ABC 2025 (II) 81 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Vikram Nath, Sanjay Karol & Sandeep Mehta,JJ.)

Criminal Appeal Nos.2688-2689 of 2024

Decided on 16 July 2025

BALJINDER KUMAR @ KALA ***- Appellant(s).***

Versus

STATE OF PUNJAB ***- Respondent(s).***

Law Covered:-*(A) Indian Evidence Act, 1872 -- Sections 27 & 106 (Bharatiya Sakshya Adhiniyam, 2023 -- Sections 23&109) -- Recovery of Weapon & Blood-Stained Articles -- Disclosure Statement -- Absence of Independent Witnesses -- Delay in Effecting Recovery -- Recovery was made two months after the incident &without the presence of any independent witnesses -- Held, while the absence of independent witnesses is not fatal per se, a considerable delay in effecting recovery, coupled with the lack of forensic linkage to the crime, makes such evidence highly suspect &unreliable. (Paras 7, 9-D, 16, 23-c, 36)*

(B) Indian Evidence Act, 1872 -- Section 3 (Bharatiya Sakshya Adhiniyam, 2023 -- Section 2) –Relevant Fact -- Eyewitness Testimony -- Credibility & Reliability -- Major Contradictions -- Interested Witnesses -- Testimonies of close relatives who were the sole eyewitnesses -- Found to be riddled with major contradictions regarding their presence at the scene, the weapon used, the presence of accompanying accused persons, &the sequence of events -- Held, when testimonies of key witnesses are self-contradictory, incoherent, &lack corroboration, they cannot form the basis for a conviction, especially in a capital case. (Paras 8, 9-B, 9-E, 21-32)

(C) Indian Evidence Act, 1872 -- Section 3 &118 (Bharatiya Sakshya Adhiniyam, 2023 -- Section 2 &124) -- Relevant Fact -- Child Witness -- Competency & Evidentiary Value -- Testimony of an injured child witness -- His presence at the scene was not in doubt -- However, during cross-examination, he admitted to being half-asleep &not having actually witnessed the accused inflicting injuries -- Held, the testimony of a child witness, though competent, carries no evidentiary value if it does not positively incriminate the accused or establish the act of commission. (Paras 8, 33-34)

(D) Indian Evidence Act, 1872 -- Section 106 (Bharatiya Sakshya Adhiniyam, 2023 -- Section 109) -- Reverse Onus -- Burden

to Explain Injuries -- Foundational Facts -- The accused suffered injuries on the day of the incident leading to the amputation of his arm -- The prosecution failed to establish his presence at the crime scene through any direct or circumstantial evidence -- Held, Section 106 of the Evidence Act cannot be invoked to place a reverse burden on the accused to explain his injuries in the absence of any foundational facts connecting him to the crime. (Paras 17, 39-40)

(E) Code of Criminal Procedure, 1973 -- Section 293 (Bharatiya Nagarik Suraksha Sanhita, 2023 -- Section 329) -- Forensic Evidence -- Chemical Analysis Report -- Non-Exhibition & Evidentiary Value -- A chemical analysis report stating that blood on exhibits was of human origin was not formally exhibited before the Trial Court -- The weapon of offence was also misplaced &not forensically linked to the crime -- Held, such reports, if not formally exhibited &if they fail to specifically link the accused to the crime, have little to no evidentiary value. (Paras 9-K, 37)

(F) Indian Penal Code, 1860 -- Sections 302, 308 & 325 (Bharatiya Nyaya Sanhita, 2023 -- Sections 103, 110&117(2)) -- Standard of Proof -- Beyond Reasonable Doubt -- Capital Punishment -- "Rarest of Rare" Doctrine -- Prosecution failed to establish the guilt of the accused beyond a reasonable doubt due to major contradictions in eyewitness accounts, investigative lapses, &lack of forensic corroboration -- Held, the standard of proof in a criminal case, especially one attracting the death penalty, is absolute &cannot be compromised -- The case did not meet the threshold for the "rarest of rare" doctrine. (Paras 1, 23-d, 23-e, 38, 41 -43)

Facts:-*The appeals arose from the concurrent findings of the Trial Court &the High Court convicting the appellant under u/ss 302, 308, &325 IPC &sentencing him to death for the murder of his wife, two children, &sister-in-law. The prosecution's case rested primarily on the testimonies of the complainant, his mother (an alleged eyewitness), &an injured child witness, coupled with the recovery of a weapon &blood-stained clothes. The Supreme Court found glaring contradictions in the testimonies of witnesses regarding their presence at the scene, the weapon used, &the sequence of events. The recovery of incriminating articles was effected after a delay of two months without independent witnesses &without forensic linkage to the crime. The testimony of the child witness was found to be non-incriminating. The Court held that the prosecution failed to prove its case beyond a reasonable doubt, acquitted the appellant, &ordered his release after over eleven years of incarceration.*

Law of relief:- ***(i) The standard of proof in a criminal case, especially one attracting the death penalty, is absolute & cannot be compromised.***

(ii) Section 106 of the Evidence Act (Sec. 109) cannot be invoked to place a reverse burden on the accused to explain his injuries in the absence of any foundational facts connecting him to the crime.

(iii) The testimony of a child witness, though competent, carries no evidentiary value if it does not positively incriminate the accused or establish the act of commission.

Counsel:-

For Appellant(s): *Mr. Dama Seshadri Naidu, Sr. Adv.*

For Respondent(s): *Mr. Siddhant Sharma, Adv.*

Cases Referred:-

1. *Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra: (2000) 8 SCC 457 (Para 30)*
2. *State of Himachal Pradesh v. Lekh Raj: (2000) 1 SCC 247 (Para 30)*
3. *State of Rajasthan v. Kalki & Anr.: (1981) 2 SCC 752 (Para 30)*
4. *Vadivelu Thevar v State of Madras: AIR 1957 SC 614 (Para 30)*

JUDGMENT

Vikram Nath, J.: -

1. One can fairly imagine the amplitude of havoc that would wreak loose in a quiet village which on one fine morning wakes up to the news of four members of a family dead, including two lives yet to even reach the incipient age of five years, and with two other family members grievously injured. To add to the horror, the primary suspect in the entire incident is the father of the deceased children. At least, that is what the alleged eyewitnesses' account points towards. It is but natural that the case garners enough sensation in no time to become a headline in the local papers and the pressure on the investigating agencies is enormous to find the culprit. The breakdown of the legal system becomes apparent when such haste to lay a finger of blame on somebody leads to a shoddy investigation and a poorly conducted trial. The result is a loosely tied prosecution case with glaring loopholes all across and yet the Courts' enthusiasm to deliver justice in such a heinous crime ensures that the accused person ends up on the death row, albeit without sufficient evidence. This is precisely the misery which the instant case entails.

2. The present appeals have been preferred by the accused-appellant assailing the judgment and order dated 04.03.2024 passed by the High Court of Punjab and Haryana in MRC No. 1 of 2020 and CRA-D No. 323 of 2020. The High Court, vide the impugned order, has upheld the conviction and confirmed the sentence of death imposed on the appellant by the Additional Sessions Judge, Kapurthala, on 29.02.2020 in Case No. SC/64/2014, under Sections 302, 308 and 325 of the Indian Penal Code, 1860[1].

