

JAGJIT SINGH @ JAGGA

A

v.

STATE OF PUNJAB

JANUARY 18, 2005

[P. VENKATARAMA REDDI AND B.P. SINGH, JJ.]

B

Penal Code, 1860—Sections 302, 460 and 458 r/w 34—Murder of three persons—Out of the two accused, one absconded—Conviction of the other accused i.e. appellant on the basis of testimony of child witness—On facts, held, the child witness implicated appellant at the prompting of her father—Delay in recording of evidence of the child witness, not explained—No motive for appellant to kill his own uncle—It is possible that the offence was committed by the other accused—Also there was nothing to connect appellant with the recovery made from the place of occurrence—Hence, appellant entitled to benefit of doubt.

C

Penal Code, 1860—Section 376—Rape—Charge for, not framed—Also no evidence suggesting commission of the offence—Conviction set aside.

D

PW5—the father of appellant and his brothers had installed a tube-well on their agricultural lands. For cultivation of the lands, they had engaged 'S' who alongwith his wife, daughter 'J' and servant 'RB' resided at the tube-well itself.

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According to prosecution, on the fateful night, appellant along with 'RB' assaulted PW6, apart from 'S' and 'J' both of whom lost their lives. 'R', an uncle of appellant who used to reside at the tube well was also fatally assaulted. PW6, the sole eye witness aged about 7 years at the time of occurrence was injured in the incident.

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Appellant alone was put up for trial since co-accused 'RB' was absconding. The Sessions Judge found appellant guilty under Sections 302, 460 and 458 r/w Section 34 IPC and on coming to the conclusion that he had also raped 'J' before she was done to death, imposed death sentence upon him. High Court confirmed the conviction and affirmed the sentence of death. Hence the appeal.

Allowing the appeal, the Court

A HELD: 1. No charge was framed against the appellant under Section
376 IPC. Nor is there any evidence suggesting that the appellant had
committed the offence of rape. Even if the evidence of PW-6 is accepted
in its entirety, there is not a word in her evidence to suggest the commission
of rape on 'J' either by the appellant or by anyone else. In these
B circumstances, it is not possible to sustain the finding of the Trial Court
that the appellant was also guilty of having committed the offence of rape.
[569-E]

2.1. The evidence of PW-4 does not bear a close scrutiny. Apart from
the fact that most of the statements made by him in examination-in-chief
C were not stated when he was examined under Section 161 Cr. P.C., the
assertions made by him in the course of his deposition are clearly false.
He has denied the fact that he put questions to PW-6 when she was
examined in the presence of the doctor PW-7, but there is the evidence of
PW7 as well as that of PW-6 herself that the questions were put to PW6
D by him and the answers given by her were recorded by the doctor, PW-7.
[571-D-E]

2.2. The statement of PW-4 that when he reached the place of
occurrence he found that the dead body of 'J' was lying naked, is also false.
No other witness has said so. In fact, the lady doctor who performed the
E post mortem examination stated that when the body of the deceased was
brought to her, the deceased was wearing green and orange printed salwar
kameej, brassier of pink colour, silver colour neck chain, pink and red
and green bangles on the right arm, golden coloured nose pin, long scalp
F hairs tied in a plait with black parandi. This itself suggests that either this
witness had not seen the dead body of 'J' at the time he claims to have
seen the dead body, or he is deliberately telling a lie to create a suspicion
that 'J' had been subjected to rape before she was killed. [571-F-H]

3. So far as PW-5 is concerned, this witness was declared hostile. No
doubt, this witness had lodged the FIR, but nothing much turns on his
evidence as he was not an eye witness. [572-B-C]

G 4.1. The statement of PW6 was recorded by the Investigating Officer
for the first time three days after the occurrence, and her statement was
recorded by the Judicial Magistrate six days after the occurrence. No
explanation is forthcoming as to why she was not examined for three days
when the Investigating Officer knew that her statement had been recorded
H by the doctor on 30th August, 1996. The Trial Court took the view that

since she was under a shock she was not in a position to make a statement and, therefore, her statement was recorded later. This is clearly erroneous because the case of the prosecution is that she regained consciousness on 30th August, 1996 and, thereafter, she was fully conscious. The evidence of PW-7 who gave a certificate of her fitness to make a statement is also to the same effect. [574-G-H; 575-A-B]

4.2. The explanation furnished by PW-6 five years after the occurrence, that she knew the appellant because he happened to be the son of PW5 at whose tube well her grandparents resided, is unacceptable particularly, in view of the fact that there is no evidence to establish that she had ever earlier seen the appellant and in none of the three statements made by her earlier the name of PW5 is mentioned. The delay in examining her in the course of investigation also creates a serious doubt in the absence of any explanation for her late examination after three days, when admittedly she was the sole eye witness who was also injured in the course of the occurrence. Though she may have witnessed the occurrence, she did not know the appellant by name as she had no opportunity of knowing or seeing him earlier, and that she has involved the appellant at the instance of her father, who was the person who suggested the involvement of the appellant when her statement Ex. PW-6/A was being recorded. [575-C-E]

