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SWARN KAUR

v.

GURMUKH SINGH AND ORS.
(Criminal Appeal No. 1624 of 2008)

B

JULY 3, 2013

[CHANDRAMAULI KR. PRASAD AND FAKKIR
MOHAMED IBRAHIM KALIFULLA, JJ.]

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Penal Code, 1860 - s. 304 (Part II) - Conviction under ss. 302/34 and 201/34 by trial court - Acquittal by High Court - Held: Inflicting of injury by the accused and the ultimate death of the deceased due to the said injury has been proved without any iota of doubt - The conduct of the accused in deliberately failing to identify the dead-body of the deceased, lodging missing report of the deceased and the conduct of negotiating with the wife of the deceased, go against the accused - They are guilty of causing death of the deceased - However, nature of injury and weapons used do not suggest intention of causing death - Hence conviction altered to one under s.304 (Part II) - Accused sentenced to 7 years RI and fine of Rs.50,000/- each imposed - Direction to pay Rs. 2 lakhs to the complainant (wife of the deceased) out of the fine amount.

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Respondents-accused, alongwith two other accused, were prosecuted for the offences punishable u/ ss. 302/34 and 201/34 IPC. The prosecution case was that respondent-accused No.2 had taken the deceased alongwith his group on pilgrimage tour, as a cook. The deceased was beaten by the accused party as they were not satisfied with the quality of food prepared by him. Thereafter, he was taken towards a rivulet in a jeep-taxi belonging to PW-6. On the next morning, the body of the deceased was found near the rivulet. Information about the same was given to the police. In the meantime,

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accused persons also gave missing report of the deceased to the police. PW 17 (police official) directed them to go to the rivulet so as to find out whether the dead-body was that of their missing companion. The accused persons, after inspecting the body said that it was not that of the deceased. The accused persons, after returning home, initially told the appellant-complainant (wife of the deceased) that the deceased was missing. Two of the accused again met her and told about the death of the deceased. They also negotiated for a settlement by way of payment of a sum of Rs. 1,00,000/- as compensation. The appellant-complainant thereafter lodged FIR. She identified the deceased from the photo of the dead-body which was found near the rivulet.

Trial court found the respondents-accused Nos.1 to 5, guilty of the charges u/ss. 302/34 and 201/34 IPC. Accused Nos. 6 and 7 were acquitted of all the charges. High Court set aside the conviction of the respondents-accused. Hence the present appeal by the complainant.

Allowing the appeal, the Court

HELD: 1.1. In view of the admitted facts of the case, the High Court failed to analyze all the circumstances which were existing, while only a few of them were noted by the High Court while examining the correctness of the judgment of the trial court. Each one of the circumstances which were demonstrated to have been proved, sufficiently established the guilt of the accused and consequently, the conclusion of the trial court in having found the accused guilty, was perfectly justified and the interference with the same by the High Court without sufficient reasoning was therefore, liable to be set aside. [Paras 20 and 37] [678-F; 685-H; 686-A]

Brahm Swaroop and Anr. vs. State of Uttar Pradesh

A (2011) 6 SCC 288: 2010 (15) SCR 1; *Podda Narayana and Ors. vs. State of Andhra Pradesh* AIR 1975 SC 1252: 1975 Suppl. SCR 84; *Gurnam Kaur vs. Bakshish Singh and Ors.* AIR 1981 SC 631: 1980 Suppl. SCC 567 - referred to.

B 1.2. There is no dispute about the engagement of the
 C services of the deceased as a cook to go along with the
 D pilgrimage tour organised by the second accused on
 E 27.03.2002. Therefore, the said circumstance was fully
 F established. As far as the second circumstance viz., that
 G the deceased was found in the company of the accused
 when they were travelling together in the jeep taxi is
 concerned, the evidence of P.W.6 was unassailable.
 When once the travel undertaken by the accused along
 with the deceased in the jeep taxi belonging to P.W.6 was
 found to be true, there is no reason to disbelieve the
 version of P.W.6, as regards the brutal assault and the
 injuries inflicted upon the deceased at the instance of the
 accused. In the course of the cross examination of P.W.6,
 it was not brought forth as to why he was enigmatically
 disposed of towards the accused or as to why P.W.6 was
 harbouring any other grudge against the accused in
 order to unnecessarily implicate the accused to the
 alleged assault on the deceased. The vehicle was a jeep,
 therefore, when five of them were sitting together along
 with the deceased in the jeep and when a brutal assault
 was inflicted upon the deceased, there is every possibility
 of P.W.6 noticing the assault inflicted upon the deceased.
 If that be so, his version that the deceased was beaten
 repeatedly and mercilessly below the knees and other
 parts of the body as stated by him, have to be accepted
 in toto, without any scope for contradiction. [Para 24, 25
 and 26] [680-H; 681-A-B, C-G]

