

HIGH COURT OF CHHATTISGARH BILASPUR

Judgment reserved on 08/09/2018

Judgment delivered on 29/11/2018

Criminal Appeal No. 406 OF 2014

- 1. Devsingh Hidhako S/o Maharsingh Hidako, aged about 40 years,
 - 2. Jagannath Gavade S/o Late Beersai Gavade, aged about 25 years,
 - 3. Rajuram Pudho S/o Somaram Pudho, aged about 30 years.
- All the appellants are R/o Village Aamatola, Gondpal, PS Kodhekurse, District Uttar Bastar Kanker, Chhattisgarh.

---- Appellants

Versus

State of Chhattisgarh, through the P.S. Kodhekurse, District Uttar Bastar Kanker, Chhattisgarh.

---- Respondent

For Appellants	:	Mr. Kalyan Kalamkar, Advocate.
For Respondent/State	:	Mr. P. K. Bhaduri Govt. Advocate and Mr. R. Tripathi, P.L.

**Hon'ble Shri Prashant Kumar Mishra and
Hon'ble Shri Parth Prateem Sahu, JJ**

C A V JUDGMENT

Per Parth Prateem Sahu, Judge

1. This appeal has been preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the impugned judgment of conviction and order of sentence dated 03/03/2014 passed by the learned Additional Sessions Judge (FTC) North Bastar, Kanker (C.G.) in Sessions Trial No.65/2012, whereby the appellants have been convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 302/34 of Indian Penal Code (hereinafter referred to as 'IPC')	Imprisonment for life with fine of Rs.100/- each, in default of payment of fine amount, additional rigorous imprisonment for six months each.

Under Section 201/34 of IPC	Rigorous imprisonment for three years with fine of Rs.100/- each, in default of payment of fine amount, additional rigorous imprisonment for one month each.
Both the sentences awarded to all the appellants have been ordered to run concurrently.	

2. Brief facts of the case for disposal of this appeal, are that, on 06/04/2012, villagers were invited in the marriage ceremony of son of Amar Singh, where celebration took place till late night. As per allegation, deceased Harijan Dhurva at about 12.00 in the night, left the house of Amar Singh for returning his home, but he did not reach his home. On next day, (PW-5) Rano Bai, wife of Harijan Dhurva intimated other villagers and on that basis, search was made by the family members as well as villagers to nearby places, but Harijan Dhurva could not be traced. Subsequently, one dead body was found on 09/04/2012 at about 7.00 AM in the 'well' of Chharetu Hidko, which is situated at his agricultural field. On the back side of the dead body, mark of blood was present.

3. A merg was reported by one Shukhram (villager) along with other villagers to concerned Police Station vide Ex. P-2 and on the basis of merg intimation, the police conducted merg enquiry. The merg report was made on 09/04/2012 at about 14.00 hours and after completion of merg enquiry, First Information Report (Ex. P-25) was registered on 10/04/2012 (next day) at about 14.15 hours against unknown persons. After lodging of merg intimation, the Police reached on spot and prepared *Naksha Panchayatnama* on 09/04/2012 vide Ex. P-4. The Police took out the dead body from well which was identified to be of Harijan Dhurva. The dead body was sent for postmortem to Community Health Center Durgukondal vide Ex. P-24. The memorandum statement of one of appellants, namely, Devsingh Hidko was recorded by the Investigating Agency on 10/04/2012 at about 16.15 hours vide Ex. P-6 and seizure of one old used thin Towel (*Gamchha*) was recovered from the possession of Devsingh Hidko on

10/04/2012 at about 16.30 hours vide Ex. P-7. Dr. B.S. Thakur (PW-17) conducted postmortem of the dead body of the deceased and submitted its report dated 10/04/2012 vide Ex. P-21, in which, he opined that the cause of death was strangulation and the death was homicidal in nature.

4. During course of investigation, appellants were arrested on 10/04/2012 at about 21.30 O'clock. After conclusion of investigation, final report for the offence under Sections 302, 201 and 34 of IPC was submitted before the Judicial Magistrate First Class, Bhanupratappur, District North Bastar Kanker against appellants. The learned trial Court on the basis of material available in the charge-sheet has framed the charges under Sections 302/34 and 201/34 of IPC.

