

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI

OA 08 OF 2014

P R E S E N T

HON'BLE MR. JUSTICE N.K. AGARWAL, MEMBER (J)
HON'BLE LT GEN GAUTAM MOORTHY (Retd), MEMBER (A)

No. 15398165X Ex- Sigman Sanjay Kumar
S/o- Shri Ram Yadav
R/o Vill- Dubkiya
PS-Piyari
Dist-Varanasi
Uttar Pradesh

..... **Applicant**

Legal practitioner for Appellant

Mr. Jotirmoy Roy
Mr. Sourabh Borthakur
Ms. Sumi Kakati
Mr. Chinmoy Chakraborty

- Versus -

1. Union of India,
represented by the Secretary to the Govt of India,
Ministry of Home Affairs,
North Block, New Delhi
2. Director General
Corps Engineering Signal Regiment,
Dimapur, Nagaland
3. The Commanding Officer,
3 Corps Engineering Signal Regiment,
Dimapur, Nagaland

..... **Respondents**

Legal practitioner for the
Respondents

Mr. S. Bhattacharjee
CGSC

Date of Hearing : **29.09.2015**

Date of Judgment & Order : **01.10.2015**

JUDGMENT & ORDER

(NK Agarwal, J)

1. The instant appeal has been preferred for setting aside/quashing the impugned proceeding of the General Court Martial of the appellant and sentence of imprisonment for life and dismissal from service passed by the General Court Martial on 26.11.2011 with a further prayer for reinstatement in service with all consequences.

2. The applicant was enrolled in the Corps of Signal on 01.05.1996. The applicant was performing duties of runner of Adjutant 3 Corps Operating Signal Regiment. In the month of November, 2009, he was posted at Dimapur. The applicant was declared to be on active service vide Section 9 of the Army Act and SRO 26 dated 31.01.2006.

3. The accused was married to Smt. Reenu Yadav on 13.06.1997. Out of their wedlock, two children viz Miss Puja Yadav was born on 06.11.99 at Military Hospital Allahabad and Master Premjeet Yadav was born on 01.08.2002 at Military Hospital, Allahabad.

4. According to the prosecution story, the accused was unwilling to get his wife and children to the place of posting. However, on the written request of his wife Reenu Yadav, the accused was allotted House No. 143/8 in Umed Vihar on 15.07.2009. Consequently his family joined him in station and children were admitted in the school. On 03.11.2009, the accused informed his wife that a family welfare meet was to take place at 1500 hrs and she was required to attend. At 1500 hrs Mrs. Reenu Yadav left for family welfare meeting and the accused stayed with his children at the house. At 1500 hrs, Lance Naik JK Choudhary (PW 2) came to his quarter and requested that his child wanted to play with the children of the accused. Subsequently the children were sent by the accused and later on, the accused went to the house of Lance Naik JK Choudhary and made phone call on Army Phone to guard Commander that he has returned from out pass and a time of 1630 hrs he entered in the guard register. The accused was then requested by Lance Naik JK Choudhary to take

his railway reservation tickets for cancellation to passenger reservation system (PRS). However, the accused left the house of Lance Naik JK Choudhary along with his children without taking the said railway tickets. At 1800 hrs, Mrs Reenu Yadav returned from Family Welfare Meet. At 1815 hrs, Lance Naik JK Choudhary went to the house of the accused and rang doorbell to handover tickets to accused. The accused partially opened the door, took tickets and closed the door. At that time, the accused was holding cigarette in one hand and also the Television in the house of the accused was at high volume. At 1940 hrs, Lance Naik JK Choudhary went to the house of the accused to inquire about railway tickets. On ringing doorbell, there was no response from inside and the television was still at high volume. At that time, the wire mesh door was latched from outside and inner door was open. Later Lance Naik JK Choudhary along with Lance Naik Sapkale (PW 8), Naik N. Sikdar (PW 9) and Havildar TP Naidu (PW 3) opened the latched wire mesh door and on entering the house found Mrs Reenu Yadav lying on floor near bathroom with rope around her neck. On being informed at 2015 hrs, Lt. Colonel Samresh Malhotra (PW 5) along with others arrived at the quarter of the accused. The accused was not there and was found by Regimental Police Non Commissioned Officer (RP NCO) near Other Rank Mess where he was washing his plate after having food. On being brought before Lt Colonel Samresh Malhotra, the accused confessed that he had strangulated his wife and children with rope. The accused disclosed that he had kept bodies of the two children in boxes kept inside the house. The accused also disclosed that the body of his son is lying in the trunk kept next to bathroom, whereas body of daughter is in the trunk kept next to the almirah. On checking, the bodies were found at the same place as disclosed by the accused. FIR was lodged with Sub Urban police Station, Dimapur, Nagaland by Lt Colonel Samresh Malhotra Second-in Command 3 Corps Operating Signal Regiment. At the instance of the accused, bodies were recovered by police from his house. On 04.11.2009 at 1.30 p.m., Post Mortem Examination was conducted. The Medical Officer opined as following-