H 1.3. Once the factum of the assault cannot be
 doubted, the further evidence of P.W.23 viz., the
 postmortem doctor, read along with the postmortem

certificate Ex.P.W.23/A, sufficiently demonstrate the nature of injuries sustained by the deceased viz. the multiple contusions below the knee, as well as serious injuries on the head of the deceased. Therefore, the said circumstance of the accused causing the injury on the body of the deceased and the ultimate death of the deceased due to the said injury is a circumstance, which has been proved without any iota of doubt. [Para 27] [681-H; 682-A-B]

1.4 The other circumstance viz., that the accused themselves reported to the police about the missing of the accused, the said circumstance has to be necessarily considered along with the circumstances described by P.W.17 and P.W.19, viz., their proceeding to the rivulet where the dead body was found by P.W.1, which was reported to the very same police station and that P.W.19 had gone to the said spot for making necessary enquiries. There is no reason to discard the evidence of P.W.17, as well as that of P.W.19 simply because they were official witnesses. The inquest report viz., Ex.P.W.19/A, postmortem report Ex.P.W.23/A, the evidence of P.W.1 and P.W.23, as well as P.W.2, sufficiently establish that the dead body, which was found at the rivulet was the body of the deceased. In the said background it will have to be held that the accused did visit the rivulet and failed to identify the body of the deceased as stated by P.W.19. Except mere denial, nothing was brought in evidence to disbelieve the said view of P.W.19. [Paras 28 and 31] [682-C-D; 683-C-E]

1.5. Such a deliberate stand of the accused in not identifying the dead body of the deceased only goes to show that the accused wanted to suppress the truth, for reasons best known to them. Therefore, the last of the circumstances viz., factum of missing of the deceased, as from 31.03.2002, were proved by the reporting of the

A same by the accused themselves to the police and also
 to P.W.2 on 01.04.2002. When once the said circumstance
 of the missing of the deceased was established beyond
 reasonable doubt, the conduct of the accused in their
 deliberate failure to identify the deceased when his body
 B was shown to them at the rivulet by P.W.19, was a
 serious circumstance, which has to be considered and
 held against the accused. [Para 33] [683-G-H; 684-A-B]

C 1.6. The failure of the accused in not having come
 forward with any acceptable explanation for not taking
 any steps by them to trace the missing of the deceased,
 except stating that they reported him missing to the
 police is yet another circumstance creating serious
 doubts about the credibility in their stand. [Para 34] [684-
 D C-D]

E 1.7. The last of the circumstances viz., the version of
 P.W.2 and P.W.12 that after reporting about the missing
 of the deceased to them by A2 and A3 on 01.04.2002, on
 04.04.2002, they came and reported that the deceased
 was no more and that they were prepared to pay a sum
 of Rs.1,00,000/- by way of compensation, if accepted to
 be true, would be a clinching piece of circumstance, that
 would complete the other chain of circumstances to
 fasten the alleged offence against the accused persons.
 F [Para 36] [685-B-D]

G 1.8. According to P.W.2, as the incident occurred in
 the State of Himachal Pradesh and she was living in a
 village in the State of Punjab, it took some time for her to
 arrange for her trip to Himachal Pradesh to lodge the
 complaint and in that process she could go to the Police
 Station only on 14.04.2002, where she identified the
 photographs of the dead body of the deceased along with
 his other belongings. [Para 22] [680-D-E]

H 2. From the nature of injuries found on the person of

the deceased, it cannot safely be said that the accused assaulted the deceased with intention to cause such injury so as to cause death. The accused persons were upset by the poor quality of food cooked by the deceased and, therefore, assaulted him. The nature of injury or the weapon used do not suggest that the accused assaulted him with the intention of causing death. However, the accused knew that the injury inflicted by them is likely to cause death. Hence, the accused shall be liable to be convicted for offence under Section 304 (Part II) IPC. In the facts and circumstances of the case, sentence of 7 years' rigorous imprisonment each and fine of Rs.50,000/- each shall meet the ends of justice. Out of the fine amount, the appellants shall be paid a sum of Rs.2 lakhs. [Para 39] [686-E-H]

Case Law Reference:

2010 (15) SCR 1	referred to	Para 18
1975 (0) Suppl. SCR 84	referred to	Para 18
1980 Suppl. SCC 567	referred to	Para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1624 of 2008.

From the Judgment & Order dated 18.06.2008 of the High Court of Himachal Pradesh in Criminal Appeal No. 280 of 2005.

