

ITEM NO.12

Court 1 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s).4832-4833/2020

(Arising out of impugned final judgment and order dated 07-08-2020 in DBCRDR No. 7/2020 07-08-2020 in DBCRA(J) No. 155/2020 passed by the High Court Of Judicature For Rajasthan At Jaipur)

MOHAN SINGH @ MAHAVEER

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN THROUGH THE SECRETARY

Respondent(s)

(FOR ADMISSION and I.R. and IA No.101529/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.101527/2020-EXEMPTION FROM FILING O.T.)

Date : 28-10-2020 These matters were called on for hearing today.

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN**

**For Petitioner(s) Mr. Siddarth Luthra, Sr. Adv.
Mrs. Revathy Raghavan, AOR**

For Respondent(s)

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

Leave granted.

In the meantime, there shall be stay of execution of death sentence.

Call for records.

Signature Not Verified


Digitally signed by
GULSHAN KUMAR ARORA
Date: 2020.11.28
16:23:52 IST
Reason:

GULSHAN KUMAR ARORA)
AR-CUM-P

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D. B. Criminal Death Reference No. 7/2020

State of Rajasthan, through the P.P.

----Petitioner

Versus

Mohan Singh @ Mahaveer S/o Ramlal @ Bherusingh, R/o
Khurmevda, Kekdi, Ajmer (Raj.) at present Khuli Majduri,
Pashchat Ratri Vishram Footpath Par, Kota City (Raj.)

----Accused/Respondent

Connected With

D. B. Criminal Appeal (Jail) No. 155/2020

Mohan Singh @ Mahaveer S/o Ramlal @ Bherusingh, R/o
Khurmevda, Kekdi, Ajmer (Raj.) at present Khuli Majduri,
Pashchat Ratri Vishram Footpath Par, Kota City (Raj.)

(At present confined in Central Jail, Jaipur)

----Accused/Appellant

Versus

State of Rajasthan, through P.P.

----Respondent

For State : Mr. Javed Chaudhary Additional
Government Advocate.

For Convict : Mr. Suresh Sahni Advocate with Mr.
Ram Mohan Sharma Advocate and Mr.
Manender Singh Solanki Advocate.

**HON'BLE MRS. JUSTICE SABINA
HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA**

Judgment

07/08/2020

Convict Mohan Singh @ Mahaveer had faced trial in FIR
No. 252 dated 24.05.2019 registered under Sections 302, 201 of
Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at Police
Station Vigyan Nagar, Kota City. Learned trial court vide



impugned judgment/order dated 26.02.2020/28.02.2020 has convicted and sentenced the convict as under:

| NAME OF CONVICT | SECTIONS | SENTENCE |
|------------------------|----------|--|
| Mohan Singh @ Mahaveer | 302 IPC | Death sentence with fine of Rs. 5,000/-. In default of payment of fine to further undergo additional six months rigorous imprisonment. |
| | 392 IPC | To undergo ten years rigorous imprisonment with fine of Rs. 10,000/-. In default of payment of fine to further undergo additional two years simple imprisonment. |
| | 201 IPC | To undergo seven years rigorous imprisonment with fine of Rs. 5,000/-. In default of payment of fine to further undergo additional six months simple imprisonment. |



The trial court has sent reference for confirmation of death sentence of the convict, whereas, convict has filed appeal challenging his conviction and sentence as ordered by the trial court.

Vide this judgment, above mentioned death reference as well as appeal filed by the convict would be disposed of.

Prosecution story, in brief, as per the FIR is that on 24.05.2019 at about 8.15 A.M., Baban called the complainant from House No. 2-Ta-11 and informed him that one bag was lying along the wall of his house. In the bag, there appeared to be a dead body tied with wires. Then, complainant reached the spot and the bag was opened by sweeper Raju Valmiki and it was found that dead body of an unknown woman was lying in it. Somebody had murdered the lady and kept her body in the bag after tying it with wires. The dead body appeared to be two days old.

After completion of investigation and necessary formalities, challan was presented against the convict.



Trial court framed charges against the convict for offence punishable under Sections 376, 392, 302 and 201 IPC. Convict did not plead guilty to the charges framed against him and claimed trial.

In order to prove its case, prosecution examined 54 witnesses during trial and exhibited 229 documents.

