

Before V.K. Bali & Nirmal Singh, JJ.

CHARAT @ SUNDA & OTHERS,—Appellants/Accused

versus

STATE OF HARYANA,—Respondents

CrI.A.No. 104/DB OF 2004

19th January, 2005

Indian Penal Code, 1860—Ss. 302/34 and 376(i)(g)—Evidence Act, 1872—S. 27—Gang rape and murder of an unidentified/unknown young girl—After committing murder accused burying the deadbody—Recovery of dead body on the basis of disclosure statements made by the accused—Circumstantial evidence clearly establishes that all accused except one are indeed involved in the double crime of rape and murder—All the eye-witnesses resiling from their statements—An eye witness to the occurrence making statement u/s 164 Cr. P.C. before the Magistrate—While appearing in Court making false statement that he was under the pressure of police—His statement made before the Magistrate cannot be disbelieved—Violation of the oath under which he deposed with impunity—He deserves to be prosecuted under the provisions of 1860 Act—Crime committed by the accused is diabolical and heinous—Orders of the trial Court convicting and sentencing accused on both the counts separately affirmed—However, one accused acquitted of the charges framed against him giving benefit of doubt.

Held, that we find some substance in the contentions of counsel only insofar as appellant Raja is concerned whereas all other appellants even if the statement of the eye witnesses but for Ved Parkash PW-3 and that too to the extent that he made before the Magistrate under Section 164 of Code of Criminal Procedure, is accepted yet, circumstantial evidence appearing against other appellants is so complete so as to lead to an irresistible conclusion that they are, indeed, involved in the double crime of rape and murder. Insofar as, however, the contention of learned counsel that Investigating Officer should have refrained from even recording the statement of first informant, as the same was based upon rumours, is concerned, we do not find any substance in the same. All that the law requires is that

every information relating to commission of cognizable offence, if given orally to an officer in charge of police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it. The information relating to the commission of a cognizable offence, can be given by any one to the officer incharge of Police Station. The information *per se* is not enough to pin down any one with the commission of crime. Same only sets criminal law into motion.

(Paras 9 and 10)

Further held, that acceptance of contention with regard to discovery of place, however, shall not absolve appellants as the chain of circumstances is so complete that no other hypothesis but for that they did commit the crime is possible. Even though, it is true that all the eye witnesses have turned hostile but statement of Ved Parkash PW-3 to the extent he made the same under Section 164 of Code of Criminal Procedure, has to be relied upon.

(Para 12)

Further held, that the circumstances proved against all the appellants are, thus, that the victim was last seen alive in their presence. The appellants other than Raja are proved to have indulged in sexual intercourse not in distant past when an unknown girl became victim of gang rape. It has further been proved that appellant Vinod absconded immediately after the occurrence and was arrested after 8 months on 14th June, 2002. The above said circumstances, are sufficient to sustain the conviction against the appellants u/s 376(i)(g) of the Indian Penal Code. Death of the hapless lady immediately after rape clearly appears to be actuated due to the motive of the appellants to screen the crime. The added circumstances is, thus motive as well, even though only for murder. In the facts and circumstances of the case, the only circumstance of motive insofar as, murder of lady is concerned, is enough to convict the appellants. Insofar as, however, appellant Raja is concerned, the only evidence against him is of last seen. He is, thus, given benefit of doubt and is acquitted from the charges framed against him as, surely on the basis of last seen alone, he cannot be convicted.

(Paras 19 to 21)

Further held, that Ved Parkash, PW-3 appears to have resiled from the statement made by him even before the Magistrate under Section 164 of Code of Criminal Procedure and it is the statement of the Magistrate which has to be believed and not the one made by him that his statement was recorded before the Magistrate under the pressure of the police. He was violated the oath under which, he deposed with impunity, least realising that in the process, he would have a direct hand in screening a heinous crime. He does not appear to have any morals. Such are the persons who are instrumental in losing faith of the people in the administration of justice. We are, *prima facie*, of the view that he deserves to be prosecuted for making a false statement before the Court, for whatever offences under Indian Penal Code that may be attracted in the facts and circumstances of the case.

(Para 24)

Gorakh Nath, Advocate, *for the appellants*.

Sanjay Vashisht, Sr. DAG, Haryana, *for the respondent*.

JUDGMENT

V.K. BALI, J.