Factual Background -

3. The case of the prosecution is that in the early morning of 29.11.2013, PW1-Vijay Kumar ("the complainant") saw the appellant outside his mother's (PW2-Manjit Kaur) house armed with a datar, wherein the appellant told the complainant that "he has finished what he had started", and fled away with 3-4 unidentified persons who were armed with a gandasi and rods. On entering PW2's house, the complainant found his following relatives in injured condition – (i) Seema Rani aged 26 years (sister of PW1; wife of the appellant), (ii) Reena Rani aged 28 years (sister of PW1; sister-in-law of the appellant), (iii) Harry aged 5 years (son of Seema Rani from her first marriage; adopted son of Reena Rani; step-son of the appellant), (iv) Sumani Kumari aged 3-4 years (daughter born out of the wedlock between Seema Rani and the appellant), (v) Harsh aged 1.5-2 years (son born out of the wedlock between Seema Rani and the appellant), and (vi) Om Prakash @ Tari aged 18 years (brother of PW1). PW1 called an ambulance, and all the six injured persons were taken to the hospital where Seema Rani, Reena Rani, Sumani Kumari and Harsh were declared brought dead while Harry and Om Prakash @ Tari were admitted at the hospital.

4. The FIR was registered at 11.15 a.m. on 29.11.2013 itself under Sections 302, 323 and 34 of the IPC at Police Station Satnampura, Kapurthala by S.I. Karnail Singh (Investigating Officer/IO') on receiving a telephonic message from the Civil Hospital, Phagwara. On 15.02.2014, on receipt of opinion from the doctor regarding nature of injuries on the person of injured Om Prakash and Harry, the offence was enhanced under Sections 308 and 325 IPC, while offence under Section 34 of IPC was reduced. The appellant was arrested subsequently on 30.01.2014 post his discharge from the hospital since he was also undergoing treatment of his arm since the date of incident.

5. After completion of the investigation, challan was presented against the appellant above to face trial under Sections 302, 308, 325

and 323 of the IPC. The case was committed to the Sessions Court, vide order dated 21.05.2014, wherein the accused pleaded not guilty and claimed trial. During the course of prosecution evidence, the case was transferred to the Court of Additional Sessions Judge, Kapurthala, wherein it was heard and decided as Case No. SC/64/2014.

6. The motive attributed by the prosecution to the appellant is that the appellant's sister, one Rekha Rani was married to one Haria – however, due to matrimonial dispute between the parties, the marriage was dissolved by divorce in presence of the panchayat wherein Haria returned all the dowry articles and also undertook to pay Rs. 35,000/- as maintenance to Rekha Rani. PW2–Manjit Kaur (mother-in-law of the appellant) stood as guarantor for Haria for returning the amount, and when such amount was not paid, it led to constant fights between the appellant and his wife Seema Rani. The fight had escalated to such an extent where the appellant had threatened to kill his wife and children if the money was not paid, and it also led to Seema Rani along with her children coming to her maternal home on 17.11.2013 after she was beaten by the accused.

7. While this was the motive ascribed, the primary evidence considered against the appellant by the Courts below was the testimonies of PW1/complainant, PW2 who claims to be an eyewitness and PW17 who is an injured child witness. Besides the testimonies, there were also alleged discoveries of blood-stained clothes, a gandasi and a bicycle at the behest of the appellant based on his disclosure statement dated 01.02.2014, which led to the prosecution establishing its case against the accused-appellant.

Trial Court's findings -

8. The prosecution, in order to substantiate its case before the Trial Court, examined 22 prosecution witnesses while the accused examined no witness in defence in spite of availing sufficient opportunities. The lead witnesses presented by the prosecution other than the medical officers and members of the investigation team included – (i) PW1-Vijay Kumar (complainant); (ii) PW2-Manjit Kaur (claims to be eyewitness); and, (iii) PW17–Harry (injured child witness). Other than this, PW23–Om Prakash, who was an injured witness, was presented before the Court but was not examined as a witness on oath on account of being found mentally unfit and thereby, not a competent witness.

9. In order to draw a verdict about the conviction of the accused, the Trial Court, after hearing the rival contentions raised by

the respective counsels, considered the following arguments and formed its reasoning on the varied grounds which are summarized as below –

A. Delay in lodging FIR: The incident is alleged to have taken place at about 6 a.m. on 29.11.2013 and the FIR was lodged on the same day at around 11 a.m. The Trial Court held that naturally, the first effort of the complainant was to save the life of his six injured family members. As such, arranging the ambulance and taking them to the hospital consumed a lot of time and FIR cannot be said to be delayed in such circumstances.

B. No independent witness: The defence counsel had argued that PW1–Vijay Kumar, PW2–Manjit Kaur and PW17–Harry are close relatives of the deceased persons and interested witnesses, and since no independent witness of the locality has been examined, thus their testimony cannot be relied upon. The Trial Court held that since the incident had taken place in the house of PW2–Manjit Kaur and that too in the early hours of the morning, therefore, she is the most natural and best witness. Further, PW17–Harry is a witness who sustained injuries during the occurrence and his presence at the place cannot be denied, therefore, his evidence cannot be discarded solely on the ground of being a close relative.

C. Presence of PW2–Manjit Kaur at the spot: Manjit Kaur, who claims to be an eyewitness to the incident, stated that after witnessing the occurrence, she managed to slip away outside the house and concealed herself behind the bushes out of fear and came back half an hour later. The defence counsel had contended that such a conduct was highly improbable and unnatural for a mother to leave her children at the mercy of the killer while slipping away from the place of occurrence and makes her presence at the spot extremely doubtful. The Trial Court observed that the reflex of every human being in a dangerous situation varies and it is quite natural that, in order to save herself from the attack, Manjit Kaur managed to escape from the house. Further, it was held that her account that she was about to leave for Gurudwara, in accordance with her daily ritual, was corroborated by PW17–Harry who had the same impression that his grandmother had left for Gurudwara by that hour.

D. Disclosure statement recorded and recovery effected without any independent witness: The defence counsel had submitted that there was no independent witness present at the time of recording

of disclosure statement of the accused, nor at the time of effecting recovery of weapon. The Trial Court held that Section 27 of the Indian Evidence Act, 1872[2] does not lay down that the statement made to police official should always be in presence of independent witnesses. Thus, in such matters, Court seeks corroboration from independent witnesses as a matter of caution and not as a matter of rule. It was held that the recovery of blood-stained clothes of the accused finds corroboration from the testimony of PW2-Manjit Kaur, who had categorically stated that the accused, at the time of occurrence, was wearing black shirt and blue pajama and the same were recovered.

E. Discrepancies in the statement of other PWs about presence of PW2 at the spot and presence of private persons other than the accused: The Trial Court held that the contradictions pointed out by the defence counsel are minor in nature, and the two eyewitnesses and one injured child witness have stood the test of scrutiny despite the lengthy cross-examination. It was observed that such minor contradictions do not go to the root of the prosecution case.

F. Defence of accused's arm being amputated: The defence counsel had argued that the left arm of the accused has been amputated and, in such a condition, it would have been impossible for the accused to carry out murder of four persons and cause injuries to two others with one hand using gandasi. However, PW1, during his cross-examination, had stated that the accused's arm had been amputated after the alleged occurrence. This was also supplemented by the statement of PW15–Dr. Ramesh Chander who had attended to the accused at Civil Hospital, Phagwara. Further, no suggestion whatsoever, nor any evidence has been adduced by the accused to submit that his arm was amputated prior to the occurrence. Therefore, this argument of the defence also fell flat.