5. The appellants abjured their guilt and claimed to be tried. In order to bring home the guilt of the accused persons, the prosecution has examined as many as 20 witnesses, and statement under Section 313 of Cr.PC. of accused persons was recorded. No defence witness was examined on behalf of accused persons.

6. The trial Court, after evaluating the evidence led by the prosecution convicted the appellants for offence under Sections 302/34 and 201/34 of IPC and sentenced them for life with fine and other sentence.

7. Learned counsel appearing for the appellants submitted that evidence of Ghasiya Ram (PW-19) was not properly recorded. He further submitted that he had not disclosed happening of incident to any other person prior to recovery of dead body i.e. for about two days. He lastly submitted that the Interpreter appointed by the Court i.e. Bhav Singh was a political person having enmity with the Investigating Officer and therefore, his interpretation to the evidence of witness Ghasiya Ram (PW-19) is doubtful. His evidence is recorded under the provisions of Section 119 of Indian Evidence Act, 1872 (hereinafter referred to as 'the Act, 1872'). Presence of Ghasiya Ram (PW-19) on spot at 12.00 PM is also doubtful.

8. Per contra, learned counsel appearing for the State/respondent supported the impugned judgment of conviction and submitted that only for the reason that there is solitary eyewitness, case of the prosecution could not be doubted. Learned trial Court after appreciating evidence available on record has passed impugned judgment. On the basis of aforementioned submission, learned State counsel further submitted that conviction of the appellants is well merited and does not call for any interference.

9. We have heard learned counsel appearing for the parties and perused the records carefully.

10. Sukram was examined as PW-1, who only stated about the merg intimation (Ex. P-2), in which, he admitted his signatures over Exs.P-3, P-4 and P-5. He also admitted that the same has been prepared before him. In his evidence, he denied that the memorandum statement (Ex. P-6) was given by appellant/accused Devsingh Hidko to Police before him and also denied that any seizure vide Ex. P-7 took place before him. The witness turned hostile. With permission of the Court, he has been cross-examined by the Public Prosecutor but no material came out to support the case of prosecution.

11. Kumari Neeta (PW-2) stated that she saw Harijan Dhurva and one co-accused Raju at about 12.00 in the night, but she had not narrated the place. In her cross-examination, she admitted that many people are dancing and singing in marriage ceremony of Agnu where the deceased along with appellants/accused persons were also present.

12. Mehattar Ram (PW-3), brother of Ghasiya Ram (PW-19) stated that his brother Ghasiya Ram had not intimated him about any incident. He admitted that after hearing about recovery of dead body in well, he also went on the spot. He further admitted that Devsingh Hidko had given information to Police that by thin towel, he strangulated deceased Harijan

Dhurva. But in cross-examination, he denied that he had given any such statement to Police and further admitted that in front of him, no statement of accused Devsingh Hidko was recorded.

13. Biro Bai (PW-4), mother of deceased was not an eyewitness, but only on the basis of suspicion, she has made allegation against the appellants. She stated that her son used to tell her that appellants may assault him. She further stated that she is not residing in the village where deceased Harijan Dhurva was residing and she is residing about 30-40 Kms. away in another village.

14. Rano Bai (PW-5) wife of deceased in her examination-in-chief stated about earlier dispute of Harijan Dhurva with Devsingh Hidko and also stated that there was meeting earlier with respect to the dispute. She further states that Devsingh Hidko after meeting screamed that he will assault Harijan Dhurva. This witness was declared hostile and during cross examination by Government Prosecutor she admitted that she made statement under Section 161 of Cr.P.C. to police stating that Raju called Harijan Dhurva where Devsingh Hidko and Jagannath Gavade were present and all the three committed murder. In cross-examination, she stated that she returned from marriage house earlier and denied that she gave any statement to police about making statement alleging that Devsingh Hidko screamed that he will assault Harijan Dhurva.

15. Baijan Singh Dhurwe (PW-6) has not supported the case of prosecution and was declared hostile. He denied the statement of earlier dispute given to police under Section 161 of Cr.P.C. (Ex. P-11). He further admitted that he signed Ex. P-12 seizure memo at Police Station.