5.1. Apart from the fact that there is not an iota of evidence as to who assaulted 'R', there appears to be no reason why the appellant should commit the murder of his own uncle with whom his family was on cordial terms. In fact his father, PW-5, had come in the morning to give tea to his brother 'R'. There is nothing on record to suggest that the appellant had any animus against his own uncle. Nor is there any evidence on record to suggest any possible motive for the appellant to commit such a heinous crime. [575-F-G]

5.2. Since the truthfulness of PW-6 so far as the involvement of the appellant is concerned, is doubtful, but there is evidence to support the involvement of another person namely, 'RB', who has absconded, the absence of motive acquires significance because it is possible that the offence may have been committed by 'RB' along with some other person or persons. [576-A]

6. Though a motor cycle and a wrist watch were seized from the place

A of occurrence, no evidence has been produced by the prosecution to connect the appellant with the recovery of these two items. [576-B]

B 7. The conviction of the appellant, therefore, depends solely upon the testimony of PW-6. There is a serious doubt as to whether she knew the appellant at all when the occurrence took place. There is no evidence to prove that she was known to the appellant. The name of the appellant appears to have been introduced by her father, PW-4, who is not an eye witness. Therefore, it is not safe to sustain the conviction of the appellant on the sole testimony of the child witness PW-6. The appellant is entitled to benefit of doubt. [576-C-D]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 226 of 2004.

From the Judgment and Order dated 14.11.2003 of the Punjab and Haryana High Court in M.R. No. 2 of 2003 and Crl. A. No. 369-DB of 2003.

D K.B. Sinha, Mrs. Kawaljit Kochar, Ashok Kumar Sharma, D. Jha and Ms. Kusum Chaudhury for the Appellant.

P.N. Misra, Bimal Roy Jad and Ms. Sunita Pandit for the Respondent.

E The Judgment of the Court was delivered by

F **B.P. SINGH, J.** This appeal by special leave has been preferred by Jagjit Singh @ Jagga who was tried by the Sessions Judge, Fatehgarh Sahib charged of the offences under Sections 302, 460 and 458 read with Section 34 IPC. The learned Sessions Judge by his judgment and order dated 31.03.2003 found him guilty of all the three charges and sentenced him to death under Section 302/34 IPC, while imposing the sentence of 10 years rigorous imprisonment and a fine of Rs. 5,000 in default to undergo two years rigorous imprisonment under both Sections 458 and 460 IPC. The appellant herein preferred Criminal Appeal No. 369 DB/2003 before the High Court of Punjab and Haryana which was heard along with Murder Reference 2 of 2003 for confirmation of the death sentence. The High Court dismissed the Criminal Appeal preferred by the appellant, and accepting the murder reference, affirmed the sentence of death.

G The prosecution had alleged the commission of the aforesaid offences
H by the appellant Jagjit Singh @ Jagga as well as by his companion Raju

Bhaiya @ Gobind Sharma who absconded and was ultimately declared a proclaimed offender. The occurrence giving rise to the instant appeal is said to have occurred on the night intervening the 29th and 30th August, 1996 in which three persons were killed and the sole eye witness Billo, PW-6 a child aged about seven years was injured. The persons who were alleged to have been killed by the appellant and his companion were Sahu and his daughter Jamila @ Guddo, apart from Rabi Singh, an uncle of the appellant and brother of the first informant Amar Singh, PW-5, who is the father of the appellant.

The case of the prosecution is that Amar Singh, PW-5 and his brothers Labh Singh and Rabi Singh (deceased) jointly cultivated lands belonging to them in village Khaman Kamli. For that purpose they had installed a tube well on their land which had a room where the motor was installed and just outside that room was a 'Chhan' (a thatched verandah). Sahu (deceased) along with his wife and daughter Jamila @ Guddo (deceased) resided at the tube well. He was engaged for cultivation of the lands belonging to Amar Singh and his brothers. Rabi Singh (deceased), used to reside at the tube well along with Sahu and his family members aforesaid. Sahu had kept his cattle at the tube well and for that purpose he had employed Raju Bhaiya @ Gobind Sharma (since absconding) who used to graze the cattle and look after them. He had been in their employment for about 6 to 7 months before the occurrence and also resided with them at the tube well. Only 5 or 6 days before the occurrence Raju Bhaiya had taken leave to go to Ludhiana on the pretext that he had to collect money from someone. A couple of days before the incident the wife of Sahu (deceased) namely, Jeewani had gone to see her daughter Hazaran at Jalandhar. While going to Jalandhar she had requested her son-in-law Bashir PW-4 a resident of Village Madera to take care of her daughter Jamila @ Guddo in her absence. According to prosecution on the evening of 29.08.1996 Bashir PW-4 along with his wife and children visited the tube well where Sahu resided in village Khaman Kamli. They were together for sometime and thereafter he and his family members returned to their village leaving behind Billo, who was only 7 years old, to give company to Guddo. That is how Billo PW-6 was at the tube well along with Sahu and Jamila @ Guddo (deceased) on the night of occurrence.

