested by SI Dilbag Singh (PW12). From the statement of the complainant, an offence punishable under Section 302 IPC, it appeared, had been committed. Accordingly, 'ruqqa' (memo) was being sent through Constable Jagtar Singh to the police station. After registration of the case, its number was asked to be intimated. SI Dilbag Singh (PW12) along with the officials accompanying him were busy at the spot. Intimation was asked to be sent through special report and the SHO was also asked to be informed accordingly. The police proceedings (Ex. P18) were recorded by SI Dilbag Singh (PW12) at village Balu on 24.07.2008 at about 12:10 p.m.

(5) At the police station, Balwan Singh ASI (PW8) recorded FIR (Ex. P19) and he made his endorsement (Ex. P20) on the 'ruqqa' (memo) to the effect that in pursuance of DDR No. 8 dated 24.07.2008 at 12:30 p.m., case FIR No. 164 dated 24.07.2008 (Ex. P19) for the offence under Section 302 IPC was registered at Police Station Nissing. After registration of the case, ASI Balwan Singh (PW8) sent the file to the investigating officer, besides, special reports of the case were sent to the higher officers through EHC Krishan Kumar. The FIR was received by the Judicial Magistrate 1st Class, Karnal on 24.07.2008 at 02:50 p.m. through EHC Krishan Kumar.

(6) SI Dilbag Singh (PW12) called HC Raj Kumar, Photographer (PW1) at the spot. He took photographs of the place of occurrence. Inquest proceedings (Ex. P7) in terms of Section 174 of the Code of Criminal Procedure ('Cr.P.C.' - for short) were conducted by SI Dilbag Singh (PW12). Rough site plan (Ex. P26) of the place of occurrence was prepared. A 'chunni' (veil) (Ex. MO-1) of the deceased Sneh Lata stained with blood which was lying near the dead body was converted into a parcel and sealed with the seal of 'DS'. It was taken in possession vide memo Ex. P25. The seal after use was handed over to Subhash (PW11) son of Jai Singh. The memo was signed by Subhash (PW11) and Jai Pal. SI Dilbag Singh (PW12) attested the same. He recorded the statement of witnesses in terms of Section 161 Cr.P.C. The dead body of Sneh Lata was thereafter handed over to her parents and to HC Surender for getting the post-mortem examination conducted at the General Hospital, Karnal. After post-mortem examination, HC Surender Singh handed over a parcel containing the post-mortem report and clothes of the deceased duly sealed with the seal 'JS' containing six seals to SI Dilbag Singh (PW12). The same were taken in police possession vide memo Ex. P27, which was signed by SI Dilbag Singh (PW12) and HC Surender Singh. The case property was deposited with MHC and statement of EHC Krishan Kumar was recorded.

(7) Nafe Singh (appellant) was arrested by SI Ilam Singh (PW13) on 25.07.2008. According to SI/SHO Ilam Singh (PW13), he along with ASI Rajbir and ASI Balwan Singh in a government vehicle driven by Satpal reached village Balu on 25.07.2008. When they reached near the turning point of village Budanpur, Sohan Singh Sarpanch of the village produced Nafe Singh (appellant). Nafe Singh (appellant) was interrogated and he made a disclosure statement in respect of the incident that had occurred on 23.07.2008. He stated that he used a 'gandasi' to inflict injuries on the person of his wife - Sneh Lata (deceased) which he could get recovered from his residential house. The disclosure statement (Ex. P21) was thumb marked by Nafe Singh @ Boby (appellant) and other witnesses which was attested by SI Ilam Singh (PW13). On the basis of the disclosure statement (Ex. P21), the police team headed by SI/SHO Ilam Singh (PW13) reached near village Balu and on the demarcation of Nafe Singh @ Boby (appellant), a used 'gandasi' (Ex. P13), which was lying behind the iron 'petti' (box) was produced by him. A sketch (Ex. P22) of the same was prepared which bears signatures of the witnesses and was attested by SI/SHO Ilam Singh (PW13). The 'gandasi' (Ex. P13) was converted

into a parcel and the same was sealed with the seal of 'RB'. It was taken in possession by the police vide memo Ex. P23. The seal after its use was handed over to ASI Balwan Singh (PW8). Site plan (Ex. P28) regarding recovery of 'gandasi' was prepared. The statements of the witnesses were recorded under Section 161 Cr.P.C. SI/SHO Ilam Singh (PW13) on the same day deposited the case property with the MHC and the appellant was put in the police lock-up.