G. Motive: The Trial Court held that the motive has been established amply in shape of testimony of PW18–Satnam Singh (Sarpanch) who had stated about the panchayati divorce between the sister of the accused and Haria and also the fact that PW2–Manjit Kaur stood as a guarantor towards the promise of payment of Rs. 35,000/-. Thus, it was clear that the appellant was nourishing a grudge against Manjit Kaur and her family members.

H. Plea of alibi: It was observed by the Trial Court that the accused was admitted to Civil Hospital, Phagwara at about 7 p.m. on 29.11.2013, i.e. the day of the incident due to some accidental injuries,

whereas the occurrence had taken place at about 6 a.m. on the same day, i.e. more than twelve hours prior to him being admitted in the hospital. Therefore, the plea of alibi merely on this ground is nothing but a bald assertion and shall not succeed as the accused has failed to adduce any oral or documentary evidence to support his plea.

I. Injuries/medical evidence reflect the intention to kill: The Trial Court analysed the post-mortem reports and the medical opinion of the members of Board of doctors who conducted post-mortem which led it to conclude that the injuries were caused by the accused on the vital body parts of the deceased and such injuries were sufficient to cause death in the ordinary course of nature. Therefore, it was established that the accused caused the injuries only with the intention to brutally kill them, leaving no chance of their survival.

J. Conviction under Sections 308 and 325 of the IPC: The Trial Court considered the medical reports and the statement of Medical Officer opining that "injury no. 3, possibility of dangerous to life, could not be ruled out", and held that from the intention of accused, while causing injuries to minor Harry, ingredients of offence under Section 308 of IPC stand proven. Additionally, with regard to the injuries meted out to Om Prakash, the Medical Officer opined that the "possibility of injury nos. 1 and 3 to be grievous in nature cannot be ruled out". Even though the final opinion regarding the injury was not placed on record by the prosecution, the Trial Court went ahead and held that the guilt of accused for the offence punishable under Section 325 of IPC stands proved.

K. Recovery of weapon and blood-stained clothes: A gandasi, i.e. the weapon used for the commission of the crime along with blood-stained clothes of the accused and a cycle were allegedly recovered on the basis of the accused's disclosure statement. The clothes and gandasi were sent for chemical analysis, and the said report stated that "The exhibits contained in the parcel A and B are stained with human blood". The said report was not exhibited before the Trial Court, but the Court, nevertheless, took judicial notice of the same and held that the report of chemical examiner is admissible in evidence as per Section 293 of the Code of Criminal Procedure, 1973[3]. The Court went ahead to the extent of holding that the blood-stained clothes and weapon of offence leave no room for doubt to connect the accused with the commission of crime.

10. Thereby, it was held by the Trial Court that the prosecution has been able to prove guilt of the accused beyond reasonable doubt.

As such, the accused, vide judgment dated 29.02.2020, was convicted under Section 302 of IPC on four counts (i.e. Seema Rani, Reena Rani, Harsh and Sumani Kumari) along with Sections 308 and 325 of the IPC.

11. The order of sentence against the accused was passed by the Trial Court on the same day after lunch, wherein the Court held it to be one of the rarest of rare cases and sentenced the accused to death under Section 302 IPC for committing four murders. The accused was also sentenced to pay a fine of Rs. 2,00,000/- (Rupees Two lakhs only), in default of which to undergo rigorous imprisonment for one year under Section 302 IPC, in case his death sentence is not confirmed by the High Court. Further, the accused was sentenced to undergo seven years rigorous imprisonment and a fine of Rs. 50,000/- (Rupees Fifty thousand only) under Section 308 of IPC, in default of payment of fine to further undergo ten months' rigorous imprisonment. Similarly, under Section 325 of IPC, the accused was sentenced to undergo seven years' rigorous imprisonment and a fine of Rs. 50,000/- (Rupees Fifty thousand only), and in default of payment of fine, to further undergo rigorous imprisonment for ten months. All the sentences were to run consecutively in case death sentence is not confirmed. Out of the amount of fine imposed, (2/3rd) of the amount was to be paid as compensation to the victim PW2–Manjit Kaur as well as injured persons namely Harry and Om Prakash, in equal proportions.

12. The elemental factors considered by the Trial Court while categorizing the instant case in the "rarest of rare" category and awarding death sentence to the accused included that the crime was not committed in the heat of passion but was pre-meditated as the convict was nourishing grudge against his own family members and led to committing murder of his own wife, two children and sister-in-law. The Court also observed that if the accused could go on to take such an extreme step, he could very well be a danger to the life of complainant and PW2. It was held that the balance tilted towards the aggravating circumstances as the crime shook the society's conscience and the convict deserves to meet the gallows.

High Court's findings –

13. The High Court, vide the impugned judgment, notes the findings of the Trial Court, details the arguments of the opposing counsels and proceeds to record its reasons for upholding the conviction. However, the High Court notes certain fallacies

committed by the Trial Court, especially with regard to its analysis of the deposition of PW1-Vijay Kumar.

14. The High Court firstly noted that the site plan (Ex PW22/J) does not show that the PW1/complainant's house is adjacent to that of his mother/PW2. Further, it was noted that the cycle repair shop of the complainant, which is where the complainant lived as per PW2's statement, is situated 10 kilometers away from the house where the occurrence took place. Thus, it was held to be apparent that PW1-Vijay Kumar was not residing near the house in question and, therefore, it was highly improbable for him to be at the spot when the accused was coming out by holding gandasi after committing the offence. Therefore, PW1's statement as to him having witnessed the accused while exiting the house after the incident was completely discarded by the High Court.

15. Subsequently, the High Court also observed that the manner in which the recovery of gandasi along with blood-stained clothes and the cycle had been effected after a considerable period of two months from the house of the accused does not inspire any confidence in the investigation and rather brings out glaring lapse on the part of the investigating agency.

16. However, the High Court granted unblemished acceptance to PW2–Manjit Kaur's statement as to her being present in the house at the relevant hour and that she was an eyewitness to the entire incident who fled away the scene out of fear of her own safety.

17. Further, with regard to the injuries sustained by the accused on the day of the incident and how the accused offered no explanation as to the cause of injuries, the High Court employed Section 106 of the Evidence Act to place reverse onus on the appellant. Failure to provide any explanation by the accused pertaining to his injuries led the Court to treat it as another reason to confirm the conviction by presuming that the said injuries were received by the accused during the assault on account of defence put up by the deceased and injured victims other than the minor children.

18. Another factor that weighed with the High Court was that the manner in which the assault was committed clearly showed that it was by a person who was keenly nursing a grudge and was not a case of robbery by unknown persons who could have easily over-powered the minor children and deceased women without inflicting injuries of such severe nature.

19. As such, the High Court held that, on co-relating the statement of PW2 and the child witness, the motive aspect and the fact that the appellant himself was admitted in the hospital later on the day of incident itself as he had suffered serious injuries, to which he has not given any plausible explanation, would go on to show that the prosecution is able to prove its case beyond any shadow of doubt regarding the involvement of the appellant.