The case of the prosecution is that late in the night the appellant came to the tube well on a motor-cycle and Raju Bahiya also joined him armed with a hammer. The appellant caught hold of Sahu who was sleeping on a cot and threw him on the ground. Raju assaulted him on his chest with the

A hammer. Seeing the occurrence Jamila @ Guddo (deceased) caught hold of Billo, PW-6 and took her towards the cattle shed. However, the appellants caught hold of Jamila @ Guddo. Raju attacked her with his hammer from behind on her shoulder, as a result of which she fell down. Billo, PW-6 started weeping, but Raju put a hand on her mouth and hit her on her head with the wooden peg. The accused tied the 'Chunni' of Jamila @ Guddo round the neck of Billo and tried to strangulate her. Thereafter they threw her under a dek tree. By that time Billo had become unconscious.

In the morning, Amar Singh, PW-5 father of the appellant came to the tube well with tea for his brother Rabi Singh, who used to reside at the tube well. He found the dead body of Rabi Singh smeared with blood in the motor room. He also found Sahu lying dead on a cot outside the 'Kotha' while Jamila @ Guddo was lying dead in the 'Chhan'. They found Billo, PW-6 lying injured under a Eucalyptus tree near the tube well. Amar Singh, PW-5, called a worker from the nearby factory and with his assistance shifted Billo to the local hospital for medical aid on a scooter. According to Amar Singh, PW-5 on the way Billo (PW-6) told him that Raju Bhैया and a motor-cyclist had killed her 'Nana' and 'Masi' with hammer. She uttered the same words when she was taken to Dr. Sharma, the local doctor, who advised them to take the injured girl to the Civil Hospital. Accordingly injured Billo, PW-6 was taken to the Civil Hospital at Khamanon Kamli. Later she was shifted to the Mohandevi Oswal Hospital at Ludhiana for better treatment.

In the meantime, at about 7.00 a.m. Amar Singh, PW-5 went to the police station Khamanon Kamli and lodged a report. In that report he stated about his brother as well as Sahu and members of his family residing at his tube well where they had kept their cattle which were looked after by Raju. He stated that at 6.00 a.m. when he went to the tube well for serving tea to his brother Rabi Singh (deceased) he found his dead body lying in the motor room with his face downward. He also saw the dead bodies of Jamila @ Guddo and Sahu. He found Billo, PW-6, lying injured under a Eucalyptus tree. He immediately called for help from the nearby factory and when a scootérist came he took her to the hospital on the scooter. On the way Billo had told that Raju Bhैया and a motor cyclist had killed her 'Nana' and 'Masi' by inflicting injuries with a hammer. They first went to the clinic of Dr. Sharma who asked him to take her to the civil hospital. Thereafter she was taken to the civil hospital. At the hospital also in the presence of the doctor she stated that she had been strangulated with 'Chunni' and had also been assaulted on her head. He further stated that he had found things lying

scattered in the room and therefore he got the impression that the occurrence had taken place when the assailants had come to commit theft. One blood stained hammer was lying outside the motor room. A

On the basis of the report made by Amar Singh, PW-5, a formal FIR was registered whereafter Sub-Inspector Manjit Singh, PW-13 the Investigating Officer, commenced investigation and went to the place of occurrence. He prepared the inquest reports in respect of Rabi Singh, Sahu and Jamila as P-8, P-13 and P-18 respectively. He also prepared a rough site plan of the place of occurrence which is Ex.PW-13/A. He recovered blood stained earth from the place of occurrence and the recovery memos are Exbs.P-9A and B. The hammer recovered from the place of occurrence is Exb.PM/1 and the memo prepared in connection with such recovery is P-9/C. The dead bodies were then sent to Civil Hospital, Bassi Pathanan and the post mortem reports are Exbts. P-3, P-9 and P-14. B C

At this stage, we may notice that the dead body of Rabi Singh was found inside the motor room while the dead body of Jamila was found in the 'Chhan' just outside the motor room. The dead body of Sahu was found just outside the 'Chhan'. Billo, PW-6 has stated about the assault on Sahu and Jamila but has said nothing about the assault on Rabi Singh. In fact, there is no evidence on record to prove the manner of assault on Rabi Singh. D

Dr. Amarjit Singh, PW-2 who conducted the post mortem examination on the dead body of Rabi Singh at 2.45 p.m. on 30th August, 1996 found as many as four incised wounds and one contusion and abrasion on his body. On dissection, he found the sternum and ribs 3 to 8 on the right side fractured. Clotted blood was present in the thoracic cavity. E

