A RAJENDER SINGH & ANR.

v.

STATE OF HARYANA

(Criminal Appeal No. 1662-1663 of 2005)

JANUARY 9, 2009

B

[LOKESHWAR SINGH PANTA AND B. SUDERSHAN REDDY, JJ.]

Penal Code, 1860 – s. 302/342 read with s. 34 – Murder C *and wrongful confinement – Accused persons wrongfully confined deceased and beat him resulting in fatal injuries – Conviction under, of accused persons except one – High Court upheld conviction of A-1, A-2, A-3 and A-4, however, acquitted A-5 and A-7 – Interference with – Held: Not called* D *for – Evidence of prosecution witnesses was satisfactory and reliable – Even though they were related to deceased, their evidence could not be discarded – Opinion of doctor that injuries were sufficient to cause death in ordinary course of nature – There was motive for accused to commit murder of* E *deceased – There was no reliable and clinching evidence against A-5, A-6 and A-7 – All other accused constructively liable u/s. 302 r/w. s. 34 though fatal injury was inflicted by A-1 only, as other accused participated in giving beatings to deceased.*

F **Prosecution case was that on the fateful day the accused persons murdered D. They wrongfully confined D in the house of appellant-A-1. A-1, A-2, A-3, A-4, A-5, A-7 and A-6 tied the hands and legs of D with a rope and inserted a wooden stick in the anus of D resulting in fatal** G **injuries. PW-9-jeep driver had informed PW-10-brother of D's grand father that accused persons had confined D. PW-1 father of D, PW-11-grandfather of D and PW-10 rushed to the house of A-1. They all heard the shrieks of D and witnessed the incident in the electric bulb light. It**

H

was within their sight. When PW-1, PW-11 and PW-10 raised an alarm appellants fled away and took stick and piece of rope with them. Motive behind the alleged occurrence was that a year ago, A-1 had registered a case against D u/s. 376 IPC in which D was acquitted. FIR was registered. Investigation was carried out. Post mortem examination of body of D was carried out. The doctor-PW-8 opined that stick could cause fatal injury to the deceased. Witnesses were examined. A-1, A-2, A-3, and A-4 were arrested. On their disclosure statement the stick and the rope were recovered. Trial court held A-1, A-2, A-3, A-4, A-5 and A-7 guilty of the charges and convicted and sentenced them u/s. 302/342 read with s. 34 IPC, however, acquitted A-6. High Court dismissed the appeals of A-1, A-2, A-3 and A-4, however, allowed the appeals of A-5 and A-7 and acquitted them. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1 In the teeth of the evidence of eye-witnesses PW-1-father of the deceased and PW-11-grandfather of the deceased, corroborated by the testimony of PW-9-jeep driver and PW-10-uncle of deceased's father, it is established beyond any doubt that in fact the occurrence had taken place at the given time in the house of A-1 where the dead body of D was found lying by the police which was sent to the doctor for post mortem examination. PW-1 immediately lodged complaint of the incident to PW-14-ASI who met him on the way leading to the police station. The names of all the accused were specifically mentioned in the said complaint. The accused persons were not found present in the village when the Investigating Officer visited the place of occurrence. A-1, A-2, A-3 and A-4 were produced before PW-12-S.I. by resident of the same village. Recovery of two pieces of 'danda' and 'rope', taken into possession by PW-12 pursuant to the disclosure

A statement made by A-1 during the course of interrogation was proved which were used by the appellants in the commission of the offence. The ocular version of PW-1 and PW-11 was further corroborated by the doctor, who found as many as 12 injuries on the dead body of D. [Para B 21] [120-F-H; 121-A-C]

1.2. In the opinion of the doctor, the cause of death of D was shock and hemorrhage due to multiple injuries to the vital organs which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. C [Para 22] [123-B-C]

