

Reserved on 18.11.2021
Delivered on 04.02.2022

Court No. - 1

Case :- CRIMINAL APPEAL No. - 947 of 1982

Appellant :- Radhey Shyam And Others

Respondent :- State

Counsel for Appellant :- Sri K.K.Dixit,Dharm Trivedi,Jai Pal Singh
Amicus Cure,Om Prakash Dixit,Poonam Singh,Reetesh Singh,Smriti

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Vivek Varma,J.

(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)

(Per Ramesh Sinha, J. for the Bench)

(A) INTRODUCTION

- (1) Four accused persons, namely, *Radhey Shyam, Raj Kumar, Jagdish and Siyaram*, were tried by the VII Additional Sessions Judge, Hardoi in Sessions Trial No. 791 of 1981 : *State Vs. Radhey Shyam and others*, arising out of Case Crime No.210 of 1981, under Sections 302 and 201 of the Indian Penal Code , 1860 (hereinafter referred to as “I.P.C.”) at police station Pihani, District Hardoi.
- (2) Vide judgment and order dated 02.12.1982, the learned VII Additional Sessions Judge, Hardoi, convicted and sentenced the accused persons in the manner as stated herein below :-

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“Accused Radhey Shyam and Siyaram

- i. Under Section 302 I.P.C. to undergo life imprisonment; and
- ii. Under Section 201 I.P.C. to undergo three years’ R.I.”

“Accused Jagdish and Raj Kumar

- i. Under Section 302 readwith Section 34 I.P.C. to undergo life imprisonment; and
- ii. Under Section 201 I.P.C. to undergo three years’ R.I.”

Their sentences were directed to run concurrently.”

- (3) Feeling aggrieved by the judgment and order dated 02.12.1982, the convicts/appellants have preferred the instant appeal. During pendency of the instant appeal, convict/appellant no.1-Radhey Shyam, convict/appellant no.3-Jagdish and convict/appellant no.4-Siyaram died, hence their appeal stand abated vide orders dated 01.02.2021, 02.07.2015 and 02.07.2015, respectively. Now, the instant appeal survives only with regard to **appellant no.2-Raj Kumar**.

(B) FACT

- (4) Shortly stated, the prosecution case runs as under :-

On 19.09.1981, at about 07:00 am, informant Raj Bahadur (P.W.1) and his brother Sumnesh Chandra were going towards their field for cutting *Urd* (उर्द). Sripal (deceased) and his wife Madhu were going to village Sirsa for taking medicine from Dr. Sobaran and when they reached near the field of Leela Seth situated on the southern side of the village of *chak* road leading to village Sirsa, accused persons Jagdish son of Chhotey,

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Radhey Shyam and Raj Kumar son of Hansraj, and Siyaram son of Ram Gulam, village Bargawan, police station Biswan, District Sitapur, came out from the field of *Jonhari* (जोन्हरी के खेत) of Ram Prasad and on coming to *chak* road, accused Radhey Shyam challenged Sripal that “पकड लो मार डालो” (he should be caught and killed). Accused Radhey Shyam and Siyaram were armed with *banka* and accused Jagdish and Raj Kumar were armed with lathies. It has been stated that at about 07:00 a.m., all the four accused persons surrounded Sripal (deceased) and tried to catch him and started scuffling, thereupon Sripal (deceased) and his wife also raised alarm. On hearing the alarm, informant Raj Bahadur (P.W.1), his brother Sunnesh, his village Pradhan Jaswant Singh, Rajnish, Leela and other villagers ran by challenging them. By that time, all the accused persons dropped Sripal (deceased) on *chak* road, caught him and accused Siyaram and Radhey Shyam cut his neck with *banka*, whereas accused Raj Kumar and Jagdish were catching him. Thereafter, Radhey Shyam (accused) took away the head of Sripal along with his companions and ran towards the eastern side. They tried to catch them but they were threatened and they could not apprehend them. *Angauchha* (अंगौछा) belonging to Radhey Shyam and a torn piece of cloth of the *bushirt* of Siyaram were lying on the place of occurrence. The dead body of Sripal (deceased) was lying in the supervision of Rajneesh and others.

It has also been stated that Sripal (deceased) had married Madhu about five months ago from this occurrence. Madhu is

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aged about 14-15 years, who has an illicit connection with Siyaram (accused) and due to that Siyaram (accused) and Sripal (deceased) had a lot of bickering with each other. Mother-in-law of Sripal, namely, Smt. Sarojani was also living with Sripal (deceased). Sripal (deceased) was alone and he had none else in his family. He had a lot of land and property and to take away his wife and property, all these four accused collusively murdered Sripal (deceased).

- (5) The evidence of P.W.1-Raj Bahadur shows that Pradhan Jaswant Singh had sent him to the police station for giving information in respect of the incident. Thereafter, he went to police station; narrated the whole incident to Munshi of the police station; whatever he told to Munshi was written by him and read it to him by the Munshi; and thereafter Munshi got his signature thereon.
- (6) It transpires from the record that based on the aforesaid report/information, First Information Report (Ext. Ka.1) was registered as Case Crime No. 210 of 1981, under Sections 302, 201 I.P.C., at police station Pihani, district Hardoi, against all the four accused persons Jagdish, Radhey Shyam, Raj Kumar and Siyaram, on 19.09.1981 at 10:00 a.m.
- (7) The investigation of the case was conducted by SI Shiv Murti Singh (P.W.7). His evidence runs as under :-

On 19.09.1981, he was posted as Sub-Inspector, police station Pihani. The case was registered at police station on 19.09.1981 at 10:00 a.m. in his presence. The investigation of the case was

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taken by him on the date itself. He recorded the statement of informant Raj Bahadur (P.W.1) at police station and proceeded to the place of occurrence. On reaching the place of occurrence, he prepared the panchayatnama (Ext. ka.4) of the dead body of the deceased Sripal, photo lash (Ext. ka. 5) and challan lash (Ext. Ka.6). Thereafter, the dead body of the deceased Sripal was sealed and was sent for post-mortem along with a letter to CMO (Ext. Ka.8) through Constable Ram Naresh and Chaukidar Bhagwandeem. He, thereafter, inspected the place of occurrence; recorded the statement of the witnesses; prepared the site plan (Ext Ka.9); and collected the blood stained earth and plain earth from the place of occurrence in a two separate containers (Ext. Ka.10). He also collected the blood stained earth of groundnut and plain earth from the field of Sunder (Ext. Ka.11). He also recovered the cloth of the victim near the dead body under recovery memo (Ext. Ka.12). He also collected the *aungaucha* (अंगौछा) and a piece of bushirt of the accused near the dead body of the deceased under recovery memo (Ext. Ka.13). He, thereafter, searched the accused persons but he could not find them.