(1) An un-identified and, thus, un-named and un-known young girl of 18-19 years, as per the prosecution version, became a victim of gang rape and murder by the appellants and two others. Whereas, on trial, appellants Charat *alias* Sunda son of Partap Singh, Krishan son of Hawa Singh, Raja *alias* Rajbir son of Prabha, Vinod *alias* Guddu son of Mahabir and Anil son of Baldeva have been held guilty for an offence under Section 376(i)(g) of Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also to pay fine of Rs. 25,000 each and in default of payment of fine, to further undergo rigorous imprisonment for a period of four years, Krishan, Raja *alias* Rajbir and Charat *alias* Sunda have also been held guilty for an offence under section 302 read with Section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also to pay fine of Rs. 5,000 each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years, vide order of conviction and sentence dated 2nd December, 2003 and 6th December, 2003 recorded by learned Additional Sessions Judge (Fast

Track Court), Hisar. The co-accused of the appellants, Dharampal and Mahender have since been acquitted. It is against this order of conviction and sentence that two appeals, one by Charat, Krishan, Raja and Vinod, bearing Crl. Appeal No. 104-DB of 2004 and the other by Anil, bearing Crl. Appeal No. 143-DB of 2004, have been filed.

(2) The occurrence leading to the gang rape and murder of an un-identified lady had taken place on 23rd October, 2001. FIR with regard to the incident came to be lodged at 6.05 PM on 24th October, 2001 and special report with the regard to the incident reached the concerned Magistrate at Hansi at 10.00 AM on 25th October, 2001. Pirthi Singh, Chowkidar of village Sisai Bolan, made statement before Balbir Singh, SI/SHO, P.S. Sadar Hansi wherein, he stated that he was a Chowkidar of village Sisai Bolan. He had come to know that yesterday, i.e., on 23rd October, 2001, Anil son of Baldev, Pala son of Ram Sarup Guddu son of Mahabir, Bhim Singh son of Ran Singh, Balwan son of Om, Sunda *alias* Charat son of Partap Singh and Krishan son of Hawa and 3/4 other boys of their village were committing rape upon a minor girl of 15/16 years, whose name and address were not known to him, in the Kikkar bushes standing in the Panchayati land of their village. When Ved Parkash son of Chandgi Ram, resident of Sisai Kali Rawan, went to his field near Kikkar trees, all persons took the girl to the Kotha tubewell in the fields of Dhup Singh son of Jailal and there they committed gang rape upon the girl one by one by putting her in fear, throughout the night. Dhup Singh had given his land and the tubewell to Sunda on lease. These persons, after committing rape upon the minor girl, murdered her and under the conspiracy, in order to destroy the evidence of the crime, they buried the dead body of the girl in the cotton crop field of Dhup Singh. He further stated that it was also a rumour that the girl had been burnt. It was not known as to whether the girl was burnt before or after her murder. Some other persons of the village had also come to know of this occurrence but they all were silent as they did not want to come forward. He was going to the Police Station to give information when Balbir Singh, SI/SHO met him at bus stand, where his statement was got recorded.

(3) During the course of trial, the prosecution examined Dr. P.K. Paliwal as PW-6, who stated that on 26th October, 2001, he conducted post-mortem examination on the dead body of an

unidentified female brought to him by ASI Daya Nand and Constable Joginder Singh. The body was naked excepting burnt sleeves on both arms reddish in colour and admitting kerosene oil smell. Scalp hair, eye brows and eye lashes were burnt and tongue was protruding out for 1.5 cm. beaten between the teeth. Whole body was having burns all over, except mid 1/3rd of back was spread. The Doctor found the following injuries on the dead body of un-identified female :—

- “1. There was multiple contusions of left side of neck situated one over the other 6 cm below the angle of mandible measure .5 to 1.5x2 cm.
2. There were contusions on right side of neck situated 3.5 cm below the engle of madible measuring 2.5 x 5 cm situated transversely oblique underneath structure were ecchymosed.
3. There was fracture of greater cornu of right side of hyoid bone with infiltration in surrounding structures and trabeculae on fractured ends.
4. There were multiple bite marks over the tongue measuring .2 to .4 cm in size situated transversely oblique.
5. There were multiple abrasions over the inner aspect of vaginal epithelium and it was inflamed having whitish deposits in the posterior fornix. Vaginal smear and vaginal swabs were taken.
6. There were multiple contusions on both cheeks, above and below the lateral angles of mouth in an area on the left side 4x3 cm and on right side 5 cm. The contusion over the tip of nose was .5 cm in size. The length of body was 5 feet and 2.5 inches.”

(4) Injuries 1 to 5, as mentioned above, were ante-mortem in nature. There were multiple abrasions on the lips, more on lower one, measuring 0.5 to 2.9 cms. placed obliquely. In the opinion of the Doctor, cause of the death was manual strangulation, coupled with smothering. Burn injuries on the body were post-mortem in nature. Duration between the death and post-mortem examination was about 3 days. Dr. Kuldeep Singh, who was examined as PW-1, stated that

on 25th October, 2001, he had medico legally examined Charat Singh appellant. His external genital organs were well developed. No external injury was present. He stated that in his opinion, Charat Singh was capable of performing sexual intercourse. He also examined appellant Krishan, on whose person there was no external injury and he too, in his opinion, was capable of performing sexual intercourse. He had also examined appellant Anil. He too, in the opinion of the Doctor, was capable of performing sexual intercourse. He further stated that Pyajama taken out from parcel, Ex. P-1, was the same which was recovered by him from the person of appellant Krishan. From another parcel, Ex. P-2, opened in his presence, he found under-wear of Anil. From another parcel, Ex. P-4, he found under-wear of Krishan and from yet another parcel, Ex. P-5, he found under-wear of Charat Singh. The Court made a note that Ex. P-1 has wrongly been exhibited as the witness stated that he had not removed the Pyajama, Ex. P-1.