1.3. On reappraisal and scrutiny of the evidence no particular reason could be found as to why the two eyewitnesses PW-1 and PW-11 should falsely depose D against the appellants. It is difficult to believe that the relatives of deceased D would spare his real assailants and falsely involve other persons responsible for committing the offence. If the witness is related to the deceased, his evidence has to be accepted if found to be E reliable and believable because he would inter alia be interested in ensuring that real culprits are punished. The trial court as well as the High Court have rightly held that there was a motive for the accused to commit murder of D as per the prosecution evidence. A-1 was nursing a F grudge against the deceased because he allegedly sexually assaulted his daughter, for which offence D was acquitted by the trial court on 18.03.2002 whereas the prosecutrix was later on married to DW-3 on 26.05.2002. D was murdered on the intervening night of 29/30.05.2002 in the house of A-1 in the village. The evidence of PWs 1 G and 11 has been found to be satisfactory, reliable, consistent and creditable by the trial court as well as by the High Court. Both the witnesses have been cross-examined at length by the defence, but nothing tangible has been extracted from the evidence to create any H

shadow of doubt that they are not truthful witnesses. They have given reliable and consistent version of the crime and their evidence inspires confidence. On the examination of the judgment given by trial court and confirmed by High Court, it is found that both the Courts have properly and rightly appreciated and re-appreciated the entire evidence on record and there is no infirmity or perversity in the findings recorded by the Courts below to interfere with the well-reasoned judgments. [Para 23] [123-C-H; 124-A-B]

1.4. In the instant case, no reliable and clinching evidence was found by the trial court and by the High Court against A-5, A-6 and A-7 who also participated in the commission of the offence. Therefore, they were rightly acquitted by the Courts. The submission that the appellants would be entitled to the benefit of doubt in the same manner as A-5, A-6 and A-7 have been acquitted cannot be accepted. The occurrence as spoken by the eyewitnesses is fully established, therefore, all the appellants will be constructively liable under Section 302 read with Section 34 IPC for the commission of the crime, though the fatal injury was inflicted by A-1 only, as the other appellants participated in giving beatings to the deceased which caused injuries on other part of his body. [Para 24] [124-C-F]

Prem Singh vs State of Punjab **AIR 1977 SC 673, referred to.**

Case Law Reference:

AIR 1977 SC 673	**Referred to**	**Para 24**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1662-1663 of 2005.

From the Judgment and final Order dated 16.8.2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. Nos.

194-DB/2003 and 2007-DB/2003.

WITH

Crl. Appeal No. 355 of 2006 and 615 of 2008.

Garima Prashad, Suchita Sharma, Sandeep Chaturvedi, Devesh Kr. Tripathi and Amit Pawan for the Appellants.

Rajeev Gaur 'Naseem' and T.V. George for the Respondent.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. Seven accused, namely, Suraj Bhan (A-1), Balraj (A-2), Ram Niwas (A-3), Rajender Singh (A-4), Dharambir (A-5), Sube Singh (A-6) and Sajjan Singh (A-7) were tried by Learned Additional Sessions Judge, Rohtak, in Sessions Case No. 119 of 2002 for committing the murder of Dinesh aged about 20 years.

2. By judgment and order dated 06.02.2003, the Learned Trial Judge convicted (A-1), (A-2), (A-3), (A-4), (A-5) and (A-7) under Section 302 read with Section 34 of the Indian Penal Code and Section 342 read with Section 34 of the Indian Penal Code (for short 'IPC') and sentenced each to undergo imprisonment for life and a fine of Rs. 10,000/ – each and in default of payment of fine, to undergo rigorous imprisonment for three years and under Section 342/34 IPC, they were sentenced to undergo rigorous imprisonment for a period of six months with a fine of Rs. 1,000/ – each and in default of payment of fine, to undergo rigorous imprisonment for one month. All the sentences were, however, ordered to run concurrently. Out of fine if realized, 90 per cent thereof was ordered to be paid to the legal representatives of the deceased Dinesh. The Learned Trial Judge acquitted (A-6).

3. The accused filed three sets of appeals before the High Court of Punjab & Haryana at Chandigarh. (A-1), (A-4) and (A-

5) filed Criminal Appeal No. 194-DB of 2003 whereas Criminal Appeal No. 207-DB of 2003 was filed by (A-2) and Criminal Appeal No. 224-DB of 2003 was filed by (A-3) and (A-7). The High Court by a common judgment and order dated August 16, 2005 modified the judgment of the Trial Court. It upheld the conviction and sentence of (A-1), (A-2), (A-3) and (A-4). It, however, acquitted (A-5) and (A-7).

4. (A-1), (A-2), (A-3) and (A-4) have now approached this Court in these appeals. These appeals were heard together and shall stand disposed of by this common judgment.