On 27.09.1981, information about lying of a human head near the village Akohara was received by him, he reached the place, from where he recovered it in the presence of the witnesses. He prepared *panchayatnama* (Ext. Ka.16), photo lash (head) (Ext. Ka. 17), challan lash (Ext. Ka.18) and letter to CMO (Ext. Ka.20). Thereafter, the recovered head was sealed and was sent for post-mortem. He inspected the place of recovery of head

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and prepared the site plan (Ext. Ka.22). On 28.09.1981, accused persons surrendered themselves in the Court. He sent the blood stained earth and original clothe etc. to Chemical Examiner for examination. He received the report of Chemical Examiner (Ext. Ka. 22 and ka 23). On 01.10.1981, accused Jagdish surrendered in the Court. After completing the investigation, he submitted the charge-sheet (Ext. Ka.24) against the accused persons.

Sri Owais Ahmad was posted as Head Moharrir along with him at the police station; he is familiar with the handwriting and signature of Sri Owais Ahmad; the chik Ext. Ka.1 has been written in the handwriting and the signature of Sri Owais Ahmad.

- (8) The evidence of P.W.3-Constable Ram Naresh shows that he was posted as Constable in September, 1981 at police station Pihani. On 19.09.1981, he brought the sealed dead body of the deceased Sripal with documents from village Akohara to District Hospital, Hardoi and presented it in a sealed condition before the doctor. Chaukidar Bhagwandin was also with him.

In cross-examination, P.W.3-Constable Ram Naresh has deposed that when he reached at the place of occurrence, dead body was lying there. Four Constables and two Inspectors were there. Chaukidar met at the place of occurrence.

- (9) The post-mortem of the dead body (headless body) of the deceased Sripal was conducted on 20.09.1981, at 01:15 p.m., in

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District Hospital, Hardoi by Dr. J.V. Singh (P.W.5), who found the following ante-mortem injuries on his person :-

“Ante-mortem injuries of the deceased Sripal

- 1) Incised wound 14 cm x 10 cm x through & through at the level of C-7. C7 is clear cut. Margins of wound clean cut clotted blood present in & around the wound. The wound on cutting the skin sub-cutaneous tissue is congested. All distal structure at thorax inlet are cut (clean). The circumference of wound is 32 cms.
- 2) Incised wounds two on top of shoulder right parallel to each 0.5 cm above obliquely placed 4 cm medial to right around clavicular joint. Each measuring 2.5 cm x 0.8 x skin deep clotted blood present.
- 3) Abrasion 2 cm x 0.5 cm on back of left shoulder 1 cm below acronic clavicular joint left.
- 4) Abrasion 4 cm x 0.7 cm obliquely placed on left side of abdomen laterally 6 cms above light iliac crest.
- 5) Incised wound on web of thumb and index finger of left hand 3 cm x 1 cm x skin deep with clean cut margins cogssion clotted blood.
- 6) Incised wound on index finger terminal with phalageal joint palmer and medial aspect 2 cm x 1 cm x bone deep left hand cut clotted blood.
- 7) Incised wound on terminal phalynix of middle finger left hand 1 cm x 0.7 cm x muscle tender deep on palmer aspect clean cut margins with cogssion and clotted blood.”

As per the opinion of Dr. J.V. Singh (P.W.5), deceased Sripal died due to shock & haemorrhage as a result of ante-mortem injuries sustained by him.

- (10) It is significant to mention here that in his examination-in-chief, P.W.5 Dr. J.V. Singh has reiterated the aforesaid ante-mortem

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injuries and cause of death of the deceased Sripal and has also deposed that on 20.09.1981, he was posted as Surgeon in District Hospital, Hardoi and on the said date, at about 01:15 p.m., he conducted the post-mortem of the dead body of the deceased Sripal, which was brought by Constable Ram Naresh (P.W.3) of police station Pihani and Village Chaukidar Bhagwandin and they identified the dead body of the deceased Sripal. He further deposed that the deceased Sripal was aged about 45 years and died 1 & 1/4 days ago. The body structure of the deceased Sripal was average built. The stiffness after death on the upper part was gone and was present at the bottom. The stomach was slightly bloated. The skin was coming out from somewhere. The head was missing from the neck. He further deposed that on internal examination, it was found that the seventh cervical vertebra was cut across. Trachea was cut across the seventh cervical vertebra. The swallowing tube was also cut across the seventh cervical. The stomach was empty. In the small intestine, there was liquid faecal matter and gas and there was faecal matter and gas in the large intestines. He further deposed that he took out *dhoti* from the dead body of the deceased Sripal and sealed it in a cloth and sent it to the Station Officer. He has proved the post-mortem report Ext. Ka.2. He further deposed that the death of the deceased could be attributable on 19.09.1981 at 07:00 a.m.; injury no.1 was sufficient to cause death; injuries no. 1, 2, 5, 6 and 7 could be caused by banka; abrasion could be caused from the rubbing of the rough ground; and there could be a difference of about six hours of the death.

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In cross-examination, P.W.5 Dr. J.V. Singh has deposed that injury no.1, which is incised wound, could be attributable to one blow and was not a result of more than one blow. He deposed that paper no.A5/11 was received by him along with the dead body, upon which he mentioned Enclosure 10 and put his signature on 20.09.1981 and also marked it as Ext Kha.2.

- (11) The evidence of P.W.4-Sri Shashidhar Rai shows that he was posted as Constable in September, 1981 at police station Pihani. On 27.09.1981, he brought the sealed human head from village Akohara at Sadar Hospital, Hardoi and placed it before the doctor.
- (12) The post-mortem of the recovered human head was conducted on 28.09.1981, at 03:30 p.m., in District Hospital, Hardoi by Dr. B.L. Sahani (P.W.6), who found the following on the unknown human head :-

“On the scalp at few places the scalp tissue including skin is present that too is very loose. On this at few places hair are adhered about 3 cm in size. Sub-cutaneous are separated. Cartilage of the ear and nasal septum missing. There is no brain matter or membranes in the skull. 8th mandible bone is missing. The upper jaw is lacerated and almost separated out. There are seven (7) teeth attached to it. The zygomatic bones are absent both side orbit are empty. The lower jaw is attached to the skull with few very loose ligaments it contains eight (8) teeth including third molar (teeth) in upper and lower jaws are very loose. The soft tissue on face absent and ligaments most of it eaten away. The neck contains only upper four cervical vertebra are attached to skull and connecting with few very loose ligaments (connecting) soft tissue except few ligaments absent. Vertebrae are eroded at places and lower most part of the 4th vertebra probably eaten away. The mental foramen in the mandible is in between mid part of the upper and lower part of the body. Mastoid process and occipital protuberance are

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prominent. The angle of the mandible is slightly everted.”

As per the opinion of Dr. B.L. Sahani (P.W.6), the cause of death could not be ascertained, hence the skull and vertebrae was preserved.

