

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1325 of 1998

Firoz Khan, S/o Mohd. Sharif Khan, Age 24 years, R/o Jarhagarh, Mahamaya Road, Ambikapur, P.S. Ambikapur, Distt. Surguja (M.P.) (now C.G.)

---- Appellant

Versus

The State of Madhya Pradesh (now the State of Chhattisgarh), through P.S. Ramanujganj, Distt. Surguja (M.P.) (now C.G.)

---- Respondent

AND

Criminal Appeal No.1358 of 1998

Suresh Kumar, S/o Devi Prasad Agrawal, aged about 30 years, R/o Jarhagarh, Police Station Ambikapur, Distt. Surguja (M.P.) (now C.G.)

---- Appellant

Versus

The State of Madhya Pradesh (now the State of Chhattisgarh)

---- Respondent

For Appellants:	Mr. Surendra Singh, Senior Advocate with Mr. Neeraj Mehta, Advocate.
For State/Respondent:	Mrs. Smita Ghai, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

Judgment (Curia Advisari Vult)

01/08/2016

The Judgment of the Court was delivered by **Sanjay K. Agrawal, J:** -

1. Since both the appeals arise out of the same incident and common judgment, they are being disposed of by this common judgment.

2. Four accused persons namely Firoz Khan (A-1), Samsuddin (A-2), Suresh Kumar (A-3) and Agnu Tigga (A-4) were tried by the Sessions Judge, Surguja (Ambaikpur), in Sessions Trial No.207/1990 (State of Madhya Pradesh v. Firoz Khan and three others). A-1 and A-2 were tried for offence punishable under Section 302 of the IPC whereas, A-3 and A-4 were tried for offence punishable under Section 302 read with Section 34 of the IPC.
3. By the impugned judgment of conviction and order of sentence dated 9-6-1998, learned Sessions Judge convicted A-1 Firoz Khan for offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for one year; and also convicted A-2 Samsuddin and A-3 Suresh Kumar for offence under Section 323 of the IPC and sentenced them to undergo RI for six months and pay a fine of Rs.500/- each, in default of payment of fine to further undergo simple imprisonment for one month. Further, A-4 Agnu Tigga was acquitted by the learned Sessions Judge.
4. Accused persons are being referred as per their status shown before the trial Court.
5. Feeling aggrieved against the judgment of conviction and order of sentence recorded by the Sessions Judge, Firoz Khan (A-1) and Suresh Kumar (A-3) have preferred these appeals before

this Court under Section 374(2) of the CrPC, whereas, no appeal has been preferred by Samsuddin (A-2).

6. The prosecution case as unfolded during the course of trial is as under: -

6.1) On 13-6-1989, at about 4 p.m., certain persons including deceased Sabbir Mohammad, Attaulla (PW-1) and Sher Mohammad (PW-2) were sitting in Village Vijay Nagar, at the same time, all accused persons A-1 to A-4 came over there on a jeep. The jeep was stopped and there were some talks between them regarding repayment of previous loan in their usual terms. It is further case of the prosecution that Sher Mohammad (PW-2) was requested by A-1 Firoz Khan to come to his house where accounts will be settled and on this request, Sher Mohammad (PW-2) sat on the front seat of the jeep along with A-1 Firoz Khan and A-3 Suresh Kumar, and deceased Sabbir Mohammad sat on the back seat along with A-2 Samsuddin. It is further case of the prosecution that on the way, A-1 threw away deceased Sabbir Mohammad from the running jeep with an intention to cause his death by which he suffered grievous injuries and succumbed to death, and other co-accused persons A-2 and A-4 assaulted Sher Mohammad (PW-2) and he was also thrown from the jeep near nala and they proceeded towards Wadrafnagar (Surguja).