Convict, when examined under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') after the close of prosecution evidence, prayed that on 21.05.2019, he had taken the deceased for labour work from *gobariya bawdi*. They had reached Vigyan Nagar Bridge by taking Aerodrome road on an auto. At that time, the deceased was wearing a *ghaghra, kurti* and *loogdi*. Then they went to the shop of Salam and they picked up *tagari* and *fawda* from there. Shop of Salam was in Vigyan Nagar Car Bazar. In the evening, he left the deceased at Vigyan Nagar Crossing. Thereafter, he did not know where the deceased had gone. He was innocent and had not committed any murder. No recovery of knife or any other article was effected from him. He had been falsely involved in the case by the police. Convict did not examine any witness in his defence.

Trial Court *सत्यमेव जयते* judgment/order dated 26.02.2020/28.02.2020 convicted and sentenced the convict in the above mentioned manner.

Learned State counsel has submitted that the prosecution had been successful in proving its case. All the circumstances brought on record by the prosecution lead towards the guilt of the convict. Convict was earlier convicted in a case of rape and murder. The trial court judgment in this regard was Exhibit P-144. While the convict was lodged in open air camp, he



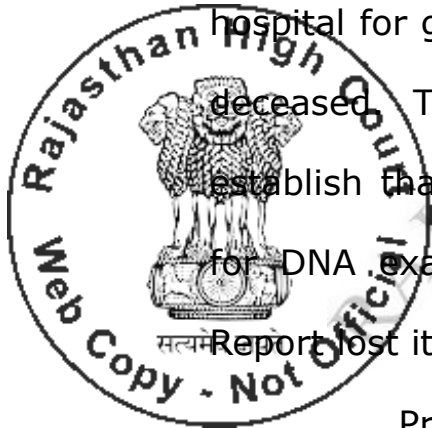
had escaped and committed the offence-in-question. Convict was involved in another case of double murder in an incident which took place in the year 1997. Now, after the arrest of the convict in the present case, challan had been presented against the convict in FIR No. 146 dated 22.05.1997 registered at Police Station Udyog Nagar, Kota City under Section 302 IPC. The said fact is evident from Exhibit P-229. Keeping in view the previous criminal record of the convict, the death sentence awarded to him by the trial court was liable to be upheld.

vide order dated 18.05.2020, Mr. Suresh Sahni, Advocate was requested to appear on behalf of the convict and vide order dated 26.05.2020, he was permitted to take services of an assistant advocate.

Learned counsel for the convict has submitted that the prosecution had miserably failed to prove its case. Recoveries had been falsely planted on the convict. Rather, no jewellery articles were found on the dead body when it was recovered from the plastic bag. No independent witness was joined at any point of time of alleged recoveries at the instance of the convict. Place of dead body was already known to the police and there was no occasion for the convict to have disclosed the same. No reliance could be placed on the testimony of P.W.42 Sahil. There was no occasion for the said witness to have given liquor to the convict in lieu of *jhumkas* alleged to have been given by the convict. Moreover, the said witness kept the said *jhumkas* in his pocket for about three weeks and there was no plausible explanation for the said fact. Recoveries of digital articles could also not be relied upon as the same had not been displayed before the trial court. There was no material on record that the dead body was carried



by the convict to the place of its recovery. The jewellery articles of the deceased were not put to her immediate kith and kin, but were put to sister-in-law of the deceased. The jewellery articles were shown in the newspaper cutting on 25.05.2019, but were taken in police possession on 28.05.2019. There was no evidence on record to show that P.W.51 Parista had been taken to the hospital for giving her blood sample for DNA examination with the deceased. There was no voluntary consent available on record to establish that the convict had given his blood sample voluntarily for DNA examination. Hence, the Forensic Science Laboratory Report lost its evidentiary value.



Present case relates to rape and murder of deceased Geeta Bai. Case rests on circumstantial evidence.

It has been held by the Hon'ble Supreme Court in

Padala Veera Reddy Vs. State of Andhra Pradesh and Ors.

(AIR 1990 SC 79), as under:-

"10. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

*(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra*)."*



It has also been held by the Hon'ble Supreme Court in case of **Brajendrasingh vs. State of Madhya Pradesh AIR**

2012 Supreme Court 1552, as under:-

"There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete so as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion inconsistent with the innocence of the accused and the only possibility that the accused has committed the crime. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Furthermore, the rule which needs to be observed by the Court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The Court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial."