- (13) It is significant to mention that Dr. B.L. Sahani (P.W.6) has reiterated the aforesaid opinion and report on the examination of human skull in his deposition and has deposed that on 28.9.1981, he was posted as Emergency Medical Officer in Sadar Hospital, Hardoi and on that date, at 03:30 p.m., he conducted the post-mortem of an unknown human head, which was brought by Constable Sashidhar Rao, police station Pihani, district Hardoi in a sealed condition. He deposed that the age of the head was of a normal male adult who had died about nine days ago. He has proved the post-mortem report of the head (Ext. Ka. 3). He deposed that on 19.09.1981 the person could have died. He further deposed that he could not tell how and in what manner the lower part of the neck was cut. He was shown the post-mortem report (Ext. Ka.2) prepared by Dr. J.V. Singh, Sadar Hospital, Hardoi and asked him whether he can relate this skull in any way with the post-mortem report (Ext. Ka. 2), he deposed that it is not possible because in the post-mortem report (Ext. Ka.2), the 7th cervical vertebra was found to be cut, whereas according to his post-mortem report, the bone was present till the 4th cervical vertebra and the 5th, 6th and 7th vertebra were missing. This head could also be of a man of about 45 years of age.

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In cross-examination, P.W.6-B.L. Sahani has deposed that this male skull could also be above 36 years. The maximum age could be 60 or 65. He stated that he could not tell. The duration of death according to the recovered head was about two to three days old. The teeth begin to loosen from about four days after death and may also start falling from the twenty-four days. The skin of the scalp starts to loosen from the fifth to the sixth day and there is a possibility of separation from the seventh to the eighth day. He stated that it is wrong to say that it is about 25-25 days old. He knows about the bones. After scientific examination, he found it to be the head of a man. The bone at the back of the skull was prominent and the mandibular angle tilted outwards, because of which, he wrote the dead body was of male as the upper bones of the female is not prominent.

In cross-examination, he has deposed that he had not found any injury on the skull.

- (14) The case was committed to the Court of Session by the Chief Judicial Magistrate, Hardoi on 23.12.1981 and the trial Court framed charges against accused/appellants Raj Kumar and Jagdish under Section 302 read with section 34 I.P.C. and under Section 201 I.P.C. and against accused/appellants Radhey Shyam and Siyaram under Sections 302 and 201 I.P.C. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.

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- (15) During the trial, in all, the prosecution examined seven witnesses. Two of them, namely, the informant Raj Bahadur (P.W. 1) and Jaswant Singh (P.W.2) were examined as witnesses of fact and other witnesses, namely, P.W.3 Ram Naresh, P.W.4 Shri Shashidhar Rai, P.W.5 Dr. J.V.Singh, P.W.6 Dr. B.L. Shahni and P.W.7 SO Shiv Murti Singh were the formal witnesses and their evidence has been discussed hereinabove.
- (16) We would first like to deal with the evidence of informant Raj Bahadur (P.W. 1), who is the witness of fact. He deposed that accused Radhey Shyam and Raj Kumar are brothers. Accused Jagdish is the friend of accused Radhey Shyam. Accused Siyaram is the brother-in-law of the accused Jagdish. At the time of the incident, all the four accused persons were living at village Akohara. Village Sirsa is one mile away in southern direction of village Akohara. He knew the deceased Sripal, who was living in Akohara. Sripal (deceased) got married before the incident with Madhu. Sripal (deceased) had lot of agricultural land in the village.

It is a matter of thirteen months ago and about 07:00 a.m., he was going to cut *Urd* (उर्द) and along with him, his brother Sunnesh was also there. They were on the *chak* road. They listened to the alarm and at that time, they were on chak road near the eastern field of Leela. On listening the alarm, they saw that four accused persons Radhey Shyam, Siyaram, Jagdish and Raj Kumar came out from the Jonhari field (जोन्हरी का खेत) of Ram Prasad. Radhey Shyam and Siyaram were armed with

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Banka, whereas Raj Kumar and Jagdish were armed with lathies. At the relevant time, Sripal was going ahead of them on the same chak road and with him was his wife Madhu. Accused Radhey Shyam challenged Sripal and all accused persons clinging to Sripal. Sripal and his wife raised alarm. Accused persons dropped Sripal on the chakroad and accused Radhey Shyam and Siyaram cut the neck of Sripal with Banka. Accused Raj Kumar and Jagdish were catching to Sripal. Apart from them, Jaswant Singh Pradhan, Rajnish and Leela were also coming there. Thereafter, all of them challenged the accused persons, thereupon accused persons threatened them. Radhey Shyam took Sripal's severed head and went to the east with the remaining three accused. Thereafter, all of them went there, where the dead body was lying. Blood was pouring out of the corpse. There was also a bushirt cloth and a handkerchief called *Agouchha* lying there. Pradhan Yashwant Singh sent him to the police station to inform. Rajneesh, Yashwant, Leela and his brother Sunnesh were left with the corpse.

He went to the police station and informed the incident and whatever he was told, Munshi wrote down the same and after reading it to him, Munshi got his signature.

Accused Siyaram had an illicit relationship with the wife of Sripal, namely, Madhu and Sripal was killed for grabbing his land. Sripal had no children. Sripal did not even have parents.

In cross-examination, P.W.1- Raj Bahadur has deposed that accused Radhey Shyam and Raj Kumar are the sons of Hans

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Ram. Radhey Shyam and Jagdish had no relationship but they are friend. P.W.1-Raj Bahadur has deposed before the trial Court that before one year's ago, a skirmish took place between him and Kanchan Pasi resident of Sirsa and in this regard, a complaint was lodged against him by Kanchan Pasi. In that case, a report against his brother Sunnesh, his uncle Fafan and Ganesh, his cousin brother Jagdish, Shyam Mohan and Brahmosh were also lodged. The police had also submitted charge-sheet in that case. According to him, at the time of the murder of the deceased Sripal, the said case was not decided. P.W.1 has also stated that Ketuka is the real sister of deceased Sripal and she was married to Kunj Bihari resident of Aagolapur, which is situated at a distance of 8-9 mile from his village. Rajneesh, who is the witness of this case, is the son of Ketuka. According to him, Ketuka had filed an application for mutation of her name in respect of the property/land of Sripal. The deceased Sripal had 50-55 bighas of land, out of which, he sold out some land to Sukhlal son of Fatte. He denied that Sripal used to play gamble and he may have spent the money which got from the selling of agricultural land, in gambling.

P.W.1 has also deposed that Madhu is the daughter of Sarojini, to whom Sripal married. Sarojini is said to be a resident of Neri village, which is situated in district Sitapur. Sarojini is a widow. He stated that he did not know whether Sipahi was the husband of Sarojini or not but he knows that the husband of Sarojani was murdered. Sarojini was living in his village for two to three years before the incident of this murder and she stayed at the place of

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Vimlesh Lohar of his village. Sarojani is a Brahmin by caste. According to him, when Sarojani came to his village, Surendra Lohar resident of Mafia was also coming along with her. Sarojini had brought her daughter Madhu and a boy Umri of 10-11 years with her. Surendra Lohar is in jail for 5-6 months before the incident. He stated that he did not know that Surendra Lohar enticed Sarojini Lohar. When Surendra Lohar was caught, Sarojini along with her boy and girl were started living at the place of deceased Sripal. Sripal had no relation with Sarojini of man and woman. He denied that Sripal was not married to Madhu daughter of Sarojini and also Sarojini was having relation with Sripal.