(8) SI Ilam Singh (PW13) submitted an application (Ex. P9) on 11.08.2008 before the Medical Officer, General Hospital, Karnal to get an opinion regarding the recovered 'gandasi' and whether the injuries on the mouth of Sneh Lata could be caused with the 'gandasi' or not. The doctor gave his opinion (Ex. P10), which was to the effect that possibility of injuries mentioned in the post-mortem report dated 24.07.2008 of Sneh Lata could not be ruled out by this weapon that had been produced before him. The weapon was returned in original.

(9) ASI Rajbir Singh (PW10) and ASI Balwan Singh (PW8) had joined the investigation of the present case with SI/SHO Ilam Singh (PW13). They have deposed regarding the arrest of the appellant - Nafe Singh @ Bobby as also regarding recovery of 'gandasi' (Ex.P13) from the place that was disclosed by Nafe Singh @ Bobby (appellant).

(10) SI/SHO Ilam Singh (PW13) prepared the police report ('challan') in terms of Section 173 Cr.P.C. which was filed in the Court of learned Judicial Magistrate 1st Class, Karnal on 04.09.2008. The learned Judicial Magistrate 1st Class, Karnal, in terms of his order dated 19.09.2008, observed that since the offence punishable under Section 302 IPC was exclusively triable by the Court of Session, therefore, the case was accordingly committed to the Court of Session. The appellant was directed to be produced before the learned Sessions Judge, Karnal on 03.10.2008.

(11) The case was assigned to the Court of learned Additional Sessions Judge, Karnal. The learned Additional Sessions Judge, Karnal, on 25.10.2008, heard arguments on the charge. The documents were perused. It was observed that a *prima facie* case for the commission of offence punishable under Section 302 IPC was made out. Accordingly, charge was framed to the effect that the appellant on 23.07.2008 in the area of village Balu falling within the jurisdiction of Police Station Nissing intentionally committed murder by causing the death of Sneh Lata and thereby committed an offence punishable under Section 302 IPC within the cognizance of the Court. The appellant, it was directed, be tried by the Court on the said charge. The charge was

read over and explained to the appellant in simple Hindi. The appellant stated that he had heard and understood the charge framed against him and he pleaded not guilty to the same and claimed trial.

(12) The prosecution, in order to establish its case, examined as many as thirteen witnesses; besides, tendered documents including the FSL report (Ex. PX) in evidence.

(13) Banarsi (complainant) appeared as PW5. He stated that he had a daughter and a son. His daughter Sneh Lata was married with Nafe Singh (appellant) ten years earlier. His daughter had three children. It is stated that his daughter was happily living with the accused (appellant) for some time. It was alleged that about 3½ months earlier from 18.11.2008, he received information about the death of his daughter. There was a talk in the village that the son-in-law of the complainant, namely, Nafe Singh @ Bobby (appellant) had killed Sneh Lata. He accompanied by his nephew Subhash (PW11) came to village Balu on receiving information about the death of his daughter. He reached the house of his daughter and found her dead. Her mouth was cut with a 'gandasi'. He made a statement (Ex.P15) to the police which bears his thumb impressions. The dead body was brought to the hospital for post-mortem examination. He received the dead body of his daughter - Sneh Lata vide receipt Ex. P16. It is stated that his daughter had never complained to him regarding the conduct of the accused (appellant) nor ever informed that she was harassed by the accused (appellant). At this stage, learned Public Prosecutor made a request that the witness (PW5) was suppressing the truth and he may be allowed to cross-examine the witness. The same was allowed by the learned Additional Sessions Judge, Karnal.