16. Ranau Ram (PW-7) turned hostile. He admitted the seizure vide Ex. P-12 of revenue documents. In his cross-examination, he admitted that Police has not recorded his statement and he is giving his evidence before the Court only on the basis of what he heard from other persons.

17. Somaru Ram (PW-8) has stated in his evidence that Police earlier recorded his statement under Section 161 of Cr.P.C., in which, he stated about the earlier dispute between Devsingh Hidko and his father Dodge Ram, but he denied all other confronted statements said to be made by him. He was also declared hostile. He was cross-examined by Government Prosecutor, in which, he only stated that he alleged against accused under 161 Cr.P.C. statement on the basis of what he heard from villagers. In further cross-examination he denied the statement of commission of murder by Jagannath Gavade given to police under Section 161 statement.

18. Amar Singh (PW-9) proved the marriage ceremony of his son Agnu and presence of many persons from both side. He further submitted that body of Harijan Dhurva was recovered from well. The Public Prosecutor declared the said witness to be hostile witness.

19. Sakharam (PW-10) has stated in his evidence that during the course of investigation, appellant/accused Devsingh Hidko stated that they have murdered Harijan Dhurva. In his cross-examination, he admitted that memorandum statement of accused Devsingh Hidko was not recorded before him. He also stated that accused persons were surrounded by police. He further admitted that no statement of accused persons were recorded on spot, but he admitted his signature on Exs. P-3, P-4, P-5, P-9 and P-13 to P-15 and was shown his unawareness about the contents of the documents.

20. Dodge Ram (PW-11) stated in his evidence that meeting with regard to missing of Harijan Dhurva took place and in that meeting, the accused persons have admitted about commission of murder of Harijan Dhurva. In his cross-examination, he admitted that Police has not recorded his statement and for the first time, he is giving statement before the Court. The evidence of Somaru Ram (PW-8), son of Dodge Ram (PW-11), shows that there was preexisting dispute between Devsingh Hidko and

Dodge Ram (PW-11). Dodge Ram (PW-11) is the only witness who stated about some confessional statement by accused persons in village meeting. In cross-examination, he denied about recording of statement of accused persons before him and also stated that he is unaware about the contents of Exs. P-3 and P-4.

21. Dhan Singh (PW-12) and Kolu Ram (PW-13) turned hostile and not supported the case of prosecution.

22. Ankalu (PW-14) stated in his evidence that Police took all the appellants/accused persons and they have admitted the commission of murder of Harijan Dhurva. In his cross-examination, he admitted that the statement of committing murder by the appellants/accused persons was given by him on the basis of statement made by Police. He admitted that he made statement on the basis of information by others.

23. Sham Singh (PW-15) and Dhansai (PW-16) were also declared hostile.

24. Dr. B.S. Thakur (PW-17) has proved the postmortem report (Ex. P-21), in which, he opined that the cause of death was strangulation and death was homicidal in nature. He further stated that the dead body was in a decomposing condition.

25. Sumanlal Poyam (PW-18), who is Patwari has admitted that he had prepared the spot map (Ex. P-23), but in cross-examination, he admitted that he has not mentioned the name of person in Ex. P-23 who has narrated the spot i.e. place of incident and the other locations mentioned in spot map (Ex. P-23).

26. Ghasiya Ram (PW-19) has been shown to be eyewitness being present near place of incident at about 12.00 in the night. Learned trial Court has recorded that the said witness is dumb and deaf therefore, his statement is being recorded in question and answer format. Evidence of (PW-19) Ghasiya Ram bears that one Bhav Singh was appointed as

Interpreter to narrate the signs of the witness through which he communicated the Court.

27. N. K. Swarnkar (PW-20), is Investigating Officer and in his Examination-In-Chief has tried to prove the preparation of documents during the course of investigation and recording of statements of the witnesses. In his cross-examination, he admitted that in the statement recorded under Section 161 Cr.P.C. of Ghasiya Ram (PW-19), it has not been mentioned that the witness is dumb and deaf. He further admitted that his statement was recorded like an ordinary witness and he has not mentioned the name of person who interpreted the signs of the witness Ghasiya Ram (PW-19), who is unable to speak. He stated that his brother Mehattar Ram (PW-3) interpreted the signs.