6.2) Thereafter, FIR was lodged by Attaulla (PW-1) to Police

Station Ramanujganj which was registered as Crime No.67/1989 in the said police station on 13-6-1989 at 6.30 p.m. for offence under Section 302 read with Section 34 of the IPC in which he stated the story as stated herein-above that his brother (cousin) Sabbir Mohammad was thrown away from the running jeep with an intention to kill him and A-1 was having country made pistol, and Sher Mohammad (PW-2) was also thrown from the jeep by the accused persons near nala and the accused persons ran away towards Wadrafnagar and in which his brother Sabbir Mohammad died on account of injuries suffered and Sher Mohammad has also suffered simple injury.

6.3) Thereafter, morgue intimation was recorded vide Ex.P-18 and dead body of deceased Sabbir Mohammad was sent for medical examination.

7. Dr. S.P. Gupta (PW-9) examined the deceased and submitted his report Ex.P-3. He conducted autopsy of the deceased and found eleven injuries on the person of the deceased. In the opinion of the doctor, all the injuries were ante-mortem caused by hard and blunt object and death was caused due to coma caused by compression of brain resulting from injuries.
8. The offending jeep was also seized vide Ex.P-2 and injured Sher Mohammad (PW-2) was examined by the doctor vide Ex.P-9 injury report. Clothes of the deceased were seized vide Ex.P-8 and were sent for chemical examination and report was received

after chemical examination which is Ex.P-24 and in which blood was found on all articles except Art.1, but there is no report of Serologist that the articles were stained with human blood.

9. The jurisdictional police after usual investigation, charge-sheeted all the accused persons (A-1 to A-4) for the offences as stated herein-above. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 19 witnesses and brought on record documents Exs.P-1 to P-24.
- 10.The accused persons abjured the guilt and entered into defence. They pleaded that death of the deceased was accidental and they have neither committed the offence nor participated in any such act which may amount to offence punishable under Section 302 or 302 read with Section 34 of the IPC. Defence has examined one witness Mohd. Mikail (DW-1) to support their plea.
- 11.The accused persons in their statements recorded under Section 313 of the CrPC, denied the incriminating evidence appearing against them and they pleaded to be innocent.
- 12.Learned Sessions Judge on appraisal of entire evidence on record held A-1, A-2 & A-3 guilty of charges and convicted A-1 for offence under Section 302 of the IPC and sentenced him as mentioned in foregoing paragraphs, however, convicted A-2 and A-3 for offence under Section 323 of the IPC. The trial Judge, however, acquitted A-4 Agnu Tigga of the charges.
- 13.The trial Court by its impugned judgment relying upon the

evidence of the prosecution witnesses, convicted A-1 for causing murder of deceased Sabbir Mohammad and A-3 for causing hurt to injured Sher Mohammad (PW-2) and sentenced them as mentioned herein-above.

14.Mr. Surendra Singh, learned Senior Advocate appearing for the appellants, would vehemently submit that the prosecution has failed to bring home the offence against A-1 and A-3 beyond reasonable doubt. He would further submit that evidence adduced on behalf of the prosecution is neither sufficient nor convincing warrant conviction of appellants A-1 and A-3. He would also submit that the prosecution has cited nine eyewitnesses to the incident and they were examined, out of nine, seven witnesses including real brother of the deceased Nasrulla (PW-15) have turned hostile and pronounced hostile witnesses by the prosecution. Elaborating his submission, he would submit that out of the three witnesses namely Suleman (PW-16), Attaulla (PW-1) and Sher Mohammad (PW-2); Suleman (PW-16) has not supported the case of the prosecution. Sher Mohammad (PW-2) has also in cross-examination in para 44, clearly said that the offending jeep suffered accident and deceased Sabbir Mohammad has fallen from the running vehicle and as a consequence of accident, he suffered grievous injuries and died instantaneously. Sher Mohammad (PW-2) has further stated that he also alighted from the vehicle near nala. Assailing the testimony of eyewitness Attaulla (PW-1), Mr. Singh would