(14) In cross-examination by the learned Public Prosecutor, it is stated by Banarsi (PW5) that it was correct that he informed the police that his son-in-law Nafe Singh (appellant) was a drunkard and he used to beat his daughter under the influence of liquor when she prevented him from consuming liquor. It is also stated as correct that his daughter informed him that the accused Nafe Singh (appellant) held out threats to kill her if she prevented him from consuming liquor. It is also stated as correct that he (PW5) tried to prevail upon Nafe Singh (appellant) and that in his presence as well accused Nafe Singh (appellant) had held out threats to kill his daughter. It is stated as correct that he informed the police that on 23.07.2008 he received information at about 09:00 p.m. that the accused (appellant) had caused injuries to his daughter. He also informed the police that Nafe Singh (appellant)

had caused injuries to her on her mouth and cheeks with an intention to kill her. It is stated as correct that he informed the police that Nafe Singh (appellant) killed Sneh Lata when she prevented him from consuming liquor. He also told the police that due to pressure of his relatives, he could not lodge the report promptly.

(15) In cross-examination by the learned defence counsel, it is stated as correct that in the beginning accused (appellant) kept Sneh Lata well. For about eight years Sneh Lata was living happily with the accused (appellant) but for the last about two years she was being harassed. He (PW5) could not tell as to why the accused (appellant) had been harassing his daughter. His daughter used to visit him frequently. It is also stated that the accused (appellant) was not on talking terms with him for the last two years before the death of Sneh Lata. Before that, their relations were cordial. He had never seen the accused (appellant) consuming liquor. His daughter never informed him that the accused (appellant) had beaten her. No Panchayat was ever convened to prevail upon the accused (appellant). The accused (appellant), it is stated, was a labourer. He did not own any land except a residential house. There was no telephone at his residence. There was a telephone at the house of his neighbour Krishan. He could not tell the telephone number. Krishan was his brother. There is a telephone at his residence for the last four-five years. Voluntarily stated that he had a mobile phone. He did not remember the exact date of the incident. He could not tell who informed Krishan on his telephone. He did not receive the telephone call. Krishan received it at about 08/08:30 p.m. It is stated that Balu is at a distance of 25-30 kilometres from village Pundrak. He and Subhash (PW11) reached village Balu on a motorcycle. Subhash (PW11) was driving the motorcycle. It is stated that at the spot the accused (appellant) was present near the dead body. No other person was present. The children of Sneh Lata were not present. He met the children on the next day. It is stated that after he reached, several persons collected. When he reached the house of Nafe, the door was closed and the dead body was lying in the 'varandah'. It was not visible from the 'gali' (street) outside. The police had come at about 08:00 a.m. on the next day of the incident. After the police had come, photographs were obtained and other writing work was done. When the police reached, it is stated, Nafe Singh (appellant) was present. Several villagers had collected at the spot. He (PW5) could not tell their names. No relative from his side was present. He (PW5) voluntarily stated that there was pressure on him from the side of relatives of the accused (appellant). He did not own any property. He

was a labourer. His (PW5's) son was a student. He was the only earning member of the family. It is stated as wrong to suggest that he often used to borrow money from his daughter to meet his expenses and on the day of incident, he had gone to his daughter to demand money. It is further stated as wrong to suggest that when he reached the house of his daughter to demand money, he found her lying dead and he falsely involved the accused (appellant) to extract money from him.

(16) Subhash (PW11) who had accompanied the complainant - Banarsi (PW5) reaffirmed the statement of Banarsi (PW5) and he deposed on the same lines. He was cross-examined by the learned defence counsel, however, nothing substantial could be brought out which may help the appellant - Nafe Singh.

(17) The prosecution examined Dr. Jagtar Singh, Medical Officer, General Hospital, Karnal (PW3). He tendered in evidence his affidavit Ex. P5. In the affidavit, it is deposed by Dr. Jagtar Singh (PW3) that he was posted as Medical Officer at General Hospital, Karnal on 24.07.2008. On the said day, he along with Dr. Rakesh Mittal, on police request (Ex. P6), conducted the post-mortem examination (Ex. P8) on the dead body of Sneha Lata wife of Nafe Singh, resident of village Balu. The inquest report (Ex. P7) was submitted by the police. The dead body was brought by HC Surender Singh. Her age was 28-30 years by appearance. The dead body had a 'salwar' (Ex. P11) and 'kamij' (Ex. P12), bangles on right wrist which were twelve in number and eleven on the left wrist. There was a metallic 'kara' on left wrist. Clotted blood was present on the 'kamij' at places. Both the eyes were closed. There was frothing from the mouth. Rigor mortis was present from all four limbs. The following injuries were noticed on the dead body of Sneha Lata:-