28. On the basis of aforementioned oral and documentary evidence, the learned trial Court convicted and sentenced the appellants/accused persons as aforementioned only on the basis of evidence of Ghasiya Ram (PW-19), a witness who is unable to communicate verbally and also having disability of hearing.

29. From evaluating the entire material available on record as also the impugned judgment of conviction, it is evident that the finding of conviction recorded by learned trial Court is only based on the evidence of sole witness Ghasiya Ram (PW-19), who has been projected as eyewitness and that too said witness was dumb and deaf.

30. The one of the important aspect of the case is with regard to the dealing with witness, who is unable to communicate verbally. The Indian Evidence Act, 1872 provides for recording of the evidence of such witnesses under Section 119 of the Act, 1872.

Prior to 03/02/2013, Section 119 of the Act, 1872 reads as under:-

“119. *Dumb witnesses.*- A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or

by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.”

31. The Courts dealing with the provisions of Section 119 of the Act, 1872 as stood prior to amendment has stressed that the evidence of such witness does not only bear the interpretation of the signs, but it must also bears the record of signs. The High Court of Gujarat in the matter of **Kumbhar Musa Alib v. State of Gujarat**¹ held as under:-

“1. If evidence is recorded under that section, there must be a record of signs and not the interpretation of signs. It is true that at some places, the learned Sessions Judge has recorded the signs as well as the interpretations, but the signs made by the witness in answer to several other questions are not recorded but only the interpretations. This is not a correct compliance with Section 119 of the Indian Evidence Act. This also does not enable the appellate Court to know whether the interpretation of the signs is correct or not.”

32. The stress on the recording of signs has been made only to assess the correctness of evidence of witnesses as mentioned in Section 119 of the Act, 1872 and also to evaluate whether the trial Court correctly interpreted the signs through interpretation of the evidence of such witness, the correctness of findings recorded by the learned trial Court based on such evidence.

33. The Hon'ble High Court of Karnataka has also considered the manner of recording of evidence under Section 119 of the Act, 1872 in the matter of **Dilawarsab Alisab Jakati v. State of Karnataka by its State Public Prosecutors**² held as under :-

“27. The questions put to deaf and dumb witnesses have to be recorded by signs and the answers so

¹ AIR 1966 Gujarat 101

² 2005 SCC Online Kar. 124

given by signs have to be interpreted and answers have to be recorded. But, that is not so in the case on hand. It is such evidence given by signs is admissible and is to be taken as oral evidence. In the present case, as the procedure laid down under Section 139 of the Indian Evidence Act is not followed, such evidence recorded by the Court, without recording the signs is no evidence.”

34. In the matter of **Darshan Singh alias Darshan Lal v. The State of Rajasthan**³, the High Court of Rajasthan while dealing with the provisions of Section 119 of the Act, 1872, has laid down that before recording the statement of deaf and dumb witness, the Court is required to ascertain that he possess the requisite amount of intelligence, and that he understands the nature of oath. Not only this, but he is also required to record the satisfaction to that effect. The Court is required to ascertain, if the witness either by writing or sign can make intelligible what he has to speak. If he is able to communicate his statement perfectly by writing, it will be more satisfactory method of taking evidence. When such a witness is not able to write, then he can make sign showing what he wants to say. If it is by signs, those signs must be recorded and not only the interpretations of those signs. It is necessary to enable the appellate Court to know whether the interpretation of the sign is correct or not. It is not safe for a Court to embark upon the examination of a deaf and dumb witness on his own without the help of an expert or a person familiar with his mode of conveying ideas to others in day-to-day life. However, such a person should not be an interested person, who had participated in the investigation and who is also a witness in the same trial.

35. From the aforementioned case laws, it is evident that the Courts have strongly held that mere recording of evidence by interpreting the signs of witness will not be sufficient, but even the signs put to the witness

³ (2006) Cri. L.J. 3008

is also to be recorded in view of the provision of Section 119 of the Act, 1872.