5. The incident leading to the prosecution of the appellants occurred on 29.05.2002. Dinesh, son of Dharambir (PW-1) complainant, had gone to Delhi for ascertaining the date of his interview for recruitment to the Police Force of Delhi Government, but till late night he did not return to his village Sundana, Tehsil Kalanaur, District Rohtak. On the following day, i.e. 30.05.2002, at about 4.00 a.m. Randhir Singh (PW-10) elder brother of PW-11 told PW-1 that Dinesh was wrongfully confined in the house of appellant-Suraj Bhan (A-1). It was Jagbir (PW-9), a jeep driver, who disclosed this fact to PW-10. On coming to know the fact of confinement of his son by A-1, PW-1 alongwith his father Sube Singh (PW-11) and uncle Raghbir Singh rushed to the house of A-1, where they found the outer door of the house bolted from inside. They all heard the shrieks of Dinesh *"maar diya, maar diya"*. Thereupon, they peeped through the window and saw that all the appellants including A-6 (since acquitted) had made Dinesh to lie down on the floor of the room, his hands and legs were tied with a rope. In the electric bulb light and within their sight, A-1 inserted a *"danda"* (wooden stick) in the anus of Dinesh, who cried loudly in pain. On seeing the occurrence, PW-1, PW-11 and Raghbir Singh raised an alarm and forcibly broke open the door of the room. On seeing them, the appellants fled away and took "danda" and piece of rope with them. They attended Dinesh, but he succumbed to his injuries at the spot.

A 6. Motive behind the alleged occurrence was that about a year prior to the incident in question, i.e. 28.04.2001, A-1 got a case registered against Dinesh under Section 376 IPC for committing sexual intercourse with his daughter. In the said case, Dinesh was acquitted by the trial court on 18.03.2002.

B 7. PW-1 requested his father Sube Singh (PW-11) and uncle Raghbir Singh to safe guard the dead body of Dinesh at the place of occurrence and himself rushed to the Police Station for lodging a report. On the way, Om Parkash, ASI (PW-14) met PW-1 at the curve of Beri Road, where, he made statement C (Ex.PA) at 9.00 a.m. narrating the entire incident. PW-14 then made his endorsement (Ex.PA-2) on the said report and sent the same to the Police Station through Constable Krishan Kumar, on the basis of which formal FIR (Ex. PJ) was recorded by MHC Mohinder Singh (PW-6) at 11.00 a.m. on the same D day. The Special Report thereof was sent to the Illaqa Judicial Magistrate through Constable Udham Singh (PW-4), which was received at his residence at 2.35 p.m. at Rohtak. Thereafter, PW-14 alongwith PW-1 rushed to the place of occurrence and got the dead body photographed from Gobind Ram, E Photographer (PW-7). PW-14 prepared the inquest report (Ex. PM) and then sent the dead body for post mortem examination. From the spot, PW-14 lifted blood stained earth, pair of sport shoes (Exs. P11 and P12) and jute rope (Ex.P13). They were taken into possession vide recovery memos (Ex. PB to Ex. PD) F and sealed in separate parcels. At the spot, rough site plan (Ex.PR) of the place of occurrence was also prepared by the Investigating Officer. On the same day, investigation of the case was taken over by Sub-Inspector Rohtas Singh (PW-12). He recorded the statements of PW-1, Randhir, Zile Singh, Jagbir G (PW-9), a jeep driver, and other witnesses. Thereafter, PW-12 searched for the accused in the village but they were found missing. The Deputy Superintendent of Police had also visited the place of occurrence and verified the investigation of the case. Naresh Kumar, Constable (PW-3), took the dead body H of deceased Dinesh to the Hospital for post mortem

examination.

8. On 01.06.2002, A-1, A-2, A-3 and A-4 were produced before PW-12 by Zile Singh. After their arrest by the Investigating Officer, A-1 during interrogation made disclosure statement (Ex.PQ) to the effect that he had kept concealed *"danda"* and *"rope"* under an iron box in his house and in pursuance thereof, he got recovered "danda" (Ex. P-18) (broken into two pieces) and *"rope"* (Ex. P-19), which were taken into possession vide recovery memo (Ex.PQ/4). The entire recovered articles were sealed and deposited with MHC of Police Station, Kalanaur.