(5) The prosecution also examined Prithi Singh as PW-2, who resiled from the statement made by him under Section 161 of Code of Criminal Procedure before the police and stated that he would not know anything about this case and that nothing had happened in his presence and further that he had not made any statement before the police. He stated that he had gone to Police Station and his thumb impressions were obtained on the blank paper. He was declared hostile and was cross-examined by the Public Prosecutor wherein, he stated that he had heard statement, Ex. PF. He had not made such statement before the police. He had not stated to the police that on 24th October, 2001, he came to know that Anil son of Baldeva, Pala son of Ram Sarup, Guddu son of Mahavir, Bhim Singh son of Ran Singh, Balwan Singh son of Om, Sunda *alias* Chart Singh son of Partap Singh and Krishan son of Hawa Singh and 3/4 other boys were committing rape with a girl of 15/16 years in the Kikkar trees, grown in the land of Panchayat. He was confronted with portion A to A of statement, Ex. PF. where it was so recorded. He was confronted with other portion B to B of statement Ex. PF as well. Ved Parkash, PW-3, likewise, turned hostile and was cross-examined by the Public Prosecutor wherein, he stated that he had heard statement Ex. PG. He had not made such statement before the police. He had not stated before the police that on 23rd October, 2001, he was going to his fields to repair the water course and when he reached near the Kikkar trees,

grwon in Panchayat land, he saw Anil son of Baldeva, Pala son of Ram Sarup, Guddu son of Mahabir, Bhim Singh son of Ran Singh, Balwan son of Om Sunda alias Charat Singh son of Partap Singh, Krishan son of Hawa Singh and 3/4 other boys while committing rape with a girl of age of 15/16 years and that on seeing him, they slipped away from that place. He was confronted with portion A to A of statement Ex. PG where it was so recorded. He further denied having stated before the police that lateron he came to know that all those boys had taken that girl to the Kotha tubewell of Dhup Singh son of Jai Lal, resident of Sisai Bolan and that they had committed rape with her for whole the night after giving threat to her. He was confronted with portion B to B of statement Ex. PG, where it was so recorded. He denied having stated before the police that the above said persons had committed murder of that girl under a conspiracy and in order to destroy the evidence, they had buried the dead body of that girl in the fields of cotton belonging to Dhup Singh. He was confronted with portion C to C of statement Ex. PG, where it was so recorded. He denied having stated before the police that the above said persons had burnt that girl but it was not known whether she was burnt after killing her or before that. He was confronted with portion D to D of statement Ex. PG, wherein, it was so recorded. A sealed envelop, Ex. PH, was opened, which contained the statement of Ved Parkash, made before the Magistrate under Section 164 of Code of Criminal Procedure. He heard that statement and admitted that he had made this statement before S.D.J.M., Hansi, but volunteered to say that the same was made by him under the pressure of the police. He admitted that when he was produced before the SDJM, Hansi by the police, the SDJM had given him one hour's time for recording his statement. He, however, denied the suggestion that he had given the statement voluntarily. He volunteered to say that before recording his statement, the police had already put him under fear by giving 2/3 cane blows. He, however, stated that when his statement was recorded, he was alone in the Court, even though, he volunteered to say that the police was standing out side the Court and that he had been threatened by the police that in case he will not make the statement according to them, they will put him in side. He, however, admitted that he had made no complaint against the police to any officer. He admitted that Sub Divisional Judicial Magistrate and asked him before recording the statement as to whether he was

making the statement voluntarily and whether there was any pressure on him or not. He had not however, denied that statement, Ex. P1, was given by him voluntarily. He denied the suggestion that he was resiling from his statement, Ex. P-1 and Ex. PG in order to save the accused, being co-villager. He further denied that on 23rd October, 2001, he had seen the accused persons, present in Court, while committing rape with a girl of 15/16 years and that he was deposing falsely. Baljit Singh son of Kehri Ram, PW-4, and Rajbir son of Munshi Ram, PW-5, the other two eye witnesses, likewise, resiled from the statements made by them before the police. They were cross-examined by the Public Prosecutor and confronted with their statements, Exs. PJ and PK, respectively.