submit that he is the cousin of deceased Sabbir Mohammad and is interested witness. He would further submit that in such a case, Attaulla (PW-1) remains to be the only one witness to be the eyewitness or the sole witness to the incident, then his testimony has to be scrutinized with care and caution. He would also submit that Attaulla (PW-1) is not reliable as he has improved his statement as there is omission of marpit by iron rod by A-1 in the FIR (Ex.P-1) and morgue intimation (Ex.P-18), and Attaulla (PW-1) has developed the story of marpit by A-1 by hands and legs first time in his statement under Section 161 of the CrPC i.e. Ex.D-1 which is the material omission amounting to contradiction and which makes his statement untrustworthy. He would also submit that the version as given by Attaulla (PW-1) of marpit is not corroborated by medical evidence and further, the prosecution case is belied by the fact that the offending jeep which was seized vide Ex.P-2 was not subjected to chemical examination because as per the case of the prosecution blood was found in the said jeep as A-1 assaulted the deceased by iron rod by which he suffered grave injury and died in the jeep itself and thereafter, his body was thrown out of the jeep by A-1. Mr. Singh further submits that the prosecution having failed to prove that death of the deceased was homicidal in nature and further failed to prove death was caused by A-1 and as such, the prosecution having failed to prove the offence beyond reasonable doubt, this is a case where A-1 and A-3, the

appellants herein are entitled for clear acquittal.

15. On the other hand, Mrs. Smita Ghai, learned Panel Lawyer appearing on behalf of the State/respondent, would support the impugned judgment and submit that the prosecution has led sufficient evidence to bring home the offence and as such, the judgment of conviction recorded and sentence awarded does not warrant any interference by this Court, therefore, the appeals deserve to be dismissed.

16. In order to appreciate the rival contentions of learned counsel for the parties, we have independently scrutinized the oral and documentary evidence appearing on record.

17. The question for consideration in this appeal is, firstly, whether the death of deceased Sabbir Mohammad was homicidal in nature and secondly, whether A-1 is guilty of causing murder of deceased Sabbir Mohammad and A-3 is guilty of causing simple hurt to Sher Mohammad (PW-2).

18. In order to bring home the offence, the prosecution has examined as many as 19 witnesses and brought 24 documents. Out of 19 witnesses, 9 witnesses, who were listed as charge-sheeted witnesses, were cited as eyewitnesses. Except Attaulla (PW-1), and Sher Mohammad (PW-2) and Suleman (PW-16), all other eyewitnesses namely Yusuf (PW-7), Dashrath Prasad (PW-8), Roopsai (PW-10), Mohd. Jaan (PW-11), Govind (PW-12) and Nasrulla (PW-15) – brother of the deceased, have

turned hostile and they were declared hostile by the prosecution during the course of trial.

19. We shall first take-up and consider the testimonies of six eyewitnesses namely Yusuf (PW-7), Dashrath Prasad (PW-8), Roopsai (PW-10), Mohd. Jaan (PW-11), Govind (PW-12) and Nasrulla (PW-15), who have turned hostile and declared hostile by the public prosecutor. It is settled law that corroborated part of evidence of the hostile witness regarding commission of offence is admissible. It was so held by the Supreme Court in the matter of **Mrinal Das v. State of Tripura**¹. Relevant paragraph of the said report states as under: - (SCC pp.505-506, para 67)

“67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the

¹ (2011) 9 SCC 479 : (2011) 3 SCC (Cri) 810

prosecution.”

20.The law laid in **Mrinal Das** (supra) was reiterated and followed by the Supreme Court in the matter of **Sathya Narayanan v. State represented by Inspector of Police**². In the matter of **Bhajju alias Karan Singh v. State of Madhya Pradesh**³, Their Lordships of the Supreme Court have held that the testimony of hostile witness is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution. Paragraph 35 of the report states as follows: -

“Regarding the admissibility and probative value of the testimony of hostile witness, normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 CrPC, the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.”

21.In light of the principles annunciated herein-above, we shall now examine the testimonies of above-stated eyewitnesses who have turned hostile and declared hostile by the prosecution and they have been cross-examined by the Public Prosecutor. We have

2 (2012) 12 SCC 627

3 (2012) 4 SCC 327

gone through their testimonies carefully. After going through the examination-in-chief as well as the cross-examination of the above-stated eyewitnesses, we find that they have not even partly or remotely supported the case of the prosecution and therefore their testimonies are of no use to the prosecution even to some extent.

