

ITEM NO.101

COURT NO.6

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 2056/2009

STATE OF PUNJAB

Appellant(s)

VERSUS

SURAJ PRAKASH & ANR.

Respondent(s)

(With office report)

WITH Crl.A. No. 366/2010

[RANI V. STATE OF PUNJAB]

(With Office Report)

Date : 15/12/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s)  
in Crl.A. 2056

Mr. V. Madhukar, A.A.G.  
Ms. Anvita Cowshish, Adv.  
Mr. Kuldip Singh, A.O.R.

in Crl.A. 366

Mr. A.P.S. Deol, Sr. Adv.  
Mr. Vipin Gogia, Adv.  
Ms. Jaspreet Gogia, A.O.R.  
Mr. Himmat Singh Deol, Adv.

For Respondent(s)  
In Crl.A. 2056

Mr. A.P.S. Deol, Sr. Adv.  
Mr. Vipin Gogia, Adv.  
Ms. Jaspreet Gogia, A.O.R.  
Mr. Himmat Singh Deol, Adv.  
Ms. Jaspreet Gogia, A.O.R.

in Crl.A. 366

Mr. V. Madhukar, A.A.G.  
Ms. Anvita Cowshish, Adv.  
Mr. Kuldip Singh, A.O.R.

UPON hearing counsel the Court made the following  
O R D E R

For the detailed reasons recorded in the signed  
non-reportable judgment, the appeal of the State

being Criminal Appeal No. 2056 of 2009 is allowed and accused Nos. 2 and 3 stand convicted as stated in the judgment and the appeal of accused No. 4 Rani, being Criminal Appeal No. 366 of 2010 is dismissed.

Consequently, the conviction and sentence awarded by the trial Court stands restored. The accused Nos.2 and 3, Suraj and Bhalla Ram would surrender before the learned trial Court within two months herefrom. The learned trial Court would take necessary steps in law to ensure that all the accused persons serve out the sentence as awarded by it and affirmed by this Court.

[KALYANI GUPTA]  
COURT MASTER

[SHARDA KAPOOR]  
COURT MASTER

[SIGNED NON-REPORTABLE JUDGMENT IS PLACED ON THE FILE.]



sentence of accused No.1 Dharminder, accused No. 4 Rani, his mother and accused No.5 Nazar Singh under Section 302, 419, 404, 201, 120B of the Indian Penal Code. While acquitting accused No. 2 Suraj and accused No.3 Bhalla Ram of the charge under Section 302/120B IPC it affirmed their conviction under Sections 419, 404, 201 IPC. Whereas Criminal Appeal No.2056 of 2009 has been preferred by the State against the exoneration of accused No. 2 Suraj and accused No. 3 Bhalla Ram from the charge under Section 302/120B IPC, accused No. 4, Rani is in appeal before this Court against her conviction under the above provisions of law. Accused No. 1 and Accused No. 5 have not preferred any appeal.

2. We have heard Mr. V. Madhukar, learned Additional Advocate General for the State as well as Mr. A.P.S. Deol, learned senior counsel for the accused.

3. The prosecution was set in motion in the wee

hours of 23<sup>rd</sup> June, 2000 when accused No.2 Suraj laid an information with, Mohinder Kumar, the Station House Officer Police Station Kotwali, Bhatinda, while he was along with his team on patrol duty at Sirki Bazaar, near Neemwala Chowk. The informant i.e. accused No. 2 Suraj stated before the Police Officer that he, Dharminder, accused No. 1 and accused No. 3 Bhalla Ram were brothers, youngest of them being Dharminder. He stated that they along with their mother Rani lived in Kartar Basi and that his mother was a Priestess in the Kali Mata Mandir, situated in the same locality. The informant further disclosed that his brother accused No.1 Dharminder was blindly in love with one Ms. Ranju, daughter of a neighbour of theirs and being infatuated by her he used to write her names in his books and kites. According to the informant, this was known to the family but brother Dharminder was so captivated by the girl he loved, that he was uncontrollable in his