Vineet Dhanda, Puneet Dhanda, J.P. Dhanda, Raj Rani Dhanda, Amrendra Kumar Singh for the Appellant.

Neeraj Kumar Jain, Manish Mohan, Aditya Kr. Chaudhary, Dharmendra Kumar Sinha, Sumeet Sharma (for Prashant Bhushan) for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This

A appeal is directed against the judgment of the Division Bench
of the High Court of Himachal Pradesh, dated 18.06.2008, in
Crl.A.No.280 of 2005. The *de facto* complainant is the
appellant. The respondents 1 to 5 were arrayed as accused 1
to 5 along with Gurnam Singh and Jagtar Singh, two other
B accused in Sessions Trial No.13/7 of 2001/2002.

2. The case of the prosecution was that on 30.03.2002, a
group of pilgrims were led by the second accused to Shah Talai
for worshipping Baba Balak Nath. The deceased Jeet Singh,
C was taken by the second accused along with the team for the
purpose of cooking. The pilgrims reached Shah Talai on
30.03.2002. On reaching Shah Talai and after paying obeisance
at the temple, the pilgrims stayed at Dana Mandi in Shah Talai.
The accused party appeared to have been not satisfied with
the food prepared by Jeet Singh and being annoyed by the said
D factor, it was alleged that the accused beat the deceased Jeet
Singh, after tying his hands with Parna (a piece of cloth used
both as head-gear and towel by the villagers). The deceased
was taken towards a khud in a jeep-taxi belonging to P.W.6,
Milap Chand. The accused stated to have given fist blows and
E kicks to the deceased and on the next day morning the body
of Jeet Singh was found in the bed of a rivulet known as 'Saryali
Khud', near Dana Mandi.

3. Some other pilgrims, not connected with the group led
F by the second accused, after noticing the body of the deceased,
stated to have brought it out and placed it on the dry portion of
the rivulet bed and the information was passed on to P.W.1.
P.W.1 is a village Up-pradhan of Gram Panchayat Naghiar.
P.W.1 in turn gave the information to the police station Thalai
G on 31.03.2002, at about 10.45 a.m. by telephone informing that
a dead body of some Punjabi male was lying in the bank of
Saryali Khud. Based on the said information P.W.19 A.S.I.,
along with other police officials reached the spot and prepared
the inquest report. In the meantime, A2, A4 and A5 along with
H A7 (acquitted accused) appeared to have proceeded to the

Shah Talai police station and reported to P.W.17, M.H.C. about the missing of one of their companion. P.W.17 directed the four of them to go to Saryali Khud and find out whether, the dead body was that of their missing companion. They went to the place where the body was found by P.W.19 and after inspecting the body A2, A4, A5 and A7 told P.W.19 that he was not the person who was missing viz., Jeet Singh. P.W.19 after conducting the inquest, sent the body for post-mortem and the post-mortem was carried out by P.W.23, Dr. A.K. Sarma. Exhibit P.W.23/A is the post-mortem report, wherein the post-mortem doctor has noted two injuries. The injuries were :

“(a) Multiple contusions on both knee and below the knee, reddish brownish scab formed, underline bones are normal.

“(b) Contusion over the xiphisternum 2 cm x 1 cm reddish brown scab formed, under lying bone normal.”

P.W.23 gave the opinion in exhibit P.W.23/A that the cause of death was the head injury leading to shock.

4. Be that as it may, on the early morning of 01.04.2002, the pilgrims led by the second accused, reached Ferozpur District of Punjab. The second accused met the appellant and informed her that her husband had gone missing at the place of Baba Balak Nath; that three of their team members have stayed back in search of her husband and they are likely to get the information in the evening by 6.00 p.m.

5. According to the appellant while no information about her missing husband was forthcoming from the accused, on 04.04.2002, A2 and A5 again met her, as well as her son P.W.12, Angrej Singh and negotiated for a settlement by way of payment of a sum of Rs.1,00,000/- as compensation, by stating that her husband Jeet Singh was no more. Thereafter, the appellant accompanied by her brother-in-law Ajit Singh and Gurbanch Singh, stated to have gone to Shah Talai police

A station on 14.04.2002 and lodged an F.I.R. (Ex.P.W.2/A) at the police station. The appellant identified her husband from the photo of the dead body shown to her, besides identifying the clothes and purse of the deceased. Thereafter, the investigation commenced.