(6) Hans Raj, Naib Tehsildar, Hansi, PW-7, stated that on 24th October, 2001, on the request, Ex. PQ, made by the police, he was deputed by the SDO (Civil), Hansi, for reaching at the spot and to get the proceedings under Section 174 of Code of Criminal Procedure completed. He went to the spot where the dead body of a girl was buried, where police was present. In his presence, dead body of a girl was taken out from the fields of Dhup Singh, buried under the earth. Proceedings under Section 174 of Code of Criminal Procedure were conducted in his presence. Dead body was then despatched to General Hospital, Hansi, for post-mortem. Baldev Singh, ASI, PW-8 stated that on 27th October, 2001, Kaptan Singh, Constable, produced before him parcels containing finger prints, bones, piece of flash, burnt pieces of clothes, swabs and smear, which were handed-over to him by the Doctor after the post-mortem examination on the dead body of an unknown girl. Same were taken into possession vide recovery memo. Ex. PR. Head Constable Wazir Singh, PW-9 tendered his affidavit, Ex. PS. in his evidence. J.B. Gupta, who was examined as PW-10, stated that on 26th October, 2001, when he was posted as SDJM Hansi, Balbir Singh, SI, moved an application, Ex. PT, in his Court, for recording the statement of Ved Parkash. He passed order, Ex. PT/ 1, on the application, aforesaid and asked the S.I. to sit out side the Court and Ved Parkash to remain in the Court at about 12.30 PM. After that at about 1.30 PM, he asked Ved Parkash whether he wanted to make the statement, who told him that he was ready to give the statement. He, thus, recorded his statement, Ex. PI and whatever stated by him, was recorded by him. It was read over to him and he after admitting the same put his thumb impression over

the same and below the statement, he made endorsement Ex. PT/2 to the effect that the statement was made by his own free Will. The statement was sealed in envelop, Ex. PH. In his cross-examination, he admitted that the accused was accompanied by the police. He, however, denied the suggestion that statement, Ex. PI, was not volunteered by Ved Parkash and was rather made by him at the instance of police. Jagdev Singh, Patwari Halqa Sisai Kali Rawan, who was examined as PW-11, proved the scaled site plan, Ex. PU, whereas, Bhol Singh, Patwari Halqa Asrawan, who was examined as PW-12, proved scaled site plan, Ex. PB. Kulbir Singh, Photographer, PW-13, proved the photographs taken by him, Exs. PW/1 to PW/4 and the negatives thereof, Exs. PW/5 to PW/8, on 24th October, 2001. These photographs were taken by him in village Sisai in the fields of Dhup Singh. Balbir Singh, SI, who was examined as PW-14, deposed that on 21st December, 2001, he moved an application to the Tehsildar, Hansi, for preparing a scaled site plan while going in the area of village Sisai and on 14th January, 2002, he moved an application to Tehsildar, Narnaund, for preparing scaled site plan. After completion of investigation of the case, he submitted report under Section 173 of Code of Criminal Procedure. Constable Ramesh, who was examined as PW-15, stated that on 27th October, 2001, accused Mahender was interrogated in his presence by SI Balbir Singh, who stated that he along with Krishan, Raja and Sunda, in order to dispose of the dead body, had dug a pit in the fields of Dhup Singh, where Narma crop was standing, on 24th October, 2001. He also stated that he could point out the place of occurrence. Constable Vidya Nand, PW-16, stated that on 18th October, 2001, Mahender accused had pointed out the pit where dead body of unknown female was buried and concealed. Satyabir Singh who was examined as PW-17, tendered his affidavit, Ex.PBB, and stated that on 14th June, 2002, he was member of the police party headed by ASI Randhir Singh. On that day, appellant Vinod *alias* Guddu was interrogated and he made disclosure statement that he along with Anil, Charat Singh, Mahender, Krishan, Raja and Dharampal had raped an unknown woman and that he could point out the place of occurrence. Thereafter, his disclosure statement, Ex. PCC, was recorded and the appellant had signed the same and he attested it as a witness. The accused then led the police party to the place of occurrence and pointed out the place in side of Panchayati land, where Kikkar trees were standing. Memo

of pointing out was prepared. Constable Mukhtiyar Singh, PW-18, stated that on 25th October, 2001, parcels of under-wear etc. of Krishan, Balwan, Charat Singh and Anil were handed-over by the Doctor to the Investigating Officer in his presence. Recovery memo of under-wear of Balwan was Ex. PDD/2. Recovery memo of under-wear of Charat Singh was Ex. PDD/3 and that of Anil was Ex. PDD/4. Parcel of Pyajama of Krishan was taken into possession through recovery memo Ex. PDD/5. On 26th October, 2001, Anil led the police party and pointed out the place in the Kikkar trees on the land of Panchayat. The pointing out memo of place of occurrence of rape was prepared. It was Ex. PEE. Pointing out was also done by Balwan accused and the memo of pointing out of place by Balwan was Ex. PEE/1. Pointing out of the place of occurrence was done by Krishan and memo of pointing out by him was Ex. PEE/2. Charat Singh also pointed out the place of occurrence and memo of his pointing out was Ex. PEE/3. All these were attested by him. SI, Balbir Singh, PW-19, gave details of investigation done by him. The prosecution tendered in evidence report of Forensic Science Laboratory, Ex. PQQ.

