

Khushwinder Singh vs The State Of Punjab on 5 March, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2639, AIR ONLINE 2019 SC 333, (2019) 107 ALLCRIC 978, (2019) 196 ALLINDCAS 24, (2019) 1 CRIMES 220, (2019) 2 ALLCRIR 1159, (2019) 2 MAD LJ(CRI) 611, (2019) 2 RECCRIR 304, 2019 (2) SCC (CRI) 283, 2019 (4) KCCR SN 291 (SC), (2019) 4 SCALE 187, 2019 (4) SCC 415, (2019) 74 OCR 411, (2020) 1 ALD(CRL) 233, AIR 2019 SC(CRI) 1581

Author: M. R. Shah

Bench: M. R. Shah, S. Abdul Nazeer, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1433-1434 OF 2014

Khushwinder Singh

.. Appellant

Versus

State of Punjab

.. Respondent

JUDGMENT

M. R. Shah, J.

1. Being aggrieved and dissatisfied by the impugned judgment and order dated 20.09.2013 passed by the High Court of Punjab and Haryana at Chandigarh in Murder Reference No. 3 of 2013 with Criminal Appeal No. D-385-DB of 2013, by which the High Court has affirmed the death penalty imposed by the learned Sessions Court, by affirming the judgment and order passed by the learned Sessions Court, Fatehgarh Sahib dated 15.03.2013, consequently convicting the appellant-accused

for the offence punishable under Section 302 IPC, the original accused has preferred the present appeals.

2. The case of the prosecution as per the statement of PW-5 – Jasmeen Kaur – original Complainant was that she was married with Rupinder Singh S/o Jeet Singh of village Bhojewal in the year 2005. Two children, the elder son namely Jaskirat Singh, aged about seven years and a daughter namely Prabhsimran Kaur aged about six years were born from the said marriage. Since the atmosphere in the family of the in-laws of the complainant was not good, complainant Jasmeen Kaur along with her husband and children had been living at her natal place at village Mukandpur for the last about six years prior to the occurrence. Gurinder Singh @ Babbu, brother of Jasmeen Kaur used to consume liquor in excess. He was dissuaded by the family from doing so and was also made to understand in this regard. Thereafter, Manjit Kaur, wife of the accused Khushwinder Singh, R/o village Suhavi, Police Station Khamanon, who is the daughter of maternal uncle of the complainant, came to see her along with the accused. The latter informed the family of the complainant that he knew one ‘Baba’ (holy man) who lives in their area, who can make person get rid of their habit of drinking permanently. The accused further informed that he also knew one travel agent, who could send Rupinder Singh, husband of the complainant, abroad. Thereafter, the accused along starting visiting the house of the complainant. About three months prior to the incident, the accused came to the house of the complainant and informed that he had made arrangements with an agent for sending Rupinder Singh to Canada. He demanded Rs.2,00,000/- and the passport of Rupinder Singh. He also informed that the remaining amount of Rs.14,00,000/- was to be paid on getting visa. Thereupon, the family of the complainant pledged their gold ornaments with the goldsmith and borrowed Rs.2,00,000/- which, along with the passport of Rupinder Singh, were handed over to the accused. The accused further informed the complainant’s family that the job would be done within two months. The accused further informed that he had also got in touch with ‘Baba’ (holy man) to enable Gurinder Singh to give up his habit of drinking and, for that purpose, the complainant’s family would have to offer “Dhala” (offering certain pulses, rice etc. in running water). 2.1 On this, in the evening of 25.06.2012 at about 06.00 p.m., the accused came to village Mukandpur to the house of the complainant in his car and informed the family of the complainant that “Dhala” was to be offered on the night at about 02.30 a.m. and, for this purpose, the accused made Paramjit Kaur – mother, Gurinder Singh @ Babbu – brother and Rupinder Singh – husband of complainant respectively to accompany him. Gurinder Singh, father of the complainant, also accompanied them as he was to pay obeisance at Gurudwara Rara Sahib. Then, on 26.06.2012 at about 11.30 a.m. the accused came back in his car to village Mukandpur and informed the complainant that Gurinder Singh, Paramjit Kaur and Rupinder Singh had been left with ‘Baba ji’. In the evening, the complainant should accompany him to the ‘Baba’ for offering “Dhala”.