20. The High Court also observed that the brutality of the incident is that of a diabolic act, whereby conscience of the society as a whole has been shocked. The deceased, including two children and wife of the accused-appellant himself, were done to death in the safety of their own house and, therefore, the Court held the case to fall in the rarest of rare category while confirming the death penalty.

Submissions -

21. It is in the above background that the impugned judgment is being assailed before us by the accused-appellant.

22. We have heard Mr. Dama Seshadri Naidu, learned senior counsel appearing for the appellant and Mr. Siddhant Sharma, learned counsel appearing for the respondent-State of Punjab.

23. The counsel for the appellant, Mr. Naidu, has argued in length before us while adequately dealing with the evidence presented by the prosecution before the Courts below, and their submissions can be classified into five main contentions which are as follows –

a) Failure of the prosecution to establish a clear motive: It has been contended that the purported financial dispute between the appellant and PW2's family which has been attributed as the root cause of animosity and gave birth to the crime remains uncorroborated since the prosecution failed to examine Haria or the appellant's sister, who were the principal parties to the alleged transaction.

b) Contradictions and embellishments in Prosecution Witness testimonies: It has been exhaustively argued that the testimonies of the key witnesses, i.e. PW1 and PW2 are riddled with contradictions ranging from the presence of the said witnesses to the weapon used and the existence of any accompanying accused persons. Even though, the appellant's counsel has made pinpointed attacks and brought forth specific discrepancies, we are deliberately not elaborating the said submission at the instant juncture, as it shall be

dealt with appropriately in the latter part of the judgment, while analysing the testimonies of the prosecution witnesses.

c) Deficiencies in the investigation and questionable evidentiary value of the alleged recoveries: It was submitted that the arrest as well as the recovery of weapon and clothes was not supported by any independent witness. Further, the disclosure statement being made two months after the incident and the lack of DNA or forensic evidence with regard to the recovered articles point towards investigative loopholes and inconclusive evidence on record.

d) Failure to meet the standard of proof beyond reasonable doubt: The above-mentioned deficiencies highlight the failure of the prosecution case in being able to meet the required standard of proof and legal threshold for conviction in cases of such nature.

e) Non-applicability of the "rarest of rare" doctrine: Without prejudice to the above grounds, it was submitted that even as such, the instant case does not qualify as "rarest of rare" and, therefore, even if in arguendo, the accused is convicted, the sentence of death penalty shall be too grave and wholly unwarranted.

24. On the other hand, the counsel for the respondent–State has unequivocally supported the findings of the Courts below and submitted that the impugned judgment should not be interfered with. It was submitted that there was an eyewitness account of the complainant PW1, PW2–Manjit Kaur and the child witness Harry, and minor discrepancies in the statements of the witnesses can be overlooked, especially in view of the fact that there was a motive and the presence of injured eyewitness is irrefutable. It was submitted that the consequential recoveries of the weapon and the blood-stained clothes further strengthen the prosecution's case, and there is no plausible reason to disbelieve the same.

Analysis –

25. Having heard the in-detail submissions and perused the material on record, we find it of utmost importance to primarily delve into the depositions of key witnesses. It is apparent that the Courts below have strongly relied upon the testimonies of three witnesses to bring home the conclusion of guilt against the accused. These three witnesses are – (i) PW1–Vijay Kumar (the complainant), (ii) PW2–Manjit Kaur (alleged eyewitness), and (iii) PW17–Harry (injured child witness). Before we proceed ahead with verifying the inter-se corroboration amongst these testimonies, it would be relevant to

reproduce the contents of FIR (which was registered at the instance of PW1) as well as the above-mentioned depositions.

Ex. PW22/B

FIR No. 54/2013 at P.S. Satnampura,
Phagwara registered on 29.11.2013

Statement of Vijay Kumar son of Late Daulat Ram, caste Adharmi, R/o Kot Rani, PS Satnampura, Phagwara, aged 28 years. Stated that I am resident of above stated address. I am running a cycle repair shop at my residence. We are two brothers. My younger brother is Om Parkash @ Tari. We have two houses and have a joint family. Yesterday dated 28.11.2013 in our house situated in Dashmesh Puri my mother Manjit Kaur, my brother Om Parkash @ Tari, my sister Seema Rani and her children Harry aged 6 years, Sumani Kumari aged 3 years, Harsh 2 years and sister Reena Rani aged 28 years were sleeping in the house at night. **My mother used to visit Shri Gurudwara Sahib at Dashmesh Puri daily in the morning.** Sunehri Lai husband of my sister Reena Rani is living abroad since two years due to this reason she is living with us. My sister Seema Rani wife of Baljinder Kumar @ Kala R/o village Gurray, PS Guraya whose marriage was solemnized since six years ago, also living with us from 15 to 20 days alongwith her children due to disputes with her husband. On dated 14.11.2013 Baljinder Kumar @ Kala came our house and threatened all of us that if we did not paid Rs.35,000/- to him he would kill his children and his wife. **Today at about 6.00 a.m. I alongwith my wife went to our another house to drink tea from my mother** and when we reached at our house near the gate in a gali **we saw that Baljinder Singh @ Kala armed with Datar** came out from our house and asked us upon seeing that he would told us to face consequences for not giving Rs.35,000/- to him and he did the same what he had said and he fleed away from the spot. **We had seen three/four unidentified persons armed with Gandasis and Rods ran away alongwith him** towards cremation ground and when we entered our house and saw that both of my sisters Seema Rani and Reena Rani, my brother Om Parkash @ Tari and three children Harry, Sumani Kumari and Harsh smeared with blood. The blood was scattered in the room here and there. Then I called Ambulance No. 108 for help and we went all of them to Civil Hospital Phagwara, there doctor Sahib declared my sister Seema Rani, Reena Rani, Children Sumani Kumari and Harsh

dead. My brother Om Parkash @ Tari and Harry being injured was admitted to the hospital for treatment. All the offence occurred by Baljinder Kumar @ Kala son of Kaila Ram residence of village Gurray PS Guraya **alongwith unidentified persons armed with weapons** with my family. Action be taken against them. Statement was recorded, heard being correct. Sd/- Vijay Kumar, Attested by Sd/- Karnail Singh SHO PS Satnampura dated 29.11.2013.

[Emphasis is mine]

Examination-in-chief and cross-examination of PW1 – Vijay Kumar

PW-1 on SA: Vijay Kumar son of Late Daulat Ram son of Ram Kishan, aged 28 years, Cycle repair shop, resident of village Kot Rani, P.S. Satnampura, Phagwara District Kapurthala.

I am running a cycle repair shop at Kot Rani. We are two brothers. The name of my younger brother is Om Parkash @ Tari. We are having two houses with joint family. One of our house is in village Kot Rani and the second house is situated in Mohalla Deshmesh Puri adjoining to Kot Rani. We have two sisters namely Reena Rani and Seema Rani. My sister Reena Rani has been residing with us for the last two years and her husband is residing abroad. My sister Seema Rani was married with accused present in the Court since the last about six years. She was having three children namely Sumani Kumari, Harsh and Harry. The marriage of sister of the accused was got performed by my mother with Hariya. There was held divorce between the said sister of the accused and her husband and my mother was to pay Rs. 35,000/- to the accused. Due to this reason, there are used remain altercation between Seema Rani and her husband i.e. the accused who is present in the Court. For this reason my said sister Seema Rani alongwith her children came to reside with us about 15 days prior to the occurrence.