(7) When examined under Section 313 of Code of Criminal Procedure, the appellants, while denying incriminating material put to them, stated that they were innocent.

(8) Mr. Gorakh Nath Sharma, learned counsel, who appears in support of this appeal, vehemently contends that FIR in the present case came to be lodged on the basis of rumours and the Investigating Officer, on the statement of the Chowkidar, should have simply ignored the same. No investigation, in any case, could commence on the basis of the report, based upon rumours. He further contends that the only evidence on the basis of which, the appellants have been convicted, is the disclosures statement made by them pursuant to which, the appellants had shown or pointed the place of occurrence and that inasmuch as, the place where the appellants were seen near Kikkar trees or for that matter, where an un-identified girl was taken to a construction of a tubewell where too, she was raped as also the place where she was buried was known to the police and somuch so, before the disclosure statement was made by the appellants, dead body had since already been recovered. The pointing out of place of occurrence by the appellants was totally meaningless and could not partake the character of recovery pursuant to the disclosure statement and but

for the aforesaid evidence, which is in admissible, there was no other evidence at all connecting the appellants with the crime and, thus, the case ought to have resulted into acquittal.

(9) We have given our anxious thoughts to the contentions of learned counsel, as noted above, but we find the same to have some substance only insofar as appellant Raja is concerned, whereas all other appellants, even if the statement of the eye witnesses but for Ved Parkash, PW-3 and that too to the extent that the made before the Magistrate under section 164 of Code of Criminal Procedure, is accepted yet, circumstantial evidence appearing against other appellants is so complete so as to lead to an irresistible conclusion that they are, indeed, involved in the double crime of rape and murder.

(10) Insofar as, however, the first contention of learned counsel that Investigating Officer should have refrained from even recording the statement of first informant, as the same was based upon rumours, is concerned, we do not find any substance in the same. All that the law requires is that every information relating to commission of cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it. The information relating to the commission of a cognizable offence, can be given by any one to the officer incharge of Police Station. The information per-se is not enough to pin down any one with the commission of crime. Same only sets criminal law into motion.

(11) The contention of learned counsel that discovery of dead body from the place of occurrence, on the basis of disclosure statement made by appellants, was not admissible appears to be correct. It may be recalled at this stage that when Prithi Singh had lodged the FIR, he clearly stated that he came to know that the persons named by him along with 3/4 other boys were committing rape upon a minor girl of 15/16 years in Kikkar bushes standing in the Panchayati land of their village. He also stated that when Ved Parkash went to his field near the Kikkar tress, all these boys took the girl and slipped away from there and that thereafter they took the girl to the Kotha tubewell in the fields of Dhup Singh and there they committed gang rape upon the girl one by one by putting her in fear and that Dhup Singh had given this land and tubewell to Sunda on lease. He further stated that after murdering an unknown girl, the accused

buried the dead body of the girl in the contton field of Dhup Singh. The place where a hapless girl of 18/19 years became a victim of ghastly crime, was known to the police and so is true with regard to the second place, where she was gang raped as also after her murder the place, where she was buried. Immediately on receipt of the first information report, SI/SHO along with other officials as also Prithi Singh, Chowkidar, had visited the place of occurrence. He then made a request to the Executive Magistrate to depute some one to visit the place, where dead body was buried. He also requested for the presence of Photographer and it was at about 6.00 PM that Hans Raj, Executive Magistrate and Kulbir, Photographer reached village Sisai Bolan at the spot. Dead body of woman, which was buried, was taken out in the presence of the Executive Magistrate. Memo in this regard was separately prepared. The Investigating Officer also conducted inquest proceedings. Photographs were also got prepared. Rough site plan of place of occurrence was also prepared. Some burnt clothes and the hair struck to these clothes were also found at the place of burial of the woman, which were lifted, made into parcel, sealed and taken into possession. The Investigating Officer also inspected the Kotha of Dhup Singh and found a cot, which was having some blood stains, burnt skin and some pieces of burnt clothes were also found lying, which too were taken into possession. Out side the room, there was a heap indicating that some clothes had been burnt there. The remains of these burnt clothes were also taken into possession. The Investigating Officer then made an application for post-mortem examination and sent the dead body for the post-mortem examination to General Hospital, Hansi. He then took Chowkidar and Ved Parkash PW with him and went to the spot where he was told that the woman had been rapped on the earlier date. He then let go Chowkidar and Ved Parkash PW and made search for the accused, who were not traced on that day in their respective houses. It is quite clearly made out from the statement of the Investigating Officer, who appeared as PW-19, that on the day he had visited the spot twice, once in the presence of the Executive Magistrate, when the dead body was recovered, and secondly, with Chowkidar and Ved Parkash, PW, had known the accused as Ved Parkash was with the Investigating Officer and it is quite obvious that besides knowing the details of the crime and various places where the victim was taken, Ved Parkash must have also told him everything, being an eye witness to the occurrence. It is too well settled that only so much of information, whether it amounts to a confession or not, as relates distinctly to the fact thereby