9. On 12.06.2003, Ajit Singh ASI (PW-13) made an application (Ex.PN) to Dr. Paramjeet (PW-8) for obtaining his opinion whether recovered *"danda"* could cause fatal injury to the deceased or not, and Doctor opined in the affirmative. After taking his opinion Ex.PO, pieces of *"danda"* were resealed. After completion of the investigation and receipt of the post mortem report and other material on record, charge sheet came to be filed against the accused. At the initial stage, A-1, A-2, A-3 and A-4 were challaned for commission of offences punishable under Sections 342/302/34 IPC. Later on, *vide* order dated 30.09.2002, A-5, A-6 and A-7 were also summoned under Section 319 Cr.P.C. All the accused persons pleaded not guilty to the charges and claimed to be tried.

10. The prosecution, in order to substantiate its case, examined as many as 14 witnesses, namely, Dharmabir (PW-1), who lodged the complaint (Ex.PA); Sumit Kumar, Draftsman (PW-2), prepared the scaled site plan (Ex.PE) of the place of occurrence; Naresh Kumar, Constable (PW-3) placed his affidavit (Ex.-PF) on record regarding taking the dead body for post mortem examination; Udam Singh, Constable (PW-4) filed his affidavit (Ex.-PG) regarding taking the Special Report to the Illaqa Judicial Magistrate; Jagbir Singh Constable (PW-5), took the case property to Forensic Science Laboratory, Madhuban; Mohinder Singh, Head Constable (PW-6), recorded the formal

A FIR (Ex.-PJ); Gobind Ram, Photographer (PW-7), proved on record photographs (Exs. P-1 to P-5) and negatives thereof (Exs.P-6 to P-10); Dr. Paramjit (PW-8), conducted the post mortem and proved on record the post mortem report (Ex.PK); Jagbir Singh (PW-9) a Jeep Driver; Randhir Singh (PW-10), B who after being informed by PW-9 regarding the fact of confinement of Dinesh at the house of Suraj Bhan (A-1) had disclosed the said fact to PW-1; Sube Singh (PW-11), an eye witness of the occurrence; Rohtas Singh SI (PW-12), the Investigating Officer of this case; Ajit Singh ASI (PW-13) and C Om Parkash ASI (PW-14), who had also completed the formal investigation of the case.

11. The accused in their statements recorded under Section 313 Cr.P.C denied the incriminating evidence appearing against them. They pleaded that they have been D implicated in a false case and they claimed to be innocent. They examined three defence witnesses, namely, Suraj Mal (DW-1), who deposed regarding disconnection of the electric connection at the house of A-1; Rajinder Singh, DSP (DW-2), on whose verification three persons, namely, Sajjan, Dharambir E and Sube Singh were found innocent in this case and Jagbir (DW-3) who was married to Poonam, daughter of Suraj Bhan (A-1) on 26.05.2002. DW-3 stated that on the evening of 25.09.2002 Dinesh had misbehaved with his wife at his Village Kohla.

F

12. The trial court, on appraisal of the entire evidence on record, held A-1, A-2, A-3, A-4, A-5 and A-7 guilty of the charges and convicted them under Section 302/342 read with Section 34 of Indian Penal Code. However, learned trial judge G acquitted A-6.

13. Being aggrieved, the accused filed three sets of separate appeals before the High Court. The High Court dismissed the appeals of A-1, A-2, A-3 and A-4. It, however, allowed the appeals of A-5 and A-7 and accordingly acquitted H them.

14. Feeling aggrieved thereby and dissatisfied with the judgment of the High Court, the above-said appeals have been filed in this Court.