Complainant Suresh while appearing in the witness box as P.W.1 has deposed as per the contents of FIR.

P.W.7 Lalchand @ Baban deposed that he was running a general store in Shastri Market. On 24.05.2019 he was told by a lady sweeper that one bag emitting foul smell was lying near the boundary wall of their house. He reached the spot and suspected



that some untoward incident had occurred. So, he informed Suresh, husband of Ward Member Rekha, about the bag lying behind the boundary wall. Thereafter, Suresh reached the spot. Further, this witness has corroborated testimony of P.W.1 Suresh. In his cross-examination, he deposed that he was not aware whether there were any jewellery articles on the deceased. He

further stated that since the dead body was emitting too much foul smell, it was not possible to stand near the dead body.

P.W.9 Sunil deposed that on 28.05.2019 he was posted as Constable at the Police Station Vigyan Nagar, Kota. On that day at 5.40 P.M., he had removed one pearl necklace and two toe rings of the deceased. The toe rings were having red stone in the middle and green stones on the corners.

P.W.10 Surendra Constable has corroborated statement of P.W.9.

P.W.12 Gulabchand, husband of the deceased deposed that Geeta Bai was his wife. Out of the wedlock, they were blessed with five children, namely Santosh, Parista, Naresh, Reshma and Jyoti. Santosh and Parista were already married, whereas, his other three children were living with him. They were poor and did labour work. There was some deformity in his wife's eyes as her one eye remained a little closed. He used to go to *gobariya bawdi* crossing along with his wife in search of work. On 22.05.2019, he along with his wife Geeta had gone to *gobariya bawdi* crossing. He got work at Anantpura, whereas, his wife had not found any labour work till then. Due to this reason, he left his wife at *gobariya bawdi*. He returned home in the evening and found that his wife had not returned home. He and his son Naresh looked around for his wife and waited for her to return



home. In the morning, they again went to *gobariya bawdi* crossing and searched for Geeta. They had taken photograph of Geeta with them and showed the same to the labour present at the crossing. However, they could not locate Geeta and he lodged her missing report Exhibit P-13 at Police Station Anantpura. His wife was wearing a coloured *ghaghra*, *kurti* and was supporting a red green colour *loogda*. She was also wearing a pearl necklace and was wearing toe nails. She was also wearing a *chappal* in her feet. She was wearing *marwadi* design bangles in her hands. About 3-4 days later, photograph of a dead body was shown to him but the same was not identifiable. They had identified the recovered clothes as belonging to his wife. In his cross-examination, he deposed that he had been shown the photograph in the police station. His wife was wearing gold nose ring and silver earrings. She was wearing two toe nails in her feet. He was not shown above articles in the police station for identification.

P.W.13 Muma deposed that Gulabchand was younger brother of her husband. He was residing in their neighbourhood along with his wife and children. Gulabchand and his wife Geeta Bai did labour work to feed their family. On 22.05.2019, Gulabchand told her that his wife had not returned home. They searched for Geeta Bai. Her brother-in-law lodged a missing person report at Police Station Anantpura. Her brother-in-law and his wife did not have any enmity with anyone. Police had shown them photograph of a dead body but the same could not be identified. Then police had shown them the clothes worn by the deceased and they identified the same as belonging to the deceased. Police had also shown them CCTV camera recording where Geeta Bai was visible with an unknown person. She had



identified ear rings and nose pin of Geeta Bai before the Magistrate. *Jhumkas* were of silver, whereas, the nose pin was of gold. This witness was also shown the said articles before the trial court and she identified the same as belonging to the deceased.

P.W.14 Mangilal corroborated the statement of his wife Muma P.W.13.