2.2 On 26.06.2012 at about 6.30 p.m., the complainant Jasmeen Kaur, along with her father Gurmail Singh, son Jaskirat Singh and daughter Prabhsimran Kaur accompanied the accused in his Maruti car bearing no. PB-10AM-9371. On the way, the accused informed that he had received a phone call from “Baba ji” that Gurinder Singh would permanently get rid of his drinking habit, but in turn Gurmail Singh, father of the complainant, would have to take a drink. On this, Gurmail Singh got into a fix, as he in fact never used to drink liquor, but he under compulsion agreed to consume liquor. Thereafter, on the way, the accused purchased a half liquor bottle and gave to

Gurmail Singh, father of the complainant, for drinking. He gradually consumed the half liquor bottle. Thereafter, the accused took some rounds and got the complainant, her children and Gurmail Singh towards the canal ahead of Bassi Pathana, where he turned his car to towards the bridge of the canal on its bank and informed the complainant that they were to first offer "Dhala". On this, at about 09.30 p.m., complainant Jasmeen Kaur and her father Gurmail Singh got down from the car and the children kept sitting in the car. They came to the bank of the canal and when they were to offer "Dhala" in the running water, the accused pushed both of them in the canal and, on this, both of them fell in the canal. Jasmeen Kaur, however, fell on one side of the canal near the edge and she, therefore, started to save herself. At some considerable distance, she was able to catch an iron bar, which had been fixed in the canal and from there, she came out of the canal and by coming along the canal she disclosed the entire occurrence to the official of the canal department who were present there. They further informed it to the parental family of the complainant at village Mukandpur. They, along with the complainant, also searched for her father and children, but she could not get to know anything about them. The place of occurrence was near the bridge of Bhakra canal of village Thablan.

2.3 The complainant had a firm belief that the accused by cheating their entire family on a false pretext had thrown her husband Rupinder Singh, her brother Gurinder Singh, mother Paramjit Kaur, son Jaskirat Singh and daughter Prabhsimran Kaur had been illegally detained somewhere or they had been thrown in the canal. The complainant further alleged that, along with her, her father Gurmail Singh was also thrown in the canal by the accused and the accused had killed him so that his dead body may be untraceable. The complainant further informed in her statement that they had sold their land for Rs.37,00,000/- and that money was lying at their home and the accused only knew about it. The accused, therefore, had finished her entire family as he wanted to misappropriate the amount of Rs.37,00,000/-. The accused carried out this exercise by keeping the entire family in deceit. The complainant requested that action be taken against the accused and they be imparted justice. The complainant had given her statement in the presence of her brother Jang Bahadur Singh. She had heard her statement and it was correct. She signed her statement in Punjabi, which was affirmed by Jang Bahadur Singh and was attested by SI Shamsheer Singh, SHO, Police Station Bassi Pathana.

2.4 The said statement – Ex. P5 ibid of Jasmeen Kaur complainant was recorded by Shamsheer Singh, SI (PW-7) who read over and explained the contents thereof to her and the complainant after admitting the genuineness and correctness thereof, signed the same. Later, Shamsheer Singh, SI put his endorsement Ex.P9 thereon, to the effect that 27.06.2012 he had received a telephonic message in the police station that some persons had been thrown in the canal. Thereupon, he accompanied by other police officials visited the Bhakra main line near the bridge at village Thablan, where several persons had gathered along the canal bank. The complainant got her statement recorded. Endorsement Ex.P9 was completed on 27.06.2012 at 11.30 a.m. The statement was sent to police station Bassi Pathana through Constable Sikander Singh. On the basis of the said statement Ex.P5, formal FIR Ex.P10 for the offences under Sections 302, 307 and 201 of the IPC was registered against the accused.