The same Dr. Amarjit Singh conducted the post mortem examination on the body of Sahu (deceased). In his case he found four bruises on his chest. He found rib nos. 2 -6 fractured on the right side and nos. 3 to 7 fractured on the left side. The lungs were severely lacerated. F

PW-3, Dr. Parampreet Kaur Ghuman conducted the post mortem examination on the dead body of Jamila @ Guddo on the same day at 4.00 p.m. She found 5 bruises on her and also found that ribs no.2, 3, 4 and 5 on the left side were fractured as also the sternum. G

The medical evidence on record proves beyond doubt that the three deceased died homicidal deaths. The medical evidence is indicative of the H

A fact that while Rabi Singh was attacked by his assailants with sharp cutting weapons, the injuries suffered by the other two deceased may have been caused by a hard and blunt object such as a hammer as suggested by the prosecution.

B According to the prosecution, Billo who had been removed to Mohandevi Oswal Hospital, Lundhiana was admitted in the ICU of the Hospital. She is said to have made a statement in the Hospital which was recorded by Dr. Bhupinder Singh, PW-7. A query was made by ASI Rajinder Kumar as to whether the patient Billo, PW-6 was fit to make a statement. He gave his opinion that she was fit to make a statement. He, thereafter, recorded the statement of Billo in question-answer form in the presence of Dr. Darshan Singh, ASI Rajinder Kumar and Bashir Ali, PW-4, father of Billo. That statement has been marked as Ex. PW 6/A which is as follows:-

	"Girl's father	-	Who has beaten you, Billo?
D	Child Billo	-	Raju Bhaiya hit my Maternal aunt (Masi) Guddo, my Maternal Grandfather and myself.
	Girl's father	-	Did Jagga accompany him?
	Billo	-	Nodded 'Yes' later on she named Jagga.
E	Girl's father	-	Was Shera, Kala also with him?
	Billo	-	Negative reply meaning 'No'."

F Three days later, on 3.9.1996, the Investigating Officer recorded the statement of Billo PW-6 under Section 161 Cr. P.C. Ext. DA/1 which is as follows:-

G "Stated that on that night Jagga came to the motor on a Motorcycle. I was sleeping on the bed with my Maternal Ant (Masi) Guddo and Raju Bhaiya and Jagga threw down my Maternal Grandfather from the cot. Jagga caught hold of the legs of my Maternal Grandfather and Raju hit him with hammer. My Maternal Aunt caught me by the hand and ran towards the buffaloes. Jagga caught hold of my Maternal Aunt from the back. Raju had a hammer in his hand. My Maternal Aunt and myself started crying loudly. Jagga took the hammer from Raju and hit my Maternal Aunt on the shoulder. Raju Bhaiya took a log of wood and with one hand throttled my mouth and hit the wooden

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leg on my head. He took the chunni of my Maternal Aunt and tied it round my neck and threw me near the Dek and after that I do not know anything." A

Yet three days later another statement of Billo was recorded on 6.9.1996 (Ext. PW6/B) by a Judicial Magistrate, the relevant part whereof is as follows:-

"Stated that my name is Billo. During the last about 5-7 days, there has been no quarrel in our house. I do not know the date today as I am small, Two days before, I was at my Maternal Aunt's house, at that time there were 3 boys, my mother and my father in the house of my maternal aunt. My mother and father came for tea to my maternal aunt's house. They left after meeting. On that day, I stayed back with my maternal aunt when I was with my maternal aunt, I slept with her. The names of the boys who had come were Sanju Gulzar and the third was Mamsar. All the three persons came at night. They did not do anything. When I was asleep Jagga came alone on a Motorcycle. Bhaiya was a servant there itself of my maternal aunt. Bhaiya's name was Raju. Then Bhaiya hit my maternal aunt on the shoulder with a hammer. Bhaiya hit with the hammer and gave it to Jagga. Then Bhaiya caught me. Then Jagga told Bhaiya to catch hold of me. Then he started beating my mother's father. Then Jagga hit my maternal grandfather with the hammer. Bhaiya was catching hold of me. I started shouting for my father. Then Bhaiya scratched my face, the marks of which are still existing on my fact. I had seen Jagga before who used to come to the motor everyday. Raju Bhaiya was a servant of my maternal aunt who used to graze buffaloes for my maternal aunt. The hammer was in our house". B C D E

In this statement Billo stated that she knew Jagga from before because he used to come to the motor (tube well) everyday. F

After investigation charge sheet was submitted against the appellant who alone was put up for trial since co-accused Raju Bhaiya was absconding. Apart from the medical evidence on record and the evidence of the Investigating Officer, the important witnesses examined by the prosecution are; Bashir PW-4, father of Billo, Amar Singh PW-5, father of the appellant and Billo PW-6, the sole injured eye witness who was aged about 7 years at the time of occurrence. When examined under section 313 Cr.P.C. the appellant completely denied his involvement and stated that he had been falsely implicated with a view to extract money from him and his father. H