P.W.1 has further deposed in his cross-examination that witness Rajneesh had asked him to report, then, he said that the corpse be saved and then he said that he would not save the corpse. Thereafter, he said that if the corpse will disappear, then, who will be responsible and therefore, he left Rajneesh there and went to lodge the report. He further deposed that he asked Madhu to lodge report but due to illicit relations, she had not gone to lodge the report. He further deposed that he went along at police station and he did not tell the peoples present there that there was any enmity with accused persons, hence they would go for lodging the report because he had no enmity with the accused persons. He is an illiterate person and only can sign. He further stated that the Inspector had not met him at police station and when he lodged the report, thereafter the Inspector met him at police station. He further stated that he had got the

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chick FIR before he met with Inspector. He had no conversation concerning this incident with the Inspector at police station. He returned to the village from the police station and Inspector was also coming along with him. After returning, they had come to the place where the dead body was lying around 11:30 a.m. He stayed on the spot till about two o'clock and by that time, Inspector had sent the dead body for post-mortem and thereafter, he went home. Rajneesh had come with the body for post-mortem. He did not have a conversation with Inspector from 11:00 a.m. to 02:00 p.m. He thereafter did not go to the police station on that day and after that, he never went to the police station. He further deposed that the Inspector had come along with him and Constable on the spot through a Jeep but the Constable who wrote the FIR had not come along with them.

P.W.1 has further deposed that after the murder and before going to police station, he did not have any conversation with Madhu. After the murder, Madhu and his mother Sarojini are not living in his village and he did not know where they reside. He further deposed that on that date, Sripal was going to Madhu's medical treatment. Sripal used to tell that his woman is sick and he used to go for medicine. This has been told to him by Sripal before two days of the incident. Sripal had not told him on which day he would go for medicine. He denied the suggestion that on that day, Sripal was going with his sister Ketuka and Madhu was along with her.

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P.W.1 has also stated that he had sickle for cutting Urd and Sumnesh had also his sickle. He did not reach his field, then, he heard the noise. Neither he nor Sumnesh had thrown sickle upon accused persons. He went to the police station after giving sickle to his brother Sumnesh. When he reached the place of occurrence along with Inspector, his brother Sumnesh was there. Leela was also present there and his plow and bull were also in the field of Leela which is situated at a distance of 115 steps from the place of occurrence.

P.W.1 has further stated that on seeing all the four accused persons coming, Sripal did not try to run away. At the time when Sripal was killed, Madhu was 10-15 steps to the north behind Sripal. Madhu did not run to save Sripal and till then she kept seeing to beat Sripal and got clinging to Sripal from the distance of 10-15 steps and when the killer ran after killing Sripal, then, Madhu came at the corpse. Madhu, thereafter, crying and she did not bend on the dead body of her man. Madhu, while crying, was standing at a distance of 6-7 steps. At the time of the incident, Madhu was aged about 14-15 years, whereas Sripal was aged about 50-55 years.

(17) P.W.2-Jaswant Singh, in his examination-in-chief, has deposed that he is the Pradhan of Village Akohara and was also Pradhan at the time of occurrence. About 13 months ago, at about 07:00 a.m., he went towards the Southern side of his village for call of nature and with him was also Rajneesh. After easing themselves, they were near the field of Leela and they saw that Sripal was

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going on chakroad towards northern side and behind him, his wife Madhu was going and at the same time, they saw that four persons came out from the Jawar's field of Ram Prasad and they all began grappling with Sripal. Sripal and his wife made noise. All the witnesses saw this occurrence. Raj Bahadur and Sunnesh were on the chakroad. All the four accused fell down Sripal and began cutting his head. Jagdish had caught his feet on the eastern side and Raj Kumar caught his head on the western side and northern side Siyaram and on the southern side Radhey Shyam was cutting his head. They all made noise and challenged the accused. They were also threatened by them that if they proceeded they will be killed. Radhey Shyam took away the cut head by catching it from his hair by hanging it in his hands along with other accused towards the eastern side. Then, they went near the dead body of Sripal. From the eastern side of the dead body, one Agauncha belonging to accused Radhey Shyam and a piece of cloth of bushirt belonging to accused Siyaram were lying there. Raj Bahadur went to lodge the report at the police station and they remained with the dead body. He identified Agauncha (Ext. 10) and a piece of bushirt coloured (Ext. 21) and has stated that the same lying near the dead body.

In cross-examination, P.W.2-Jaswant Singh deposed that he went from the home for call of nature at 07:00 a.m. His farm is about a furlong away from the house. Rajneesh met him in the chak of Leela where he went to call of nature. Rajneesh had gone to call of nature along with him also. It took 10-15 minutes for easing out. His way is from the side of the farm of Leela.

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There was no one else to ease out. His farm is 50 steps away from Leela's farm, wherein the groundnut and cowpea crop was there. His farm is at the North-East corner of Leela's farm. There are 4-5 fields in the middle. He deposed that it is wrong to say that his farm is situated about two furlong away from Leela's farm. Thereafter, they came to the place where the incident took place. When he saw the incident, he was at the eastern side of Leela's farm and at the time, Sripal was 110-115 steps away from him. Accused dropped Sripal in the corner of the field of Leela on eastern side.

P.W.2 has further deposed in cross-examination that where he was standing, neither he nor Rajneesh was having any lathi and they were having only *lota* (a round water pot). Raj Bahadur and Sunnesh were armed with *hasiya* (sickle) and they were going to cut Urd. They were running 50-60 steps towards the place of the incident when clinging took place. Raj Bahadur and Sunnesh were also running 30 steps towards the place of the incident. Leela was also 30-40 steps ahead. He deposed that accused Radhey Shyam and Siyarm were cutting the head of Sripal with banka by standing and bowing down and both had assaulted three-three, four-four blow of banka and he did not see the blow of banka on earth. Four accused ran towards the east north corner. Blood was falling from his head in Leela's field. They have not chased the accused persons.

P.W.2 has further deposed in cross-examination that after the murder, Madhu did not cry by clinging to Sripal but she stood

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away and crying. Ram Bahadur went to police station. Police and Ram Bahadur came from police station to the place of the incident and at that time, Ketuka and his members were not coming there. Rajneesh was residing in his village. Police went from the place of the occurrence at about 3-4 p.m. Raj Bahadur did not go along with the police.