B 6. On 15.04.2002, A2, A6 and A5 were arrested at village
C Baltoha and were remanded to police custody by the Court. On
D 17.04.2002, based on the disclosure statement of A2, the
turban, parna, bag, shirt, blanket and cooking utensils of the
deceased, Jeet Singh, were recovered from the house of A2
at village Baltoha. The first and the third accused were arrested
on 19.04.2002, and they stated to have identified the place of
occurrence. A4 and A7 were arrested on 06.05.2002, and
based on the admissible portion of the disclosure statement
of A4, a stone which was thrown below the bus stand of
Deothsidh, was recovered. The prosecution *in toto* examined
23 witnesses and in the Section 313 questioning, the accused
denied the case of the prosecution and no defence evidence
was let in on behalf of the accused.

E 7. One relevant statement in the Section 313 questioning
of A4 when it was put to him that the prosecution evidence
against him that all the pilgrims except Jeet Singh, returned to
the native place on 01.04.2002 and what he had to say about
it, A4 in his answer stated as under:

F *"It is correct. We all returned except Jeet Singh, but he
was missing from Shah Talai and we have lodged report
with the police at P.S.Talai about missing of Jeet Singh."*

G 8. Again in Question No.20, it was put to A4, that in the
prosecution evidence against him it had come to light that on
01.04.2002, at about 9.00 A.M., accused Joginder Singh @
Kala, went to the house of Smt.Swarn Kaur and told her that
her husband Jeet Singh had been missing from Shah Talai and
that he had retained three persons in Shah Talai to trace out

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Jeet Singh and further told Smt. Swarn Kaur that Jeet Singh would return in the evening, A4 answered as follows: A

"We all persons had went to the house of Smt. Swarn Kaur and told that Jeet Singh was missing from Shah Talai and that we told that we have lodged a report about his missing with the police." B

9. With the above evidence on record and the stand of the accused, the Trial Court found accused 1 to 5 guilty of the charges falling under Section 302 r/w Section 34 and Section 201 r/w Section 34 of I.P.C. The Trial Court, however acquitted A6 and A7 of all the charges. Ultimately, after finding accused 1 to 5 guilty of the above charges, the Trial Court imposed the punishment of imprisonment for life for the offence under Section 302 r/w Section 34, besides imposing a fine of Rs.10,000/- each and in default of payment of fine, further sentence of imprisonment for six months each. For the offence proved under Section 201, all the five accused were sentenced to rigorous imprisonment for one year, apart from a fine of Rs.2,000/- each and in default, imprisonment for one month each. The sentence were directed to run concurrently. C D E

10. All the five accused preferred an appeal before the High Court of Himachal Pradesh in Cri.A.No.280 of 2005 and the High Court having reversed the judgment of the Sessions Court and set aside the conviction and sentence imposed on them and there being no further appeal at the instance of the State, the *de facto* complainant has come forward with this appeal. F

11. We heard Mr. Vineet Dhanda, learned counsel for the appellants and Mr. Neeraj Kumar Jain learned senior counsel for the respondent accused. G

12. The learned counsel for the appellants contended that the deceased was taken by the second accused along with the other accused and the pilgrims for cooking purposes, on H

A 27.03.2002 and that on 31.03.2002, the dead body of the deceased was seen by P.W 1, the village Up-pradhan, who preferred a complaint to the police. According to the learned counsel, the accused 1 to 5 were last seen along with the deceased when they travelled in the jeep-taxi belonging to P.W.6; that in the evidence of P.W.6 it has come to light that the accused hit the deceased by fist, apart from giving him indiscriminating kicks; that his hands were tied with a parna and that they got themselves dropped at Saryali Khud, near Dana Mandi. The dead body of Jeet Singh was found in the bed of the rivulet Saryali Khud and that the accused who stated to have reported about the missing of Jeet Singh to Shah Talai Police on 31.03.2002, were directed to see the dead body near the rivulet, and though the accused went there and saw the dead body, for reasons best known to them, did not identify the same, though it was the dead body of Jeet Singh.

13. The learned counsel contended that it has come out in evidence that on 01.04.2002, after returning from the pilgrimage, A2 and A4 went to the home of the appellant and informed that the deceased went missing at Shah Talai and that a report has been lodged with the police. The learned counsel contended that the said fact was admitted by A4 in the Section 313 questioning and therefore, it was the responsibility of the accused to have satisfactorily explained as to how the deceased was missing. The learned counsel further contended that though on behalf of the accused it was claimed that they preferred a complaint with the police on 31.03.2002, nothing was brought on record to show that any serious complaint was lodged with the police to trace the deceased. Per contra, when they stated to have gone to the police station of Shah Talai on 31.03.2002, P.W.17 advised them to go and see whether the dead body lying at the rivulet was the body of deceased and that the accused who had gone there and met P.W.19 deliberately did not identify the body of the deceased Jeet Singh. The learned counsel submitted that their presence at the

rivulet for the purpose of identification was duly noted as per the statements recorded by P.W.19, which were marked as Ex.P.W.19/G,H & J. The learned counsel, therefore, contended that the chain of circumstances leading to the involvement of the accused in the killing of the accused, were duly brought out in evidence by the prosecution and that the conviction and sentence imposed by the learned Sessions Judge was perfectly justified. The learned counsel contended that the interference with the same by the High Court, therefore, was liable to be set aside.