A The Trial Court on an appreciation of the evidence on record came to the conclusion that all the three deceased had met homicidal deaths. It was submitted before the Trial Court that in the first statement made by Billo, the name of the appellant was suggested to her by her father PW-4 who had put a leading question suggesting the involvement of the appellant to which she nodded in the affirmative. That statement could not be relied upon. Thereafter her statement was recorded by the police three days later on the 3rd September, 1996 by the Investigating Officer. No explanation was offered by the prosecution as to why her statement was not recorded earlier. Thereafter, her statement was recorded by a Magistrate on 6th September, 1996, six days after the occurrence. The case of the defence was that this time was utilized to tutor the child witness so as to implicate the appellant. The case of the defence is that the appellant was unknown to the witness PW-6, Billo, who was a child about 7 years old. She was not a resident of village Khamanon Kamli where the deceased resided, but was the resident of a different village namely, Madera and there was nothing on record to suggest that the appellant has ever visited village Madera where the witness resided or that PW-6 had ever come to village Khamanon earlier. No test-identification parade was held. It was also submitted that PW-4 was a wholly unreliable witness and his evidence was worthless.

E The learned Sessions Judge came to the conclusion that PW-6 Billo was a reliable witness and though a child witness she could be relied upon as she impressed the Court as a truthful eye witness. The Trial Court noticed the fact that PW-6 was examined as a witness almost 5 years after the occurrence and during this period she was residing with her parents. She knew Jagga the appellant since he used to come to the tube well and there was sufficient opportunity for her to identify the appellant. The medical evidence supported her version, and the fact that she was herself an injured witness added credibility. The first statement recorded by PW-7, Dr. Bhupinder Singh was relied upon by the Trial Court on a finding that she was fully conscious as per the certificate of fitness given by the doctor. The fact that she named the appellant in response to a leading question put to her by her father was no ground to discard her statement. It further held that no prejudice was caused to the accused, even though there was delay in recording the statement of PW-6 by the Magistrate. The learned Sessions Judge found that since the victim was under a great shock, she was not in a position to make a statement earlier. He further observed that mere omissions and improvements made by her in her statements before the Magistrate or the doctor was no ground to doubt her credibility. As regards the appellant being known to the

aforesaid witness the Trial Court was content with observing that since he used to come to the tube well, she had known him from before. Further it held that on the day of occurrence there was sufficient opportunity for PW-6 to identify the appellant. He, therefore, found her evidence acceptable. Considering the evidence of PW-4 the Court found that though there were some improvements appearing in his testimony, those improvements did not go to the root of the case and that his evidence corroborated the testimony of Billo PW-6.

It may be noticed at this stage that from the evidence of Dr. Parampreet Kaur Ghuman, PW-3, it appears she had taken a vaginal swab of deceased Jamila and the same was sent for chemical examination. The report disclosed presence of semen and, therefore, she opined that the possibility of rape could not be ruled out. Only on the basis of this solitary statement in the evidence of PW-3 the Trial Court jumped to the conclusion that the appellant had committed a very ghastly crime and had committed rape of Jamila before her death. This was a circumstance which the Trial Court took into account while imposing the death sentence.

We may observe that no charge was framed against the appellant under Section 376 IPC. Nor is there any evidence suggesting that the appellant had committed the offence of rape. Even if the evidence of Billo PW-6 is accepted in its entirety, there is not a word in her evidence to suggest the commission of rape on Jamila either by the appellant or by anyone else. In these circumstances, it is not possible to sustain the finding of the Trial Court that the appellant was also guilty of having committed the offence of rape.

Before the High Court as well similar submissions were advanced and for similar reasons the High Court dismissed the appeal and affirmed the sentence of death. The observations in the judgment of the High Court also suggest that the High Court concurred with the view of the Trial Court with regard to the commission of offence of rape by the appellant. As we have observed earlier this finding cannot be sustained at all in the absence of any charge being framed under Section 376 IPC and in the absence of any evidence whatsoever to support this allegation.

We have examined the evidence of the witnesses in great detail and subjected their testimony to critical scrutiny in view of the fact that the appellant is charged of a ghastly offence and has been sentenced to death.

PW-4, Bashir stated that in the year 1996, he was residing at Khamanon

A Kamli village. He also claimed to know Raju Bhaiya who had stayed with him for about 4 months before joining his father-in-law at the tube well of Amar Singh, PW-5. He further stated that Jamila @ Guddo used to accompany Raju Bhaiya when he took the cattle for grazing. On 28.8.1996 his mother-in-law went to Jalandhar to see her daughter and she requested him to take care of her daughter Guddo @ Jamila (deceased) since she was alone in the house.