- (18) In the statement under Section 313 of the Code of Criminal Procedure, the accused persons have denied all the allegations made against them. Accused Radhey Shyam has stated that his brother Onkar stood witness against Pradhan Jaswant Singh and Raj Bahadur; and his brother was a witness against Raj Bahadur, informant of this case and due to that enmity, they falsely deposed against them and this case has been falsely launched against them. Accused Raj Kumar has also stated that due to enmity, he has been implicated by the informant in this case. The same has also been stated by accused Jagdish. Accused Siyaram has also stated that due to enmity with his brother-in-law Jagdish, has been falsely implicated in this case. He has denied that he had any illicit connection with Smt. Madhu said to be the wife of Sripal. It is also denied that to grab the land and Madhu, they committed this offence. Accused Siyaram has also stated that he did not know that Sripal had married Madhu before this occurrence. Jagdish had denied that Madhu was married to Sripal. Raj Kumar and Radhey Shyam have also denied that Madhu had married with Sripal.

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(19) The learned trial Court believed the evidence of Raj Bahadur (P.W.1) and Jaswant Singh (P.W.2) and found the appellants Radhey Shyam and Siyaram guilty for the offences punishable under Sections 302 and 201 I.P.C., whereas appellants Jagdish and Raj Kumar for the offences punishable under Section 302 read with Section 34 I.P.C. and 201 I.P.C. and, accordingly, convicted and sentenced the appellants in the manner stated in paragraph-2.

(20) As mentioned earlier, aggrieved by their convictions and sentences, appellants preferred the instant appeal and during the pendency of this appeal, appellant nos. 1, 3 and 4 died and their instant appeal stand abated. The present appeal is surviving on behalf of the appellant no.2-Raj Kumar, thus, this Court proceeds to hear the appeal on behalf of the appellant no.2-Raj Kumar.

(C) APPELLANTS' CASE

(21) On behalf of appellant no.2-Raj Kumar, Sri Jai Pal Singh, learned Amicus Curiae has argued that :-

A) P.W.1-Ram Bahadur and P.W.2-Jaswant Singh are interested witnesses as the brother of accused Radhey Shyam, namely Onkar stood witness against Pradhan Jaswant Singh (P.W.2) and Raj Bahadur (P.W.1) and his brother was a witness against Raj Bahadur (P.W.1) and due to that enmity and just to take revenge, P.W.1-Ram Bahadur and P.W.2-Jaswant Singh gave false evidence against the appellants. According to him, P.W.1-Ram Bahadur and P.W.2-Jaswant Singh are not the eye-witness.

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Moreso, both P.W.1 and P.W.2 have criminal record. In this regard, learned Amicus Curiae appearing on behalf of the appellants has placed reliance upon **Shaikh Nabab Shaikh Babu Musalman and others Vs. State of Maharashtra** : 1993 Supp. (2) SCC 217; **Vijaysing Dharamdas Thakar Vs. State of Gujarat** : 1996 CrL. L. J. 2932; **Surendra Pratap Chauhan Vs. Ram Nail and others** : 2001 CrL. L. J. 98.

- B) The medical evidence is not corroborated with the statement of the prosecution witnesses. P.W.2-Jaswant Singh, in his examination-in-chief, in paragraph-8 has stated that “मुल्जिमान राधेश्याम व सियाराम खडे हुए झुककर बांका से श्रीपाल का सर काट रहे थे। तीन-तीन, चार-चार बांका दोनो ने चलाये ही थे। मैने बांका के निशान जमीन पर नही देखे।” Whereas P.W.5 Dr. J.V. Singh, who conducted the post-mortem of head less body of the deceased Sripal, has categorically deposed in paragraph-11 that “चोट नं० 1 एक ही वार से पहुंचायी हुई थी। अधिक वार से पहुंचाई हुई नही थी।” In these backgrounds, his submission is that this itself belies the prosecution case.
- C) P.W.5-Dr. J.V. Singh, who conducted the post-mortem of the head less body of the deceased Sripal, has stated in his examination-in-chief in para-5 that on internal examination, it was found that on the seventh cervical vertebra, both carotid arteries were cut across; the swallowing tube was also cut across the seventh cervical; the stomach was empty; in the small intestine, there was liquid faecal matter and gas; and there was faecal matter and gas in the large intestines. PW.5, in cross-examination, has stated that there may be a difference of six hours here and there of the death of the deceased. Thus, this

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believes the prosecution case and perhaps the deceased Siyaram was assaulted sometime in the night while gone for call of nature.

- D) The incident occurred on 19.09.1981 at 07:00 a.m. The inquest of the head less body was conducted on 19.09.1981. The head was recovered on 27.09.1981 on the pointing out of Sumkesh Chandra, who is the brother of informant P.W.1-Ram Bahadur, by the police. P.W.6-B.L. Sahani, who conducted the post-mortem of the head on 28.09.1981, has stated that he could not tell that as to how and in what manner, the lower portion of the neck was being cut. This witness was also shown the post-mortem report of the head less body of the deceased Sripal (Ext.Ka.2) prepared by Dr. J.V. Singh (P.W.5) and a specific question was asked from him as to whether the unknown recovered head had in any manner related to the headless body of the deceased Sripal, he (P.W.6) has stated that it could not be ascertained because in the post-mortem report (Ext. Ka.2), 7th cervical vertebra was cut, whereas in his report, only bones of 4th cervical vertebra was present and 5th, 6th and 7th vertebra were not present. Further, the head was of a man of about 45 years. In his cross-examination, P.W.6 has stated that the unknown recovered head could be of a man of 36 years and the maximum age of that man could be 60 years or 65 years. His submission is that the investigation is tainted and both P.W.1 and P.W.2 had prejudiced the mind of the Investigating Officer by fixing the identity of the head of Sripal after nine days of the incident but no D.N.A. test report or no expert opinion was obtained to the

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effect that Head and Headless body belong to the same person, even though the head was found in a decomposed position.

- E) Madhu, the so-called wife of the deceased Sripal and Rajneesh, who is the nephew of the deceased Sripal, have not lodged the F.I.R. nor produced them before the Court for recording their evidence by the prosecution, although they have been made a witness in the charge-sheet.
- F) Appellant-Raj Kumar has no motive to kill the deceased Sripal. According to the prosecution, the only allegation against appellant-Raj Kumar is that he and Jagdish caught hold of the deceased Sripal and there is no allegation against them of causing injuries to the deceased Sripal. According to him, after the death of Sripal, Madhu along with her mother and brother left the village Akohara. He has stated that no marriage was taken place of Madhu with the deceased Sripal. The deceased Sripal was aged about 45 years and Madhu was aged about 14-15 years only at the time of the incident. If Madhu was the wife of the deceased Sripal, then after the death of the deceased Sripal, definitely, she will stay at the village and inherited the property of the deceased Sripal as a wife but the land of the deceased Sripal was inherited by Ketuka (sister of Sripal), which shows the motive against Ketuka and her son Rajneesh to kill the deceased Sripal to get the property of Sripal.
- G) As per the prosecution, deceased Sripal along with so called wife Madhu was going to the doctor for taking medicine but after the incident, only 45 paise was recovered from the possession of the

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deceased Sripal. It is highly improbable that a person going to the doctor only has 45 paise.