3. That, thereafter the Investigating Officer commenced the investigation and recorded the statements of the concerned witnesses and also collected the incriminating material. The Investigating Officer set out for search of the accused and recorded the statement of one Manjit

Singh, resident of Village Nogawan, who was the Ex-Sarpanch and informed the Investigating Officer that the accused came to him on the morning of 27.06.2012 and told him that he had thrown his relations Gurinder Singh, Rupinder Singh, Paramjit Kaur, Gurmail Singh, Prabhsimran Kaur, Jasmeen Kaur and Jaskirat Singh in the Bakhra Canal. That, thereafter the Investigating Officer arrested the accused. On being interrogated, he made some disclosures to the police, including that he had stolen Rs.36,70,000/- from the house of Gurmail Singh and he had concealed the money in his house in a bag which was lying in the almirah of his house. His disclosure statement was recorded, signed by the accused and witnessed by ASI Kaur Singh. It was attested by Shamsheer Singh S.I. The accused then accompanied the police to his house and led them to the almirah from where Rs.36,70,000/- contained in a bag were recovered. Recovery memo was prepared. Thereafter, the investigating team visited the place of incident where the victims were thrown in the canal. A supplementary statement of the complainant was recorded wherein she disclosed the theft of her ornaments and money. That, one by one, the dead bodies of the victims were found. The Investigating Officer collected the medical evidence. The autopsy on the dead bodies of the victims was done by the concerned doctors. During the course of the investigation and on the basis of the statement made by the accused during interrogation, the Chappals and shoes of the victims were found/recovered. That, during interrogation, the appellant made a statement that on 26.06.2012 in the morning, he administered sleeping pills Anzilum 05 along with "mishri" (Sugar) to Rupinder Singh, Gurinder Singh and Paramjit Kaur before offering "Dhala" and empty strips lying in the envelope were kept concealed underneath the driver seat of a Maruti car and he could get those recovered. His disclosure statement was recorded, that was signed by him and witnessed by ASI Harjit Singh and HC Balbir Singh. That, thereafter the Investigating officer recovered those strips from the car parked in the police station. The Investigating Officer prepared parcel of this article and sealed the same.

4. That, on 01.08.2012, the complainant Jasmeen Kaur came at the police station and asked for recording her statement under Section 164 CrPC. She was taken to the court of Chief Judicial Magistrate, Fatehgarh Sahib, where the Investigating Officer moved an application for recording the statement of the complainant Jasmeen Kaur under Section 164 CrPC. Her statement was recorded by the learned Chief Judicial Magistrate, Fatehgarh Sahib.

4.1 After completion of the investigation, the Station House Officer of the Police Station, Bassi Pathana filed the police report under Section 173 CrPC before the learned Magistrate to the effect that the Appellant accused has committed offences punishable under Sections 302, 201 and 307 of the IPC.

4.2 On presentation of the police report, the copies of the documents, as required under Section 207 CrPC, were furnished to the accused. The case was committed by the learned Magistrate to the learned Sessions Court vide order dated 29.09.2012 as the offences were exclusively triable by the Court of Session. That the learned Sessions Judge, Fatehgarh Sahib framed the charge against the accused for the commission of the offences punishable under Sections 264, 302, 201 and 380 of the IPC. The accused pleaded not guilty and claimed trial and therefore he came to be tried by the learned Sessions Court for the aforesaid offences.

4.3 To prove the case against the accused, the prosecution led oral as well as the documentary evidence. The prime witnesses examined by the prosecution are as under:

PW-5	Complainant
JASMEEN KAUR	
PW-7	SI
SHAMSHER SINGH	
PW-8	EX-SARPANCH
JANG BAHADUR	(of village Mukandpur)
PW-11	ASI
KAUR SINGH	
PW-14	REGULATION BELDAR,
RAJINDER SINGH	Punjab Irrigation Department

Through the aforesaid witnesses, the prosecution also brought on record the incriminating material against the accused.

5. After closure of the prosecution evidence, the statement of the appellant-accused was recorded under Section 313 CrPC and the substance of the evidence appearing against him was put to him. He denied the allegations of the prosecution. He pleaded innocence and the false implication in the case. He also further stated that Gurinder Singh @ Babbu, brother of the complainant Jasmeen Kaur was addicted to alcohol and therefore Jasmeen Kaur was staying with her parents. That her entire family was under tension. That her brother Gurinder Singh under the influence of liquor threw the entire family in the canal and later on Gurinder Singh commit suicide. It was stated that Jasmeen Kaur made a false complaint to the police to save herself.

5.1 The appellant-accused was called upon to enter in defence, but he closed the same without examining any defence witness.