- “1. An incised wound 9 x 1 cm on right side of upper lip starting from right nostril, horizontally placed towards right medibular region on dissection underlying bone fracture.
2. Incised wound 7 x 3 cm on left side of cheek starting from left angle of mouth going outward horizontally towards left mandible region underlying tissues, muscles, nerves and vessels were cut. Clotted blood was present.
3. An abrasion 7 x 0.2 cm present below injury No. 2.
4. An abrasion 12 x 0.3 cm left side of neck 2.5 cm above

the mid clavicle.”

(18) In the opinion (Ex. P10) of the doctors, the cause of death in this case was hemorrhage, asphyxia due to aspiration. All the injuries were ante mortem in nature and were sufficient to cause death in normal course of life. Well stitched dead body after post-mortem, copy of post-mortem report, police papers duly signed by Dr. Jagtar Singh (PW3), parcel containing clothes bearing six seals and sample seal were handed over to the police. The probable time between injury and death, it is stated, was variable and between the death and post-mortem was three to thirty-six hours.

(19) During deposition in Court, Dr. Jagtar Singh (PW3) stated that 'salwar' (Ex. P11) and 'kamij' (Ex. P12) were the same which were removed from the dead body of Sneh Lata and were handed over to the police in a sealed parcel; besides, 'gandasi' (Ex. P13), it is stated, was the same which was shown to them by the police in respect of which opinion (Ex. P10) had been given.

(20) In cross-examination, it is stated by Dr. Jagtar Singh (PW3) that he did not remember whether video-graphy of the post-mortem was done or not. It is stated that rigor mortis on the dead body were stable. Rigor mortis starts within first hour of the death and it depends on the weather, circumstances of the death and health of the deceased. In summer usually it takes 36 hours to disappear and in winter usually takes 48 hours to disappear. It takes 2-3 hours to semi-digest the food. It is stated that the deceased must have taken her meal about two hours prior to her death. There were no visible marks of stool as well as urine on the clothes. They did not mention the depth of injuries No. 1 and 2 in centimetres. It is stated as correct that hemorrhage had resulted on account of injuries No. 1 and 2; besides, asphyxia resulted when the blood from injuries No. 1 and 2 blocked the trachea. Injuries No. 3 and 4 it is stated were simple. He (PW3) could not tell the exact time variation between injuries No. 1 and 2. Larynx, it is stated, was intact. It is stated as wrong to suggest that injuries No. 1 and 2 were not sufficient to cause death of the deceased. It was not possible whether injuries on the person of the deceased were caused between 08:00 to 10:00 a.m. on 23.07.2008. Again stated that the possibility of the same could not be ruled out. There are no colour changes in the incised wounds after death until and unless putrefaction starts. He could not tell the exact posture of the deceased with respect to the assailant at the time of causing injuries. It is stated as wrong to suggest that the injuries on the lip and cheek on

the face were not sufficient to cause death. It is also stated as wrong to suggest that they had given false opinion on the asking of the police. It is stated as correct that the kind of weapon used had not been mentioned in the opinion (Ex. P10). It is stated as wrong to suggest he was deposing falsely.

(21) According to the FSL report (Ex. PX), it is *inter alia* mentioned that Ex.-1a (Lady's shirt), Ex.-1b (Lady's salwar), Ex.-2 (Dupatta) were stained with blood stains; besides, blood was detected on Ex.-3 (Gandasi). The result of serological analysis of blood was attached. According to the result of serological analysis of blood, it is mentioned that material was disintegrated in respect of lady's shirt (Ex.1a), lady's 'salwar' (Ex.1b). The origin of blood on the 'dupatta' (Ex.2) and 'gandasi' (Ex.3) was human. The blood group was inconclusive.