(D) STATE/RESPONDENT ARGUMENT

(22) On behalf of the State/respondent, Sri Arunendra, learned Additional Government Advocate, while supporting the impugned judgment, has vehemently argued that the trial Court, after relying upon the version of the eye-witnesses, namely, P.W.1 Raj Bahadur, Jaswant Singh (P.W.2), has rightly held guilty to the appellants for the offences punishable under Sections 302/34 and 201 I.P.C. It has been argued that under the penal code, a person is responsible for his act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. As per the prosecution case, the appellants, with common intention, came out from the Jawar's field of Ram Prasad and thereafter, appellants clinging the deceased Sripal and after laying down Sripal on the chakroad, accused Siyaram and Radhey Shyam cut the neck of the deceased Sripal with Banka, whereas other accused Raj Kumar and Jagdish caught hold the deceased Sripal. The medical evidence has also supported the prosecution story as the injuries of banka and lathi were in the ante-mortem injuries sustained by the deceased Sripal. Therefore, the trial Court has rightly punished the appellants under Section 302/34 and 201 of the

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Indian Penal Code. There is no illegality or infirmity in the impugned order.

(E) ANALYSIS / DISCUSSION

- (23) We have heard Sri Jai Pal Singh, learned Amicus Curiae appearing on behalf of the appellants and Sri Arunendra, learned AGA for the State/respondents at length and have carefully gone through the judgment and order of conviction and sentenced passed by the learned trial Court. We have also re-appreciated the entire evidence on record, more particularly the depositions of PW1 Ram Bahadur and PW2 Jaswant Singh and have also considered the injuries found on the headless body of the deceased as well as injuries found on the unknown recovered head.
- (24) The crucial question in this appeal is whether the evidence of the two eye-witnesses viz, P.W. 1 Raj Bahadur and P.W. 2 Jaswant Singh inspires confidence or not.
- (25) A perusal of the statement of Raj Bahadur P.W.1 shows that on the date of the incident i.e. on 19.09.1981 at about 7 a.m., he along with his brother Sunnesh were going to cut Urd in their field situated near the chak road and the deceased Sripal and his wife Madhu were also going ahead of them on the same chak road. When they (P.W.1 and his brother Sunnesh) reached on chak road near the eastern field of Leela, they heard a noise and on hearing the noise, they saw that four accused persons came out from the Junhari's field of Ram Prasad and challenged

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Sripal. Sripal and his wife Madhu, thereafter, raised alarm and at that time, accused Radhey Shyam and Siyaram were armed with Banka and accused Raj Kumar and Jagdish were armed with lathies and they all clung to Sripal and thereafter they dropped the Sripal (deceased) on the earth of chak road and accused Radhey Shyam and Siyaram cut the neck of Sripal with banka and accused Raj Kumar and Jagdish caught hold Sripal. Apart from them, Jaswant Singh Pradhan (P.W.2), Rajneesh and Leela were also coming there and thereafter, they all challenged the accused persons, upon which accused persons threatened them. Thereafter, accused Radhey Shyam took away the head of the deceased Sripal and ran along with other accused persons towards the eastern side from there. Thereafter, he went to the police station alone and on his dictate, the Munshi of the police wrote down the FIR (Ext.Ka.1) and read it to him and got his signature thereon.

- (26) P.W.2-Jaswant Singh has deposed that on the date of the incident, at about 07:00 a.m., he went towards the Southern side of his village for call of nature and Rajneesh was also with him. After easing themselves, they were near the field of Leela and they saw that Sripal was going on chakroad towards northern side and behind him, his wife Madhu was going and at the same time, they saw that four persons came out from the Jawar's field of Ram Prasad and they all began clinging with Sripal. Sripal and his wife made noise. All the witnesses saw this occurrence. Raj Bahadur and Sunnesh were on the chakroad. All the four accused fell down Sripal and began cutting his head. Jagdish

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had caught his feet on the eastern side and Raj Kumar caught his head on the western side and the northern side Siyaram and on the southern side Radhey Shyam was cutting his head. They all made noise and challenged the accused. They were also threatened by them that if they proceeded they will be killed. Radhey Shyam took away the cut head by catching it from his hair by hanging it in his hands along with other accused towards the eastern side. Then, they went near the dead body of Sripal. In cross-examination, P.W.2-Jaswant Singh deposed that he went from the home for call of nature at 07:00 a.m. His farm is about a furlong away from the house. Rajneesh met him in the neighbour chak of Leela where he went to call of nature. Rajneesh had gone to call of nature along with him also. It took 10-15 minutes for easing out. His way is from the side of the farm of Leela.

- (27) From the aforesaid statements of P.W.1 and P.W.2, it transpires that when accused persons armed with Banka and lathies came out from the Jonhari's field of Ram Prasad and challenged the Sripal, neither deceased Sripal nor his wife Madhu tried to save themselves by running here and there and also there were no scuffled happened between the accused persons and the deceased Sripal nor with the wife of the deceased Madhu. As per the statement of P.W.1 and P.W.2, after coming out from the Jonhari's field of Ram Prasad, accused persons clinging to Sripal. It is quite unnatural that a group of persons armed with the deadly weapon came and challenged a person, then, the person instead of trying to save himself by hook and crook,

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standing there and waiting for the group persons to come nearer to him and kill him. Herein, it is not the case of the prosecution that the accused persons after coming out from the field of Jonhari of Ram Prasad had immediately all of a sudden assaulted the deceased with banka and lathies but the prosecution case is that after coming out from the field of Jonhari of Ram Prasad, accused persons first challenged the deceased Sripal and then they all clinging the Sripal and then they all dropped the deceased on the earth and then two accused persons namely Radhey Shyam and Siyaram cut the neck of the deceased Sripal with Banka, whereas accused Raj Kumar and Jagdish caught hold the deceased Sripal.

- (28) Herein, it is pertinent to mention that P.W.2 in his statement has categorically stated that Jagdish had caught feet of the deceased Sripal on the eastern side and Raj Kumar caught his head on the western side, whereas on northern side Siyaram and on southern side Radhey Shyam were cutting his head with Banka and both of them must have used banka blow three to four times and there was no mark of blow of banka on the earth. Even if it is assumed the statement of P.W.2 is true and perfect, then, it is beyond imagination that when four persons tried to kill deceased Sripal, out of which, one person caught hold the head of Sripal and one person caught hold the feet of Sripal and two accused persons cut the neck of the deceased, no tussle took place from the accused persons and the deceased Sripal and the deceased Sripal did not try to save himself from the accused persons. Normally, in such a situation, the person(s) should try

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to save himself from the accused persons but the prosecution right from the inception has only tried to say that only the deceased and his wife raised alarm and nothing was done to save himself by the deceased. It is quite improbable.