14. As against the above submissions, Mr. Neeraj Kumar Jain learned senior counsel appearing for the respondent accused, submitted that there were very many missing links in the chain of circumstances and that if really the accused persons had gone to the place where the dead body of Jeet Singh was lying as claimed by the prosecution, there was no reason why the said fact was not recorded in the inquest report and their signatures were not obtained in that report. According to the learned senior counsel, at the police station when they went to report about the missing of Jeet Singh, their signatures were obtained in blank papers, which were fabricated to the advantage of the prosecution for foisting a false case against the accused Nos.1 to 5.

15. The learned senior counsel also contended that there was long delay in the filing of the F.I.R. and that by itself would vitiate the case of the prosecution. The alleged killing of the deceased was on 31.03.2002. The appellant lodged the F.I.R. with Shah Talai Police Station only on 14.04.2002. The learned senior counsel contended that there was no valid explanation for the enormous delay in the filing of the complaint by the appellant.

16. The learned senior counsel by referring to the injuries noted on the body of the deceased contended that there were only multiple contusions and if really the deceased was beaten

A by several persons, there would have been apparent swelling on the body, which was not present and, therefore, the story of the prosecution cannot be believed.

B 17. The learned senior counsel, therefore, contended that the various circumstances, which were listed out by the High Court and the lack of proper evidence to support the said circumstances, weighed with the High Court in interfering with, the conviction and sentence imposed by the learned Sessions Judge and the same does not call for interference.

C 18. The learned counsel appearing for the appellant relied upon the decisions in *Brahm Swaroop and another vs. State of Uttar Pradesh - (2011) 6 SCC 288* and *Podda Narayana and others vs. State of Andhra Pradesh - AIR 1975 SC 1252*, as well as *Gumam Kaur vs. Bakshish Singh and others - AIR*
 D *1981 SC 631*.

E 19. Having heard the learned counsel for the appellant, as well as the respondent accused and having perused the judgment of the Trial Court, as well as that of the High Court, we find that this was a case based on circumstantial evidence. Having noted the facts and the evidence led before the Trial Court, the following facts are not in dispute viz.,

F (a) There was a pilgrimage tour organised at the instance of the second accused, which consisted of about 100 pilgrims including other accused viz., A1, A3, A4 and A5, as well as A6 and A7.

G (b) The deceased Jeet Singh was taken by the second accused along with the pilgrims for the purpose of cooking.

H (c) The evidence of P.W.6 was to the effect that the deceased was carried in his jeep taxi bearing Registration No.PB-10D-0507 on 31.03.2002 and that his hands were tied with a parna.

- (d) According to P.W.6, while they were travelling, the deceased was mercilessly beaten by all the accused persons. A
- (e) It is the stand of the respondent accused that the deceased was missing on and from 31.03.2002 and that they reported the same to the Shah Talai Police Station. B
- (f) While according to P.Ws.17 and 19 when the accused persons went and reported to P.W.17 about the missing of the deceased Jeet Singh, they were directed to report to P.W.19 to find out whether the dead body lying at the rivulet was the body of the deceased. According to the accused they were not asked to go to the said riverbed for identification. On the other hand, it was claimed that their signatures were obtained in blank papers, which was fabricated later on by the prosecution. C D
- (g) Admittedly on 01.04.2002, A2 and A4 went to the house of the deceased Jeet Singh and informed the appellant about the missing of the deceased from the pilgrims group. E
- (h) According to P.W.17 and P.W.19 after the appellant filed the F.I.R. on 14.04.2002, the photograph of the dead body of Jeet Singh was shown to her, which was duly identified and that she also identified the clothes worn by the deceased, as well as the purse belonging to the deceased. F
- (i) According to the appellant, after informing her about the missing of the deceased by A2 and A5, on 01.04.2002 and subsequently on 04.04.2002, they came and informed her that her husband was no more and that they were prepared to pay a sum of Rs.1,00,000/- by way of compensation and that she G H

A should not go to the police and that her son P.W.12 was also present at that time.

B (j) The postmortem report Ex.P.W.23/A revealed that there were multiple contusions on the knee and below the knee of the deceased, apart from contusions in the head of the deceased, which according to the postmortem doctor P.W.23 was fatal to the deceased.