discovered, may be proved, as per the provisions of Section 27 of the Evidence Act. If all the places, be it near Kikkar trees, where a young girl was first raped or the Kotha tubewell, where she was raped for whole night or where she was buried, were known to the police, disclosure statements made by the appellants and pursuant to that pointing out all the places, as mentioned above, would not amount to any discovery. The judicial precedents cited by learned counsel, who represented the appellants, in **Krishan Mohar Singh versus State of Goa (1)**, **Mohal Singh versus State of Punjab (2)**, **State of Haryana versus Jagbir, (3)**, **Vijender Singh versus State of Delhi (4)**, and **Rahimbeg versus State of U.P. (5)**, appear to have been wrongly ignored by learned trial Court. In the case of **Mohal Singh versus State of Punjab (supra)**, accused had made confessional statement, indicating the place, where they had buried the dead body and the police was already aware of the place which was disclosed to it earlier by a prosecution witness. Supreme Court held that this evidence was not admissible and recovery of dead body cannot be said to be at the instance of disclosure statement made by the accused. In case of **State of Haryana versus Jagbir Singh (supra)**, once again, Supreme Court held that recovery of dead body on the basis of statement made by the accused is not helpful to the prosecution as the provisions of Section 27 of the Evidence Act have no application to such a disclosure statement and recovery because this information was already known to the police. It was observed in the case of **Vijender Singh versus State of Delhi (supra)** that if an information given by the accused leads to discovery of a fact, which is direct outcome of such information, then only it would be evidence, but when the fact had already been discovered, evidence could not be led in respect thereof. Learned trial Judge, however, distinguished these judicial precedents by observing that the evidence on record would not suggest that the police had the knowledge of the exact place, where the appellants had raped an unknown girl in the standing Kikkar trees on the Panchayat land. It was also observed that exact place where the appellants raped an unknown woman and she must have not been raped at the same place as would have endeavoured to ward off every individual sexual assault on her was not known to the police.

- (1) 2000 S.C.C. (CrI.) 6
- (2) 1995 (2) R.C.R. 218
- (3) 2003 (4) R.C.R. 554
- (4) 1997 (2) R.C.R. 257
- (5) 1972 S.C.C. (CrI.) 827

This distinction made by learned trial Judge does not appear to be correct. Once, place and Kikkar trees, where an unknown woman was raped, was known to the police, the exact place, where each one of the appellants might have raped her, was of no consequence. That apart, when the appellants pointed the place where they raped an unknown woman, they had not mentioned the exact place as well. Learned trial Court, on the basis of a judgment in **Ravindra versus State of Kerala (6)** and another judgment in **The State of Maharashtra versus Damu Gopinath Shinde (7)**, held pointing out of place of rape by the appellants to be admissible under Section 8 of the Evidence Act. Facts of the cases aforesaid are quite distinguishable and, in our considered view, cannot apply to the facts of the case in hand.

(12) Acceptance of contention of learned counsel with regard to discovery of place, in our view, however, shall not absolve appellants Charat Singh, Krishan, Anil and Vinod as, the chain of circumstances is so complete that no other hypothesis but for that they did commit the crime is possible. Even though, it is true that all the eye witnesses have turned hostile but statement of Ved Parkash, PW-3, to the extent he made the same under Section 164 of Code of Criminal Procedure, has to be relied upon and it has further to be held that while appearing in the Court, he made a false statement that he was under the pressure of the police. It would be worthwhile to mention here that statement of Ved Parkash came to be recorded on an application, Ex. PI, made by the police to the concerned Magistrate on 25th October, 2001. When application, Ex. PI, was made before the Magistrate, he recorded the following order :—

“SHO Balbir Singh presented the present application with the request to record the statement of Ved Parkash s/o Shri Chandgi Ram, Caste Jat, r/o Sisai Kalirawan. I asked the S.H.O. to sit outside the Court room and asked the witness Ved Parkash to remain seated in the Court room. I shall record the statement of Ved Parkash after an hour.”

(13) The time mentioned underneath the signatures of SDJM is 12.30 PM. The matter, it appears, was taken up for recording the statement of Ved Parkash at 1.30 PM as it is mentioned in the order

(6) 1999 CrI. Law Journal 2364 (Kerala)

(7) 2000 CrI. Law Journal 2301

that it is at the time that he had asked Ved Parkash whether he wanted to make his statement and he stated that he wanted to make his statement. It is only then that learned Magistrate proceeded to record the statement of Ved Parkash as follows :—

“Statement of Ved Parkash son of Chandgi, aged 55 years,
r/o Sisai Kalirawan, on S.A.