P.W.15 Abdul Salam deposed that he was doing contract work. About 5-6 years ago, he purchased House No. 3-N-23 situated behind Jain Temple from Aaftaj Ahmad and was getting done the construction work of that house. Shanu @ Shanu Khan and Mohan Singh had earlier also worked in Shripura Fish Market and due to this reason, he knew them. Mohan Singh had no permanent residence at Kota and used to sleep on footpath etc. He had kept Mohan Singh on the construction side as a *chowkidar*. On 18.05.2019, the construction work of his house at Vigyan Nagar was completed. On 21.05.2019 Mohan Singh and Shanu had reached his Shripura house and Mohan Singh had said that now he would not work with Shanu. On 22.05.2019 electricity fitting work was done in his house at Vigyan Nagar by Pawan Kumar Electrician. On 24.05.2019, he came to know that Mohan Singh *chowkidar* was not present at the site. Since Mohan Singh did not have a mobile phone, he could not be contacted. He was shown video footage by Vigyan Nagar police officials and he identified the person shown in the footage as Mohan Singh. *PARMAN* was written on the bag recovered by the police.

P.W.16 Naresh, son of the deceased identified clothes and jewellery articles of the deceased. He also corroborated the statement of his father to the effect that his mother had not come home on 22.05.2019. He also stated that his sister Parista was



taken to the hospital by him and his father for giving her blood sample. In his cross-examination, he stated that his signatures were not taken on any paper by the police.

P.W.18 Dwarka Lal deposed that he was resident of Hajira Basti, Shivpura Dadabadi and was working as RCC contractor. He had taken the contract for laying roof of House No.

24/23 situated at Vigyan Nagar. Shanu was working as a mason and had finished his job on 15.05.2019. On 22.05.2019, he had to do shuttering work at Ram Mandir site and for that, he required two shuttering sheets. He sent Mukesh Mahawar and Lekhraj to the house of Salam Bhai at 10 O'clock for bringing those sheets and they had brought those sheets from Vigyan Nagar to Ram Mandir in about one hour. In his cross-examination, he deposed that the sheets were lying outside the house of Salam Bhai and they had been brought the same from there.

P.W.19 Sunil deposed that he knew the convict and identified him in the Court.

P.W.22 Lekhraj deposed that he was doing labour work. On 22.05.2019 he had gone to RCC Labour Crossing Ghatochkach Crossing. He met contractor Dwarka Lal, who sent him to a site situated at Ram Mandir station for RCC shuttering. Dwarka Lal had sent him along with Mukesh Mahawar to Vigyan Nagar site. From Vigyan Nagar site, they had picked up two iron shuttering sheets and returned to site at Ram Mandir Kota Junction. One lady was doing cleaning work at construction site who was wearing *banjara* type clothes, i.e., *ghaghra*, *kurti* and *loogda*. He identified the photograph of that lady before the police. In his cross-examination, he deposed that he had not gone inside the house.



He had seen the lady sweeping in the morning at about 10.00 A.M.

P.W.24 Raju Valmiki deposed that on 24.05.2019 he along with Vijay had opened the bag and had found dead body of a lady in a naked condition. Dead body had been tied with wires and was in unidentifiable condition. He had been called by Suresh at the spot. He was working as a sweeper.

P.W.26 Rambabu Nagar deposed that he had handed over CCTV footage of the camera fixed towards outside of his house bearing no. 3-Ja-6. He admitted that the police had taken the video recording in a pen drive.

P.W.27 Dr. Vinod Garg deposed that on 29.05.2019 he had taken blood sample of Parista, daughter of the deceased, on FTA card. He exhibited DNA Report as Exhibit P-34.

P.W.30 Ramishwar deposed that on 23.05.2019 he was posted as Head Constable at Police Station Anantpura and had recorded missing person report of Geeta Bai at the instance of applicant Gulabchand. He proved the same as Exhibit P-14.

P.W.31 Sitaram deposed that he was running a footwear shop at Vigyan Nagar. He had handed over CCTV camera recording of 22.05.2019 to the police. Camera was fixed outside his shop. In the said footage one man carrying a *fawda* and one lady carrying a *tagari* was seen walking behind him.

P.W.32 Dr. Sachin Meena deposed that on 28.05.2019, he had conducted post mortem examination on the dead body of an unknown lady. He proved post mortem examination report Exhibit P-36. As per Exhibit P-36, deceased had suffered following injuries:



"Injury No. (1)- 20cm x Max 5cm x skin deep, wound present on mid of chest which is obliquely placed, pale post-mortem in nature.

Injury No. (2)- Faint mark of max width 1cm present at left side of neck, which is horizontally placed. On giving incision hematoma at muscle seen/present.