C (k) The evidences of P.W.1, P.W.2, P.W.6 and P.W.12, read together discloses that the deceased went along with the accused who were part of the pilgrims group of about 100 persons on 27.03.2002 and that while all others returned back on 31.03.2002, the deceased alone did not return and for which there was no valid explanation offered at the instance of the accused, except stating that they made a report at Shah Talai police station about the missing of the deceased.

E 20. By referring to the above factors, when we note the circumstances, which were put against the accused by the prosecution, we find that the following circumstances have to be noted. In our considered opinion, the Hon'ble High Court failed to analyze all the circumstances which were existing, while only a few of them were noted by the High Court while examining the correctness of the judgment of the Trial Court. The circumstances which were existing as against the accused can be stated as under:

G (i) At the instance of A2, the deceased Jeet Singh was engaged as a cook to come along with the pilgrims to Shah Talai to worship Baba Balak Nath on 27.03.2002.

(ii) P.W.6 in whose jeep taxi the accused stated to have travelled along with the deceased Jeet Singh, was

- totally an independent witness, who had no axe to grind against the accused. A
- (iii) The version of P.W.6, read along with the postmortem report Ex.P.W.23/A and oral evidence of P.W.23, the postmortem doctor, it has come to light that the deceased Jeet Singh, suffered injuries viz., multiple contusions below his knee and also severe head injury. B
- (iv) The factum of 'missing of the deceased' Jeet Singh, was admittedly said to have been reported by the accused themselves, first to the police station at Shah Talai and then on 01.04.2002, to the appellant. C
- (v) There was no document produced on behalf of the accused to show that any earnest effort was taken by the accused to trace the deceased after he was reported to be missing from 31.03.2002. According to P.W.17 and P.W.19, the accused were advised to go and see a dead body lying at the rivulet bank and that after checking the body in the presence of P.W.1 and P.W.19, the accused stated that the said dead body was not that of the deceased. D
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- (vi) As far as the identification of the dead body of the deceased, the same was established by the identification made by P.W.2, the appellant, by looking to the photograph of the deceased and also the clothes worn by him, as well as the purse belonged to the deceased. The said statement of the appellant as regards the identification based on the photographs shown to her, as well as the belongings of the deceased was not disputed at the instance of the accused. F
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- (vii) The recovery of the stone at the instance of A4, H

A which was alleged to have been used in the offence
was also duly established.

B 21. Keeping the above circumstances in mind, when we
test the submissions made on behalf of the appellant, as well
as that of the respondent accused in so far as the
circumstances are concerned, it has come in evidence through
P.W.2 and P.W.12 that A2 and A4 informed the appellant after
01.04.2002 i.e., on 04.04.2002 that the deceased was reported
to be missing earlier and was stated to be dead and according
C to P.W.2 and P.W.12 the said accused offered to pay a sum
of Rs.1,00,000/- by way of compensation, so that the appellant
did not report the matter to the police.

D 22. According to P.W.2, as the incident occurred in the
State of Himachal Pradesh and she was living in a village in
the State of Punjab, it took some time for her to arrange for
her trip to Himachal Pradesh to lodge the complaint and in that
process she could go to the Police Station at Shah Talai only
on 14.04.2002, where she identified the photographs of the
dead body of the deceased along with his other belongings.

E 23. According to P.W.19, based on Exhibits P.W.19/G, J
and I, the statements of the accused that the dead body found
in the rivulet was not that of the deceased Jeet Singh. When
P.W.19 was confronted as to why the statement of the accused
F about the identification of the dead body was not noted in the
inquest report, P.W.19 came forward with an answer that since
the accused made it clear that the dead body was not that of
the deceased Jeet Singh, he felt that there was no necessity
to make a note of it in the inquest report.

G 24. Keeping the above circumstances which exist in the
case on hand, when we consider the submissions of the learned
counsel, as far as the first circumstance is concerned, there is
no dispute about the engagement of the services of the
deceased Jeet Singh as a cook to go along with the pilgrimage
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tour organised by the second accused on 27.03.2002. Therefore, the said circumstance was fully established.

25. As far as the second circumstance viz., that the deceased Jeet Singh was found in the company of the accused when they were travelling together in the jeep taxi bearing Reg.No.PB-10D-0507 is concerned, the evidence of P.W.6 was unassailable. It has been found by the Trial Court that the evidence of P W.6 was categoric in that respect and that nothing contra was elicited from him to take a different view.