36. Looking to the fact that there could be any chance of misunderstanding signs or incorporating and interpreting the signs in deposition sheets even by slightest mistake of understanding the signs of witness of such type, the legislature cautiously has amended the provision of Section 119 of the Act, 1872 vide Amendment Act of 2013, which came into effect from 03/02/2013. The amended provisions of Section 119 of the Act, 1872 reads as under:-

“119. Witness unable to communicate verbally.-

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by sign; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.”

37. The legislature has cautiously added the proviso which provides that the statement of such witnesses, who are unable to communicate verbally shall be videographed. This provision has been added by way of amendment only to avoid any mistake of understanding the signs of such witness at the time of recording of his/her evidence before Court and also that the appellate and higher Courts can appreciate the evidence of such witness in its entirety and in its true perspective, to which, the said witness has made statement.

38. In the case in hand, the learned trial Court has neither recorded the signs at the time of recording evidence of Ghasiya Ram (PW-19), who is dumb and deaf witness nor his evidence has been videographed.

39. The proviso added to Section 119 of the Act, 1872 by way of an amendment, mandatorily requires that the evidence of witness under Section 119 is to be videographed as word “shall” has been used purposefully by the legislature. The word “shall” cannot be understood in any other meaning except that the mandatory duty imposed upon the Courts for trying the cases in which complainant or witness is unable to hear and speak. The learned trial Court utterly failed to comply with the provisions of Section 119 of the Act, 1872 and therefore, evidence of Ghasiya Ram (PW-19) is not admissible.

40. Now the next question for consideration whether witness Ghasiya Ram (PW-19) otherwise is relative witness or not as he being the solitary witness on whose evidence, the appellants are convicted. No doubt, the conviction can be based on solitary eyewitness, but his evidence is required to be cautiously and minutely examined.

41. As per evidence of Ghasiya Ram (PW-19), it is evident that at about 12.00 in the night, he by chance was present on the spot as he was answering call of nature near the place where incident took place, therefore, for this reason also his evidence requires careful examination and perusal.

42. The spot map (Ex. P-23), which was prepared by Patwari Sumanlal Poyam (PW-18) shows that the distance of the place of incident is 200 meters from the house of Amar Singh, where the well was situated on the agricultural field of Chharetu Hidko. From perusal of the spot map (Ex. P-23), it shows that the spot where Ghasiya Ram (PW-19) was present at about 12.00 in the night has not been mentioned. The spot of the presence of so-called sole eyewitness on whose evidence appellants/accused persons have been convicted is important, because the incident occurred in the night and the persons could be identified only from some specific distance. Even in deposition of Ghasiya Ram (PW-19), it is nowhere mentioned that as from what distance, he saw the incident. Though in his

cross-examination, he stated that he saw the incident from *Gharbadi* (house fencing). The question No.19 has been specifically proposed to the witness that from what distance he saw the incident, but in answer to that, he made statement that he saw the incident from the fencing of the house. There is no marking of *Gharbadi* in spot map.

43. The distance of presence of the witness is important because it is not an incident of day light but of night and that too in agricultural field where there is no electric light available. As per case of prosecution with respect to light the only statement made by Ghasiya Ram (PW-19) is that “थोड़ा सा चांद निकला हुआ था”. By the said statement, it is evident that there was no full moon or half moon and therefore the person's or things in such situation could be identified only with short distance, but distance was not specifically mentioned. There is also no evidence that he heard some shout, talking of the accused on place of incident.

44. There is no evidence available on record to show that where the house of Ghasiya Ram (PW-19) was located or situated in village, but it is clear that the house of Ghasiya Ram (PW-19) was not situated near the place of incident, otherwise it could have been very well mentioned in the spot map (Ex. P-23). This fact is also important in view of the evidence led by Ghasiya Ram (PW-19) wherein he has stated that from the house of Amar Singh i.e. the place of marriage ceremony, he returned to his house and thereafter went to answer call of nature at about 12.00 in the night. The person could not travel far from his house to answer call of nature in night, therefore, in aforementioned circumstances, presence of Ghasiya Ram (PW-19) near the place of incident witnessing the incident of murder appears to be doubtful. The conduct of witness Ghasiya Ram (PW-19) also appears to be suspicious. The case of the prosecution itself reveals that the marriage ceremony of Agnu and function of singing and dancing was going on in the house of Amar Singh till late night and as per evidence of Ghasiya Ram (PW-19) itself, it was continuing there even at about 12.00