15. Ms. Garima Prashad, learned counsel appearing on behalf of the appellants, contended that the evidence produced in this case is not sufficient and convincing to warrant the conviction of the appellants. She contended that the evidence of PW-1 and PW-11 could not be accepted as they are both interested witnesses related to the deceased. She next contended that PW-1, PW-9 and PW-10 in their deposition have given a concocted version which casts severe doubts about truthfulness of the prosecution case. The learned counsel also contended that the evidence appearing on record against the appellants is verbatim version which was taken into consideration by the trial court with regard to the acquittal of A-5, A-6 and A-7 and, therefore, the case of the appellants cannot be decided on any other scale and should have been treated at par for giving benefits of doubt to the appellants as it was considered for the acquittal of A-5, A-6 and A-7. The learned counsel then contended that as per the post mortem report (Ex. PK), as many as 12 injuries were found on the dead body of Dinesh which would support the defence version of DW-3 that the deceased was given beatings by the village people of his village Kohla, when Dinesh misbehaved with his wife at their residence on 29.05.2002. It was also argued that there is no reliable evidence brought on record to prove that the appellants also shared common intention to murder Dinesh and in the absence of such evidence, the appellants could not be convicted for offence punishable under Section 302 read with Section 34 IPC.

16. Mr. Sandeep Chaturvedi, Advocate, appearing on behalf of the appellant in Criminal Appeal No. 615/2008, has adopted and supported the arguments made by Ms. Garima Prashad, Advocate. As against that, Mr. Rajiv Gaur Naseem, Advocate appearing on behalf of the State, has canvassed for

A the correctness of the view taken by the trial judge which was confirmed by the High Court.

17. In order to appreciate the aforesaid rival contentions of the learned counsel for the parties, we have independently B scrutinized the oral and documentary evidence appearing on record.

18. PW-1, father of the deceased Dinesh, at the relevant time was serving in the Police Department. On 29.05.2002 he was on leave for a period of one month. He stated that his son C Dinesh had applied for recruitment in the Police of Delhi Government. On 29.05.2002 Dinesh had gone to Delhi to confirm about the date of interview to be held for the post. He did not return to his house till late in the night. On 30.05.2002 at about 4.00 a.m., Randhir Singh, elder brother of his father D Sube Singh (PW-11), came to his house and disclosed that Dinesh was wrongfully confined by A-1 in his house. This information was given to Randhir Singh by Jagbir (PW-9), a jeep driver. On receipt of this information, he alongwith his father (PW-11) and uncle Randhir Singh went to the house of E A-1. The outer door of the house of A-1 was found bolted from inside. They peeped through the window and noticed that Dinesh was made to lie facing his face towards the floor of the room. At that time, an electric bulb was burning inside the room. A-1 inserted *"danda"* in the anus of Dinesh in their presence F and his hands and both legs were tied by a piece of rope. Dinesh was crying in pain. They raised cry and in the process they broke open the door and entered the room. All the accused ran away carrying *"danda"* and *"rope"* with them. As per his version, in spite of their best efforts, Dinesh could not be G survived. He also stated that about one year prior to the present incident, A-1 got a false case registered against Dinesh under Section 376 IPC in which his son was acquitted by the Court and as a result thereof, A-1 was nursing a grudge against his son. He testified the contents of the repot (Ex.PA) lodged to the Police, on the basis of which FIR (Ex. PJ) came to be H

registered by PW-6 at the Police Station. This witness has corroborated the version of PW-12, the Investigating Officer, in regard to taking into possession blood stained earth, a pair of sports shoes belonging to deceased Dinesh and preparation of the parcels containing the seized articles affixed with seals. He showed his knowledge of ignorance about the marriage of the daughter of A-1 with Jagbir (DW-3) son of Om Prakash, resident of village Kohlapur, District Sonipat. A suggestion that on 29.05.2002 Dinesh had gone to village Kohlapur and there he misbehaved with Poonam, as a result thereof he was given beatings by the village people, has been emphatically denied by him. He has identified two pieces of "danda" (Exs.P-18 and P-19), which were used by A-1 in the commission of the crime. He categorically stated that there was sufficient electric bulb light inside the room when they saw accused persons giving beatings to Dinesh. A suggestion of the defence that on receiving telephonic information from Jagbir (DW-3) son-in-law of A-1, he alongwith his father PW-11 and A-1 went to village Kohla in a hired jeep and brought his injured son in the said jeep and then they threshed Dinesh at bus stand of village Sundana and as a result whereof Dinesh died on 30.05.2002 at about 8.00 p.m., has been denied by him.