On 14.11.2013, accused came to our house in village Kot Rani, and threatened us to kill Seema Rani, Reena Rani and children of Seema Rani. **On 29.11.2013 my mother Manjit Kaur had gone to Gurudwara at about 06.00 AM.** At that time on the said date my both the said sisters, my mother and children of Seema Rani were present in the house situated in the area of Dashmesh Puri above-said. **On 29.11.2013, I alongwith my wife Sunita Devi were going to our house situated in Dashmesh Puri to take tea alongwith my mother.** When we reached at the gate of the above-said house, **we**

saw accused Baljinder Kumar coming running out from the said house alongwith Gandasi. On seeing us, he told us that he has done what he has to do and to face the consequences for not making the payment of Rs.35,000/-. After uttering this, he ran away from the spot towards the cremation ground. When we entered in the house, he saw that both of my sisters Seema Rani and Reena Rani, my brother Om Parkash @ Tari and three children of Seema Rani smeared with blood. The blood was scattered in the room. Then ambulance 108 was called at the spot and brought the injured to Civil Hospital, Phagwara in said ambulance. On reaching Civil Hospital, Phagwara the doctor told us Seema Rani, Reena Rani and children Sumani Kumari and Harsh are dead. My injured brother and child Harry were admitted in the said hospital for treatment. The accused had murdered my sisters Seema Rani, Reena Rani and children Sumani Kumari and Harsh and had got injury to Om Parkash @ Tari and Harry and made by statement to the police which bears my signature and I identify the same. The said statement is EX.PA.

On 29.11.2013, police reached at the spot and lifted blood from the spot which was put into dubbi plastic which was sealed with the seal of mark "KS" and the same was taken into police possession vide memo EX PB which was attested by me and other police officials. Police also took into possession blood stained shawl and bed sheet of dubble bed from the spot vide EX.PC which was also attested by me and other police officials. My statement was also recorded in this regard.

On 01.02.2014, the accused got recovered one gandasi made of iron, blood stained clothes i.e. Pajama and one vest (both blood stained) which were worn by accused at the time of alleged occurrence from the residence house behind the petti in village Burra. He also got recovered one cycle from another room of his house. Sketch EX.PD of recovered gandasi was prepared. Thereafter, this gandasi alongwith the bicycle and above-said clothes were taken into police possession vide memo EX.PE, The said sketch and memo bearing my signatures as attesting witness. My statement with regard to this recovery was also recorded. I identify the accused present in the Court.

(Remaining examination in chief is deferred at the request of Ld PP that case property of this case not produced)

Dated 30.07.2014

PW-1 on SA: Vijay Kumar son of Late Daulat Ram recalled for further examination in chief.

I have seen the sealed parcels of gandasi EX.P1 and clothes EX.P2 in the Court today. At the request of Ld. PP these parcels are ordered to be opened. On opening parcel EX.P1, a gandasi is taken out which is EX.P3. It is the same gandasi which was got recovered by the accused. On opening parcel EX.P2, one pajama and one T-shirt blood stained are taken out which are EX.P4 and EX.P5 respectively. These are the same clothes which were got recovered by the accused. I have also seen the cycle EX.P6. It is the same which was got recovered by the accused.

XXXXXmm:- on behalf of the accused.

Gandasi and clothes of the accused were seen by me in the house of the accused. These articles were recovered from the room of the accused. The brothers and other family members of the accused are residing with him. The accused took the police alongwith me to his house. Many residents of the village had assembled in the house of the accused when we went there. The police had not obtained their signatures on any paper. The police did the writing work regarding the recovery. We had gone there at 09/10:00 A.M. The police did the writing work in the room of the house of the accused. The other family members of the accused came to the house when we reached there and by that time we had not entered in the room of the alleged recovery. It is correct that if we had gone to the house of the accused the alleged recovery could have been effected on search without the assistance of accused. It is incorrect to suggest that nothing was recovered from the house of the accused in my presence and I have deposed falsely on this aspect. It is also wrong to suggest that police did not do any writing work at the house of accused.

Seema alongwith her children had come to our house on the 14th of month but I do not remember the month. It is wrong to suggest that I alongwith my family residing separately from my mother. **My cycle repair shop is situated at 10 kilometers from my house where the alleged occurrence took place. I stated in my statement EX PA that accused was armed with a gandasi. Confronted with his said statement where gandasi is not mentioned. My mother was present at the time of alleged occurrence. The occurrence took place at about 06:00 A.M. My mother was present in the house when the alleged occurrence took place.** My mother used

to go to Gurudwara to pay obeisance. She used to go to Gurudwara at about 06:00 A.M and return at about 07.00 A.M. from Gurudwara. **I had stated in my statement EX.PA that my mother had to Gurudwara at about 06.00 A.M. on 29.11.2013.** Attention of the witness drawn towards EX.PA where this fact is not specifically recorded. It is incorrect to suggest that my mother had not witnessed the occurrence. The police recorded my statement EX.PA at about 11:00 A.M at Civil Hospital, Phagwara. I do not know at which place and on which date statement of my mother was recorded. I and my wife had not chased the accused. **He was accompanied with 3-4 persons. But we had not noticed any weapon in the hands of those persons as they had run away.** All those persons ran towards the creation ground side. **When we entered the house and saw the injured lying in pool of blood, we raised raula.** It is correct that a news regarding the alleged occurrence was also published in the newspaper EX.Dl (objected to). It was a correct news which was published in EX.D1 (objected to). The accused was arrested after about three days of the occurrence. It is correct that his left arm has been amputated. Voluntarily It was amputated after the alleged occurrence. Prior to 14th of that month, my sister had also visited us about 15-20 days back. We did not inform the police regarding the threats given by the accused. Seema was married earlier also prior to her marriage with the present accused. It is wrong to suggest that neither myself nor my mother had witnessed any occurrence. It is also wrong to suggest that we have falsely named the present accused in this case. It is also wrong to suggest that I have deposed falsely.

Dated 15.10.2014

[Emphasis is mine]

Examination-in-chief and cross-examination of PW2 – Manjit Kaur

PW-2 on SA: Manjit Kaur wife of Daulat Ram, wife of Ram Kishan, aged 55 years, Housewife, resident of village Kot Rani, P.S. Satnampura, Phagwara District, Kapurthala.

Stated that I am housewife. I have two sons namely Vijay Kumar and Om Parkash @ Tari. Said Om Parkash @ Tari is mentally retarded person. I have two daughters namely Seema Rani and Reena Rani. My daughter Reena Rani was married with Sunhari Lal. Her husband is residing abroad. Since husband of Reena Rani has been residing abroad so she was residing with us for the last

about two years. She was issueless. From the first marriage of Seema Rani she was having one child namely Harry who was taking into adoption by Reena Rani. Second marriage of my daughter Seema Rani was performed with Baljinder Kumar @ Kala resident of village Burra the accused present in the Court about 5-6 years back. My daughter Seema Rani was having two children from her second marriage namely Sumani Kumari and Harsh. Rekha Rani sister of accused was married with Hariya resident of Atta near Goraya. There were not cordial relations between said Rekha Rani and Hariya and as such they could not pull on together. A divorce was taken place between them on 19.10.2013 in the presence of panchayats of both the parties. I was also present in said panchayat at that time. Hariya returned the entire dowry articles to accused Baljinder Kumar. Said Hariya had also undertaken to pay a sum of Rs. 35,000/- to accused of this case. I stood as guarantor on behalf of Hariya to make payment of said amount of Rs.35,000/- to the accused as I was mediator in the above-said marriage of Rekha Rani with Hariya. Hariya did not make the payment above-said of Rs.35,000/- as agreed within stipulated date and as result thereof there used to remain altercation between Seema Rani and her husband Baljinder Kumar accused. On 14.11.2013, my daughter Seema Rani and her husband Baljinder Kumar came together to my house. He threatened us in case we did not make the payment of the above-said amount of Rs.35,000/- he will kill all of us. Thereafter, Seema Rani alongwith children again came to my house on 17 11.2013 after she was beaten by the accused.

On 29.11.2013 I was present in my house and I was likely to go to Gurudwara at about 05:30 A.M. I did not go to Gurudwara and after sometimes, I went to the bathroom side. **On hearing of voice I came out from the bathroom then I saw accused Baljinder Kumar armed with gandasi wearing black shirt and pajama of blue colour. Accused caused injury with the gandasi to my daughter namely Seema Rani and Reena Ram, said Om Parkash @ Tari, Harsh, Harry and Sumani Kumari by causing injuries to them with the gandasi.** Accused was uttering where is their mother I will kill her also for not making payment of above-said Rs.35,000/-. **Due to fear I ran out of the house and raised a raula.** When I entered into the house after some times then I saw that my both daughters, my son and three children above-said were lying

in an injured condition. **My son Vijay Kumar and his wife came there** who called an ambulance 108 by making a telephone call and took the injured to the Civil Hospital, Phagwara in the said ambulance. In the hospital doctor told that Seema Rani, Reena Rani, Harsh and Sumani Kumari are dead Harry and Tari were referred to DMC, Ludhiana after giving them first aid. Accused had caused the murder of Seema Rani, Reena Ram, Harsh and Sumani Kumari and also injured Tari and Harry due to non payment of the abovesaid amount. Accused Baljinder Kumar present in the Court to whom I identify. My statement was recorded by the police.

XXXXXmn:- on behalf of the accused.

(Deferred at the request of Ld.Counsel for the accused as he has been engaged from the Free Legal Aid side and copy of challan is not with him)

Dated: 30.07.2014

PW-2 on SA: Manjit Kaur wife of Late Daulat Ram recalled for crossexamination by Ld Counsel for the accused

I am daily visitor to the Gurudwara. **I usually go to the Gurudwara at about 06:00 AM. without fail.** It takes about 10-15 minutes to reach the gurudwara if one goes on foot. My daughter Seema came to my house alongwith her children on 17.11.2013. This was the second marriage of Seema with accused. The accused came to my house on 14.11 2013 and threatened us. We did not inform the police regarding the factum of threats given by the accused. **The cycle shop of my son Vijay was situated near by my house and that shop comes after crossing two shops from my house and he resides in that shop.** I have never seen my said son Vijay Kumar taking intoxicants. There is one varandah outside the shop. My son Vijay Kumar and his wife reside in the house where Vijay Kumar runs cycle repair shop. **My son Vijay Kumar and his wife came earlier to me to the place of occurrence.** Police recorded my statement in my house when we had came back after depositing the dead bodies in the mortuary after 11:00 A.M. I do not remember the exact time when my statement was recorded by the police. I do not know if my statement was recorded earlier or if the statement of my son Vijay Kumar was recorded earlier then my statement. The male folk was separate then the women folk when the police recorded the statements of mine and my son. **It is wrong to suggest that our bathroom is situated with varandah adjoining**

to the roadside but it is situated near our kitchen. We have got only one bathroom in our house near our kitchen. Police did not prepare site plan in my presence. It is wrong to suggest that from inside the bathroom, place of occurrence is not visible. Our bathroom and toilet are separate. **I heard the noise while sitting in the bathroom at about 06:00 A.M. I did not go immediately to the room i.e. place of occurrence, but I ran outside of the house being afraid of the accused.** At that time our main gate was open through which I came outside. **I ran towards colony raising raula. My son and his wife came to me hearing my raula, when I came back to my home. My said son and his wife also came there.** I concealed myself near the factory situated near colony. **I hid myself behind the bushes, for about half an hour. After half an hour, I gained the consciousness.** I lost my consciousness behind the bushes. I do not remember if I had got recorded to the police in my statement that I had run out of my house raising raula. Accused had threatened us on 14.11.2013 and thereafter, I saw him at the time of occurrence. I do not know if a news item was published in some newspaper qua the said occurrence. **My son Vijay Kumar and his wife Sunita had come to us to have cup of tea on their own.** It is incorrect to suggest that neither myself nor my son had seen the occurrence. It is further wrong to suggest that the accused never visited my house on 14.11.2013, nor he gave any threat to us on the said day. It is also wrong to suggest that the accused has been falsely implicated in this case.

Dated: 30.07.2014

[Emphasis is mine]

26. The precise purpose behind reproducing the above testimonies of PW1 and PW2 is to bring forth the striking contradictions and incongruities which become as clear as a day on a singular comprehensive reading. The prosecution relied laboriously on the testimonies of PW1 and PW2 to establish the appellant's presence and conduct at the scene. The Trial Court has lent its unquestionable acceptance to the two testimonies. Even though the High Court displayed a degree of caution, was quick to recognize the inconsistencies in PW1's deposition and discarded the same, yet again, found no reason to doubt PW2's account of events, extended her the credibility of being an eyewitness to the entire incident and considered it to be unimpeachable. We are, however, unable to accord the same degree of sanctity to the testimonies of these two purported

star witnesses. The reasons are multiple and based on ample discrepancies which are discussed as follows –

A. Presence of PW1 at the spot:

Although PW1's presence at the spot has already been discarded by the High Court, we find it relevant to discuss the same as it also points towards blazing contradictions in PW2's account of events and raises several questions about the veracity of her own statement.

Firstly, PW1 states that his cycle shop where he resided is ten kilometres away from the place of occurrence, whereas PW2 stated that the said cycle shop is merely two buildings away from her house. PW2's claim goes unverified by the record since no site map has been placed on record to reflect that the two places are in the same neighbouring area. Rather, it has come on record at various places in the case file that PW2's house and PW1's house/cycle shop were located in two different villages. Therefore, PW2's statement in this regard is clearly false.

Further, PW1, in FIR as well as during his deposition, states that on the morning of 29.11.2013, his wife and him were going to PW2's house to have tea along with her. Whereas PW2, in her chief and cross-examination, makes several inconsistent statements about the arrival of PW1 to the spot. She initially states that her son (PW1) and daughter-in-law came to the spot as a consequence of the 'raula' (hue and cry) that she raised. She reiterates the same sentiment in her cross-examination but, a few sentences later, she goes ahead and says that the son and his wife had come to have a cup of tea on their own. At one point of time, she also mentions in her cross-examination that PW1 and his wife had come to the spot of occurrence earlier than herself. It also must be noted that PW1 nowhere mentions about any raula/alarm raised by PW2, as claimed by her good self. These jarring inconsistencies suggest chiefly two things – firstly, that the statement of PW2 is highly shaky, varies at every other turn and is not reliable at all; and secondly, that the presence of PW1 and his wife at the spot of occurrence cannot be deduced from the contrasting statements and admitted facts like the distance of cycle shop from the place of accident.

Therefore, it can be safely concluded that it was highly unlikely for PW1 to be present at the spot when the accused was leaving after allegedly committing the murder and any reliance on PW1's

statement to convict the accused shall be grossly misplaced. It is apparent, as the High Court had also acknowledged, that PW1 had been introduced as a sham witness by the prosecution despite him being absent from the site of crime.

B. Presence of PW2 at the place of occurrence:

PW2–Manjit Kaur's account of events has been lent maximum trustworthiness by the Courts below and she has been hailed as one true eyewitness to the entire incident. We have already expressed our reservations pertaining to PW2's statement emanating from huge contradictions as stated above, but there are even bigger irregularities to shake her credibility further. Firstly, PW2's presence in the house during the occurrence becomes doubtful from the initial stage itself as PW1 nowhere mentions her presence in the FIR which was registered on the day of the incident itself. It is unfathomable that the complainant would narrate the sequence of events and would miss out on such a major and traumatic detail as to his own mother witnessing the murder of her children and grandchildren. Further, even in his examination-in-chief, PW1 reiterates that his mother (PW2) had gone to the Gurudwara at 6 a.m. on the said morning. It is only during his cross-examination that PW1, for the first time, states that his mother was in the house at the time of the alleged incident. Such dissonance in statement clearly indicates towards the untrue and misguiding nature of these statements.

Further, even PW2's own account of being present at the crime scene is highly questionable. In her examination-in-chief, she mentions that she heard the noise while in bathroom, came out of the bathroom, saw the accused committing the act, then ran out of the house out of fear and raised 'raula'. However, in her cross-examination, she states that as soon as she heard the noise while in the bathroom, she directly ran outside the house due to fear, thereby not directly and first-handedly witnessing the accused committing the act of murder and inflicting injuries. She further states that her son and his wife came to the spot as a result of 'raula' (alarm) that she raised and that they came back to the house with her. However, in the same breath, she also talks about her hiding behind the bushes and losing consciousness for about half an hour, and her son and his wife reaching the place of occurrence before herself. This entire narration creates a major dent in the timeline of the prosecution case and leads to inconsistencies which cannot be

aligned in a rational manner. PW2's testimony in itself is highly ambivalent, fluctuating and shows no sign of coherence of events forming an unbreakable chain. The incompatibility of a sequence of events only becomes more apparent when the statements of the two star witnesses are attempted to be read together. A natural conclusion of the above depositions is that PW2's presence at the crime scene as an eyewitness is highly improbable as she is thoroughly self-contradictory about the unfolding of events on that fateful morning. Therefore, her existence as an eyewitness also has to be ruled out.

C. Weapon wielded by the accused:

Given the inconsistent nature of statements throughout, it comes as no shock yet certainly points towards another irregularity that PW1/complainant, while getting the FIR registered, had stated the accused to be carrying a 'datar' while exiting the crime scene. However, in the later statements made by PW1 before the Court, which were naturally recorded after the alleged recovery of weapon on 01.02.2014, PW1 has readily changed his stance and stated to have seen the accused carrying a 'gandasi'. It must be noted that the two weapons are considerably and visibly different, and a rural individual, especially such as PW1 himself, is understood to be adept in such difference and would not ordinarily mistake one for the other. It goes without saying that the murder weapon becomes a relevant piece of evidence in such cases. A subsequent and convenient switching of statements by a key witness with regard to seeing the accused with the said weapon only points towards the fabricated nature of such a statement.

D. Accompanying accused persons with the appellant:

Another unmistakable contradiction is in PW1's account of events in the FIR where he states the appellant to be accompanied by three/four unidentified persons who were armed with gandasis and rods. Whereas, in his chief examination, he entirely omits mentioning any accompanying accused persons. However, when he is confronted with such a contradiction during the cross-examination, he admits that the accused was accompanied by three/four persons while fleeing the scene of crime, but states that he did not notice any weapons in the hands of such accused persons. These amount to three different versions by the same individual regarding one peculiarity i.e. if the accused-appellant, whom he claims to have witnessed fleeing away from the scene, was accompanied by

someone else or not. Such inconsistency gives greater weight to our decision to render PW1's statement wholly unreliable.

27. Apart from the above-mentioned discrepancies in the depositions, there is a whole array of perceptible questions that neither the prosecution has attempted to address, nor the Courts below have exhibited any inquisitiveness towards. Even though PW1 consistently mentions that he was accompanied by his wife Sunita Devi while going to PW2's residence, there is no explanation as to why Sunita Devi has not been examined at any point. Further, irrespective of who raised the 'raula' (alarm), be it PW1 or PW2, if such an outcry was actually raised at some point by either of them, it is quite surprising to note that no neighbour has been made a witness anywhere. It becomes especially more shocking in a rural set up where the community is close knit and the houses are situated nearby. In fact, as per the site plan, the house of one Sada Ram is located right next to that of PW2. Therefore, it would have been unmissable for such neighbours to not step out and witness the alleged escape of the accused.

28. Further, it has not missed our attention that how PW2 managed to escape the house without being noticed by the accused, has also not been explained and remains an enigma. She has stated in the cross-examination that the bathroom is not near the exit but is next to the kitchen. The site plan prepared by the investigating agencies also does not shed clearer light on the same and the mystery regarding unnoticed escape only thickens, given the difference in age and motor abilities of the accused (28 years at the time of incident) and PW2 (aged around 55 years). The Courts below have opted to not burden themselves with this query and have rather believed PW2's statement in this regard as it is.

29. It must be noted that the Trial Court as well as the High Court have very conveniently brushed aside such contradictions in the testimonies of PW1 and PW2 by holding that minor contradictions do not go to the root of prosecution case. We are unable to succumb to the view of categorizing above-discussed contradictions as "minor".

30. The general principle is that only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness.[4] Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful.[5]

Material discrepancies are those which are not normal and not expected of a normal person.[6] Moreover, when witness testimonies exhibit significant contradictions between their initial statements and trial depositions, they cannot be relied upon unless independently corroborated.[7]

31. In the instant case, there are different versions of the same set of events which are being told by these witnesses at differing points of time, statements retracted and remoulded as per their convenience, wherein such difference in statements are leading to material alterations in the chain of events. As a result, the prosecution timeline and the fundamental details about the occurrence are not at all corroborated between its two key witnesses. Therefore, we observe that the contradictions in prosecution witnesses' testimonies, as pointed above, are major ones and carve a gaping hole in the prosecution story altogether.

32. The internal inconsistencies and lack of corroboration cast serious doubts and snatch away the degree of accuracy that is to be attained while determining the culpability of an accused in cases of murder. We cannot turn a blind eye to the obvious inconsistencies in the depositions of its main witnesses which indicate deliberate embellishment and coaching, rendering these testimonies unreliable. Therefore, we have no hesitation to hold that no credence can be lent to the testimonies of PW1 and PW2 and their account of being "eyewitness" to the incident or having seen the accused has to be discarded.

33. Once it has been deduced that the statements of PW1 and PW2 inspire no confidence of this Court and their presence at the scene of occurrence has to be disbelieved, we proceed forward to analyse the testimony of third key witness, i.e. PW17–Harry, who was a child witness and sustained injuries during the event, thereby, his presence at the spot cannot be doubted. His testimony is reproduced as below –

Examination-in-chief and cross-examination of PW17 – Harry

PW-17 on SA: Statement of Harry son of Sunahari Lal son of unknown, aged about 12 years, Student, R/o Dasiimesh Nagar, Kotrani, Phagwara, District Kapurthala.

Stated that I am resident of abovesaid address and now studying in 5th standard. On 28.11.2013 I was present in my maternal grand mother Manjit Kaur's house. On that night I alongwith my mother

Reena alongwith my masi Seema Rani, my uncle Tari and my cousin sister Sumani and my cousin brother Harsh were sleeping together. In early morning of 29.11.2013 at about 5.00 a.m. my masar Baljinder Singh @ Kala accused present in the court armed with Gandasi came there in the room where we all were sleeping and opened attacked on all of us with gandasi and killed my mother Reena alongwith my masi Seema Rani and my cousin sister Sumani and my cousin brother Harsh. The accused caused three injuries to me on my neck and stomach. After causing the occurrence, the accused ran away from the spot. Due to injuries I was got admitted in the Civil Hospital, Phagwara. **PW17 (XXXXXXXXX by Sh. Lakhbir Singh**, Advocate, counsel for the accused)

When I woke up I have not seen the accused in the room volunteered I was half sleep. Press reporter after visited the seen. I do not remember the time when the press reporter came at the spot. **I have not seen masar inflicting injuries on that deceased and injured volunteered as I was half sleep.** My maternal grand mother used to go to Gurudwara at 5.00 a.m. She used to come from the Gurudwara after two hours come back. **I was sleeping straight way. When I received injury I was sleeping at that time.** I am studying in 5th class. First I received injury on my left arm. It is wrong to suggest that there is no visible injury mark on my left arm. I became unconscious when I received first injury on my left arm. On that day my nani came back from Gurudwara at 6.00 a.m. By that time, accused has fled away from the spot. My nani came there after half an hour of the occurrence. It is wrong to suggest that I have deposed falsely.

Dated: 25.10.2018

[Emphasis is mine]

34. While we have no qualms about the competency of PW17 on the account of being a child witness, the key inference that has to be drawn by the above testimony is that the injured witness did not actually 'witness' the incident. In his cross-examination, he admits that he was sleeping throughout the incident. He states that he did not see the appellant as he was half-asleep and specifically states that he did not see the appellant inflicting injuries on the deceased persons. Therefore, even if PW17's testimony is treated as completely reliable, it is clear that his statement cannot be considered as incriminating against the appellant for the lack of having witnessed the actual incident.

35. Having examined the above testimonies in thorough detail, it becomes evident that once PW1 and PW2's statements are discarded for absence of reliability, the prosecution case effectively loses its vertebrae and comes crumbling down to its feet.

36. Further, to make matters even worse for the prosecution, there are key deficiencies in the investigation and the evidentiary value of the alleged recoveries remains questionable. Neither the arrest of the accused nor the alleged recovery of the blood-stained clothes and the weapon (purportedly based on the disclosure statement of the accused) is supported by any independent witness. While the recovery may not be wholly discarded due to the lack of a supporting witness, however, it undoubtedly becomes highly questionable, especially with the factum of long delay of two months in the discovery being effected.

37. Additionally, it is quite conspicuous that the investigating agency took minimum pains to link the discovered articles to the incident or the deceased persons through forensic evidence or otherwise. The only forensic evidence in this case is the report of the chemical analysis which merely states that the blood found on the exhibits is opined to be of human origin. The same is evidently not sufficient to link the articles to the deceased or the specific offence. In any case, the report has admittedly not been formally exhibited before the Court. With regard to the alleged weapon of offence, it has been deposed by PW22-Karnail Singh (SHO/IO) that the weapon was misplaced at a later stage and no forensic analysis placed before the Court. It clearly and amply reflects the regard that has been held due towards investigative protocols in the instant case and is utterly deplorable.

38. Consequently, a lot of focus has been laid by prosecution as well as by the Courts below on the alleged motive that led to the commission of the crime. However, as a result of the above analysis, when there remains practically nothing to link the accused-appellant to the scene of the crime, an alleged monetary dispute between the parties shall not by itself aid the prosecution case enough to frame the accused for a charge of murder on multiple counts. The Trial Court has held that dacoity or commission of offence by a stranger party has to be ruled out due to the gruesome nature of the crime. However, merely lack of an alternative plausible explanation to the incident cannot serve as enough evidence in itself to send a man to the gallows, whose guilt otherwise remains unestablished.

39. Similarly, the High Court has employed Section 106 of the Evidence Act to draw an adverse inference against the accused with regard to his silence surrounding the injuries sustained by him on the day of the incident which led him to getting admitted in the hospital later on the same day and caused consequent amputation of his left arm. The High Court has concluded that in the absence of any alternative explanation by the accused, it has to be presumed that the said injuries were a result of the resistance that the accused must have faced during the commission of the crime earlier in the day. However, we believe that given the fact that the prosecution has not been able to establish the presence of accused at the site of crime through direct, circumstantial, oral or forensic evidence, taking recourse to Section 106 of the Evidence Act and employ it against the accused in a detrimental manner in the absence of any foundational facts, shall lead to a severe and unwarranted application of the provision.

40. Further, neither PW1 nor PW2, in his/her statement, has stated anything about the accused of having suffered an arm injury while he was allegedly spotted at the crime scene. In such circumstances, no opportunity arises to shift the burden of proof on the appellant so as to reasonably explain his injury. No adverse inference can be drawn thereby.

41. As such, we are constrained to conclude that the above discussed deficiencies which include, (a) contradictions and embellishments in key eyewitness testimonies, (b) failure to conclusively link material objects to the crime, and (c) investigative lapses leading to gaps in the evidentiary chain – all these factors highlight the failure of the prosecution in meeting the legal threshold for a conviction.

42. In matters such as the instant one, the burden on prosecution is to prove beyond reasonable doubt that it is the appellant and appellant alone who has committed the crime. It is settled law that in order to record conviction based on ocular evidence, their testimonies have to be completely credible and trustworthy.

43. However, in the present matter, where there are major contradictions in the testimonies of key prosecution witnesses accompanied by glaring investigative defects, it cannot be said that the prosecution has established the charge beyond reasonable doubt. At the cost of repetition, we must state that the standard of proof is an absolutely strict one and cannot be faltered with. When at stake are

human lives and the cost is blood, the matter needs to be dealt with utmost sincerity. Therefore, given the facts and circumstances of the case and in light of the above discussion, we cannot bring ourselves to hold the accused-appellant guilty of the charged offence as his guilt has not been proved beyond a reasonable doubt.

44. Accordingly, the appeals are allowed. The impugned judgment and final order dated 04.03.2024 passed by the High Court of Punjab and Haryana, as well as the judgment dated 29.02.2020 passed by the Additional Sessions Judge, Kapurthala, are hereby quashed and set aside. The appellant is acquitted of all the offences charged with. The appellant has undergone incarceration for more than eleven years, and it is accordingly ordered to release him forthwith unless he is required in connection with any other case.

45. Pending application(s), if any, shall stand disposed of.

***Result*:-** Appeals allowed. Conviction and death sentence set aside. Appellant acquitted of all charges and ordered to be released forthwith.