- (29) The prosecution has not produced any evidence on record to the effect that when two accused persons were caught holding the feet and head of the deceased and when two accused persons were cutting the neck of the deceased by banka, what was the position of the hands of the deceased Sripal. The evidence of both of the eye-witnesses i.e. P.W.1 and P.W.2 shows that no effort was made by the deceased and his wife Madhu to save the deceased Sripal and also during cutting the neck, the deceased did not make any agitation by hand. This creates doubt on the evidence of P.W.1 and P.W.2.
- (30) One more important aspect is that prosecution has right from the beginning has stated that Madhu is the wife of the deceased Sripal and on the date of the incident, she was going along with the deceased Sripal for her medical treatment at Sirsa village. Both P.W.1 and P.W.2 have stated that when the deceased Sripal was challenged by the accused persons; when the deceased Sripal was clinging by the accused persons; when the deceased Sripal was dropped by the accused persons; when the neck of the deceased Sripal was cutting by the accused persons; and when the cut neck of the deceased Sripal was taken away by the deceased, the wife of the deceased Sripal, namely, Madhu was at a distance of 10-15 steps and seen the incident by standing at a distance of 10-15 steps because P.W.1-Raj Bahadur, in his cross-

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examination, has deposed that Madhu did not run to save Sripal. It is quite unnatural that the accused persons were killing the deceased Sripal and his wife Madhu kept mum standing 10-15 steps behind them and saw the whole incident from the distance of 10-15 steps and did not make any effort to save the deceased from the accused persons. Normally, in such situation, wife would try to save his husband's life from the accused persons.

- (31) As per the prosecution case, the whole incident was seen by P.W.1-Raj Bahadur, his brother Sunnesh, Leela, P.W.2-Jaswant Singh, Rajneesh, who is the nephew of the deceased Sripal and Madhu, who is the wife of the deceased Sripal but the FIR was neither lodged by Madhu nor lodged by the nephew of the deceased Rajneesh even though they saw the incident as per the prosecution case but the FIR was lodged by P.W.1-Raj Bahadur.
- (32) P.W.1-Raj Bahadur has tendered an explanation in this regard in his statement that Rajneesh, who is the nephew of the deceased Sripal, has told him that he would safeguard the headless body of the deceased Sripal and, he (P.W.1) would go to lodge the report. P.W.1-Raj Bahadur had gone to the police station to lodge the report alone. Even if the explanation of P.W.1 is accepted, the prosecution has failed to show why other witnesses i.e. Madhu, Leela, Rajneesh, Sunnesh had not been produced for examination. The entire record of the case is silent on the issue.

(33) In the aforesaid connection it would be useful to refer to the decision of the Apex Court **Shivaji Dayanu Patil v. State of Maharashtra : 1989 AIR 1762**. In that case the wife of the deceased was a witness who had kept mum for two days. Castigating her conduct as highly unnatural and improbable, the Apex court in paragraph 11 observed as follows :

"A wife, who has seen an assailant giving fatal blows with a stick to her husband, would name the assailant to all present and to the police at an earliest opportunity."

(34) In this case also, Madhu is said to be the wife of the deceased Sripal and was 10-15 steps behind the deceased and she had recognized the assailants, whereas Rajneesh is the nephew of the deceased. But their conduct in not reporting to the police the incident, although they were at the place of the incident and seen the whole incident, was highly unnatural and improbable. The prosecution has failed to show any reason or evidence to justify the conduct of Madhu and Rajneesh.

(35) We feel that in the instant case it was essential for the prosecution to examine Madhu, Leela, Rajneesh, Sumnesh. Their evidence was essential to the unfolding of the narrative. No reason has been assigned by the prosecution for not producing them. This circumstance also goes against the prosecution. In this connection, it would be essential to reproduce the observations of the Apex Court in the decision **The State of U.P. v. Jaggo alias Jadgish : AIR 1971 SC 1586**. In paragraph 15, the Apex Court observed thus :

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(36) "15. it is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called. This statutory principle in criminal trials has been stressed by this Court in the case of **Habeeb Mohammad v. The State of Hyderabad : 1954 AIR 51**, for eliciting the truck."

- (37) In that, one Ramesh with whom the deceased was talking at the time of the incident had not been examined and the Apex Court held that he should have been examined for his evidence was essential to the unfolding of the narrative. It also held that mere presentation of an application by the prosecution that since Ramesh had been won over he was not examined was not good enough and that he should have been examined in the court and it was for the court to decide as to whether he was won over.
- (38) Another circumstance which militates against the claim of both the eye-witnesses of having seen the incident is the delay in their interrogation under Section 161 Cr.P.C. P.W.1 admitted in his cross-examination that after lodging of the F.I.R. he was not straight away interrogated at the Police Station by the Inspector. He states that after lodging the report, he met with Inspector and by that time, copy of chik was supplied to him. He along with the Inspector and other Constables came on the spot at 11:00 a.m. through a Jeep and he stayed on the spot till 02:00 p.m. and between 11:00 a.m. to 02:00 p.m., no talk was happened with the Inspector about the incident. The evidence of the Investigating Officer P.W.7 -Shiv Murti Singh, however, shows that on the date of the incident, he recorded the statement

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of the informant and then proceeded to the place of occurrence. No cogent explanation has been offered by the prosecution for this contradiction in the statement of P.W.1 and P.W.7 in recording the statements of witnesses under Section 161 Cr.P.C. In this context it would be useful to refer to the observations of the Apex Court in paragraph 15 and 18 of the judgment **Ganesh Bhawan Patel v. State of Maharashtra** : 1979 AIR 135, which are to the following effect :-

"15 Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced."

"18. Normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses."

- (39) The next submission of the learned Amicus Curiae appearing on behalf of the appellant no.2-Raj Kumar is that both P.W.1-Ram Bahadur and P.W.2-Jaswant Singh are interested witnesses and inimical to the accused persons, hence their testimony cannot be believed. According to him, the informant Raj Bahadur (P.W.1) is inimical to convict/ appellants Jagdish and Raj Kumar on account of the fact that they were the witnesses against the whole family of Raj Bahadur (informant) including Raj Bahadur himself in an occurrence held on 26.08.1979 for the offence lodged under Section 147, 323 I.P.C. In support of this submission, the learned Amicus Curiae appearing on behalf of the appellant no.2-Raj Kumar has drawn our attention to the

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copy of the charge-sheet of that case showing these details (Ext. Kha. 26 to Ext. Kha. 30).