22.This brings us to consider the testimony of Suleman (PW-16), one of the eyewitnesses. He states before the Court that on the date of incident he had seen Mohd. Sabbir falling from the running vehicle and by which he suffered injury on his hand, knee and chest and died, as such, he has neither supported the prosecution case nor he has been declared hostile.

23.The next eyewitness is Sher Mohammad (PW-2). He is said to be injured witness. In his statement before the Court, he states that A-1 Firoz Khan assaulted the deceased by jack rod (iron) 5-7 times by which he suffered head injury. However, in the cross-examination at paragraph 44, he has stated that the deceased was sitting on back seat, near the house of Chowkidar, the jeep suffered accident and deceased Sabbir Mohammad fell down from the jeep and went along with the vehicle being dragged up to some distance by which he suffered grievous injuries and died thereafter. He also states that the road where the jeep suffered accident was rough and full of stones. He also states that the jeep was being driven slowly and he also alighted from the jeep near nala as such, though this witness has not supported the

case of the prosecution, yet he has not been declared hostile by the prosecution, rather he has demolished the prosecution case.

24. Now, the eyewitness of the prosecution left for consideration is Attaulla (PW-1). He is cousin of deceased Mohd. Sabbir and it is his case that he was following the jeep which was seated by the deceased, Sher Mohammad (PW-2) and accused persons (A-1 to A-4), and he has lodged FIR Ex.P-1 and morgue intimation Ex.P-18. FIR is Ex.P-1 lodged by this witness on 13-6-1989 at 4 p.m. in which he has stated that four persons came in a jeep from Vijay Nagar Basti and stopped near the house of Chowkidar and in that jeep, his brother Mohd. Sabbir (the deceased) was also sitting and Feroz Khan (A-1) told him that they will be coming after half an hour, again they came back after half an hour and there is some dispute about repayment of earlier loan amount. In this statement, pertinently, this witness has said that the persons sitting in the jeep (accused persons) threw away his brother Mohd. Sabbir out of the jeep and also threw Sher Mohammad (PW-2) near nala and they went towards Wadrafnagar. Same statement is also recorded in Ex.P-18, morgue intimation, that all the accused persons (A-1 to A-4) with intention to cause death of the deceased, thrown him from the moving jeep which was duly recorded in the said morgue intimation under Section 174 of the CrPC. However, in his statement recorded under Section 161 of the CrPC before the police Ex.D-1, this witness has made a statement that the

present appellants and other accused persons assaulted the deceased by hands and fists and thereafter, thrown him from the jeep by which he suffered grievous injuries. This witness while making statement before the Court stated that while he was following the jeep from a distance of one *jerib*, he saw that appellant Firoz Khan was assaulting the deceased by iron rod by which the deceased suffered several injuries on his head and there was bleeding from head, blood was oozing from the injuries and fallen in the jeep and on his clothes also, and when the deceased succumbed to death, his dead body was thrown out of the jeep and they had gone to Wadrafnagar. Thus, Attaulla (PW-1) has changed his version, what he has made in FIR Ex.P-1 and morgue intimation Ex.P-18 as there is no allegation of assault or marpit by appellant Firoz Khan either in the morgue intimation or in the FIR and he had developed the story of marpit in Ex.D-1, the statement recorded under Section 161 of the CrPC before the police and the story of marpit by iron (jack) rod in his statement before the Court. It is also important to note that Attaulla (PW-1) is cousin of deceased Mohd. Sabbir, so he is alleged to be interested and partisan witness.

25. Before proceeding further, the question for consideration at this stage, would be, whether the evidence of relatives of the deceased is admissible. The law on the subject regarding admissibility / acceptability or otherwise of the testimony of interested witnesses is very well settled by Their Lordships of the

Supreme Court in umpteen number of cases. Few of them may be noticed herein profitably and usefully.