B On the same evening, he along with his wife and children had gone to the tube well of Amar Singh to meet Guddo @ Jamila (deceased). After spending sometime with her they came back leaving behind Billo, PW-6 to give company to Jamila. On 29.8.1996 at about 6.00 a.m. he was informed by someone that everyone living in the Dera at the tube well of the accused

C had been massacred. He, therefore, went to the tube well and found his father-in-law lying dead. His sister-in-law Jamila was lying naked in the room on an empty gunny bag and from her condition she appeared to have been raped. Rabi Singh uncle of the appellant was lying dead and his left thumb was smeared with ink. (The witness appears to have made a mistake about the dates). Billo had been admitted in the hospital in an injured condition and he, therefore, went to Khamanon Kamli hospital where Billo was admitted. From the hospital, he went to Jalandhar to inform his mother-in-law while his wife took care of Billo, PW-6 who was removed to the Mohandevi Oswal Hospital, Ludhiana in his absence. He came to that hospital alongwith his mother-in-law. In his presence, the doctor talked to Billo, PW-6 but she did not respond in the first instance. Doctor again talked to Billo and she responded to the question put by the doctor. The doctor recorded the statement of Billo, PW-6 in his presence and in the presence of two police officials. Billo had named the appellant and Raju Bhaiya as the assailants.

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F From his cross-examination it appears that it was not stated by him, in the course of investigation, that his mother-in-law had requested him to take care of Jamila (deceased) while leaving for Jalandhar. He had also not stated that he along with his wife and Billo had gone to the house of his mother-in-law to see Jamila and after staying for sometime came back leaving Billo there at the tube well of the appellant. He had also not stated in the course of investigation that when he had reached the spot he found his father-in-law lying dead on the cot and Jamila (deceased) lying on an empty gunny back in a naked condition having been raped. Similarly, many other statements made by this witness in the course of examination-in-chief were not stated by him in the course of the investigation. The credibility of this witness stands sufficiently impeached. What however is of significance is his assertion that

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H Billo, PW-6 responded on repeated calls of the doctor whereafter the doctor

put questions to her and she answered them. He claimed to have stated in his statement recorded under Section 161 Cr. P.C. that Billo, PW-6 had answered the questions of the doctor. He had also told the police that the doctor had recorded the statement of Billo. He denied the suggestion that he had put questions to Billo and not the doctor. He was categorical in asserting that while the statement was being recorded by the doctor, he did not put any question to Billo suggesting that Jagga was also present with Raju Bhaiya. It was in response to the question put by the doctor that Billo answered stating that Raju Bhaiya and Jagga were there. He admitted that the police recorded his statement in the hospital and his statement was recorded for the first time on 3.9.1996. He further stated that he reached at 8-9 p.m. on 29.8.1996 and the statement Ex.6/A was recorded on the next day after 12 noon. He denied the suggestion that the appellant had been involved with a view to extracting money from him and his father.

The evidence of PW-4 does not bear a close scrutiny. Apart from the fact that most of the statements made by him in examination-in-chief were not stated when he was examined under Section 161 Cr. P.C., the assertions made by him in the course of his deposition are clearly false. He has denied the fact that he put questions to Billo, PW-6 when she was examined in the presence of the doctor PW-7. On the other hand, there is the evidence of Dr. Bhupinder Singh as well as that of Billo PW-6 herself that the questions were put to Billo by him and the answers given by her were recorded by the doctor, PW-7. In fact a mere perusal of the statement itself discloses that he had put all the questions to which Billo gave her answers. However, the questions and answers were recorded by the doctor, PW-7. It is also clear from the aforesaid statement that PW-4 Bashir, father of Billo, PW-6 suggested the involvement of the appellant along with Raju Bhaiya and in answer to that question Billo nodded and answered in the affirmative. His statement that when he reached the place of occurrence he found that the dead body of Jamila was lying there and she was naked, is also false. No other witness has said so. In fact, PW-3, the lady doctor who performed the post mortem examination on the dead body of the deceased Jamila stated that when the body of the deceased was brought to her she was wearing green and orange printed salwar kameej, brassier of pink colour, silver colour neck chain, pink and red and green bangles on the right arm, golden coloured nose pin, long scalp hairs tied in a plait with black parandi. This itself suggests that either this witness had not seen the dead body of Jamila at the time he claims to have seen the dead body, or he is deliberately telling a lie to create a suspicion that Jamila had been subjected to rape before she was killed. Having considered

A his evidence, we are convinced that this witness is not worthy of belief and stands thoroughly discredited in his cross examination. His assertions further demonstrate that he has no regard for truth. He went to the extent of claiming that he was a resident of village Khamanon Kamli whereas the case of the prosecution is that he is a resident of village Madera and the evidence of Billo PW-6 on this aspect is very categorical. We must, therefore, discard the evidence of Bashir, PW-4.