(22) The prosecution also examined Karma (PW7) son of Bali Ram whose house is adjacent to the house of Nafe Singh (appellant). According to him, he saw the accused (appellant) causing injuries to his wife Sneh Lata by overlooking the wall intervening his house and that of the appellant. He (appellant) hit Sneh Lata on her mouth and cheeks. Other neighbours also reached the spot on hearing noise.

(23) The appellant in his statement under Section 313 Cr.P.C. stated that he was innocent. A false case had been registered against him by the complainant in collusion with the police as well as witness Karma (PW7) son of Bali Ram and Subhash (PW11) in order to extract money by concocting a false story.

(24) The real facts, according to the appellant, were that Banarsi Dass - complainant (PW5) was a poor person and he used to borrow money from him from time to time. For this purpose, he (PW5) frequently used to visit his house. Many times, he (PW5) stayed for a week or more at his house. His (appellant's) wife Sneh Lata was not happy due to this conduct of the complainant - Banarsi (PW5). On the day of alleged occurrence in the morning at about 06:30 a.m., he (appellant) left his house for labour work. He received information at about 03:30 p.m. that somebody in order to snatch her gold ear rings at about 10:30 a.m. attacked his wife - Sneh Lata with a sharp edged weapon when she protested against it. The attack was near the Government School, Balu. Her condition was very serious. Before reaching his house, his wife had expired due to the injuries and his father-in-law Banarsi (PW5) was present there. Some persons had gathered there. At that time, Banarsi (PW5) demanded Rs.50,000/-

from him and threatened him that in case he failed to do so, he would get him involved in a false murder case. He (appellant) requested him (complainant) that he had to support three small children and old aged mother and he was unable to fulfill his illegal demand, but he (complainant) remained adamant and falsely implicated him in collusion with the police and the witnesses. Nothing was recovered from him.

(25) In defence, the appellant examined Meshar Devi (DW1), his mother. She stated that her son Nafe Singh had three children, i.e. two daughters and a son. He (appellant) used to leave home for labour work everyday at about 5.00-6.00 a.m. Her daughter-in-law Sneh Lata (deceased) had gone to make purchases from a shop near the school at about 10:30 a.m. Some unknown persons had inflicted injuries on her body and face. When some school children came to inform her (DW1) that her daughter-in-law was lying injured near the school, she removed Sneh Lata to the hospital but she succumbed to her injuries on the way. She brought her back. In the afternoon, her (Sneh Lata's) father Banarsi (PW5) also reached. Her son Nafe Singh (appellant) also reached at about 05:00 p.m. Her (Sneh Lata's) father demanded Rs.50,000/-. She (DW1) and her son pleaded that they were unable to pay the amount.

(26) The present case, it is further stated, was lodged by Banarsi in collusion with the police. Karma (PW7), it is stated, was inimical to her son in connection with party faction. Her son was supporting the candidate in the Sarpanch election whom Karma (PW7) was opposing. All these persons conspired and got the case registered against her son falsely.

(27) In cross-examination, it is stated by Meshar Devi (DW1) that it was incorrect to suggest that her son Nafe Singh was addicted to liquor. It is also stated as incorrect to suggest that Sneh Lata used to be beaten by her son Nafe Singh (appellant). It is further stated as incorrect to suggest that Sneh Lata died on 23.07.2008 on account of injuries inflicted by Nafe Singh (appellant). It is further stated as incorrect to suggest that Banarsi (complainant) never raised demand of Rs.50,000/- from them. It is also stated as incorrect to suggest that the case was genuine and Karma (PW7) had also witnessed the incident.

(28) Learned Additional Sessions Judge, Karnal, after considering the evidence and material on record has held the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to life imprisonment; besides, pay a fine of

Rs.5,000/- and in default of payment thereof, undergo rigorous imprisonment for a period of one year.