- (i) The following injuries were found on the body of Smt Reenu Yadav during PM Examination –
 - (a) Two ligature marks were found around the neck
 - (b) Sub cutaneous tissue are found congested and bruised
 - (c) Hyoid bone was found fractured

- (d) Neck muscles around the ligature marks were found congested
- (e) Lungs were found congested. Heart chambers were found empty
- (f) Liver, spleen, kidneys were found slightly congested.

Time since her death was between 12 to 24 hrs at the time of PM examination.

(ii) The following injuries were found on the body of Miss Pooja Yadav during PM Examination _

- (a) Two ligature marks were found around the neck.
- (b) Sub cutaneous tissues are found congested and bruised.
- (c) Hyoid bone was found fractured.
- (d) Neck muscles around the ligature marks were found congested.
- (e) Lungs were found congested. Heart chambers were found empty.
- (f) Liver, spleen, kidneys were found slightly congested.

Time since her death was between 12 to 24 hrs at the time of PM examination.

(iii) The following injuries were found on the body of Master Premjit Yadav during PM examination -

- (a) Two ligature marks were found around the neck.
- (b) Sub cutaneous tissues are found congested and bruised.
- (c) Hyoid bone was found fractured.
- (d) Neck muscles around the ligature marks was found congested.
- (e) Lungs were found congested. Heart chambers were found empty.
- (f) Liver, spleen, kidneys were found slightly congested.

The Doctor opined that the death was due to asphyxia caused in the bodies of Smt Reenu Yadav, Miss Pooja Yadav and Master Premjit Yadav due to strangulation by ligature. The fracture of Hyoid bone occurred in the bodies of Smti Reenu Yadav, Miss Pooja Yadav and Master Premjit Yadav due to excess pressure applied on their necks.

The death of all three victims was homicidal in nature

5 The accused was charged with the following charges :-

1st Charge, Army Act Section 69

Committing a civil offence, that is to say, murder, contrary to Section 302 of the IPC- in that he, at field, on active service, on 03 Nov 2009, by intentionally causing the death of his wife Smti Reenu Yadav, a civilian, committed murder.

2nd Charge, Army Act Section 69

Committing a civil offence, that is to say, murder, contrary to Section 302 of the IPC- in that he, at field, on active service, on 03 Nov 2009, by intentionally causing the death of his son Master Premjit Yadav, a civilian, committed murder.

3rd Charge, Army Act Section 69

Committing a civil offence, that is to say, murder, contrary to Section 302 of the IPC- in that he, at field, on active service, on 03 Nov 2009, by intentionally causing the death of his daughter Miss Puja Yadav, a civilian, committed murder.

6. The General Court Martial was conducted. Altogether 27 witnesses were examined by the prosecution whereas the accused examined 2 witnesses as DW 1 & DW 2. One witness was also examined as Court witness.

7. The GCM after completion of the trial found the appellant guilty of the charged vide order dated 06.11.2011 and sentenced him to suffer imprisonment for life and to be dismissed from service.

8. Heard learned counsel for the parties and perused the GCM records.

9. According to the counsel for the appellant, the evidence on record does not warrant conviction of the appellant U/s 302 of IPC; has failed to note the serious contradiction of the PWs; committed serious error of law in brushing aside the serious discrepancies in the evidence of the PWs. It was further argued that no forensic test was conducted in respect of the rope, no finger prints on the rope were taken and extra-judicial confession made to the PW 5 Lt Col Samresh Molhotra is liable to be rejected in view of Sec. 24 of the Evidence Act. The GCM has also ignored the evidence adduced by DW 2 and thus, the conviction of the accused is liable to be set aside and quashed.