Question : Do you want to make your statement of your own will or you want to make statement under the pressure of some one?

Answer : I want to make my statement at my own will. There is no pressure over me of any one.

Question : What do you want to state in this case ?

Answer : It is matter of 23rd October, 2001. It was 10.30/11 A.M. I, Baljit and Rajbir had come to drink water from the hand pump. This hand pump is in our field. We heard some whispering from behind the Kikkars of Panchayat. These Kikkars and the field of Panchayat is with me on lease (Theka). We three went there and saw a young girl, who will be about 20/21 years. With her there were Bhim s/o Ran Singh, r/o Sisai Kalirawan, Anil s/o Baldev r/o Sisai Kalirawan, Balwan s/o Om, r/o Sasai Kalirawan, Pala s/o Ram Saroop r/o Sisai Kalirawan, one Sunda Harijan of Bole Panne, one Krishan s/o Hawa Singh, caste Harijan r/o Sisai Kalirawan. I made them to run away from there. Next day in the evening some persons of Dhani Pal came and told in the village that girl, which I have stated in my statement, has been murdered, who has been murdered in the revenue estate of Bola Pana near Dhanipal.

Question : Do you want to say some thing else ?

Answer : I have nothing to say any more.”

(14) Learned Magistrate appeared in this case as PW-10 and made statement in tune with orders passed by him, mention whereof, has already been made above. The only cross examination to him was the suggestion that Ved Parkash had not made statement voluntarily and it was rather made at the instance of the police, which was denied by him.

(15) In the context of the background of the case, fully detailed above, statement made by Ved Parkash, PW-3, that he had made statement before the Magistrate under pressure and not voluntarily, has to be dis-believed. It is the statement of the Magistrate, which has to be believed as he recorded the same in discharging his duties and had no reason whatsoever to make an incorrect record. To a question put to Ved Parkash as to whether he was making the statement without any pressure, he answered in affirmative. It is quite apparent to us that all the witness, including Ved Parkash, PW-3 have chosen to play safe. They would not support the cause of an unknown woman, even the dead body of whom was not claimed by any one. They would rather give precedence to their co-villagers for whatever reasons that might have prevailed with them. In the circumstances, as mentioned above, the prosecution version to the extent of the statement made by Ved Parkash before the Magistrate has to be believed. Same, however, may not go beyond the appellants having been seen with the victim a day previous to when her dead body was dug out from the cotton fields. That circumstance, however, would clearly manifest that the appellants were last seen with the victim as thereafter, she was only found to be dead. The occurrence in the present case had taken place in the evening and night of 23rd October, 2001. Dr. P.K. Paliwal, PW-6, conducted the post-mortem examination on the dead body of an unidentified woman on 26th October, 2001. He stated that duration between the death and post-mortem was about three days. The Doctor was not cross-examined on this issue and, therefore, it stands proved that the death of an unknown girl was at about the same time when she was seen with the appellants. Coupled with the circumstance aforesaid, the prosecution has been able to prove that the victim was certainly repeatedly raped. Injury No. 5 on the dead body of the girl has been described as follows :—

“There were multiple abrasions over the inner aspect of vaginal epithelium and it was inflamed having whitish deposits in the posterior fornix. Vaginal smear and vaginal swabs were taken.”

(16) The report of Forensic Science Laboratory, even though, had shown no human semen having been detected in the vaginal swab but it clearly shows that human semen was found on the slides, which were prepared from vaginal smear. Photograph of the dead body, Ex. PW/4, shows dark colouration of the portion of the private parts, which indicates that the girl was subjected to repeated sexual

assaults. Multiple abrasions to the extent described by the Doctor would not have been found on her dead body otherwise. Medical evidence referred to apart, counsel for the appellants has not even urged that it is not a case of repeated sexual assaults on the victim.

(17) Relevant findings of Forensic Science Laboratory are as under :—

“5. Traces of blood too small for serological tests were detected on exhibit-5 (Pyjama).

6. Human semen was detected on exhibit-7 (underwear), exhibit-8 (underwear), exhibit-9 (underwear) and exhibit-12a (slides). However, semen could not be detected on exhibit-6 (kachha) and exhibit-12b (swabs).”

(18) The report shows blood, though in insufficient quantity for serological test, on the pyajama, which was taken into possession from appellant Krishan by SI Balbir Singh on 25th October, 2001. Appellant Krishan has not come up with any explanation as to how the blood was found on his Pyajama, even though, he denied the very factum of recovery of the same, which was otherwise proved. Findings of the FSL are also that human semen were found on the underwears of appellants Anil, Charat Singh *alias* Sunda and Krishan, respectively. They too have not given any reason but for that the same could be for many reasons and that the apparels of these appellants were taken into possession and were sent for examination, stands otherwise proved. The report further shows that human semen was detected on Ex. 12a, which was prepared by the Doctor, who conducted the post-mortem examination on the dead body of the victim. That the appellant Vinod had absconded for a long time is yet another circumstance against the said accused.

(19) The circumstances proved against all the appellants are, thus, that the victim was last seen alive in their presence. The appellants other than Raja are proved to have indulged in sexual intercourse not in distant past when an unknown girl became victim of gang rape. It has further been proved that appellant Vinod absconded immediately after the occurrence and was arrested after 8 months on 14th June, 2002.

(20) The above said circumstances, in our view, are sufficient to sustain the conviction against the appellants, noted above, under Section 376(i)(g) of the Indian Penal Code. Death of the hapless lady

immediately after rape clearly appears to be actuated due to the motive of the appellants to screen the crime. The added circumstance in the present case is, thus, motive as well, even though only for murder. We may observe that in the facts and circumstances of this case, the only circumstance of motive insofar as, murder of lady is concerned, is enough to convict the appellants.

(21) Insofar as, however, appellant Raja is concerned, the only evidence against him is of last seen. No doubt, learned trial Judge relied upon another circumstance against him with regard to recovery of Kassi, with which the earth was dug to bury the girl but that circumstance does not appear to inspire much confidence. Tek Chand, Inspector, in whose presence Kassi was recovered on the disclosure statement made by appellant Raja, died and was not examined. Learned trial Court held recovery memo of Kassi prepared by him admissible under Section 32(2) of the Evidence Act. That may be correct but in the present case, Constable Krishan was also a witness of recovery of Kassi and even though he was available, he was not examined as unnecessary. Since Tek Chand, Inspector, has not been examined, appellant Raja was deprived of cross-examining him. In the circumstances, if perhaps, Constable Krishan would have been produced and supported the prosecution version with regard to recovery of Kassi, things would have been different but his non-examination and simply saying that he was unnecessary witness, creates doubts insofar as, complicity of appellant Raja in the commission of crime is concerned. He is, thus, given benefit of doubt and is acquitted from the charges framed against him as, surely, on the basis of last seen alone, he cannot be convicted and we might repeat here that the statement with regard to last seen, that we are believing, is only with regard to the factum of all the accused having been seen with the unfortunate young girl as, while making statement before the Magistrate, Ved Parkash, PW-3, did not state that he had seen all the appellants committing rape upon her. That circumstance, as mentioned above, has been taken only as the victim having been last seen with the appellants and it would not be safe to convict a person only on the basis of last seen.

(22) In view of the discussion made above, whereas, we find merit in Crl. A. No. 104-DB of 2004 insofar as, it pertains to Raja appellant and, thus, acquit him of the charges framed against him, we dismiss the said appeal filed on behalf of other appellants.

Crl. Appeal No. 143-DB of 2004 filed by Anil is dismissed, being devoid of any merit. We uphold the order of conviction and sentence recorded by learned Additional Sessions Judge (Fast Track Court) Hisar for all the appellants but for Raja.

(23) Learned trial Judge, while recording the order of sentence on two counts, has not mentioned that sentences against the appellants would run concurrently, which surely, means that there shall be two sentences under both the counts, separately. The crime committed by the appellants is diabolical and heinous. They have treated a young girl of 18/19 years like a wolf treats its prey, sucking the blood, enjoying the flesh and throwing the carcass. They have not only repeatedly one by one raped her but then, with a view to screen the crime, burnt her with clothes and when found that it may not be possible to burn the whole body with the pieces of clothes, buried her. We affirm the order of sentence on both the counts separately. Appellant Vinod, it appears from the judgment when the same was being pronounced, hurled a shoe on the Presiding Officer. We only state this fact without any further comments.

(24) We would not like to part with the judgment without commenting upon the role of Ved Parkash, PW-3. He appears to have resiled from the statement made by him even before the Magistrate under Section 164 of Code of Criminal Procedure and to that extent, we have already held that it is the statement of the Magistrate, which has to be believed and not the one made by him that his statement was recorded before the Magistrate under the pressure of the police. He has violated the oath under which, he deposed with impunity, least realising that in the process, he would have a direct hand in screening a heinous crime. He does not appear to have any morals. Such are the persons, who are instrumental in losing faith of the people in the administration of justice. We are, *prima facie*, of the view that he deserves to be prosecuted for making a false statement before the Court, for whatever offences under Indian Penal Code that may be attracted in the facts and circumstances of the present case.

(25) Let notice be issued to Ved Parkash to show cause as to why proceedings for perjury be not initiated against him, for 14th March, 2005.

R.N.R.