(29) Learned counsel for the appellant has submitted that it is a case where the appellant has been falsely implicated. A reference has been made to the deposition of Meshar Devi (DW1), who stated that on the day of the occurrence, the accused (appellant) had left the house for labour work early in the morning; besides, the deceased had gone for making purchases from a shop near the school at about 10:30 a.m. She also stated that some unknown persons inflicted injuries on her body and face. When some school children informed her (DW1), she took Sneh Lata (deceased) to the hospital but she succumbed to her injuries on the way and she returned back. It is further contended that the learned trial Court failed to consider that the house of Karma (PW7) was not shown in the site plan prepared by the draftsman, so his presence at the spot was doubtful. Moreover, soon after the incident Karma (PW7) went to the fields and his statement was not recorded by the police on 24.07.2008 but was recorded on 25.07.2008, which makes his presence at the time of incident to be doubtful. It is submitted that the appellant has been implicated as he was unable to fulfill the demand of Rs.50,000/- raised by the complainant. Besides, there was no motive for the appellant to kill his wife and the appellant was living happily with his wife - Sneh Lata (deceased) and children.

(30) In response, learned counsel for the State has contended that the case is fully made out and established against the appellant. He has been rightly convicted and sentenced by the learned trial Court. The prosecution case is fully established from the deposition of Banarsi - complainant (PW5), Karma (PW7), who is a neighbour of the appellant; besides, Subhash (PW11), who brought Banarsi (PW5) to village Balu at the house of Sneh Lata where she had died. The medical evidence in the deposition of Dr. Jagtar Singh (PW3), it is stated, clearly shows that the death was homicidal.

(31) We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance have gone through the records of the case.

(32) As already noticed, the incident had occurred on 23.07.2008 at the house of the appellant between 08:00-09:00 p.m. The FIR (Ex. P19) was recorded on 24.07.2008 at about 12:30 p.m. The said report was received by the Judicial Magistrate 1st Class, Karnal on 24.07.2008 at about 02:50 p.m. The allegations against the appellant are that he inflicted 'gandasi' blows on the mouth and face of Sneh Lata

(deceased). The appellant and Sneh Lata (deceased) had been married for ten years. They had three children. It has come in the deposition of Banarsi - complainant (PW5) that Nafe Singh (appellant) used to often beat her after consuming liquor. He (PW5) also stated that Nafe Singh (appellant), his son-in-law, was a drunkard and he used to beat his daughter when she prevented him from drinking. His daughter had informed him of the threats held out by the appellant when she stopped him from drinking. He (PW5) had tried to prevail upon Nafe Singh (appellant), however, he in his presence held out threats to kill his daughter. Karma (PW7) son of Bali Ram is a neighbour of the appellant. He stated that he was present at his house on 23.07.2008 at about 08:00/08:30 p.m. His house was adjacent to the house of Nafe Singh (appellant). He stated that the appellant was habitual of taking liquor and his wife used to protest against his drinking and prevent him from consuming liquor. They used to frequently quarrel on this account. The accused (appellant) was present at his house on the day of incident and was quarrelling with his wife. He (PW7) heard a loud cry from the house of the accused (appellant). There is an intervening wall between his house and the house of the accused (appellant). From over the wall, he saw the accused (appellant) causing injuries to his wife - Sneh Lata (deceased). The accused (appellant), it is stated, hit Sneh Lata on her mouth and caused injuries on her mouth and cheek. Their neighbour reached the spot on hearing the noise. Sneh Lata thereafter fell on the ground and he went to the house of his employer on his call. Nafe Singh accused, it is stated, was present on the scene of the occurrence. In cross-examination, nothing substantial could be brought out from his deposition. It is stated that he worked for Sukhdev Singh, whose fields were 3-4 'killas' (measurement of distance in acres) away from his house. He went to the fields of Sukhdev Singh to switch on the motor for watering the fields. It is stated that in his presence, the accused (appellant) inflicted 'gandasi' blows to the deceased who fell on the ground. She died after falling on the ground. He had not checked the deceased. The 'gandasi' blow, it is stated, was inflicted on the right cheek. Nafe Singh (appellant) was standing by the side of the deceased. He was about half a feet away from the deceased. The 'gandasi' was sharp edged with a wooden handle. It was about 6-7 inches long. He had left the spot and he could not tell whether any relative of Sneh Lata reached or not. He came back the next morning. He was not at the spot so he could not tell whether the police arrived or not. In his presence, the police reached in the morning and he met the police. His statement was recorded by the police on

25.07.2008. It is stated as correct that on 24.07.2008 when he went to the police for the first time, he did not tell the police. It is stated as wrong to suggest that he did not witness the incident and had falsely involved the accused (appellant) in the case due to party faction in the village. It is stated that the police had obtained his signatures on his statement. It is stated as wrong to suggest that he was deposing falsely.