- (40) P.W.1-Raj Bahadur, in his cross-examination, has specifically deposed that Kanchan Pasi resident of village Sirsa had lodged a report against him, his brother Sunnesh and other family members and the police filed charge-sheet against them. However, he did not know if Raj Kumar (appellant no.2) and Jagdish (appellant no.3) were the prosecution witnesses in that case or not. He admitted the fact that this case was pending at the time of incident.
- (41) According to the appellants, Onkar, who is the real brother of accused Radhey Shyam and Raj Kumar, stood witness against Jaswant Singh in a forgery and embezzlement case pending since 1970 and he was examined on 15.09.1978. A copy of the statement of Onkar has been filed as Ext. Kha.2.
- (42) P.W.2-Jaswant Singh has deposed that Onkar did not give statement against him prior to this occurrence but Ext. Kha.2 proves that Onkar, who is the real brother of accused Radhey Shyam and Raj Kumar, stood as a witness on 15.09.1978. The trial Court, after considering the aforesaid and also the fact that no cross-examination was made to Onkar and also one could not remember if he stood witness long ago in 1978, observed that there was no question of implicating the brother of Onkar, namely, Radhey Shyam and Raj Kumar, in such a heinous crime of murder.

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- (43) From the aforesaid, it transpires that enmity persisted between the family members of accused persons and the informant's side prior to the incident and both informant side and accused persons have known to each other very well.
- (44) The prosecution has come out with the case of motive, namely, so called illicit relation of accused/appellant no.4-Siyaram was having with wife of the deceased Sripal, namely, Madhu and deceased Sripal was alone and he had a lot of agricultural land, hence in order to grab the agricultural land of Sripal and his wife Madhu, accused/appellant Siyaram colluded with other accused persons and committed the murder. These assertions have been stated by P.W.1 and P.W.2 in their statement. In the statement under Section 313 Cr.P.C., accused/appellants have categorically stated that Madhu is not the wife of the deceased Sripal. This denial of the accused/appellant has not been contradicted by the prosecution. There is no any other evidence except the testimony of P.W.1 and P.W.2 that Madhu is the wife of deceased Sripal. P.W.2 have admitted in his statement that at the time of incident, deceased Sripal was aged about 50-55 years, whereas the age of Madhu was 14-15 years and Madhu used to reside with his mother Sarojini at the place of Sripal.
- (45) It is an admitted fact that Smt. Ketuka has also filed an application for mutation of her name on the land belonging to Sripal. It is also admitted that she is living in this village and property belonging to Sripal is in her possession. In these backgrounds, the contention of the appellants is that there was

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no question of getting property belonging to Sripal because it was to go her sister in absence of any other heir.

(46) Both P.W.1 and P.W.2 have stated in their depositions that at the time of the incident, apart from them, Madhu, Leela, Rajneesh and Sumkesh were also present there and they all saw the incident. But the prosecution has failed to produce Madhu, Leela, Rajneesh and Sumkesh in the witness box. There is no explanation on behalf of the prosecution as to why so called wife of the deceased Sripal, namely, Madhu, who was present 10-20 steps from the deceased at the time of the incident, was not produced before the trial Court for adducing evidence. There is also no proper explanation as to why Rajneesh, who is the nephew of the deceased Sripal, did not go to lodge FIR nor any close relative such as Madhu and Ketuka, who is the sister of the deceased and is residing at the same village at the time of the incident, did not go to lodge the report of the incident, rather the FIR was lodged by P.W.1-Raj Bahadur, who is not related to the deceased Sripal and only relation with the deceased Sripal was a villager.

(47) It is pertinent to mention here that there is no cogent evidence indicating illicit relations or reason for the accused/appellants to reasonably assumed about likelihood of unchaste relations. The statements made by the P.W.1 and P.W.2 on the basis of inference, impression, chimera, imagination or conjecture cannot be regarded as proof of illicit relations. It may be stated that many people when hear about relations between a man and a woman, or even their public meeting, they jump to the loose

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conclusions, or assume or interpret loosely and nastily and for them every rumour is gospel truth. On the basis of the above statements made by P.W.1 and P.W.2, it will not be just, proper and safe to conclude about illicit relations and consequently about the same being the motivating factor. In short, there is no satisfactory evidence about motive insofar as if Madhu was the wife of Sripal, then after the death of Sripal, definitely she will stay at village and inherit the property of Sripal as wife but land of Sripal was inherited by Ketuka, who is the sister of deceased Sripal.

- (48) The statement of P.W.2-Jaswant Singh shows that accused Radhey Shyam and Siyaram were cutting the head of Sripal by standing and bow down with Banka. Both of them were said to be used banka three-three, four-four times upon the deceased and he did not see the mark of banka on the earth. Meaning thereby as per the aforesaid statement that both Radhey Shyam and Siyaram assaulted the deceased Siyaram three and four times with banka and there was no mark of banka on the earth. The evidence of P.W.5-Dr. J.V. Singh, who conducted the post-mortem the headless body of the deceased Sripal, have categorically stated that injury no.1 is attributable by one blow and not by several blow. The aforesaid statement of P.W.2 and P.W.5 shows that the statement of P.W.2 with regard to assault of the deceased Sripal with Banka three and four times is contrary to the report of the post-mortem of headless body of the deceased Sripal.

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- (49) It also come on record that the inquest report of the head recovered on 27.09.1981 has been prepared by the Investigating Officer which bears the signatures of Raj Bahadur (P.W.1), his brother Sunnesh Chandra and Jaswant Singh (P.W.2) but the P.W.1-Raj Bahadur denied the same in his statement and even the recovery of this head before him has been denied. P.W.1 had failed to explain as to how his signature on the inquest report of the head was mentioned. The trial Court, after considering the entire evidence on record, has rightly observed that the conduct of the Investigating Officer is not above board and also observed that the head could not be connected with the dead body of Sripal and this is only due to negligence of the Investigating Officer.
- (50) It appears that the weapon of assault i.e. Banka and lathies was not recovered by the Investigating Officer nor unknown recovered head was sent for D.N.A. test nor any expert opinion was obtained by the Investigating Officer which raises doubt that head and the headless body belong to the same person even though the head was found in a decomposed position. Thus, it can be safely said here that the investigation of the case appears to be tainted and not as per law.
- (51) Pursuant to the aforesaid discussion, we feel that the prosecution has failed to bring home the guilt of the appellant no.2-**Raj Kumar** beyond reasonable doubt and this is a fit case in which he deserves the benefit of doubt.

[40]

- (52) In the result, the instant criminal appeal so far as it relates to appellant no.2-**Raj Kumar** is **allowed**. The judgment and order dated 02.12.1982 passed in Sessions Trial No. 791 of 1981 so far as it relates to the **appellant no.2-Raj Kumar** is hereby set aside. The appellant no.2-Raj Kumar is acquitted from the charges levelled against him. The appellant is in jail. He shall be set at liberty forthwith if no longer required in any other criminal case.
- (53) **Appellant no.2-Raj Kumar** is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.
- (54) Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

(Vivek Varma, J.) (Ramesh Sinha, J.)

Order Date : 4th February, 2022

Ajit/-