19. PW-11, the second eyewitness of the incident, has corroborated the entire testimony of PW-1. He was cross-examined at length but nothing could be elicited from his statement which casts any doubt about the truthfulness of his testimony. Jagbir PW-9, the jeep driver, deposed that on 29.05.2002 at about 8.30 a.m. Ballu (A-2) alongwith four other persons, who were identified in the Court, came to his house and asked him to take them to village Kohla. They hired his jeep and he took them to village Kohla. They left him with his jeep on the village street. On hearing alarm, he rushed to the place where he found son of PW-1 present. All the five accused persons then asked him to take the son of PW-1 to village Sundana, but initially he refused to oblige them as he apprehended danger to the life of the son of PW-1, but later

A on from the village Kohla he took the son of PW-1 alongwith A-1 and six more persons in the jeep and left them except Sube Singh (A-6) at bus stand of village Sudana. He disclosed this incident to Randhir Singh Subedar uncle of PW-1 on the same night. This witness in the cross-examination has stated that B village Kohla is at a distance of 15-16 KMs from Gohana and Gohana is at a distance of about 25-30 KMs from Rohtak, whereas village Kohla is at a distance of about 60 KMs from village Sundana. He stated that A-1 and son (Deceased) of PW-1 had met him at the house of the daughter of A-1 in village C Kohla. He admitted that A-1 told him that prior to this incident Dinesh had teased his daughter and on the day of incident Dinesh had gone to the house of DW-3, son-in-law of A-1. A suggestion of the defence that Dinesh was assaulted by the people of village Kohla and as a result thereof, he could not D walk properly has been denied by him. He also denied the suggestion that he had brought injured Dinesh in his jeep and left him at Sundana Bus Stand. A further suggestion that PW-1 and PW-11 grandfather of Dinesh, had accompanied him in the jeep while going to village Sundana, has been denied by him.

E

20. Randhir Singh (PW-10) deposed that on 30.05.2002 at about 2.30 a.m. while he was sleeping in his house, Jagbir (PW-9) came there and disclosed that A-1 had confined Dinesh in his house. He immediately rushed to the house of PW-1, F woke him up and thereafter passed on the said information to PW-1. He stated that on the next morning, he came to know about the murder of Dinesh in the house of A-1.

21. In the teeth of the evidence of eyewitnesses PWs 1 and 11, corroborated by the testimony of PW-9 and PW-10 G discussed above, it is established beyond any shadow of doubt that in fact the occurrence had taken place at the given time in the house of A-1 where the dead body of Dinesh was found lying by the Police which was sent to the Doctor for post mortem examination. PW-1 immediately lodged complaint (Ex.

H

PJ) of the incident to Om Prakash, ASI (PW-14) who met him on the way leading to the Police Station. The names of all the accused were specifically mentioned in the said complaint. The accused persons were not found present in the village when the Investigating Officer visited the place of occurrence. A-1, A-2, A-3 and A-4 were produced before Rohtas Singh S.I. (PW-12) by Zile Singh, who is the resident of the same village. Recovery of two pieces of *"danda"* (Exs.P-18 and P-19) and *"rope"* (Ex. PQ/3) taken into possession by PW-12 pursuant to the disclosure statement (Ex.PQ) made by A-1 during the course of interrogation, has been proved which were used by the appellants in the commission of the offence. The ocular version of PW-1 and PW-11, the eyewitnesses, has been further corroborated by Dr. Paramjit, who found as many as 12 injuries on the dead body of Dinesh. Dr. Paramjit in his *post mortem* report (Ex.PK) had noticed the following injuries:

i. There was bruise contusion about 6 x 2 cm present in left supra scapular area with blurred margins;

ii. There was contusion 2 x 1 cm on right shoulder with blurred margins. On dissection, extra vestation of blood into true skin and subcutaneous tissues with infiltration was present;

iii. There was bruise 2 x 2 cm on right elbow with discoloration of skin with blurred margins;

iv. Multiple bruises 5 x 5 cm present on both hands on dorsal aspect.