So far as Amar Singh, PW-5 is concerned, this witness was declared hostile. No doubt, this witness had lodged the FIR, but nothing much turns on his evidence as he was not an eye witness.

C The evidence of Billo, PW-6 is of considerable significance, it being the testimony of an eye witness who was also injured in the incident. Her first statement was recorded by the doctor, PW-7 on 30th August, 1996. In our opinion, that statement has to be discarded because it was at the prompting of her father that she implicated the appellant, otherwise, she had only D implicated Raju Bhaiya. Her second statement was recorded by the Investigating Officer on September 3, 1996 and her third statement was recorded by the Judicial Magistrate on September 6, 1996. She was deposing before the court 5 years after the occurrence. In this background we may examine her evidence in detail.

E In her deposition, PW-6 claimed that she was residing with her parents at village Madera while her maternal grand father and grandmother and aunt resided at Khamanon Kamli at the tube well of Amar Singh, PW-5. Raju Bhaiya (since absconding) was the servant of her grandfather namely, Sahu. Amar Singh, at whose tube well her maternal grandparents were residing, is the father of the appellant and, therefore, she knew the appellant as well. F She has narrated the manner in which on the fateful night the appellant came along with Raju Bhaiya and assaulted her, apart from her maternal grandfather and aunt Jamila, both of whom lost their lives. She claimed that after the incident she had become unconscious and only on the next day she regained consciousness while in the hospital at Ludhiana. In the course of her cross-examination, she was confronted with her earlier statement and though she G claimed to have stated many facts, those facts were not found in her earlier statement Ex.PW-6/A . Similar is the position with regard to her statement Ex.PW-6/B recorded by the Judicial Magistrate and Ex.DA recorded by the Investigating Officer. It is not necessary to refer to all the questions put to her in her cross-examination and her being confronted with her earlier H

statements where those statements were not found. She claimed to have stated in her statement Ex.PW-6/A that the appellant was the son of Amar Singh at whose tube well her grandparents were residing and therefore she knew him. This fact was not recorded in Ex.PW-6/A. Even in her statement made before the Judicial Magistrate she claimed to have stated that her aunt, her grand father and one Rabi Singh were killed at the tube well of Amar Singh and they were residing at that tube well. When confronted with that statement, it was found that she had not stated the fact that they were residing at the tube well of Amar Singh. She also claims to have stated before the Judicial Magistrate that her aunt, her grand father and Rabi Singh received injuries at the tube well of Amar Singh, but in her statement Ex. PW-6/B the name of Amar Singh was not mentioned. She also claimed to have stated before the police that Amar Singh at whose tube well her grandparents were residing is the father of the appellant and, therefore, she knew the accused present in the Court. However, she was confronted with her statement Ex.DA where it was not so recorded. From these statements made by the witness, it appears that she had earlier not mentioned the fact that the tube well where her grandparents were residing belonged to Amar Singh, father of the appellant and, therefore, she knew him. In fact, in her statement made before the Judicial Magistrate PW-6/B, this witness has stated that she had seen the appellant earlier since he used to come to the tube well everyday. The Trial Court came to the conclusion that the appellant was known to Billo, PW-6 because he used to come to the motor (tube well). In the course of her deposition, PW-6 did not say so. On the contrary, she claimed to know the appellant because he happened to be the son of Amar Singh at whose tube well her maternal grandparents were residing, and this claim she made for the first time while deposing in Court 5 years after the occurrence.

Though a submission was made before the Trial Court that the appellant was not known to PW-6, Billo, the Trial Court brushed aside this argument holding that since the appellant used to come to the tube well, she had occasion to see him and identify him. Apart from the fact, as we have pointed out above, that in the course of her deposition, she does not say so, it is also difficult to accept the explanation furnished by PW-6 five years after the occurrence, namely that since he happened to be the son of Amar Singh, who was the owner of the tube well, where her maternal grandparents were residing she knew the appellant. One cannot lose sight of the fact that this child was only 7 years old when the occurrence took place. She had come to the tube well where her grandparents resided only in the evening preceding the night of the occurrence. There was, therefore, no truth in her assertion made in an