(33) It is to be noticed that Karma (PW7) son of Bali Ram is an independent witness and his presence at the time of incident cannot be doubted as he happens to be a neighbour of the appellant. He (PW7) heard a loud noise coming from his neighbour's house and by overlooking the intervening wall, he saw the accused Nafe Singh (appellant) inflicting injuries to his wife - Sneh Lata with a 'gandasi'.

(34) The appellant seeks to discount his (PW7's) evidence on the ground of party faction and also from the fact that he made his statement to the police on 25.07.2008 and not on 24.07.2008 when the police came to village Balu at the house of the appellant after the incident had occurred on 23.07.2008.

(35) It may be noticed that the appellant in his statement under Section 313 Cr.P.C. to the question regarding Karma (PW7) witnessing the occurrence, he simply stated that it was incorrect. He does not state that Karma (PW7) was deposing falsely due to party faction. It is in the deposition of the defence witness Meshar Devi (DW1), mother of the appellant, who stated that Karma (PW7) was inimical to her son in connection with party faction. Her son was supporting the candidate in the Sarpanch election who Karma (PW7) was opposing. During the cross- examination of Karma (PW7), it was simply put to him that he did not witness the incident and had falsely involved the accused (appellant) due to party faction in the village.

(36) In fact, it was not put to Karma (PW7) that the appellant had been supporting the candidate in the Sarpanch election whom he (PW7) had been opposing. The stand, therefore, that the evidence of Karma (PW7) is doubtful on this account is not of much consequence as his deposition is sought to be discounted primarily for the reason that he deposed against the appellant due to party faction in the village. This is clearly a half hearted attempt on the part of the appellant as nothing particular with regard to party faction was put to him in cross-examination. It is well known that a party is to put to its opponent's witness so much of his case as it concerns that particular witness and if no such question was put, the Court is to presume that the account of the witness has been accepted. If it is intended to suggest that the

witness in question was not speaking the truth in respect of a particular point or circumstance, then his attention is to be drawn to the same so that he has an opportunity of giving an explanation.

(37) The other ground that has been taken for not relying on the deposition of Karma (PW7) is that he did not make his statement to the police when it had come to village Balu on 24.07.2008 after the incident had occurred a day earlier on 23.07.2008.

(38) This aspect has in fact been clarified by Karma (PW7) in his cross-examination. He (PW7), in his examination-in-chief, stated that after the incident he went to the house of his employer on his call. In cross-examination, it is stated that he works for Sukhdev Singh, whose field was 3-4 'killas' away from his house. He went to the field of Sukhdev Singh to switch on the motor for watering the fields. He stated that in his presence police reached the place of occurrence in the morning, i.e. on the morning of 24.07.2008. He met the police and his statement was recorded by the police on 25.07.2008. It is stated as correct that on 24.07.2008, when he went to the police for the first time, he did not tell the police. It is stated as wrong to suggest that he did not witness the incident. Therefore, it is the police which recorded his statement on 25.07.2008, i.e. a day after when it went to the place of occurrence on 24.07.2008. This is hardly of any consequence as the police conducts the investigation on its own pace and a witness even if he informs that he had witnessed the occurrence, the police carries out some local inquiries for ascertaining whether he was a truthful witness or was just introduced. Besides, the police on its own also takes its time in investigating the case and recording the statements of the witnesses. Therefore, delay of one day in recording the statement of Karma (PW7) by the police does not in any manner affect his eyewitness account, especially when nothing is shown that he was inimical to the appellant.