attachment and feelings. It was further informed that in the previous evening at about 8:00p.m. after his mother had retired from the temple, the entire family took their dinner together and had gone to sleep. It was mentioned as well that Dharminder who was usually late in returning home was not back till then. It was disclosed that at about 1:00a.m. one of the persons who was a resident in the neighbourhood of the temple came and reported to them that dense smoke was coming out from the chowbara of the temple. On receiving this information, the mother of the informant, Rani, had gone to the temple and found that his brother Dharminder Singh was lying dead inside in a burnt condition. It was also seen that there was a writing by him, on the wall with blood, "Ranju, I love you". The informant expressed his conviction that his brother Dharminder being mad with love for the girl, overpowered by the feeling of deprivation first injured himself with a sharp edged iron

weapon and then had put himself on fire by sprinkling kerosene oil and had burnt him to death. In specific terms, the informant opined that no one was to be faulted for the death of Dharminder Singh and that it was a case of voluntary self immolation. He expressed his opinion that in the circumstances, no legal action need be taken and that the information was being lodged so as to apprise the police of the incident.

4. As the records reveal, after the above information was recorded, the SHO P.S. Kotwali, Bhatinda, Mohinder Kumar along with his team, after forwarding the statement to the P.S. Kotwali for registration, set out for the spot at about 3:30a.m. In the proceedings under Section 174 Cr.P.C. that followed, the investigating officer conducted the inquest over the dead body which was found lying inside the Kali Mata Mandir. The report, Exhibit PC dated 23<sup>rd</sup> June, 2000 discloses that the date and hour of

discovery of the body was at 1:15a.m.on 23<sup>rd</sup> June, 2000 and that the same was identified by Suraj Prakash and Bhallaram, accused Nos. 2 and 3 respectively, to be that of their brother Dharminder aged 18 years. It was mentioned in the Report that the body was burnt, the eyes were semi open, mouth was open, however, the limbs were stiffened. It also recorded that rigor mortis had set in. Injuries on the right and left legs were noticed as well. The blood that was found at the spot was related to the wound sustained by the body. The sketch map of the place of occurrence was also set out in the enclosed Report and a match box, a sharp iron file (reti) and a blood stained piece of cloth were also seized. The Inquest Report was signed by the Investigating Officer and also Bhalla Ram and Suraj Prakash accused Nos. 2 and 3. It is a matter of record that in the course of inquest proceedings, statements of accused Nos. 2 and 3 Suraj and Bhalla Ram were also recorded who

amongst others in substance had corroborated the version as set out in the information that was lodged by Suraj accused No. 2 with the S.H.O., P.S. Kotwali Bhatinda and pursuant to which the investigating team had visited the temple in the early hours of 23<sup>rd</sup> June, 2000. The sequence of events from the receipt of information from Suraj till the completion of the inquest was set out as well by the Investigating Officer in his note appended to the Inquest Report whereafter the dead body was forwarded for *post mortem* examination. The autopsy on the dead body was conducted on the same day i.e. 23.6.2000 at 11:00a.m.

5. A perusal of the said Report available on record in original would reveal that the body was burnt except the lower abdomen and the thighs varying from superficial to deep burns. The examination also recorded incised wound on the right lower leg front and middle of the size 5cm X 2cm with clotted blood oozing therefrom. Burnt

pieces of cloth, the undergarment and the leather belt of the deceased were seized. The doctor opined that the cause of death was due to neurogenic shock from burnt injuries which was *ante mortem* in nature and sufficient to cause death in the ordinary course of nature.

6. It is not disputed that soon after the *post mortem* examination was over, the dead body was handed over to the family of the accused persons whereafter it was cremated on the very same day i.e. 23<sup>rd</sup> June, 2000.