26.Their Lordships of the Supreme Court recently, in the matter of **Waman and others v. State of Maharashtra**⁴ taking into consideration its earlier decisions in the matters of **Sarwan Singh v. State of Punjab**⁵, **Balraje v. State of Maharashtra**⁶ and other decisions in this regard, have held that the evidence of such interested witnesses should be scrutinized with a little care as a rule of prudence, not as a rule of law and the fact being relative cannot by itself discredit the evidence. Their Lordships concluded in paragraph 20 of **Waman's** case (supra) as under: -

“20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

27.Thus, the testimony of Attaulla (PW-1) has to be examined in light of the aforesaid principles laid down by Their Lordships of the Supreme Court, as he is related witness and he has made improvement in departure from his statement recorded in the FIR (Ex.P-1) and the morgue intimation (Ex.P-18), and while making statement under Section 161 of the CrPC (Ex.D-1) and before the Court. In the morgue intimation Ex.P-18 and the FIR Ex.P-1,

4 (2011) 7 SCC 295

5 (1976) 4 SCC 369

6 (2010) 6 SCC 673

he has simply stated that the accused persons threw the deceased from the jeep by which he suffered grievous injuries and later-on died. There is complete departure from this statement while making statement before the police under Section 161 of the CrPC Ex.D-1. He developed the story and said that the accused persons assaulted the deceased and then threw him from the jeep. Further improving his case in the statement before the Court, this witness has said that the present appellants assaulted the deceased in the jeep itself by jack (iron) rod 5-7 times with the assistance of other co-accused persons by which he suffered grievous injuries, blood of the deceased also spread in the jeep and he died and thereafter, he was thrown from the jeep. Thus, Attaulla (PW-1) has made statement which he earlier did not make while recording FIR and morgue intimation. Apart from this, the offending vehicle jeep was seized vide Ex.P-2 by the police. It has not been proved that blood was found in the offending jeep seized by the police or it was sent for chemical examination. Thus, the version of this witness Attaulla (PW-1) is required to be considered carefully.

28. In the matter of **Ram Kumar Pande v. The State of Madhya Pradesh**⁷, the Supreme Court has held that though FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it, but omissions of important facts, affecting the probabilities of the case, are

7 AIR 1975 SC 1026

relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case. Likewise, in the matter of **Namdeo Daulata Dhayagude and others v. State of Maharashtra**⁸, the Supreme Court has held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

29. It is well settled law that while appreciating the evidence, the court has to take into consideration whether the contradictions / omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. Therefore, the court after going through the entire evidence, must form an opinion about the credibility of the witnesses. (See **State v. Saravanan**⁹ followed in **Sunil Kumar Sambhudayal Gupta (Dr.) and others v. State of Maharashtra**¹⁰).

30. It is also well settled that where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a

8 AIR 1977 SC 381

9 (2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152

10 (2010) 13 SCC 657

witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence.

{See **State of Rajasthan v. Rajendra Singh**¹¹ followed in **Sunil Kumar Sambhudayal Gupta** (supra)}.

31. In the matter of **State v. Sait**¹², it has been held that in case, the complainant in the FIR or the witness in his statement under Section 161 of the CrPC, has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. This observation has been followed in **Sunil Kumar Sambhudayal Gupta** (supra).

32. It is also well settled that the discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt. {See **Mahendra Pratap Singh v. State of U.P.**¹³ followed in **Sunil Kumar Sambhudayal Gupta** (supra)}.

33. Appellant Firoz Khan is said to have caused injury to the deceased by iron rod / jack rod. The prosecution has failed to

11 (2009) 11 SCC 106 : 1998 SCC (Cri) 1605

12 (2008) 15 SCC 440 : (2009) 3 SCC (Cri) 1037

13 (2009) 11 SCC 334 (2009) 3 SCC (Cri) 1352

recover and produce the said iron rod / jack rod before the Court which also falsifies the version of Attaulla (PW-1) that Firoz Khan (A-1) has caused injury to deceased Mohd. Sabbir by which he died.