6. After hearing both sides, as also after appreciating the entire evidence on record, both oral as well as documentary, learned Sessions Court convicted the appellant-accused for offences punishable under Sections 302, 307, 364, 201 and 380 of the IPC. That the learned Sessions Court imposed the death sentence for the offence punishable under Section 302 IPC. Learned Sessions Court also imposed other punishments for the other offences for which he was convicted. Learned Sessions Court also passed an order that all the sentences to run consequently. The accused made a reference to the High Court which was numbered as Murder Reference No. 3 of 2013. The accused also preferred an appeal before the High Court challenging the judgment and order passed by the learned Sessions Court convicting him for the aforesaid offences.

6.1 By the impugned judgment and order, the High Court has, on re-appreciation of the entire evidence on record and by a well-reasoned judgment, has confirmed the conviction and sentence passed by the learned Sessions Court, including the death sentence. Hence, the present appeals before this Court.

7. The learned counsel appearing on behalf of the appellant-accused has vehemently submitted that, in the facts and circumstances of the case, both the learned Sessions Court as well as the High Court have materially erred in holding the appellant-accused guilty for the aforesaid offences.

7.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant-accused that the High Court has not properly appreciated and/or considered and/or re-appreciated the entire evidence on record while confirming the findings recorded by the learned Sessions Court holding the appellant-accused guilty for having committed the murder of six persons.

7.2 It is vehemently submitted by the learned counsel appearing on behalf of the appellant-accused that the High Court has not properly appreciated and/or considered the fact that it is a case of material contradictions, more particularly, the depositions of PW-5 and the other witnesses examined by the prosecution. It is submitted that there are material contradictions in the depositions of PW-5 and other prosecution witnesses with respect to the registration of the FIR and the arrival of the police at the spot and, more particularly, the time at which the police reached the spot. For the aforesaid, the learned counsel appearing on behalf of the appellant-accused has taken us through the depositions of PW-5, PW-14, PW-7, PW-8 and PW-11. 7.3 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that there are material contradictions in the oral evidence between PW-5, PW-7, PW-8, PW-11, PW-14 and PW-17 which shall weaken the prosecution case and therefore the same benefit must go to the accused as it can be said that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

7.4 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that it is a case of planting of false witnesses; planting of recoveries (cash and keys disclosure statement under Section 37 of the Evidence Act of the accused and the memo of recovery of cash and keys) as there are material contradictions between PW-5, PW-7, PW-9 and PW-11.

7.5 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that the recovery of cash and keys has been planted by the prosecution. It is submitted that, in the cross-examination of PW-7, SI Sharsher Singh has categorically stated that before 02.07.2012 the accused had not disclosed as to where he had kept concealed the money. It is submitted that in the cross-examination PW-7 has stated that during remand the house of the accused was searched for three times. It is submitted that, despite the above, nothing was found from the house of the accused when it was searched earlier.

7.6 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that it is also a case of planting of recoveries (ornaments disclosure statement under Section 27 of the Evidence Act of Harjit Singh, ASI and Head Constable Balwinder Singh) as there are material contradictions between PW-5, PW-7, PW-9 and PW-11. It is submitted that though PW-5, PW-7 and PW-9 stated with respect to the recovery of ornaments from the Petti lying at the house of the accused, in the entire Chief and in cross-examination, PW-11 nowhere tells about the recovery of ornaments from anywhere at any point of time.

7.7 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that even it is a case of planting of recovery of Anzilum 0.5mg tablets, memo of disclosure of statement under Section 27 of the Evidence Act of ASI Harjit Singh and Head Constable Balbir Singh and the recovery memo of six empty strips of tablets Anzilum 0.5 mg tablets. It is submitted that there are material contradictions on the aforesaid recoveries. 7.8 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that the strips of the tablets were recovered from the Maruti car which was kept parked in the police station. It is submitted that, therefore, there are all possibilities of planting of recovery of Anzilum 0.5 mg tables. It is submitted that the strips were planted later on to show the accused might have intoxicated the victims.

7.9 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that, in the report of the chemical analyser Ex. P-44, no poison has been detected in the contents of Ex. I to V. It is submitted that no poison was detected in the contents sent to the chemical analyser. It is submitted that, in any case, the contents of the Anzilum tablets cannot be said to be poisonous. 7.10 It is further submitted by the learned counsel appearing on behalf of the appellant-accused that motive attributed by PW-5 and the prosecution for the accused to commit the offences and to kill the family members of PW-5 is not at all believable. It is prayed therefore to acquit the accused for the offences for which he has been convicted. 7.11 In the alternative, it is submitted by the learned counsel appearing on behalf of the appellant-accused that this is not a case of capital punishment and, therefore, without prejudice to his submissions made hereinabove, it is prayed to commute the death sentence to life imprisonment.

8. The present appeals are vehemently opposed by the learned counsel appearing on behalf of the State.

8.1 It is vehemently submitted by the learned counsel appearing on behalf of the State. It is submitted that, in the present case, the prosecution has successfully proved the case against the accused beyond reasonable doubt. It is submitted that on appreciation and re-appreciation of the entire evidence on record, both the learned Sessions Court as well as the High Court have rightly held the accused guilty for having killed the six persons. It is submitted that therefore the findings recorded by the learned Sessions Court and confirmed by the High Court are on appreciation of the evidence, which are neither perverse nor contrary to the materials on record.

8.2 It is further submitted by the learned counsel appearing on behalf of the State that the present case of the prosecution is based on the eye-witness of the complainant PW-5 Jasmeen Kaur, which is also a substantial evidence and the evidence of last seen. 8.3 It is vehemently submitted by the learned counsel appearing on behalf of the State that, in the present case, PW-5 is the unfortunate eye-witness who has seen her entire family being killed by the accused. It is submitted that she is the witness who has seen the accused last seen with the deceased. It is submitted that PW-5 is the witness to the deceased Gurinder Singh – brother, mother Paramjit Kaur and husband Rupinder Singh leaving in the company of the accused on 25/26.06.2012 at about 2.30 am and thereafter these three persons were not seen alive by anyone. Rather dead body of Gurinder Singh was found by the police on 29.6.2012. It is submitted that, therefore, the prosecution has been successful in proving the accused last seen together with the deceased Gurinder Singh, Paramjit Kaur and

Rupinder Singh.

8.4 It is further submitted by the learned counsel appearing on behalf of the State that on 26.06.2012, the complainant PW-5 along with her father Gurmail Singh and her two children aged seven and eight years respectively left in the car of the accused for offering prayer in the running water of Bhakra main canal near village Thablan bridge. It is submitted that, as stated by PW-5 in her deposition, at about 9.30 p.m., when PW-5 along with her father came out of the car to offer prayer in the running water while her children kept sitting in the car, the accused pushed PW-5 and her father in the canal. However, PW-5 came out of the canal with the help of an iron bar in the canal. PW-5 immediately narrated the occurrence to some employees of canal department present there – PW-4 Rajinder Singh. 8.5 It is further submitted by the learned counsel appearing on behalf of the State that the fact that PW-5, Gurmail Singh and her two children aged seven and eight years respectively were with the accused in the Maruti car, has been corroborated by PW-8 Jang Bahadur. 8.6 It is further submitted by the learned counsel appearing on behalf of the State that, as such, there are no material contradictions on the registration of the FIR and arrival of the police on the spot, as contended/submitted on behalf of the accused. It is submitted that PW-5 and PW-7 have fully supported each other on the police arriving at the spot and the registration of the FIR.

8.7 It is further submitted by the learned counsel appearing on behalf of the State that, in the present case, as such, there are recoveries of money and ornaments which have been recovered from the house of the accused. It is submitted that recoveries were done at the instance of the accused himself. It is also submitted that the recovery of the ornaments and cash has been established and proved by the prosecution beyond doubt.

8.8 It is further submitted by the learned counsel appearing on behalf of the State that even the recovery of Anzilum 0.5mg tablets from the Maruti car of the accused has been established and proved by the prosecution by leading cogent evidence.

8.9 It is further submitted by the learned counsel appearing on behalf of the State that, in the present case, even the motive has been proved beyond all doubts that the crime is committed for theft of Rs.37,00,000/- and ornaments and that the accused planned meticulously to wipe out the entire family. It is submitted that as the accused was aware that he will not be able to kill all the seven members of the family at one time and, therefore, he took them in two stages and killed them in two instalments. It is submitted that, therefore, both the Courts below have rightly held the accused guilty for having killed six persons out of seven members of a single family and has rightly imposed the capital punishment.

8.10 It is further submitted by the learned counsel appearing on behalf of the State that, in the facts and circumstances of the case and the manner in which the accused killed six innocent persons, out of seven members of a family, and that too, in a pre-planned manner and in two instalments, the aggravating circumstances are in favour of the capital punishment. Therefore, it is prayed to confirm the capital punishment/death sentence imposed by the learned Sessions Court and confirmed by the impugned judgment of the High Court.

9. Heard learned counsel appearing on behalf of the respective parties at length. We have scanned the entire evidence on record, both oral as well as documentary evidence. We have minutely considered and gone through the entire evidence on record, as it is a case of capital punishment and death penalty awarded by the Courts below.

9.1 Having heard the counsel for the respective parties and having scanned/gone through the entire evidence on record, and the findings recorded by the learned Sessions Court and confirmed by the High Court, we are of the opinion that the findings recorded by the learned Sessions Court and confirmed by the High Court are on appreciation of the evidence, which are neither perverse nor contrary to the evidence on record.

9.2 It is required to be noted that, in the present case, six persons out of seven members of a family have been killed by the accused. It is required to be noted that even PW-5 was also thrown into the canal by the accused along with her father Gurmail Singh and her two children aged seven and eight years. However, she could survive and come out of the canal with the help of an iron bar in the canal. Therefore, she is the eye-witness to the incident of having pushed along with Gurmail Singh into the canal.

9.3 The accused was last seen together with the deceased Gurinder Singh, Paramjit Kaur and Rupinder Singh on 25/26.06.2012 at about 2.30 a.m. That, thereafter, the aforesaid three persons were not seen alive by anyone. That the dead body of Gurinder Singh was found by the police on 29.06.2012. The deposition of PW-5 having seen the accused last together with the aforesaid three persons, has been established and proved by the prosecution by leading cogent evidence and examining PW-8 Jang Bahadur, ex-Sarpanch of village Mukandpur.

9.4 The prosecution has proved the case against the accused by leading cogent evidence and examining PW-5, the eye-witness; PW-14, an employee of the canal department, who is an independent witness to whom PW-5 narrated the entire occurrence which was first in time; PW-8 the ex-Sarpanch; PW-9 Manjit Singh before whom extra-judicial confession was made and also by examining several police witnesses, including PW-7, the investigating officer Sharsher Singh. Having gone through the entire deposition of the aforesaid witnesses minutely, we are of the opinion that, by and large, they have supported the case of the prosecution. In fact, both the learned Sessions Court and the High Court have considered in detail the so-called contradictions pointed out by the defence. Both the Courts below have rightly observed that there might be minor contradictions, but they are not fatal to the prosecution case and/or they will not make the prosecution case false.

10. As held by this Court in a catena of decisions, minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. In the case of Yogesh Singh v. Mahabeer Singh (2007) 11 SCC 195 it is observed by this Court that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of prosecution case and should not be taken to be a ground to reject the prosecution evidence. It is further observed that the omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is further observed that it is only

the serious contradictions and omissions which materially affect the case of prosecution but not every contradiction or omission.

11. Applying the aforesaid to the facts and circumstances of the case, we are of the opinion that the witnesses who were examined by the prosecution are trustworthy and reliable. There are no material contradictions which may affect the case of the prosecution. PW-5 is the eye-witness and also the victim. She has been fully cross-examined by the defence. But the defence has not brought out anything from her cross-examination which may affect the case of the prosecution and/or which may doubt her trustworthiness. PW-14 is an independent witness to whom the occurrence was narrated by PW-5. Even PW-8 and PW-9 are also independent witnesses. Nothing has been alleged against them.

12. In the present case, there are also recoveries of cash and ornaments from the house of the accused which were recovered at the instance of the accused. The cash of Rs.36,70,000/- which was taken by the accused from the house of the victims has been recovered from the house of the accused. Even the ornaments which were taken by the accused from the house of the victims have been recovered from the house of the accused and that too at the instance of the accused himself. The recoveries regarding memos etc. have been proved by the prosecution. Even the keys of the house of the victims were found from the house of the accused. The ornaments and the cash have been identified by PW-5. Merely because, earlier there might have been search at the house of the accused and nothing was found at that time, cannot be a ground to discard the recoveries made subsequently which, as such, were made at the instance of the accused himself. The accused is the best person to know where he kept the ornaments/cash which he had taken from the house of the victims. There is no reason to doubt the recoveries. 12.1 In the present case, the prosecution has been successful in proving the motive for the accused to commit the offence and to do away with the entire family, which is supported by the recoveries of cash and ornaments from the house of the accused.

12.2 Even the recoveries of Anzilum 0.5mg tablets from the Maruti car belonging to the accused has been established and proved. Therefore, the prosecution case that he had given pills to the deceased persons and, thereafter, killed them has been established. Now the case on behalf of the accused that no poison was detected in the contents sent to the chemical examiner and, therefore, the aforesaid case of the prosecution may not be believable is concerned, it is required to be noted that only in a case where the pills are given in larger number, in that case only, the poison would be detected. Therefore, non-detection of the poison in the contents would not be fatal to the case of the prosecution.

13. Considering the aforesaid facts and circumstances of the case and the findings recorded by the learned Sessions Court and confirmed by the High Court, which the Courts below have considered in detail by giving cogent reasons and on appreciation of the evidence on record, we are of the opinion that the High Court has rightly confirmed the conviction of the accused for the offence punishable under Section 302 IPC having killed/committing the murder of six persons. We are in complete agreement with the view taken by the High Court. Under the circumstances of the case, the conviction of the accused for the aforesaid offences is hereby confirmed.

14. Now, so far as the capital punishment imposed by the learned Sessions Court and confirmed by the High Court is concerned, at the outset, it is required to be noted that, as such, the learned counsel appearing on behalf of the accused is not in a position to point out any mitigating circumstance which warrants commutation of death sentence to the life imprisonment. In the present case, the accused has killed six innocent persons, out of which two were minors – below 10 years of age. Almost, all the family members of PW-5 were done to death in a diabolical and dastardly manner. Fortunately, or unfortunately, only one person of the family of PW-5 could survive. In the present case, the accused has killed six innocent persons in a pre-planned manner. The convict meticulously planned the time. He first kidnapped three persons by way of deception and took them to the canal and after drugging them with sleeping tablets, pushed them in the canal at a mid-night to ensure that the crime is not detected. That, thereafter he killed another three persons in the second stage/instalment. Therefore, considering the law laid down by this Court in the case of *Mukesh v. State (NCT of Delhi)* (2017) 6 SCC 1, the case would fall in the category of the “rarest of rare case” warranting death sentence/capital punishment. The aggravating circumstances are in favour of the prosecution and against the accused. Therefore, striking a balance between the aggravating and mitigating circumstances, we are of the opinion that the aggravating circumstance would tilt the balance in favour of the capital punishment. In the facts and circumstances of the case, we are of the opinion that there is no alternative punishment suitable, except the death sentence. The crime is committed with extremist brutality and the collective conscious of the society would be shocked. Therefore, we are of the opinion that the capital punishment/death sentence imposed by the learned Sessions Court and confirmed by the High Court does not warrant any interference by this Court. Therefore, we confirm the death sentence of the accused imposed by the learned Sessions Court and confirmed by the High Court while convicting the appellant for the offence punishable under Section 302 IPC.

15. In view of the above and for the reasons stated above, the present appeals fail. The impugned judgment and order passed by the High Court dismissing the appeal and confirming the judgment and order passed by the learned Sessions Court convicting the accused for the offences punishable under Sections 364, 302, 307, 201 and 380 IPC is hereby confirmed. The conviction of the appellant-accused for the offences punishable under Section 302 IPC and other offences is hereby confirmed and the capital imprisonment/death sentence imposed by the learned Sessions Court and confirmed by the High Court for the offence punishable under Section 302 IPC for having killed six persons is hereby confirmed.

.....J. (A.K. SIKRI)J. (S. ABDUL NAZEER)
J. (M. R. SHAH) New Delhi, March 5, 2019.