26. When once that factum of the travel of the deceased along with the accused is found to be true, then the next circumstance to be examined is the alleged violent assault made by the accused on the body of the deceased as stated by P.W.6, when they were travelling together in his jeep taxi. When once the travel undertaken by the accused along with the deceased in the jeep taxi belonging to P.W.6 was found to be true, the point for consideration is as to why the version of P.W.6, as regards the brutal assault and the injuries inflicted upon the deceased at the instance of the accused, should not be believed. In the course of the cross examination of P.W.6, it was not brought forth as to why he was enemically disposed of towards them or as to why the P.W.6 was harbouring any other grudge against the accused in order to unnecessarily implicate the accused to the alleged assault on the deceased. The vehicle was a jeep, therefore, when five of them were sitting together along with the deceased in the jeep and when a brutal assault was inflicted upon the deceased, there is every possibility of P.W.6 noticing the assault inflicted upon the deceased. If that be so, his version that the deceased was beaten repeatedly and mercilessly below the knees and other parts of the body as stated by him, have to be accepted *in toto*, without any scope for contradiction.

27. When once the said factum of the assault cannot be doubted, the further evidence of P.W.23 viz., the postmortem

A doctor, read along with the postmortem certificate Ex.P.W.23/A, sufficiently demonstrate the nature of injuries sustained by the deceased viz. the multiple contusions below the knee, as well as serious injuries on the head of the deceased. Therefore, the said circumstance of the accused causing the injury on the body of the deceased and the ultimate death of the deceased due to the said injury is a circumstance, which has been proved without any iota of doubt.

28. When we come to the other circumstance viz., that the accused themselves reported to the Shah Talai police about the missing of the accused, the said circumstance has to be necessarily considered along with the following circumstances described by P.W.17 and P.W.19, viz., their proceeding to the rivulet where the dead body was found by P.W.1, which was reported to the very same police station and that P.W.19 had gone to the said spot for making necessary enquiries.

29. The question for consideration is whether the accused had gone to report the incident to the police and what were the subsequent events after the said reporting. In this context, the evidence of P.W.17, to some extent support the version of the accused about their reporting to the police about the missing of the deceased on 31.03.2002. Though the accused took the stand that after reporting at Shah Talai police station, they did not go to the rivulet as claimed by the prosecution, according to the prosecution, P.W.17 directed them to go to the rivulet and find out as to whether or not the dead body lying there was the dead body of the deceased. In so far as the report of the missing of the deceased is concerned, since there were no two contradicting views, we do not wish to dilate further on that issue.

30. When we examined the disputed question about the visiting of the accused to the place viz., the rivulet where the dead body was found, the prosecution relied upon the evidence of P.W.17 and P.W.19 and the statements of the accused in Ex.P.W.19/G, J and K.

31. On behalf of the accused, it was contended that their signatures were obtained in blank papers, which were subsequently fabricated by the police to suit their convenience. As far as the said statement is concerned, except the *ipse dixit* there was no other evidence to support the said stand. It is quite possible that when the accused reported to the police station about the missing of the deceased, as the S.H.O., P.W.17 would have directed them to go to the spot where the dead body was reported to be lying in order to ensure whether the said body either belonged to the deceased or not. There is no reason to discard the evidence of P.W.17, as well as that of P.W.19 on that score, simply because they were official witnesses. The inquest report viz., Ex.P.W.19/A, postmortem report Ex.P.W.23/A, the evidence of P.W.1 and P.W.23, as well as P.W.2, sufficiently establish that the dead body, which was found at the rivulet was the body of the deceased Jeet Singh. In the said background it will have to be held that the accused did visit the rivulet and failed to identify the body of the deceased as stated by P.W.19. Except mere denial, nothing was brought in evidence to disbelieve the said view of P.W.19.

32. In such circumstances, it is not known as to why the accused should have merely stated that the body was not that of the deceased Jeet Singh. The statements in Ex.P.W.19/G, J and K were rightly relied upon by the Trial Court to affirm the position that the accused came forward with the stand that the body found on the rivulet was not that of the deceased.

33. Therefore, a conspectus consideration of all the above proved facts, only disclosed that the accused deliberately failed to identify the body of the deceased, when the same was shown to them at the spot by P.W.19, pursuant to the direction of P.W.17. Such a deliberate stand of the accused in not identifying the dead body of the deceased only goes to show that the accused wanted to suppress the truth, for reasons best known to them. Therefore, the last of the above circumstances viz., factum of missing of the deceased Jeet Singh, as from

A 31.03.2002, were proved by the reporting of the same by the accused themselves to the police and also to P.W.2 on 01.04.2002. When once the said circumstance of the missing of the deceased Jeet Singh was established beyond reasonable doubt, the conduct of the accused in their deliberate failure to identify the deceased Jeet Singh, when his body was shown to them at the rivulet by P.W.19, was a serious circumstance, which has to be considered and held against the accused.