10. On the other hand, by taking us to the evidence adduced by the witnesses, in particular, PW 5, learned counsel for the respondents supported the conviction and sentence passed by the GCM and prays for dismissal of the appeal.

11. The question, therefore, arises for consideration of this Bench is whether the findings recorded by the GCM is based on proper appreciation of the evidence on record and sentence awarded is legally sustainable.

12. Undisputedly, there is no procedural or legal lapse in conducting the GCM proceeding. The mode and manner of murders has also not been disputed. The matter is very serious as it involves murder of a lady as well as 2 minor children; that too, by strangulating out of which the bodies of 2 children were kept in 2 boxes. The only point raised by the appellant's counsel is that the prosecution has failed to prove the involvement of the appellant in the said offence in as much as according to him the extra-judicial confession is not trustworthy which has been taken by inducement. Also the statement of the witnesses examined by the prosecution suffers from several discrepancies and contradictions which vitiate the trial and the appellant has been falsely implicated.

13. In order to appreciate the rival contentions advanced by the both the counsel for the parties it would be appropriate to deal with the statements of PW 2 and PW 5 in detail. The relevant portion of the statement of LNK J.K.Choudhury PW 2 and Lt. Col Samresh Malhotra, PW 5 are quoted below:

Statement of LNK J.K.Choudhury PW 2

"The accused was known to me as both of us were posted in 3 Corps Operating Signal Regiment. I was staying in Quarter No. 143/5, Umed Vihar whereas the accused was staying in Quarter No. 143/8 with family. The accused had two children, daughter Pooja Yadav who was 10 years old and son Premjit Yadav who was 07 years old. I knew the wife of the accused. I have one son. In Block No. 143, there were 9 quarters from 143/1 to 143/9. There was an Army telephone No. 2153 installed in my house for public use. Prior to 03 Nov 09, the accused was performing the duties of Adjutant runner. A family welfare meeting was to take place on 03 Nov 09. I had seen my wife going along with 3 other ladies of the block No. 143 to include wife of Signalmn Kasar RK, wife of LNK Barude and the wife of the accused for family welfare meeting. The wife of accused was wearing a green Saree and had slippers in the feet. After

my wife had left, since my son was crying to play with the children of the accused, therefore I went to the house of the accused to bring his children to my house. I rang the door bell and saw the accused in Physical Training (PT) dress inside his house. I told the accused to send his children to play with my son, as my son was crying. Then I left the house of the accused and reached my house. Later the children of the accused also reached my house to play with my son. After approximately 10 minutes of arrival of children of the accused at my house, the accused also came to my house and told me that he would like to inform the quarter guard of his arrival from out pass. The accused then made a call to quarter guard from the public telephone kept in my house. The accused had made phone call at approximately 1610 hrs. The accused had not consumed alcohol when he had come to my house and was wearing the same PT dress. I told the accused that I had to get my railway reservation tickets cancelled by giving them to passenger reservation system (PRS) Non Commission Officer. The accused agreed to do it. However, by the time I was searching for the railway tickets, I saw the accused taking his children and leaving my house. At approximately 1800 hrs, my wife arrived at my house. After approx 15 minutes of arrival of my wife at my house, I went to the house of the accused to give my railway reservation ticket to him for cancellation. On reaching the house of the accused, I rang doorbell twice. After second bell, the accused half opened inner wooden door, which opened inwards. Then the accused unlatched the wire mesh door from the latch at the top of the said wire mesh door, opened it outwards and took the tickets from me. At that time also the accused was in PT dress, the television in the house was on high volume and the accused was holding a cigarette in the same hand from which he took tickets from me. After taking the tickets from me, the accused told me that he is watching some serials on TV and asked me to leave. So I came back to my house. At 1930 hrs I was expecting the accused to come and tell me the status of cancellation of my railway reservation tickets, waited for approx 10 minutes and at approx 1940 hrs I left my house and reached the house of the accused for inquiring about the railway tickets. When I reached the house of accused, his television was at high volume, the fans inside the house were switched on, the inner wooden door was open, whereas the outer wire mesh door was latched from outside. I rang the doorbell thrice and

also called up the name of the accused. On not finding anyone there, I did not go back to my house but went downstairs and looked for the accused in shopping complex. I did not find him there. Then I went to the block No. 144 located behind block No. 143 and met LNK Sapkale PP (PW 8) and Naik N. Sikdar (PW 9) standing on the road in front of the said block No. 144. I asked both of them if they had seen the accused, however, they denied having seen the accused. Then I called Havildar TP Naidu (PW 3) and asked him about whereabouts of the accused and he asked me as to why I was inquiring about the accused, to which I replied that I had given railway tickets to the accused for cancellation and if it was not done today then I would suffer a loss. Not finding the accused, I took Hav TP Naidu along with LNK Sapkale and Naik N Sikdar to look for the accused. On reaching block 143, LNK SK Singh was standing outside his house; therefore Hav TP Naidu called him also to accompany us. **Then all of us went to the house of the accused, rang the door bell and called out his name. There was no response from inside. Then I opened the latch of the out wire mesh door.** I then went forward and turned towards the entrance I saw Mrs Reenu Yadav lying on the floor of bathroom. However, at this point I had not seen the face of the person so lying. I then moved ahead and saw Mrs Reenu Yadav lying on the floor in front of the toilet. The head of Mrs Reenu Yadav was towards the toilet and the feet towards the opposite wall. Mrs Reenu Yadav was wearing the same green saree, in which I had seen her while she was going for family welfare meet. While we were standing near the body of Mrs Reenu Yadav, I saw two black coloured iron boxes of approx 1.5 ft in height, 3.5-4 ft in length and approx 2 ft wide kept in the bed room. One box was kept close to almirah and another one was kept next to the men's dressing table fixed to the wall. On reaching my house, Hav TP Naidu called up Subedar Major from public phone and told that Mrs Reenu Yadav was lying on the floor inside the house of the accused with a rope tied around her neck. He also told that the accused was not inside his house. Lt Col Samresh Malhotra (PW 5), Subedar Major BP Tiwari and Subedar Rohitesh saw the body of Mrs Reenu Yadav and at that time I was also with them. The accused and his children were still not present inside the house. Thereafter, Lt Col Samresh Malhotra along with others came to my residence from where he made a telephone call. I was also present there but I do not recall the telephonic conversation. Lt Col

Samresh Malhotra then called regimental police section from public telephone and ordered them to look for the accused. After making the phone call, everyone came down and stood on the road in front of block No. 143. At approx 2115 hrs Regimental police non Commission Officer, Company Hav Major Bijendra Pal along with two more personnel of Regimental police brought the accused to the location, where we were standing. **Lt. Col Samresh Malhotra then asked the accused as to what had happened to which the accused did not reply. When Lt Col Malhotra asked the accused about the whereabouts of his children the accused told "Mujhe quarter guard me daal do phir main poora bataoonga."** On being repeatedly asked by the Lt Col Malhotra as to the whereabouts of children, the accused replied **"Bacche sahi salamat hain sahib, pehle quarter guard main dal do phir bataunga"**. On repeating the question again, the accused said **"Biwi ko maar diya sahab aur baccho ko maar ke box ke andar band kar rakha hoon."** There was no threat, promise or inducement given by Lt. Col Samresh Malhotra or anyone else standing there to the accused while the accused said so. At approx 2300 hrs, Major Koutsu who was performing the duties of Adjutant came to the place where Lt Col Samresh Malhotra was standing Adjutant was also accompanied by civil police. When the accused had informed Lt Col Malhotra regarding killing his wife and children, at that time I did not see any Corps of Military police personnel present there. Later on, I had seen Corps of Military police personnel, however, I do not know the exact time of their arrival.

Statement of Lt. Col Samresh Malhotra, PW 5

13.1. Going to the statement of PW 5 Lt Col Samresh Malhotra, it would be very clear that the appellant had admitted the murder of his wife as well as his two children before him voluntarily, categorically and in unambiguous manner. The substance of evidence of PW 5 are as quoted below -

As per his orders family members with small children were to stay back home during the Family Welfare Centre Meet. Accused as on 03 Nov 2009 was performing the duties of Adjutant's Runner. Family quarter was allotted for the accused on specific request. The witness used to stay in 3 COSR Officer Mess Complex. He attended unit, Mandir Parade 0630 pm to 0745 pm. After Mandir

parade he walked from Mandir to his room along with his wife and daughter. When he reached his room, in a outer room found a handkerchief, he found identity card, mobile set, pouch with CSD card and PAN Card. The room was bolted but the stuff was lying in his drawing room.

He went outside his room, he called beat NCO Naik (Now Hav) PKS Dhariyal, he asked him how this things came in his room. The NCO who told him that accused had come to his residence and was waiting outside, at residence at around 7 pm. After him (accused) nobody had come around that locality. The area was adequately lit and the room was inside officer mess complex. The package was not in his room when he left for his office as his wife and daughter were at home. This happened when he and his family were at Mandir parade. After asking from sentry he came home, he called up the company commander Major CS Jayaram and told him to meet him along with the accused in his office. At around 8 pm, he got a call from Subedar Major BP Tiwari that he has received a call from family quarter that in quarter No. 143/8 wife of accused is lying in unconscious stage. He moved along with LNK S.K Choudhury and Subedar Rohitesh who guided him and took him to the location at Umed Vihar. His vehicle had taken around 5 to 10 minutes to reach Umed Vihar. Distance from Signal centre was approx three to four Kms. Time to walk 30 minutes. When he reached Umed Vihar around 2015 hrs he had carried the stuff which was thrown in his house. In front of the building, there was a crowd of 20 to 25 people and at some distance from the spot some more people were standing. He could recognize the persons in front of the building as they were from his unit. He got down in front of 143 block and went near the block. He met LNK JK Choudhury and Naik TP Naidu who then showed him the house of accused. The quarter has two doors, one is wire mesh and other is wooden door was found seen opened. He could hear the noise of TV switched on loud noise and fan was switched at full speed. When he saw that the door was bolted from outside and lying inside was an unconscious person, quarter owner was missing he realised that there was something wrong. LNK JK Choudhury (PW 2) opened the door, then he went inside along with other persons. The TV was on the left hand side in the first room. When he went to the side bedroom, there was light in the bedroom and fan was not working, he was guided to the location by PW 2. When he entered the passageway he could see the folded legs of the lady, then he went ahead to see her, he saw the body 1 to 1 ½ ft. away. By this time Sub Major BP Tiwari and Sub Kuldeep Singh had reached the outside room along with Naik TP Naidu (PW 3). The first sight he could see that

neck was strangulated by a jute rope, brown in colour . On going closely he observed that the rope had been tightly tied around the neck with two knots, the skin was entangled in the rope with two knots on right side. It was a strong rope used. Some sort of blood from mouth and nose some short of blood was seen on the blouse. The legs of the lady were folded backwards which was not a normal scenario. The strength of strangulation was so much that the face of the lady was swollen. The blood clots were fresh. He could smell foul. He did not observe any blood at any other place in the bed room. There were two boxes, one near the entrance of bathroom and one near the almirah. Both the boxes were approx 4 ft in length by 2 ft in width and 3 ft in height. Then he told Subedar Major to look and while he went downstairs to make a call and asked them to meet him at downstairs. Then he saw the body, it was a motionless and not showing any sign of life. He called up the Duty Medical officer immediately for medical help at 0830 pm. He called up Col A, HQ 3 Corps & Adm Commandant.

Maj CS Jayaram had reached there. He asked to search for accused in the whole unit. He also called Adjutant Major K Kouutsu and Lt Col (Then Maj) AD Sharma to reach Umed Vihar. He called up Commanding Officer, who was in exercise area apprising about the incident. Dr. Major T Mahato came at 8.45 pm. He went upstairs along with Maj T Mahato and Lt Col AD Sharma and Subedar Maj BP Tiwari who inspected the body. On observation, he declared her dead. Around 0845 pm, he was informed by Sub Major BP Tiwari that accused was found at HQ OR Mess at 0915 pm PR NCO brought accused to Umed Vihar along with 02 x other rank persons. When he told him that his wife was dead and children were not found anywhere, there was no response. Accused appeared to be in total control with sound health. When he asked him in presence of Major T Mahato, Maj Jayaram, Lt Col AD Sharam and Sub Major BP Tiwari that his wife was dead and what had happened, for that he replied that "MAINE USE MAAR DIYA HAI. MAIN USSE TAANG HAD CHUKA THA AUR IS CHEEZE KA MUJHE KOI AFSOSE NAHI HAI". No civil police was present at that time. CMP had come but they were controlling the crowd on the other side. Accused voluntarily confessed without any inducement, threat or promise. CMP did not have any interaction with accused. Major concern was where were the children and what was their condition. He asked him the whereabouts of the children to which he replied "APP MUJHE QUARTER GUARD MAIN BAND KARO PHIR MAIN BATAUNGA". Repeatedly the accused was being asked the whereabouts of the children, to which he said "BACHHE SAHI SALAMAT HAI".

He was questioned normally and no force was used on him. On repeatedly asking the same question he told that " BACHHE KO MAR DIYA HAI OUR BOX MAI BAND HAI". Hearing this he along with Lt Col AD Sharma, Major CS Jayaram, Major T Mahato, Subedar Major BP Tiwari went upstairs Maj AD Sharma opened the first box near the bathroom, took out some clothes on top and could not find the body of boy inside it. The second box was opened by Maj AD Sharma in which the body of the girl was also not found.

They all came down and again asked the accused. There accused clarified and said " JO BAKSA BATHROOM KE PASS RAKHA HAI USME LARKE KI BODY HAI." Then again they went into quarter LT Col AD Sharma opened first box and boy was found followed by second box and girl was found inside the box. There were total three trunks in the room. Dr. Maj T Mahato inspected the children and pronounced them dead. The face of the body was swollen and the head was towards the bathroom and the leg towards almirah. The ropes used for strangulate all the three bodies were of different colour. Both bodies were examined DMO, Major T Mahato and he pronounced they were dead. The accused had no remorse for what he has done. After coming down he had given a call to his commanding officer to give him the exact picture of the incident. He asked the accused, 'BACHHE TO NIRDOSH THE UNKO KIYON MARA? He replied " AAPNI WIFE KO MARNE KE BAAD, MAIN APNE IN-LAWS KE SAAT KOI RISHTA NAHI RAKHNA CHAHTA THA, ISLIYE MAINE APNE BACCHO KO PAHLE HIS MARR DIYA."

On being asked by him as to why he threw the identity card in his room. He replied that he had come to his room to tell him everything but he was not available so he (accused) threw the stuff in his room. Till the time, police had come, he was passing the information to senior officers. Around 2300 pm, Major K Koutsu, Subedar Kuldeep Singh brought police party, lady police officer Sub Inspector Mhapeni Lotha and Sub Inspector AK Akhum with 02 lady constables arrived at block No. 143, Umed Vihar, Lt Col Malhotra told them to carry out the preliminary investigation and took them to the place of incident. Firstly, he showed them the body of the lady and then the children. Police carried out their investigation, Major K. Koutsu clicked some photographs and later police come down where the accused sitting there. Police had recorded the statement given by accused. Then the police said that they wanted to take the bodies for postmortem.

14. PW 5 Lt.Col Samresh Malhotra is the person who had filed the written complaint and also pursuant to which FIR was registered. The statement of Lt.Col Samresh Malhotra is in conformity with the contents of FIR (Exhibit 24) which inspires confidence.

15. The testimony of PW 2 and PW 5 clearly reveals that the appellant has voluntarily confessed and admitted committing murder of his wife and two kids and there is no inducement so as to discard their testimony and disbelieve confession.

16. In this connection the position of law is well settled

Evidentiary value of extra judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extra judicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case.

(Please See Para 12 2010)12 SCC 142 (Sukada Vs State of Madhya Pradesh(Now Chattisgarh))

Extra judicial confession to neighbor of victims and recovery of dao as basis of conviction- conviction confirmed-Appellant accused sentenced to life imprisonment by courts below.

(Please See (2011) 14 SCC 760 (Chandra Bonia Vs.State of Assam))

17. PW 2 (LNK J.K.Choudhury), a neighbor of the appellant has seen the appellant at about 7 PM on 3.11.2009 i.e. on the day of occurrence in a suspicious condition in his house. The same remained unexplained.

In cases where the accused was last seen with the deceased victim (last seen together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred.