(39) The fact that the house of Karma (PW7) is not shown to be adjoining the house of the appellant in the site plan (Ex. P14), is also not of much consequence. Vir Shakti Singh, EHC No. 8, Draftsman, Police Lines, Karnal (PW4) prepared the scaled site plan (Ex. P14). He stated that on the asking of SHO, Police Station Nissing, he went to village Balu on 27.07.2008. On the pointing of Banarsi Dass - complainant (PW5), he (PW4) prepared rough notes. He (PW4) prepared scaled site plan (Ex. P14) based on the rough notes on 30.07.2008. The marginal notes were as per the existing position. The scale used was 1 inch = 16 feet. The site plan (Ex. P14) bears his signatures. He was a trained draftsman.

(40) In cross-examination, he (PW4) stated that he had not brought his diploma on the date of his deposition; besides, he had not brought the rough notes and he could not even produce the same. It is stated that many persons had gathered at the place of occurrence. It is stated as wrong to suggest that he had prepared the site plan (Ex. P14) without visiting the place of occurrence. It is stated as wrong to suggest that he was deposing falsely.

(41) Vir Shakti Singh EHC, Draftsman (PW4) was not cross-examined as regard the fact of the house of Karma (PW7) not being shown in the site plan (Ex. P14). In any case, a perusal of the site plan (Ex. P14) shows that on the north, adjacent to the house of Nafe Singh (appellant), is the house of Satyawar son of Bali Ram, which has been shown. Karma (PW7), is also the son of Bali Ram and, therefore, he (PW7) is the brother of Satyawar, whose house has been shown as adjacent to the house of the appellant on the northern side.

(42) Similar is the position in the site plan (Ex. P26) prepared by SI Dilbag Singh (PW12), the investigating officer in the case, i.e. the house of Satyawar son of Bali Ram is shown adjacent to the house of the appellant on the northern side. SI/SHO Ilam Singh (PW13) prepared site plan (Ex. P28) with regard to the recovery of 'gandasi' on the basis of disclosure statement (Ex. P21) of the accused - Nafe Singh (appellant). On the said disclosure statement, the police party reached village Balu and on the demarcation of the accused, the 'gandasi' (Ex. P13) was recovered from behind the iron 'peti' (box) from his house. The house of Satyawar son of Bali Ram is shown adjacent to the house of appellant on the northern side in the site plan (Ex. P28). Satyawar son of Bali Ram, as already noticed, is the brother of Karma (PW7). As such, it cannot be said that Karma (PW7) was not the neighbour of the appellant - Nafe Singh and was not present at the time of occurrence.

(43) In the circumstances, there is no reason to doubt the eyewitness account of Karma (PW7), who is a neighbour of the appellant as his house was adjacent to that of the appellant and was a natural witness; besides, he was present at his house when the incident had occurred and had seen the incident by overlooking the wall intervening the houses. Moreover, even though enmity with him is alleged, the same is only a half hearted attempt and does not entail such circumstances so as to discount his deposition.

(44) The other contention of the learned counsel for the appellant is that there was no motive for the appellant to commit the murder of

his wife Sneh Lata. Motive, as is well known, is hidden in the heart and mind of the offender and it is difficult to ascertain as to what was in the heart and mind of the person when he committed the criminal act. It is the offender alone who knows as to why and how he acted in a particular manner. In a caselike the present one, where there is direct evidence, the motive would not play an important part. The motive is to be adjudged from the surrounding circumstances that are available on record. When there is direct evidence, the motive pales into insignificance.

(45) The evidence on record which includes the deposition of the complainant - Banarsi (PW5), his nephew Subhash (PW11) and that of the eyewitness Karma (PW7); besides, the affidavit Ex. P5 of Dr. Jagtar Singh (PW3) which mentions the cause of death due to the injuries, which were inflicted by the appellant on his wife - Sneh Lata as also the recovery of 'gandasi' (Ex. P13) on the disclosure statement (Ex. P21) of the appellant and the FSL report (Ex. PX) with the serological analysis of the blood on the 'gandasi' that was recovered to be human, clearly goes to establish the guilt of the appellant and his having committed the murder of his wife - Sneh Lata. In the circumstances, there is no material to dislodge the judgment and order of the learned Additional Sessions Judge, Karnal convicting and sentencing the appellant.

(46) For the foregoing reasons, there is no merit in the appeal and the same is accordingly dismissed.

Shubreet Kaur