in the night, but the said witness did not rush to the house of Amar Singh to intimate such grievous incident of murder. This witness even has not narrated the incident to his brother or any other family member of the house, but after seeing the incident of murder, he came to his house and slept quietly. Even on the next day and the day after next, he has not disclosed the commission of murder of Harijan Dhurva by the appellants to any person of the village or even to his family members. He kept quiet for more than two days and not given any satisfactory explanation for same. All the above conduct makes the evidence of Ghasiya Ram (PW-19) suspicious.

45. The Hon'ble Supreme Court in the matter of **Govindaraju alias Govinda v. State by Sriramapuram Police Station and another**⁴ while dealing with the case of solitary eyewitness has held as under :-

“25. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.”

46. The Hon'ble Supreme Court in the matter of **Lallu Manjhi and another v. State of Jharkhand**⁵ held as under :-

⁴ (2012) 4 SCC 722

⁵ (2003) 2 SCC 401

“10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the singly witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness (see: *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614).”

47. The learned Court below not recorded signs and gestures nor videographed the evidence of Ghasiya Ram (PW-19) who is a witness with disability to speak and hear. Here the witness is not a dumb but also deaf and therefore, signs and gestures of witness as well as an interpreter is also required to be recorded, which has not been done in this case, but only questions made by Interpreter was recorded and only interpreted answers have been recorded. The aforementioned mode of recording of evidence done by learned Court below does not fulfill the requirements of Section 119 of the Act, 1872. In the present case, there is non-compliance of provision of Section 119 of the Act, 1872 in its entirety while examining Ghasiya Ram (PW-19) as there is no record of signs nor the recording of evidence of Ghasiya Ram (PW-19) is videographed, which makes his evidence inadmissible.

48. Further, the conduct of the evidence of witness Ghasiya Ram (PW-19) makes his evidence doubtful, and the same cannot be relied upon to convict the appellants for an offence of murder. No recovery of any incriminating articles from any of the appellants have been made. Dodge

Ram (PW-11) is the only person who states about confession in meeting but apart from him, no other witness makes this statement or supported it. As per evidence available on record, Dodge Ram (PW-11) was having previous enmity with Devsingh Hidko, which reflected in evidence of Somaru Ram (PW-8), and therefore, his evidence alone cannot be taken as gospel truth, particularly when the said confession has been said to have been made in a meeting before group of persons and no other witness even whispered about any confession of accused in meeting. There is no identified person brought as witness who first saw the dead body in well. Biro Bai (PW-4) has not seen anything herself, she only made statement based on some earlier conversation with deceased. Rano Bai (PW-5), wife of deceased was also not present on spot. As she herself left the place earlier than Harijan Dhurva where marriage ceremony was going on, therefore, her evidence with respect to the fact that she witnessed Raju calling Harijan Dhurva is not admissible. The suspicion however grave, it cannot take place of proof.

49. The Hon'ble Supreme Court in the matter of **Mousam Singha Roy and others v. State of W.B.**⁶ in Paragraphs 27 and 28 held as under :-

“27. Before we conclude, we must place on record the fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In a similar circumstance this Court in the case of *Sarwan Singh Rattan Singh v. State of Punjab* [AIR 1957 SC 637] stated thus : (AIR p. 645, para 12)

⁶ (2003) 12 SCC 377

"It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

50. From the above discussions, in our considered view, there is non-compliance of provisions of Section 119 of the Act, 1872 which is fatal and further the prosecution failed to prove the case beyond reasonable doubt that it is the appellants only who committed offence by impeachable evidence. We therefore, set aside the impugned judgment of conviction of all the appellants for offences under Sections 302/34 and 201/34 of IPC.

51. In the result, the appeal is allowed. The appellants are directed to be released forthwith, if not required in any other case.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Parth Prateem Sahu)
Judge