7. When the matter rested on that, the episode took a 'U' turn in view of the FIR lodged by Gurmeet Singh with the Police Station Kotwali, Bhatinda to the effect that one Jagjit had informed him that very day, that he had met Dharminder Singh, the brother of Suraj and Bhalla accused Nos.2 and 3, claimed to be dead in the incident in the intervening night of 22<sup>nd</sup> June, 2000 and 23<sup>rd</sup> June, 2000 and the dead body of whom

had been cremated on 23<sup>rd</sup> June, 2000 on the completion of the *post mortem* examination and that Dharminder Singh had requested Jagjit Singh not to disclose the fact, that he was alive. It was laid in the Report, that Jagjit Singh did also convey to the informant i.e. Gurmeet Singh that Dharminder had confided in him that he along with Nazar Singh accused No. 5 had committed the murder of Gurdip Singh, the brother of Gurmeet Singh in the Kali Mata Mandir, in order to eliminate him from the way of Dharminder as one of the contenders in love. The informant Gurmeet Singh further revealed that Jagjit Singh had disclosed to him that Suraj and Bhalla Ram, accused Nos.2 and 3 had conspired to undertake the operation to eliminate Gurdip Singh and pass it off as a suicide committed by their brother Dharminder Singh, amongst others by inscribing on the wall of the temple, a parting message for Ranju, as if he had immolated himself for her.

8. As the F.I.R. would disclose, Gurmeet Singh

thereafter along with his uncle Harbhajan Singh and Gurjit Singh came to the Police Station lodged the above information alleging that it was accused No. 1 Dharminder as well as accused No. 5. Nazar Singh who had conspired with the other accused persons, and had committed the murder of his brother Gurdip Singh and had disposed of the dead body by effacing the trail of their crime. This information was registered as FIR NO. 283 dated 24<sup>th</sup> August, 2000 under Sections 302/201/419/420/465/506/120B/34 IPC of P.S. Kotwali, Bhatinda and in due course the accused persons were arrested and on the completion of the investigation charge sheet was submitted against them. Charge was framed by the trial Court under Section 302/404/419/201/120B of the IPC against all the accused persons who pleaded "not guilty" and claimed to be tried. The prosecution examined several witnesses including the doctor who had conducted the *post mortem* examination as well as the investigating officer.

The accused persons denied the correctness of the incriminating materials brought on record during the trial, in their statements under Section 313 of the Code of Criminal Procedure. They, however, examined two witnesses in defence.

9. The trial Court on a consideration of the materials on record as a whole and after due analysis thereof convicted all the accused persons under the above provisions of the I.P.C. and sentenced them to suffer rigorous imprisonment for life for the offence under Section 302 IPC and other sentences for the accompanying offences. In the appeal preferred by all the accused persons, as referred to hereinabove, the High Court acquitted Suraj and Bhalla Ram accused Nos. 2 and 3 of the charge under Sections 302 and 120B IPC while maintaining their conviction for the other offences. Vis-à-vis the other accused person, it however, sustained the conviction and sentence as recorded by the trial Court. To reiterate, the State

being aggrieved by the acquittal of accused No. 2 Suraj and accused No.3 Bhalla Ram, of the charge of murder has impugned the decision of the High Court. On the other hand Rani being dissatisfied with the sustenance of her conviction and sentence seeks redress in her appeal.

10. In the above background, the learned Standing Counsel while referring to the evidence on record has emphatically urged that the materials available proved beyond doubt the complicity of all the accused persons including the accused Nos. 2 and 3 Suraj and Bholu Ram and, therefore, their acquittal of the charge under Section 302 IPC is patently erroneous. According to the learned counsel the circumstantial evidence is fully complete so much so that it does not admit of any doubt with regard to the complicity of the accused persons in the commission of the offence with which they have been charged. In support of his contentions, the learned Standing Counsel has taken this Court to the oral as well as

documentary evidence pertaining to the visit of accused No. 1 Dharminder and accused No. 5 Nazar Singh to the house of the deceased Kuldeep in the fateful evening to take him along whereafter he was found dead in the temple. Reference was also made by the learned Standing Counsel to the seizures made by the investigating agencies of all the personal belongings of the deceased based on the disclosures made by accused No. 1 Dharminder and accused No.5 Nazar Singh from the places shown by them. According to the learned counsel, having regard to the cause of death as evidenced by the post mortem examination Report, the situs of the dead body and the State in which the same was found the conspiracy to do away with the deceased by the accused persons altogether have been proved beyond all reasonable doubt. The learned Standing Counsel has argued that the evidence on record would dominantly establish that the accused persons conspired together to murder the deceased and pass off that

crime to be one of suicide of accused No. 1 Dharminder and destroy the evidence with regard to the crime in a pre-planned manner. According to the learned Standing Counsel, thus the acquittal of accused No.2 Suraj and accused No. 3 Bhalla Ram, if allowed to remain would cause travesty of justice.

11. In response, Mr. Deol has argued that admittedly there is no direct evidence with regard to the offence of murder and the other crimes allegedly committed by the accused persons. He has urged that even assuming that there was a mistaken identity of the dead body which was found in the temple, it by no means would establish the culpability of the accused persons, there being no evidence at all of any conspiracy as alleged. Mr. Deol has argued that the circumstances relied upon by the prosecution do not unerringly point to the

guilt of the accused persons and thus the exoneration of accused No.2 Suraj and accused No. 3 Bhalla Ram from the charge of murder cannot be faulted with. In the same vein, Mr. Deol has urged that the conviction of Rani, the mother of these two accused persons and also accused No.1 Dharminder for any of the offences cannot be upheld. Vis-à-vis the extra-judicial confession said to have been made by accused Dharminder, before PW2, Jagjit and PW4 Rajinder, the learned counsel has insisted that in law not only such a confession is a very weak piece of evidence, it is wholly insignificant in this case in absence of any corroboration from any other quarters and is thus of no worth in the facts and circumstances of the case. Mr. Deol has urged that the conviction of the accused persons is on the basis of an inference drawn

from the circumstantial evidence which really has no factual foundation and thus not only the acquittal of the accused No. 2 Suraj and accused No. 3 Bhalla Ram ought to be left uninterfered, the conviction of Rani ought to be set aside in the facts and circumstances of the case. Though an attempt was made by the learned counsel to rely on a letter dated 1<sup>st</sup> July, 2000 addressed on behalf of the accused person to the concerned police authority to plead that their association was only with regard to the identification of the dead body which was wrongly done to be that of accused Dharminder, as the said document does not form a part of the record of the trial, we are not inclined to either refer thereto or rely thereon.

12. Be that as it may, in order to appreciate

the submissions made on behalf of the parties and having regard to the nature of the offence involved and the consequences to follow, we have considered it to be expedient to have a bird's eye view of the evidence on record.

13. Dr. Pawan Kumar Bansal, P.W.1, who had conducted the post mortem examination on the dead body of Gurdip on 23<sup>rd</sup> June 2010, stated on oath that it had suffered superficial to deep burns all over the body except lower abdomen and both front and back of the thigh. He had an incised wound on the right lower limb measuring 5 cm X .2 cm where clotted blood was present. In the course of the post mortem examination, pieces of cloth with black stain, a leather belt and the under garment of the deceased was seized. The doctor opined that death was due to neurogenic shock arising

from burn injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. He mentioned that the probable time between death and post mortem was within 24 hours. In view of the fact that the post mortem had been conducted on 23rd June, 2000 at 11:00 a.m. in the morning, it suggested thereby that death had occurred in the previous night.

14. It is noticeable from this evidence that the dead body was identifiable in spite of the burns suffered. When this witness was shown, to identify the iron file that was recovered from the place of occurrence by the side of the dead body, he opined that the injury found on the right leg of the deceased could have been caused thereby.

15. P.W. 2 Jagjit Singh in his deposition

mentioned that on 24<sup>th</sup> June, 2000 at about 6:00p.m. while he was at the railway station, Bhatinda, he met accused No. 1 Dharminder Singh @ Bhupinder. According to this witness, he was surprised to see Dharminder Singh alive as by that time the news that he had committed suicide had gone around. This witness stated that on seeing him Dharminder took him aside and requested him not to disclose the fact that he was alive. According to this witness, Dharminder also confessed before him that in the intervening night of 22<sup>nd</sup>/23<sup>rd</sup> June, 2000 he along with Nazar Singh, A5 had murdered Gurdip in the temple of Kali Mata situated in Guru Nanapura Mohalla and that in order to demonstrate that Dharminder was dead, it was written on the wall of the temple "I love Ranju" to indicate that he (Dharminder) had immolated himself for his love. The witness

stated that in saying so Dharminder also disclosed that the same was so planned so as to kill two birds with one stone as he considered Gurdip to be another contender for the girl whom he loved. This witness further stated that having come to learn from this disclosures of Dharminder that Gurdip had been murdered, he narrated the facts to Gurmit Singh who then accompanied him along with Harbhajan to the Police Station and lodged the FIR in the same evening at about 7:00p.m. on 24<sup>th</sup> June, 2000.

16. P.W. 3, Gurmit Singh the informant, the brother of the deceased Gurdip testified that on 22nd June, 2000 at about 5/6 p.m. accused No. 1 Dharminder Singh and Nazar Singh, accused No. 5 came to their house and took along with them the deceased. He stated that

while leaving the house, his brother Gurdip was wearing a gold ring and a gold kara and he also carried with him a purse in his pocket along with a driving licence containing his photograph with some money. According to this witness, Gurdip Singh did not return that night and also on the following day. He also deposed that in the very same night he along with his uncle Harbhajan had gone to the house of Dharminder to enquire about his brother where they met Rani, accused No. 4 and also accused Nos. 2 and 3 Suraj and Bhalla Ram who told them that Dharminder, Gurdip and Nazar Singh, did come to their house, but had gone away and had not returned till then. The witness did state that they thereafter went to the house of Nazar Singh but did not find him there. Their further search did not yield any result and it was only on 24<sup>th</sup> June, 2000 on

being told by Jagjit that his brother Gurdip had been murdered and that Dharminder was also involved in the offence, this witness filed the FIR in the Police Station. He further deposed that the Police produced before him a sealed parcel containing pieces of cloth which he identified to be a piece of the shirt which his brother had been wearing on the date of which he had left the house with Dharminder and Nazar Singh on 22nd June, 2000. The witness on being shown the photographs Exhibit P3 to P6 of the dead body also recognised the same to be that of his brother Gurdip Singh, the deceased. He also identified the identity card Exhibit P8 and Driving Licence Exhibit P9 to be that of his brother, the deceased. This witness when shown by the Police also identified the Kara recovered on the basis of disclosures made by accused Dharminder and

accused Nazar to be that of his brother Gurdip. This witness as well identified the pair of shoes recovered from the place shown by the accused Dharminder and Nazar Singh to be that of his brother.

17. P.W.4 Rajinder Kumar, who was at the relevant time Joint Secretary of the Anti Corruption Board, Bhatinda stated on oath that the accused Dharminder on 22<sup>nd</sup> June, 2000 at about 6:00p.m. along with his mother Rani, his brothers Suraj Prakash and Bhalla Ram together with their friend Nazar Singh were present in the premises of the temple and that in the course of the discussion which they had Rani had suggested to Dharminder and Nazar that Gurdip Singh who was also involved in love affair with Ranju, the girl whom Dharminder cherished for, ought to be sacrificed before

the Gods and his dead body ought to be consigned in flames so that it gets charred beyond recognition. According to this witness, Dharminder, however, confided in him to state that after the offence was committed he along with his brothers, circulated the news that Dharminder was dead so as to facilitate the enticement of Ranju by him, Gurdip having been removed from the way. The witness further claimed that Dharminder also disclosed to him that as a part of the plan so hatched, he along with his brothers and Nazar Singh and in collaboration with their mother called Gurdip Singh from his house, took him to the temple and set him ablaze by pouring petrol on him and also inscribed the writing on the wall "I love you Ranju" so as to completely represent as if Dharminder had expired. According to this witness, he

produced Dharminder Singh before the Police whereafter he was arrested.

18. P.W. 5 Harbhajan Singh, uncle of the deceased stated that he(deceased) had left his house in the company of Dharminder Singh and Nazar Singh whom he identified in Court. According to this witness, at about 10:00p.m. on 22<sup>nd</sup> June, 2000 he was informed by the family of Gurdip that he had not returned home whereafter he visited their house and then, had gone to the house of accused No. 4 Rani to ascertain the whereabouts of Gurdip. The witness stated that at the time of his visit accused No. 4 Rani, accused No. 2 Suraj and accused No. 3 Bhalla Ram were present in their house and on enquiries being made about the whereabouts of Gurdip it was stated that he along with Dharminder and Nazar Singh had

gone somewhere. To confirm the statement made by P.W. 2, this witness went to the house of Nazar Singh who disclosed that Gurdip Singh, Dharminder and Nazar Singh had come to his place at about 7:30p.m. but had left not to return. P.W. 5 further stated that on the next day i.e. 23<sup>rd</sup> June, 2000 he again went to the house of accused No. 4 Rani, who then intimated him that her son Dharminder, accused No. 1 had committed suicide and further requested the witness to trace the whereabouts of Gurdip. It was thereafter, according to the witness, that he accompanied Gurmeet Singh to the Police Station Kotwali, Bhatinda to lodge the FIR about the murder of Gurdip. This witness as well on being shown the photographs of the deceased and the piece of the burnt cloth seized from the place of occurrence did identify the same to be that of

his nephew Gurdip Singh. He identified as well the gold ring, gold kara, driving licence, purse, pair of shoes, all exhibited at the trial to be that of Gurdip Singh, the deceased.

19A. P.W.7, Jasvir Singh, was present at the Police Station along with one Bakshish Singh at the time when the accused Dharminder was under arrest. According to this witness, during his presence, accused No. 1 Dharminder suffered a disclosure statement that he had kept concealed a pair of shoes, a purse of black colour, a driving licence, a gold ring and some currency notes in a closed paper bag at the back side of the shops constructed near the bank of a canal. The witness stated as well that during his presence accused No. 5 Nazar Singh disclosed that he had kept

concealed a shirt smeared with blood which he was wearing at the time of incident after wrapping the same in glazed paper at the back of shop of Bhola Ram located near Bank Canal in the burrow pits. This witness stated that pursuant to such disclosure statements, the above mentioned personal belongings of Gurdip Singh were recovered from the place mentioned by Dharminder and Nazar Singh which on being shown to him he identified the same to be that of the deceased Gurdip his nephew.

19. P.W. 13 Mohinder Kumar, S.H.O., P.S. Kotwali at the time of initiation of the prosecution, on oath confirmed the lodging of the FIR by Gurmeet on 24<sup>th</sup> June, 2000 at 7:00p.m. He confirmed as well that at that point of time he was accompanied by Harbhajan Singh and Jagjit Singh. He testified as well

that the materials collected from the place of occurrence, in course of the investigation started on the information lodged by accused No. 2 Suraj were shown to the informant and his companions who identified the piece of cloth to be that portion of the shirt worn by Gurdip Singh. They also identified the dead body to be that of Gurdip Singh when the photograph thereof was shown. The Investigating Officer endorsed the statement of P.W. 4 Rajender Kumar that he had produced Dharminder for being arrested in connection with the crime. In course of the investigation, the witness also explored the pyre where Gurdep Singh had been cremated from where he collected a sample of the last remains. He mentioned about the arrest of the other accused persons during the course of the investigation. He deposed to have prepared

the scale map of the place of occurrence, the Inquest Report Exhibit PC. That he recorded the statements amongst others of the accused Nos. 2, 3 and 4, Suraj, Bhalla Ram and Rani was also stated. He mentioned about the recovery of the iron file (reti) a piece of match stick and the match box from the place of occurrence.

20. The evidence on record when analysed provides the following incriminating circumstances vis-a-vis the accused persons:-

(i) On 22<sup>nd</sup> June, 2000, at about 6/7 p.m., the evening before the discovery of the dead body of the deceased later that night, accused Dharminder and Nazar Singh had visited the house of Gurdip and had taken him along with them whereafter the deceased did not return.

(ii) The fact that Gurdip was in the company of Dharminder and Nazar Singh was confirmed by accused No. 2 Suraj, accused no. 3 Bhalla Ram, accused No. 4 Rani and accused No. 5 Nazar to the informant along with Harbhajan had gone to their house to enquire about the whereabouts of Gurdip Singh, the very same evening.

(iii) On 23<sup>rd</sup> June, 2000, when P.W. 6 Harbhajan Singh had visited the house of Rani, accused No. 4 she disclosed to her that her son Dharminder, accused No. 1 had committed suicide and had also requested him to search for Gurdip Singh whose whereabouts were not known till then.

(iv) On the basis of disclosures made by accused No. 5 Nazar Singh, his blood-stained shirt which he was wearing at the time of offence and also the gold kara belonging

Gurdip was recovered. The gold kara was identified to be that of Gurdip by P.W. 7.

(v) No explanation has been provided by accused No. 4 as to how his shirt got stained with blood.

(vi) Acting on the disclosures of Dharminder, accused No. 1, the personal belongings of the deceased were recovered from the place which he had indicated. There was no explanation from the side of the accused Dharmender as to how these personal belongings came into his possession or got recovered from the place shown by him.

(vii) The extra-judicial confession made by accused Dharminder to Jagjit Singh who conveyed it to Gurmeet, the informant that he (Dharminder) along with his brothers, mother

and friend Nazar Singh had conspired and murdered Gurdip in the temple and had endeavoured to pass on the incident as one of suicide by Dharminder.

(viii) Suraj, accused No.2 had informed the Police between 1:15A.M. and 3:30A.M. on 23<sup>rd</sup> June, 2000, that his brother accused No. 1 Dharminder had committed suicide by immolating himself in the temple and expressing at the same time that no legal action was called for.

(ix) The dead body was found about 1:15a.m inside the temple and Suraj and his mother Rani had gone to the place of occurrence. They seemed to be certain about the death of the person concerned and did not attempt to provide any medical attention and had waited for a sufficient long time to inform the Police only to apprise them of the incident

and not for any legal action in connection therewith. Such a conduct is incomprehensible if the body was really that of Dharminder.

(x) The visible haste on the part of the accused persons to get the Inquest and post-mortem done and have the dead body cremated before the real identification would surface so as to destroy the corpus of the offence.

(xi) The testimony of P.W. 4 Rajender Kumar, testifying about the disclosures made by accused Dharminder to him about the conspiracy and the execution thereof to murder Gurdip.

(xii) A failed attempt on the part of Bhalla Ram to show that he was on duty that night from 9:00p.m. to 5:00a.m in the face of his presence at the time of Inquest that was

conducted after 3:30a.m. by the Police and his signature on the Inquest report.

21. True it is, that a conviction on the basis of circumstantial evidence alone would demand that the circumstances be such so as to form a complete chain so much so that every possible hypothesis of the innocence of the accused person(s) is ruled out. The test would depend on the facts of each case and the circumstances presented thereby. On an assessment of the evidence adduced by the prosecution and the incriminating circumstances noted hereinabove, we are of the unhesitant opinion that the same unmistakably establish the culpability of all the accused persons in the charges framed against them. To start with, not only accused Nos. 1, 2, 3 and 4 are members of the same family and were

fully aware that accused No. 1 Dharminder was uncontrollably enamoured by Ranju and that Gurdip was also a contender for her, which in our opinion is a motive for the perpetration of the crime for which they have been charged with, the materials on record establish that in order to facilitate the commission of the offence they took along with them accused No. 4 Nazar Singh so that the deceased could be trapped in their design, taken to the temple, first injured in the leg so as to maim him and then over power him to be doused with kerosene and put on fire and ensure that he was dead by the time, the report was made to the Police posing as if their brother accused No. 1 Dharminder had committed suicide. The criminal intent of the accused persons, according to us is writ large and the circumstances enumerated hereinabove do not

permit any other view. The circumstances fit in with the version of the witnesses and present a complete and a clear picture of the incident and the manner of commission of the offence. Had the accused persons not conspired to commit the offence, the family members would have endeavored at first to procure medical help than letting the body lie in the temple and take enough time to inform the Police to be sure that death had taken place. The very fact that after having participated in the crime and also having ensured that Gurdip had died, a false information was lodged with the Police to the effect that it was accused No. 1 Dharminder, who had committed suicide demonstrates the *mens rea* of the accused persons beyond any reasonable doubt. There was a criminal intent to mislead the Police and cover up the

incident of murder of Gurdip to be that of suicide of Dharminder and had not Jagjit met this accused at the railway station, the episode might have ended in this fashion.

22. Though an attempt has been made to contend that the witnesses are all relatives of the deceased and, therefore, partisan having regard to the substance and the coherence of their testimony, we are of the view that this factor perse cannot discredit them or adversely affect the probative worth of their statements on oath. The recovery of the personal belongings of Gurdip from the place as shown by Dharminder and that of the blood stained shirt of Suraj worn by him at the time of commission of the offence, at their instance, also in our opinion furnishes a fool proof evidence of nexus between the

accused persons and the crime. There is no dispute with regard to the identity of the dead body as well. Not only the post mortem indicates that the body was identifiable as the face was not burnt which is also a fact supported by the findings recorded in the Inquest Report, the witnesses as referred to hereinabove on being shown the photographs of the dead body have identified the same to be that of Gurdip. There is no plea on behalf of the defence and rightly so, that accused No. 1 Dharminder is not alive. In that view of the matter on a consideration of the evidence as a whole, we are of the opinion that there is no room for any reasonable doubt about the culpability of the accused persons in a body to have conspired to murder Gurdip by first assaulting him with an iron *reti* in the leg and then set him ablaze alive by over powering

him in the temple in the dead of light. The situs of the occurrence, being a temple of which accused No. 4 Rani was the Priestess, in our opinion, overwhelmingly prove her knowledge, collaboration and participation in the same.

23. In all, therefore, the incriminating circumstances established by the prosecution form a complete chain of events which do not permit any confusion or doubt with regard to the involvement of all the accused persons in this heinous crime of murder. What makes this offence abhorrent is the fact that not only the murder was committed in a deceitful manner, the same was designed to be a case of suicide by one of their sons, thereby trying to mislead the investigating agency and abuse the process of law. In the above view of the

matter, we are constrained to hold that the learned appellate Court grossly erred in assessing the evidence on record in acquitting accused Nos. 2 and 3 Suraj and Bhalla Ram. We, therefore, reverse the order of acquittal of these two accused persons into one of conviction under Sections 302, 419, 404, 201, 120B of the I.P.C.

24. Further, we find no persuasive reason to differ from or interfere with the findings recorded by the trial Court.

25. In the result, the appeal of the State being Criminal Appeal No. 2056 of 2009 is allowed and accused Nos. 2 and 3 stand convicted as above and the appeal of accused No. 4 Rani, being Criminal Appeal No. 366 of 2010 is dismissed.

26. Consequently, the conviction and sentence awarded by the trial Court stands restored. The accused Nos. 2 and 3, Suraj and Bhalla Ram would surrender before the learned trial Court within two months herefrom. The learned trial Court would take necessary steps in law to ensure that all the accused persons serve out the sentence as awarded by it affirmed by this Court.

.....J  
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J  
[AMITAVA ROY]

NEW DELHI  
DECEMBER 15, 2015.