Margin blurred with discoloration of skin present. On dissection, extra vestation of blood into skin and subcutaneous with infilteration.

v. There was bruise 2 x 1 cm on left lower arm with margins blurred;

vi. Another bruise 1 x 1 cm on the left wrist joint below

A the above mentioned wound;

vii. A bruise 5 x 1 cm on the left side on interior abdominal wall with margin blurred and discoloration of skin;

B viii. Bruise 3 x 2 cm on the left thigh with blurred margins;

ix. An lacerated wound 2 x 1 cm on the left leg with margins blurred and extra vestation blood into skin C discoloration;

x. A lacerated would 5 cm below the above mentioned wound;

xi. Bruise swelling on ankle joint (right) 2 x 2 cm with D discoloration of skin;

xii. There was lacerations present around the anal opening at 3rd, 7th and 10th o clock position of size 2 cm, 1 cm, 3 cm respectively. Blood was coming out from anus. Anal opening was distorted and E dilated. On dissection, blood was present in anal canal and rectum with rupture (through and through) of posterior lateral aspect ofrectal wall with perforation of intestinal coils in the right side alongwith through and through laceration of right F kidney withlacerations of right lob of liver, extending through and through of liver. Large amount of blood was present in peritoneal cavity. On dissection of skull, large scalpel haemotoma present with multiple laceration on brain with subdural haemotoma. Walls, G ribs andcartilages externally healthy. On dissection, blood was present in plural cavity with haemothorax with laceration of right lung present in lower lobe just above the diapharam right dome of dipharam ruptured in posterior half. Left lung healthy. In heart

H

both chambers were empty. Abdominal wall as described above. Peritorium haemoperitome present. Mouth pharnix and esophagus healthy, stomach and its contents was healthy. Small intestines andlarge intestines and liver already described. Spleen was healthy. Bladder was empty. Organ of generation was healthy.

22. In the opinion of Dr. Paramjit, the cause of death of Dinesh was shock and haemorrhage due to multiple injuries to the vital organs which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

23. On reappraisal and scrutiny of the evidence discussed hereinabove, we find no particular reason as to why the two eyewitnesses PW-1 and PW-11 should falsely depose against the appellants. It is difficult to believe that the relatives of deceased Dinesh would spare his real assailants and falsely involve other persons responsible for committing the offence. It is well settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would inter alia be interested in ensuring that real culprits are punished. The trial court as well as the High Court have rightly held that there was a motive for the accused to commit murder of Dinesh because as per the prosecution evidence, A-1 was nursing a grudge against the deceased because he allegedly sexually assaulted his daughter, for which offence Dinesh was acquitted by the trial court on 18.03.2002 whereas the prosecutrix was later on married to DW-3 on 26.05.2002. Dinesh was murdered on the intervening night of 29/30.05.2002 in the house of A-1 in village Sundana. The evidence of PWs 1 and 11 has been found to be satisfactory, reliable, consistent and creditable by the trial court as well as by the High Court. Both the witnesses have been cross-examined at length by the defence, but nothing tangible has been extracted from their evidence to create any shadow of doubt that they are not truthful witnesses. They have given reliable and consistent version of the crime and their evidence

A inspires confidence. On our examination of the judgment given by the trial court and confirmed by the High Court, we find that both the Courts have properly and rightly appreciated and re-appreciated the entire evidence on record and there is no infirmity or perversity in the findings recorded by the Courts
B below to interfere with the well-reasoned judgments.

24. The ratio of the judgment in *Prem Singh v. State of Punjab* [AIR 1977 SC 673] relied upon by the learned counsel is of no help to the appellants in the facts and circumstances of the present case. In that case, the evidence of two
C eyewitnesses who were brother of the deceased with regard to participation of four other accused was found unreliable and in the peculiar facts and circumstances of that case, the conviction of those accused was held illegal by the Supreme Court. In the present case, no reliable and clinching evidence
D was found by the trial court and by the High Court against A-5, A-6 and A-7 who also participated in the commission of the offence, therefore, they were rightly acquitted by the Courts. Therefore, the contention that the appellants shall be held entitled to the benefit of doubt in the same manner as A-5, A-
E 6 and A-7 have been acquitted cannot be accepted. The occurrence as spoken by the eyewitnesses is fully established, therefore, all the appellants will be constructively liable under Section 302 read with Section 34 IPC for the commission of the crime, though the fatal injury was inflicted by A-1, only as
F the other appellants participated in giving beatings to the deceased which caused injuries on other part of his body.

25. No other point has been raised by the appellants. We thus, find no merit and substance in any of the submission made on behalf of the appellants.

G

26. In the result, for the afore-stated reasons, there is no merit in these appeals and these are, accordingly, dismissed.

N.J. Appeals dismissed.