Injury No. (3)- Stitched (sewed) wound of length 12cm present at mid of abdomen, it is stitched by wire (तार) & wire tied to each other. Wound is present at umbilical region & upto public synapsis. On removing wire the max width of wound is 5.5cm and it is cavity deep. Margins of wound is pale not have any vital reaction & hemotama. The pelvic cavity contains long Blouse (Kurti) and peticot. The length of Kurti is 47 cm and peticot is 76 cm. {Handed over to police without packing as requested by I/O verbally}"



As per Exhibit P-36, liver, ovary, bladder, uterus and part of intestine were missing. Cause of death of the deceased was opined to be given after receipt of chemical and histopathology report. A perusal of Exhibit P-41, letter issued by the Department of Forensic Medicine, MBS Hospital, Kota to S.H.O., Police Station Vigyan Nagar, Kota, reveals that cause of death of the deceased was due to asphyxia as a result of strangulation which was sufficient to lead cause of death in ordinary course of nature. P.W.32 Dr. Sachin Meena also proved document Exhibit P-41.

P.W.35 Dr. Madhu Meena has corroborated statement of P.W.32 Dr. Sachin Meena and has also proved post mortem examination report of the deceased Exhibit P-36 as well as aforesaid letter Exhibit P-41.

P.W.36 Mukesh corroborated statement of P.W.22 Lekhraj. He further deposed that the convict present in the Court was the man who was present with the lady at the construction



site. He had identified the deceased and the convict from the photographs Exhibit P-53 to Exhibit P-55.

P.W.39 Dr. Brijesh deposed that he had taken blood sample of convict for DNA examination. He proved DNA examination report Exhibit P-37.

P.W.41 Rajendra Goyal deposed that he had an office below his house. He had fixed two cameras at his shop and had handed over the video recording of 22.05.2019 to the police wherein at about 8.26 A.M., one man was seen walking with a *favda* and behind him, a lady was walking with a *tagari* towards Jain Mandir.

P.W.42 Sahil deposed that on 14.06.2019 he was working as a salesman at Rikky Banake Countrymade Liquor Shop. Mohan Singh used to come to the shop for purchasing liquor and due to this reason, he knew him. On 23.05.2019, Mohan Singh had come to the shop in the morning. At that time, Mohan Singh was already under the influence of liquor and had demanded liquor from him on credit. He declined to give him liquor on credit. Then, Mohan Singh gave two silver *jhumkas* to him and said that they belonged to his wife and he should keep them and give him a quarter of liquor. He said that in the evening, he would take *jhumkas* and pay for the quarter. However, Mohan Singh did not return to his shop. On 14.06.2019, Munindra Singh, S.H.O., Police Station Vigyan Nagar along with the convict and other police officials came to his house at Sajidehda between 9.30-10.00 A.M. Sahil in his cross-examination deposed that silver *jhumkas* had not been produced in the Court on that day.

P.W.44 Kalulal deposed that on 24.06.2019, he was posted as Tehsildar Ladpura. He had been called in the present



case for identification purposes. The sealed articles were produced before him and were mixed in similar articles. Muma had identified two silver like *jhumkas* and one nose pin (gold like). He proved identification report Exhibit P-17.

P.W.48 Naveen Kumar Jharwal deposed that on 24.06.2019, he was posted as Additional Chief Judicial Magistrate

No. 7, Kota and had recorded statement of Mukesh Mahawar and Sahil Khan under Section 164 Cr.P.C. and proved the said statements.

P.W.49 Sher Singh deposed that on 21.06.2019, he had compared wires, Article-7 and Article-8 and had found that they were made out of same material.

P.W.51 Parista deposed that on 22.05.2019, her mother had not returned home after doing labour work. She had been informed on phone by her father that her mother had not returned home. After 2-3 days, she had visited Kota from Sikar along with her husband. Dead body of an unknown woman had been recovered by the police officials of Police Station Vigyan Nagar. She had identified the clothes of her mother Geeta Bai. She had also given her blood sample for examination on 29.05.2019 at MBS Hospital, Kota.

P.W.52 Munindra deposed that on 24.05.2019 he was posted as Station House Officer at Police Station Vigyan Nagar. At about 9.05 A.M., he received an information through telephone that a dead body had been recovered near Jain Mandir, Government School, Vigyan Nagar. He went to the spot and FIR was registered on the basis of statement of the complainant. Plastic bag, on which *PRAMAN* was written and on the circular part ROOF HOG was written, was recovered. There were blood



stains on the bag. From the bag, dead body of a naked woman, who had been tied with wires, was recovered. The mouth of the bag had also been tied with a thin wire. The dead body was taken in possession and the spot was inspected. Dead body was photographed and various police stations were informed regarding recovery of unknown dead body. Dead body was kept in mortuary of MBS Hospital, Kota. Since the dead body was not identified, it was cremated on 28.05.2019 after post mortem examination. Clothes recovered from the dead body at the time of post mortem examination, i.e., *ghaghra*, *kurti* and bra, were taken in possession. One necklace and two toe rings of the deceased were also kept for identification purposes. On 29.05.2019, dead body was identified by kith and kin of the deceased from the clothes and jewellery articles of the deceased. Blood sample of Parista was taken for DNA examination vis-à-vis dead body. He recorded statements of witnesses. He also deposed that CCTV footages, Articles 14 to 18 were taken in possession. He also deposed that knife was recovered from the disclosed place on the basis of disclosure statement suffered by the convict. This witness deposed that convict had absconded on 10.07.2016 while he was lodged in Open Air Camp, Sanganer vis-à-vis his conviction under Sections 302, 376 and 379 IPC. FIR No. 589/2016 Exhibit P-172 was registered against the convict in this regard under Section 224 IPC on 11.07.2016. This witness also placed on record charge sheet in the said FIR as Exhibit P-173 for which proceedings under Section 299 Cr.P.C. were taken against the convict. Vide Exhibit P-174 standing warrants of the convict were issued to secure his presence. He also deposed with regard to further investigation conducted by him.





Let us examine the circumstances brought on record by the prosecution to come to a conclusion as to whether it has been successful in proving its case.

The prosecution has placed reliance on circumstance of last seen. In this regard, convict while answering one of the questions put to him in his statement under Section 313 Cr.P.C.

stated that on 21st or 22nd May, he had taken Geeta Bai from *gobariya bawdi* for labour work at the shop of Salam in Car Bazar. Geeta Bai was wearing *ghaghra*, *kurti* and *loogdi* and he had left her at 5.00-5.15 P.M. Prosecution has placed reliance on CCTV footage where convict and the deceased are seen walking together. Convict was carrying a *fawda*, whereas, deceased was carrying a *tagari*. The said fact was admitted by the convict in his statement under Section 313 Cr.P.C. that he had gone with Geeta from *gobariya bawdi* for doing labour work at the shop of Salam in Car Bazar on 21st or 22nd May. He also admitted that he knew Abdul Salam and had worked at his house in connection with construction work. He also admitted that he knew Sunil. Sunil had asked him to bring liquor at two occasions. He also admitted that he brought Geeta from *gobariya bawdi* and had taken her in an auto a little ahead of Aerodrome road. He also admitted that he knew Sahil who used to sell liquor and he used to purchase liquor from him.

Thus, it can safely be inferred that circumstance of last seen of the deceased in the company of the convict duly stands established from CCTV footages, Articles 15 and 16. The said CCTV footages have been proved by the witnesses who had handed over the same to the investigating agency. Hence, the said circumstance points towards the guilt of the convict.



Another important circumstance available against the convict is Article 17 CCTV footage dated 23.05.2019. In the said CCTV footage, convict is seen carrying a bag. Exhibit P-141 is the photograph taken from the CCTV footage which shows that convict was carrying a bag on his shoulder. Article 17 CCTV footage was handed over to the police by P.W.7 Lalchand @ Baban. The said CCTV cameras were installed at his house. Plastic bag was found lying by the boundary wall of the house of P.W.7 Lalchand @ Baban. Dead body was recovered from the said bag. Thus, the said circumstance also points towards the guilt of the convict.

So far as the clothes of the deceased are concerned, they were recovered from her dead body at the time of post mortem examination. Said clothes have been identified by children of the deceased as well as sister-in-law of the deceased P.W.13 Muma, as belonging to the deceased. Moreover, said clothes were visible in the CCTV footages, Articles 15 and 16. Although, relatives of the deceased have deposed that they could not identify the dead body from the pictures shown to them by the police but they had identified the same from the clothes and the jewellery articles recovered from the dead body. Thus, the said circumstance establishes that the dead body was of Geeta Bai.

Exhibit P-34 is the DNA Examination Report prepared by State Forensic Science Laboratory and as per the same, the source of DNA profile obtained from piece of sternum of deceased was a female and biologically related to the source of DNA profile obtained from blood sample of Parista Bai. Thus, it is established that the dead body-in-question was of Geeta Bai, mother of P.W.51 Parista.





A perusal of Exhibit P-37, DNA Examination Report prepared by State Forensic Science Laboratory reveals that *ghaghra* of deceased exhibit no. 1, *kurti* of deceased exhibit no. 2, bra of deceased exhibit no. 3, vaginal swab of deceased exhibit no. 5, pubic hair of deceased exhibit no. 6, nail scrapping of deceased exhibit no. 7, hair recovered from crime scene exhibit no. 8, hairs with hair band recovered from crime scene exhibit no. 9, wet gauge piece rubbed from bloody head of deceased exhibit no. 10, *lakdi ki balli* recovered from crime scene exhibit no. 11, *plastic ka katta* recovered from crime scene exhibit no. 12, Pants of convict exhibit no. 4, blood sample of convict on FTA card exhibit no. 13, blood of convict on gauge and saliva of convict on gauge were sent for DNA examination. Report of DNA examination reads as under:

"A. Results of serological test:

1. Blood was detected on exhibit no. 1 (Ghaghara of deceased), 5 (Vaginal swab of deceased), 6(Pubic Hair of deceased), 7(Nail scrapping of deceased), 10(Wet gauge piece rubbed from bloody head of deceased) and 12(Plastic ka katta recovered from crime scene).
2. Traces of blood was detected on exhibit no. 2(Kurti of deceased), 3(Bra of deceased) and 11(Lakdi ki Balli recovered from crime scene).
3. Blood was not detected on exhibit no. 4(Pants of accused)

B. Result of Powerplex-21 system kit

1. The alleles of DNA profile obtained from exhibit no. 13 (Blood sample of accused) and piece of sternum bone of deceased (Ref.-DNA/EXAM/685/19) **are accounted in** the mixed DNA profile obtained from stains detected on exhibit no. 12 (Plastic ka katta recovered from crime scene).
2. DNA profile obtained from exhibit no. 13 (Blood sample of accused) **is matching with** DNA profile obtained from stains detected from exhibit no. 4 (Pants of accused).
3. DNA profiles obtained from exhibit no. 5 (Vaginal swab of deceased) and 7(Nail scrapping of deceased) **are matching with** DNA profile



obtained from piece of sternum bone of deceased (Ref.-DNA/EXAM/685/19).

4. Incomplete DNA profiles obtained from exhibit no. 1(Ghaghara of deceased), 2(Kurti of deceased), 3(Bra of deceased), 6(Pubic Hair of deceased), 8(Hair recovered from crime scene), 9(Hairs with hair band recovered from crime scene), 10(Wet gauge piece rubbed from bloody head of deceased) and 11(Lakdi ki Balli recovered from crime scene)."

Thus, as per the above report, stains detected on plastic bag recovered from crime scene had mixed DNA profile of convict and deceased. DNA profile obtained from blood sample of convict matched with DNA profile obtained from stains detected on pants of convict. There is nothing on record to suggest that the convict had not voluntarily given his blood sample for examination. As per Exhibit P-58, blood sample of the convict was taken for DNA examination on FTA card. P.W.39 Dr. Brijesh had taken blood sample of the convict for DNA examination. From the cross-examination of this witness, it cannot be inferred that the blood sample of the convict was not taken voluntarily.

P.W.30 Ramishwar has proved missing person report Exhibit P-14 recorded by him at the instance of husband of the deceased.

On 25.05.2019, a notice was put up containing photograph of an unknown woman and the articles worn by her. The jewellery articles were, although, taken in possession by the police on 28.05.2019 but the same had duly been shown in the notice by way of photograph on 25.05.2019 itself (much before the relatives of the deceased joined investigation). Hence, it cannot be said that the jewellery articles were later added by the prosecution to strengthen its case. Jewellery articles worn by the deceased had been duly identified by P.W.13 Muma, who is a relative of the deceased.



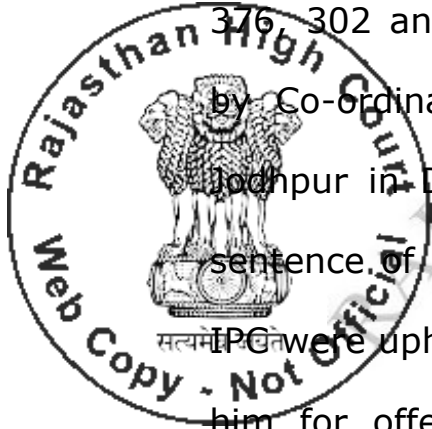
The next circumstance brought on record is that the convict had given *jhumkas* of the deceased to P.W.42 Sahil at the time of purchase of liquor on 23.05.2019. P.W.42 Sahil had handed over said *jhumkas* to police on 14.06.2019 and they were duly identified by the relatives of the deceased. P.W. 44 Kalulal Tehsildar is an independent witness and before the said witness, jewellery articles worn by the deceased were identified by P.W.13 Muma, i.e. two silver like *jhumkas* and a gold like nose pin. The said circumstance also points towards the guilt of the convict.

Thus, all the circumstances brought on record by the prosecution lead to the hypothesis of the guilt of the convict and negate his innocence. It cannot be said that somebody else might have committed the crime as the prosecution has been successful in completing the chain of circumstances leading towards the guilt of the convict and negating his innocence. Hence, the learned trial court had rightly ordered conviction of the convict for offence punishable under Sections 302, 392 and 201 IPC.

The next question that requires consideration is that as to whether death sentence awarded to the convict is liable to be upheld or it can be converted into imprisonment for life. In this regard, the past criminal record of the convict is very relevant. A perusal of Exhibit P-229 reveals that the convict was involved in a double murder case and FIR No. 146 in this regard was registered on 22.05.1997 under Section 302 IPC. Final Report in the said FIR was filed on 30.06.1999 as convict Mohan Singh @ Mahaveer could not be traced. However, convict was arrested in the present case and trial in FIR No. 146 dated 22.05.1997 also commenced and the same is pending.



Exhibit P-144 is the judgment/order dated 03.09.2004 passed by the Court of Additional District and Sessions Judge, Nimbahera District Chittorgarh in a murder case relating to incident dated 18.01.2003 registered against convict Mohan Singh @ Mahaveer. Vide judgment/order dated 03.09.2004, convict was convicted and sentenced qua offence punishable under Sections 376, 302 and 379 IPC. Vide judgment dated 30.11.2010 passed by Co-ordinate Division Bench of this Court at Principal Seat, Jodhpur in D. B. Criminal Appeal No. 932/2004, conviction and sentence of convict Mohan Singh @ Mahaveer under Section 302 IPC were upheld and he was acquitted qua charges framed against him for offence punishable under Sections 376 and 379 IPC.



While, the convict was undergoing sentence in terms of judgment Exhibit P-144, he escaped from open air camp. The said fact was admitted by the convict when question in this regard was put to him in his statement under Section 313 Cr.P.C. Thereafter, convict had committed murder in the present case.

It is also evident from testimony of P.W.52 Munindra and documents Exhibit P-172, Exhibit P-173 and Exhibit P-174 that the convict had absconded from Open Air Camp, Sanganer while he was undergoing sentence in pursuance to his conviction ordered vide judgment/order dated 03.09.2004 Exhibit P-144.

As per the post mortem examination report Exhibit P-36, liver, ovary, bladder, uterus and part of intestine of the deceased were missing. It also transpires that the pelvic cavity of the deceased contained long blouse (*kurti*) and *petticoat*. Thus, the convict had not only murdered the deceased by strangulation, but had thereafter cut her abdomen and taken out certain organs from



the body and had put her *kurti* and *petticoat* in her abdomen and had stitched the abdomen with a wire.

Keeping in view the criminal antecedents of the convict as well as the manner in which the present crime has been committed, learned trial court had rightly sentenced the convict Mohan Singh @ Mahaveer with death sentence under Section 302

IPC. Thus, the conviction and sentence of the convict are liable to be upheld.

Death sentence awarded to the convict is confirmed.

Death reference stands answered accordingly.

Consequently, appeal filed by the convict is dismissed.

A copy of this judgment be supplied to the convict Mohan Singh @ Mahaveer.

(CHANDRA KUMAR SONGARA),J

(SABINA),J

MANOJ NARWANI /