C 34. With that when we come to the next question as to the failure of the accused in not having come forward with any acceptable explanation for not taking any steps by them to trace the missing of the deceased, except stating that they reported him missing to the police is yet another circumstance creating serious doubts about the credibility in their stand. When D admittedly, the deceased was engaged at the instance of A2 for the purpose of cooking food for the pilgrims and subsequently he was found missing when the tour programme was on going, we fail to understand as to how by taking a mere E stand that such missing of the person was simply reported to the police without any further action taken in that respect is one other circumstance to be considered against the accused. When the deceased was engaged and was taken along with the pilgrims, which was led by the second accused, it was the F responsibility of the second accused to have shown what were the earnest efforts taken by him to trace the whereabouts of the deceased. Unfortunately, except the mere statement that along with A3 and A4, he went to Shah Talai police station and reported about the missing of the deceased, nothing else was shown as to what were the further steps taken by him to trace G the deceased. Further, the evidence of P.W.2 that the accused offered to compensate the missing of the deceased was yet another circumstance to be taken into account while considering the guilt of the accused.

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35. Therefore, the said conduct of the accused would only go to show that the said circumstance is also one other relevant circumstance, which has to be considered along with the other circumstances, which were all found proved and adverse against the accused.

36. With that when we come to the last of the circumstance viz., the version of P.W.2 and P.W.12 that after reporting about the missing of the deceased to them by A2 and A3 on 01.04.2002, on 04.04.2002, they came and reported that the deceased was no more and that they were prepared to pay a sum of Rs.1,00,000/- by way of compensation, was last of the circumstance which if accepted to be true would be a clinching piece of circumstance, that would complete the other chain of circumstances to fasten the alleged offence against the accused persons. The Trial Court which had the advantage of watching the demonour of P.W.2 and P.W.12, has noted that no serious answer was elicited from the mouth of the said witnesses, as regards the alleged offer of compensation made by A2 and A4. There is no valid reason to interfere with the said conclusion of the Trial Court in the absence of any other legally acceptable counter evidence to doubt the version of P.W.2 and P.W.12. Therefore, if A2 and A4, had made an attempt and offered the compensation of Rs.1,00,000/- after informing P.W.2 about the death of the deceased, the only conclusion which could be drawn based on the other chain of circumstances, which we have found to have been established without any scope of contradiction, was the culpability of the accused in having eliminated the deceased by inflicting the injuries upon him, as narrated by P.W.6 and as found to have existed by the expert witness viz., the postmortem doctor P.W.23 in Ex.P.W.23/A.

37. We are convinced that every one of the circumstances which were demonstrated to have been proved, sufficiently established the guilt of the accused and consequently, the conclusion of the Trial Court in having found the accused guilty

A was perfectly justified and the interference with the same by the High Court without sufficient reasoning was therefore, liable to be set aside.

B 38. Now, we address as to the nature of the offence committed by the accused. PW-23, Dr. A.K. Sharma, who conducted the post-mortem examination, has found the cause of death to be the head injury. But, the question is whether that itself would be sufficient to hold the accused guilty of the offence under Section 302 of the Indian Penal Code. The injuries found on the person of the deceased, as quoted in the preceding paragraph of the judgment, shows presence of only a small contusion of the size of 2 cm x 1 cm on the xiphisternum and the underlying bone was also found to be normal.

D 39. It is well settled that intention is always lodged in the mind of the accused but, to gather the intention one of the relevant factors which the court looks into is the nature of injury inflicted on the deceased. In our opinion, from the nature of injuries found on the person of the deceased it cannot safely be said that the accused assaulted the deceased with intention to cause such injury so as to cause death. It appears to us that the accused persons were upset by the poor quality of food cooked by the deceased and, therefore, assaulted him. The nature of injury or the weapon used do not suggest that the accused assaulted him with the intention of causing death.

E However, we are of the opinion that the accused knew that the injury inflicted by them is likely to cause death. Hence, in our opinion, the accused shall be liable to be convicted for offence under Section 304 Part II of the Indian Penal Code. In the facts and circumstances of the case, we are of the opinion that

F sentence of 7 years' rigorous imprisonment each and fine of Rs.50,000/- each shall meet the ends of justice. Each of the accused shall deposit the fine amount within three months failing which they shall suffer imprisonment for a further period of one year. Out of the fine amount the appellants shall be paid

G a sum of Rs.2 lakhs.

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40. The said accused 1 to 5 are directed to surrender A
forthwith before the Additional Sessions Judge, Ghumarwin,
District Bilaspur, Himachal Pradesh, who shall hand them over
to the concerned police for serving the remaining sentence. In
the result, the appeal is allowed, the judgment and order of
acquittal passed by the High Court is set aside and the B
accused are convicted and sentenced in the manner indicated
above.

K.K.T.

Appeal allowed.