A earlier statement that she knew the appellant since he used to frequently come to the tube well. As noticed earlier, in the course of her deposition, she does not say so. There is no evidence on record to suggest that PW-6 had ever stayed at the tube well earlier. In the course of investigation, she had not claimed to have known the appellant since he was the son of Amar Singh at whose tube well her grandparents were residing. In fact in her earlier statements, Amar Singh's name has not been mentioned at all. We entertain a serious doubt whether a girl 7 years old and residing in a different village would have known to whom the tube well belonged. These facts expose a serious lacuna in the prosecution case because there is no evidence to establish beyond reasonable doubt that the sole eye witness PW-6, Billo had ever an opportunity of seeing or knowing the appellant. The mere fact that he happened to be the son of Amar Singh, who was the owner of the tube well, by itself does not establish that the witness had ever seen the appellant before the day of occurrence. This, coupled with the fact that in her first statement PW-6/A recorded on 30th August, 1996, her father PW-4 by putting a leading question to her suggesting the involvement of the appellant, got the appellant implicated creates a serious doubt about the truthfulness of this witness. Thereafter she repeated the involvement of the appellant in her subsequent two statements. If there was any evidence to prove that PW-6, Billo, who was then aged about 7 years had ever an opportunity of seeing the appellant and identifying him, her evidence could have been acted upon. Unfortunately, there is no such evidence on record. She was persuaded to name the appellant by her father PW-4 who suggested to her the involvement of the appellant. We, therefore, entertain serious doubt as to whether PW-6, Billo had ever seen the appellant so as to be able to name him as one of the assailants. Moreover, she had come to the tube well only in the evening preceding the night of occurrence. There is no evidence to establish that the appellant had come to the tube well that evening.

This has to be viewed in the light of the fact that her statement was recorded by the Investigating Officer for the first time three days after the occurrence, and her statement was recorded by the Judicial Magistrate six days after the occurrence. The courts below have taken the view that delay in examining her has caused no prejudice to the defence. Counsel for the appellant, submitted that this period was utilized by the prosecution for tutoring the witness, and therefore the delay of three days in her examination under Section 161 Cr. P.C. is significant. No explanation is forthcoming as to why she was not examined for three days when the Investigating Office knew that a statement of her's had been recorded by the doctor on 30th August, 1996.

The Trial Court took the view that since she was under a shock she was not in a position to make a statement and, therefore, her statement was recorded later. This is clearly erroneous because the case of the prosecution is that she regained consciousness on 30th August, 1996 and, thereafter, she was fully conscious. The evidence of Dr. Bhupinder Singh, PW-7 who gave a certificate of her fitness to make a statement is also to the same effect. The reasoning of the Trial Court that the victim, PW-6, was under a great shock and was not in a position to make the statement, cannot be sustained. Neither the Trial Court nor the High Court cared to closely examine the evidence on record to find out whether there was any evidence on record to prove that the appellant was known to PW-6 or that PW-6 had any reason to know his name so as to be able to identify him by name. The explanation furnished by PW-6 five years after the occurrence, that she knew the appellant because he happened to be the son of Amar Singh at whose tube well her grandparents resided, is unacceptable particularly, in view of the fact that there is no evidence to establish that she had ever earlier seen the appellant and in none of the three statements made by her earlier the name of Amar Singh is mentioned. The delay in examining her in the course of investigation also creates a serious doubt in the absence of any explanation for her late examination after three days, when admittedly she was the sole eye witness who was also injured in the course of the occurrence. We are, therefore, of the view that though she may have witnessed the occurrence, she did not know the appellant by name as she had no opportunity of knowing or seeing him earlier, and that she has involved the appellant at the instance of her father, who was the person who suggested the involvement of the appellant when her statement Ex.PW-6/A was being recorded.

There is yet another aspect of the matter which has remained unexplained. PW-6 has not mentioned a word as to how Rabi Singh was killed. Admittedly, he was sleeping in the motor room and just outside that room PW-6 was sleeping with Jamila (deceased). Apart from the fact that there is not an iota of evidence as to who assaulted Rabi Singh, there appears to be no reason why the appellant should commit the murder of his own uncle with whom his family was on cordial terms. In fact his father Amar Singh, PW-5, had come in the morning to give tea to his brother Rabi Singh. There is nothing on record to suggest that the appellant had any animus against his own uncle. Nor is there any evidence on record to suggest any possible motive for the appellant to commit such a heinous crime. We should not be understood to say that it is necessary to prove motive for the commission of an offence even when there is satisfactory direct evidence in proof thereof.

A In this case since we doubt the truthfulness of PW-6 so far as the involvement of the appellant is concerned, but there is evidence to support the involvement of another person namely, Raju Bhaiya, who has absconded, the absence of motive acquires significance because it is possible that the offence may have been committed by Raju Bhaiya along with some other person or persons.

B We also observe that though a motor cycle and a wrist watch were seized from the place of occurrence, no evidence has been produced by the prosecution to connect the appellant with the recovery of these two items. The conviction of the appellant, therefore, depends solely upon the testimony of PW-6, Billo. We entertain a serious doubt as to whether she knew the appellant at all when the occurrence took place. There is no evidence to prove that she was known to the appellant. The name of the appellant appears to have been introduced by her father, PW-4, who is not an eye witness. We, therefore, do not consider it safe to sustain the conviction of the appellant on the sole testimony of the child witness PW-6, Billo. The appellant is entitled to the benefit of doubt.

D Accordingly, this appeal is allowed and the appellant is acquitted of all the charges levelled against him. He shall be released forthwith unless required in connection with any other case.

B.B.B.

Appeal allowed.