(Please see para 32 of (2013) 14 SCC 434 (Rohtash Kumar VS.State of Haryana)

18. The evidence of PW 2 and PW 5 coupled with the corroborating evidence and other witnesses who were present at the time of occurrence, is sufficient to prove the appellant guilty beyond all reasonable doubts.

19. Moreover, the appellant has not cross-examined the prosecution witnesses putting the alleged story in their mouths, nor has proved successfully the alibi as deposed in his statement as DW-1. Merely, the finger prints on rope were not examined. Therefore, it is not correct to say that the punishment has been awarded without appreciating the evidence available on records in proper perspective or the finding of GCM suffers from illegality in any manner.

20. There is sufficient materials on record insofar as the appellant is concerned and it can be said that the circumstantial evidence is sufficient to get the appellant convicted and for this the following principle of law are relevant :

Criminal trial- confession-extra judicial confession/hearsay – unshaken extra judicial confessions corroborated by circumstantial evidence regarding murder when may be relied on.

Circumstantial evidence –murder or suicide –conviction of murder confirmed- All circumstantial taken together held clearly form such a continuous and unbroken chain as to leave no manner of doubt that deceased was shot head by appellants- voluntary nature of delivery of pistol of victim to appellants is irrelevant – cleaning of pistol to remove fingerprints is a circumstances which is a strong pointer to guilt of the appellants.

(Please See (2010) 8 SCC 784 (Santokh Singh and another Vs. State of Punjab)

When the prosecution relies on circumstantial evidence only motive is relative fact and must be taken into consideration under section 8 of the Evidence Act but where cogent and other circumstances would be made, reasonable doubt that it is the accused and the accused alone who has committed offence and this is the one case the Court cannot hold that in the absence of motive, accused cannot be held guilty

Conviction can be based solely on circumstantial evidence- prosecution case must stand on its own legs and cannot derive any strength from weakness of defence put up by accused. However, a false defence may be called into aid to lend assurance to Court where various links in chain of circumstances evidence are complete in themselves.

Evidence of police officials cannot be discarded merely on ground that they belong to police force and are either interested in investigation or in the prosecution. However, as far as possible, corroboration of the evidence on materials particular should be sought. A witness is normally considered to be independent unless he springs from source which are likely to be tainted and this usually means that said witness has cause to bear such enmity against accused so as to implicate him falsely. There can be no prohibition to the effect that a policeman cannot be a witness or that this deposition cannot be relied upon if it inspires confidence.

(Please See(2014) 12 SCC 419 (Madhu Alian Madhuranatha and another Vs. State of Karnataka)

21. Whatever the appellant has stated and the DW-2 examined by him has stated appears to us afterthought inasmuch as the above story was not put by the appellant in the mouth of the prosecution witnesses and does not inspire confidence.

22. The appellant has also failed to prove that at the time of occurrence he was not present at the place of occurrence. In this connection the following principles of law enunciated by the Hon'ble Supreme Court in the case of **Shaikh Sattar Vs. State of Maharashtra reported in (2010)8 SCC 430.**

Plea of alibi had to be proved with absolute certainty so as to completely exclude possibility of presence of appellant at place of occurrence at the relevant time-criminal trial-defence- burden of proof – balance of probabilities or beyond reasonable doubt.

23. It is the settled law that minor discrepancies, omissions and contradictions which do not affect the core of prosecution case be ignored. Further, if offence has been proved beyond reasonable doubt by the prosecution, the other technicalities raised (Forensic expert report) is of no consequence and would not render the valid sentence as invalid.

The justice is the virtue by which the society/court/tribunal gives a man his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering justice with mercy, the court must be very conscious, that it has to do justice in exact conformity with some obligatory law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law.

(please see (2013) Vol 4 SCC 186)

24. After going through the records of the GCM, in our opinion, the prosecution has ably proved that and the appellant alone had committed the

alleged offence and therefore, the impugned sentence passed by the GCM does not suffer from any factual or legal infirmities and also stand to the reason.

25. Thus the question framed has been answered accordingly in favour of the prosecution.

26. In the result, the appeal has to fail. It is accordingly dismissed.

27. No costs.

28. However, as requested by the appellant's counsel, the respondent authorities may consider for sending the appellant to the civil jail situated in Uttar Pradesh where the appellant's father resides.

MEMBER (A)

MEMBER (J)