34. Apart from this, case of the prosecution is also not fully supported by medical evidence. Dr. S.P. Gupta (PW-9) has stated that the deceased has suffered 11 injuries on his body which were ante-mortem in nature and cause of death was coma as the injuries became compressed and such injuries can also be caused if a person falls on a rough road.

35. Thus, from the aforesaid narration of facts, it is quite vivid that the testimony of Attaulla (PW-1), who is the star witness of the prosecution, is not consistent with the guilt of the accused, as he has completely changed his version from FIR and morgue intimation while making statement under Section 161 of the CrPC before the police by improving that appellant Firoz Khan assaulted the deceased and while making statement before the Court, he further improved that the deceased was assaulted by iron rod / jack rod in the jeep itself and when he died in the jeep, his body was thrown by the appellants and other accused persons. Therefore, on account of serious omissions / contradictions and improvement made, non-recovery of iron rod, non-examination of jeep by chemical examiner and in view of the fact that no blood was found to have been proved in the jeep and medical evidence is also not establishing the case of the

prosecution, the omission of witnesses amounts to contradiction creating a serious doubt about the truthfulness of the version given by this witness Attaulla (PW-1), as he has made material improvement before the Court in order to make his evidence acceptable. Medical evidence is also not fully supporting the version given by this eyewitness regarding the injury caused by iron rod.

36. Charge framed against appellant Feroz Khan on 3-9-1991 is that the accused persons with intention to cause death of Mohd. Sabbir thrown him from the running jeep which is offence punishable under Section 302 of the IPC. It is not the case of the prosecution from the day one that the deceased was murdered in the jeep itself and thereafter, his dead body was thrown by the accused persons.

37. Thus, taking into account the fact that six eyewitnesses have turned hostile and have been declared hostile by the prosecution and they have not supported the case of the prosecution at all; injured witness Sher Mohammad (PW-2) has also not supported the case of the prosecution as stated herein-above; Attaulla (PW-1) – eyewitness is also not found to be trustworthy and his testimony is not acceptable; the case of the prosecution is also not supported by medical evidence fully; there is serious omission in the statements of witnesses from FIR and morgue intimation; and following the law laid down by the Supreme Court in the above-stated judgments, we are clearly of the opinion that

the prosecution has failed to bring home the offence that appellant Firoz Khan caused the murder of the deceased, beyond reasonable doubt.

38. Thus, we hold that the learned Sessions Judge has committed grave legal error in holding that the prosecution has proved the offence beyond reasonable doubt.

39. As far as appellant Suresh Kumar (A-3) is concerned, he has been convicted for offence under Section 323 of the IPC, who is said to have caused simple injuries to Sher Mohammad (PW-2). Sher Mohammad (PW-2) in his statement before the Court in paragraph 44 has not supported the case of the prosecution and has clearly come out with a case that near the house of Chowkidar, the offending jeep suffered accident and deceased Mohd. Sabbir also fallen from the said vehicle and suffered accident, and he (Sher Mohammad PW-2) also alighted from the vehicle near nala and as such, it has not been proved beyond reasonable doubt that simple hurt was caused by the accused persons to him.

40. Consequently, the judgment of conviction recorded and sentence awarded by the impugned judgment dated 9-6-1998 passed by the Sessions Judge, Surguja (Ambikapur) in Sessions Trial No.207/1990 is hereby set aside.

41. Cr.A.No.1325/1998 preferred by appellant Firoz Khan is allowed. Conviction recorded and sentence awarded against appellant

Firoz Khan under Section 302 of the IPC are hereby set aside and he is acquitted of the said charge. He is on bail. He need not surrender. However, the bail bonds of Firoz Khan shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

42. Cr.A.No.1358/1998 preferred by appellant Suresh Kumar is also allowed. Conviction recorded and sentence awarded against appellant Suresh Kumar under Section 323 of the IPC are also hereby set aside and he is also acquitted of the said charge. He is on bail. He need not surrender. However, his bail bonds shall remain in force for a period of six months in view of the provision contained in Section 437A of the CrPC.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge