

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 26/07/2018****Judgment delivered on : 25/09/2018****CRA No. 928 of 2013**

1. Rajesh Khurana, aged 21 years,
2. Ramsingh, aged 28 years,
3. Ramniwas, aged 23 years,
4. Rakesh Khurana, 19 years,
5. Ramdas, aged 38 years,
6. Rameshwar Singh, 31 years

All S/o Budhram Khurana

All R/o Village Ulkhar, PS Sarangarh, Distt. Raigarh C.G. Civil
And Rev. Distt. Raigarh C.G.**---- Appellants****Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station - Sarangarh, Distt. Raigarh C.G.

---- Respondent

For Appellants	:	Shri Neeraj Mehta, Advocate.
For Respondent/State	:	Shri Rahul Tamaskar, P.L.
For Objector	:	Shri Sanjay Agrawal and Shri Akhand Pratap Pandey, Advocates.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

CAV Judgment**Per Pritinker Diwaker, J:**

This appeal arises out of the judgment of conviction and order of sentence dated 11.9.2013 passed by the Additional Sessions Judge, Sarangarh, Distt. Raigarh in ST No.39/2011, convicting each of the appellants under Sections 302/149, 201/149 & 120B of IPC and sentencing them to undergo life imprisonment, pay a fine of Rs.5000/-; RI for three years, pay a fine of Rs.1000/- and RI for three years, pay a

fine of Rs.1000/- with default stipulations respectively.

02. As per the prosecution case, in between 30.8.2011 and 31.8.2011 the appellants who are real brothers, committed murder of Ramkumar. Motive for commission of murder is said to be business rivalry as the deceased was a village doctor and was running a chemist shop and the appellants were also having chemist shop but the business of the deceased was flourishing as compared to that of the appellants. It came to the fore during investigation that on 30.8.2011 after having his dinner the deceased left his house saying that he is going to the house of his in-laws for watching some TV programme. After watching said programme he left his in-laws' house saying that he is going back to his house but when he did not return till late night, he was searched by his brothers at all possible places and on the next day also extensive search of the deceased was made. However, on receiving information from one Laxmi Malhotra that one dead body is lying beside the road, when PW-1 Shyam Kumar went there he identified the dead body to be of his brother Ramkumar. It was noticed that neck of the deceased was brutally cut by a sharp edged weapon and that private part of the deceased was also removed. At the instance of PW-1 Shyam Kumar, merg intimation Ex.P/1 was recorded on 31.8.2011 at 12.30 noon. Soon thereafter at 12.40 noon on the basis of merg, FIR (Ex.P/2) was registered under Section 302 of IPC against the unknown person. Inquest on the dead body was conducted on 31.8.2011 vide Ex.P/6 and thereafter, the dead body was sent for postmortem which was conducted on 1.9.2011 vide Ex.P/26 by PW-17 Dr. MK Manhar. The autopsy surgeon noticed multiple incised wounds

on the neck including cutting of trachea, incised wound in abdomen in hypochondrium region and amputation of the penis from root level. In his opinion, the cause of death was shock due to excessive blood loss from the body and the nature of death was homicidal. Diary statements of two witnesses PW-2 Ramo and PW-4 Bharat Tandan were recorded on 20.9.2011 vide Ex.D/1 & D/3, and before that their affidavits were obtained on 15.9.2011 vide Ex.D/3 and D/3A. Statements u/s 164 of CrPC were also recorded of these witnesses on 23.9.2011 vide Ex.P/3 & P/5 respectively. PW-2 and PW-4 in their diary statements have stated that they saw the accused persons carrying one person, however, while deposing in the Court they have stated that the accused persons were carrying dead body of the deceased.

Memorandum of accused/appellant Rajesh Khurana was recorded on 3.9.2011 vide Ex.P/8 and pursuant thereto, one bloodstained *gupti* was seized vide Ex.P/9. At the instance of appellant Ramnivas Khurana one half burnt T-shirt having stains like blood was seized vide Ex.P/10. At the instance of appellant Ramsingh Khurana one full sleeve shirt which was also half burnt and had stains like blood was seized vide Ex.P/11. Likewise, on being produced by appellant Rajesh Khurana, one full sleeve shirt which was half burnt and had blood like stains was seized vide Ex.P/12. From the place of incident, slippers of the deceased, plain & bloodstained soil were seized vide Ex.P/16. However, nothing could be recovered pursuant to memorandum of appellant Rakesh Khurana vide Ex.P/20. Further, there is no FSL report on record. While framing charge, the trial Judge charged the appellants under Sections 302/149, alternatively 304,

201/149 & 120B of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 19 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Counsel for the appellants submit as under:

- that there is no evidence as to where the deceased was killed and in what manner he was done to death.
- that the only evidence adduced against the appellants is that they were seen by PW-2 and PW-4 carrying one person along with them whereas in their statements u/s 161 of CrPC they have not stated that the accused persons were carrying dead body of the deceased. Likewise, PW-4 in his statement u/s 164 of CrPC has not stated that the accused were carrying the deceased.
- that there is inordinate delay in recording statements u/s 161 of CrPC of PW-2 & PW-4. These two witnesses allegedly saw the appellants committing murder of the deceased on 30.8.2011 but they kept mum for 20 days and no good reason has been assigned by them for this delay.

- that there is no evidence on record to show as to why PW-2 & PW-4 jointly became wiser all of a sudden on 20.9.2011 and could not disclose the name of the appellants to police or any other person at earlier point of time.
- that the prosecution has failed to justify as to why affidavits of PW-2 & PW-4 were obtained and likewise, their Court statements u/s 164 of CrPC were recorded.
- that PW-2 & PW-4 both in their Court statements have stated that they were beaten by the police (PW-18). Considering this aspect of the case, the entire prosecution case becomes doubtful and it appears that PW-2 & PW-4 were planted as eyewitnesses to the incident by the police.
- that though certain seizures have been effected on the memorandum of appellant Rajesh Khurana, but there is no FSL or serological report to establish connection between the seized articles and the crime in question and therefore, the seizure becomes insignificant.
- that two affidavits were obtained from PW-2 & PW-4 by the SDOP, Sarangarh, and this also demonstrates that they are planted witnesses at the behest of the police.

In support of his contentions, reliance has been placed on the judgments of the Hon'ble Supreme Court in the matters ***State of Orissa Vs. Mr. Brahmananda Nanda, AIR 1976 SC 2488; Tejinder Singh Vs. State of Punjab, (2013) 12 SCC 503; Surajit Sarkar Vs. State of West Bengal, AIR 2013 SC 807; and Shahid Khan Vs. State***

of Rajasthan, (2016) 4 SCC 96.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as also by the counsel for the Objector as under:

- that PW-2 & PW-4 were threatened by the appellants and therefore, they kept quiet for about 20 days and their conduct appears to be natural.
- that both PW-2 & PW-4 have stated in the Court that they saw the appellants carrying the deceased.
- that no question has been put to these witnesses as to why there was delay in recording their diary statements and therefore, the accused persons cannot derive any benefit of the said delay.
- that motive has also been proved by the prosecution as the deceased and the appellants were in the same business of running chemist shop and business of the deceased was flourishing and as such, the appellants were nurturing grudge against the deceased.
- that the postmortem report also supports the version of PW-2 & PW-4 because the time of death as mentioned in the postmortem report correspond with the time when the appellants were seen carrying body of the deceased by these witnesses.
- that the appellants have not offered any explanation in their statements u/s 313 of CrPC as to whose body they were carrying on the date of incident and therefore, it also goes against the appellants.

Reliance has been placed on the decisions of the Hon'ble Apex Court in the matters of ***Ranbir and others Vs. State of Punjab, (1973) 2 SCC 444; Lalli Vs. State of West Bengal, (1986) 2 SCC 409; Dr. Krishna Pal and another Vs. State of UP, (1996) 7 SCC 194;*** and ***State of UP Vs. Satish, (2005) 3 SCC 114.***

07. Heard counsel for the respective parties and perused the material on record.

08. PW-2 Ramo, one of the main witnesses of the prosecution, has stated that on the relevant date he was returning from Sarangarh hospital to his village on his bicycle and when he reached near the house of one Sukhru, he noticed that light of house of Sukhru was on. In the said light he saw all the six accused persons going towards the street after committing murder of the deceased. He states that he hid himself behind the bushes, the accused persons brought the dead body of the deceased, kept the same near a tree beside the road and moved away towards village pond. Thereafter, he (PW-2) went to his house along with his bicycle and slept. On the second day he again went to the hospital for treatment of his grand-son and when he returned to his house, he came to know that the deceased has been killed by six accused persons. He states that along with other villagers he went to see the dead body and after staying there for some time he returned to his house. After about 3 days of the incident he was brought to Police Station – Sarangarh and asked by Jangde (PW-18), ASI, to disclose to him as to what was seen by him, on which he informed PW-18 that he had seen all the six accused persons throwing

the deceased. He further states that he was asked by the said police officer not to take names of six persons and to take names of only three persons and that he was brutally beaten by the said police officer. When he was beaten brutally with a club by PW-18 he accused him (PW-18) of having taken two lacs of rupees from Khurana and that is why forcing him to take names of only three brothers. He states that thereafter he was taken inside the police station where he was offered liquor and when he refused to take the same, he was compelled to drink it and was asked by the said police officer not to disclose about the money taken by him (PW-18) to anyone. At about 9 pm he was let free and then he made statement before the SDOP, Sarangarh where he was asked by SDOP to go and get hospitalized, however, in the hospital he was asked to go back after taking injection and then he took treatment in his village. He has stated that his statement was recorded at Raigarh Court where he was taken by the Station House Officer and there he disclosed everything. He states that on the second day of incident when dead body of the deceased was recovered, police came to his village for investigation and body of the deceased was sent for postmortem. When a specific question was put to this witness whether his statement was recorded after 20 days of the incident, he states that it may be, because he does not remember the date. When he was confronted with his diary statement (Ex.D/1), he states that he did disclose to the police that he saw the accused persons carrying dead body of the deceased and if the same is not recorded in his statement he cannot tell the reason. He states that he never disclosed to the police that the accused persons were carrying "one person" and

if such fact is recorded, he cannot tell the reason. Further, he has stated that he did disclose the name of the deceased who was being lifted by the accused persons and if the same is not there in his diary statement, he cannot tell the reason. Similarly, he also disclosed to the police that he had hidden himself behind the tree and from there saw the accused persons carrying dead body of the deceased and if the same is not recorded in his diary statement, he cannot tell the reason. In para-11 he has again changed his statement and stated that he was not taken on the 3rd day of incident to police station but was taken to police station after about 20 days. He further states that till he was called in the police station he did not disclose about the incident to anyone in the village and it is only after enquiry by the police that he disclosed the same to the police. He admits that even of his own he did not disclose about the incident to police and only after about 20 days when his statement was recorded he disclosed the same. He has denied the suggestion that any affidavit was given by him or by Bharat Tandan (PW-4) to the police. He states that he had never signed any affidavit. When he was taken to police station by PW-18, three accused persons were already arrested and that he also lodged a complaint against PW-18 for beating him. After about one month his further cross-examination was done on 12.2.2013 and there he has stated that he gave affidavit along with Bharat Tandan (PW-4) which were prepared by the Notary and that the date in the affidavit was mentioned by the Notary.

09. PW-4 Bharat Tandan is another eyewitness to the incident. His diary statement was also recorded on 20.9.2011, the date when

statement of PW-2 was recorded. He has stated that on the date of incident he had gone to Civil Court, Sarangarh in connection with his case and returned in the evening. In the night he was watching TV and when at about 10-10.30 pm he came out from his house to ease himself, in the torch light he saw the accused persons holding one person whose face was covered and they were taking him to their house. He states that he was abused by accused Ramdas and was also threatened for his life and therefore, due to fear he went into his room and switched off the light, however, he did not close the door completely and from there he saw the accused persons carrying a person. After about 1-1 ½ hour the accused persons came out from their house carrying one person and threw that person in the bushes near old liquor shop and went towards village pond. In the next morning he went to other village to work in the field. After about 2-4 days he returned and came to know about death of the deceased and then disclosed everything to Rajkumar (PW-3) & Ramesh (not examined) and then again went to another village. He has further stated that on 18.9.2011 police came to him and took PW-2 Ramo along with him to police station but no enquiry was made from them. On 19.9.2011 they were again called by the police and were questioned. When they disclosed that they had seen six accused on the date of occurrence throwing the dead body, they were beaten by police and asked to disclose the names of only three persons, and that on 20.9.2011 he went to Raigarh Court for recording his statement. He states that on 20.9.2011 when his statement was being recorded in the Court, accused No.6 threatened his sister and on 23.9.2011 (Ex.P/5)

his statement u/s 164 of CrPC was recorded. He further states that after about 8-10 days, accused Rameshwar offered him Rs.50,000/- for changing his statement, which he refused.

In cross-examination he has stated that he saw the accused persons carrying a person whose face was covered and this fact was disclosed to the police while recording his diary statement and if the same is not recorded he cannot tell the reason. He admits that despite having suspicion about occurrence of any untoward incident he did not inform about the aforesaid incident to Kotwar or Panch. He states that in the next morning he left for Village – Bhadra and even before going to Bhadra, he did not inform about the said incident to anyone. At Bhadra also he did not disclose about the incident to anyone except one labourer working with him at Bhadra, however, he does not remember his name. After about 3-4 days when he returned to his village, he informed about the incident to Ramesh and Rajkumar (PW-3) and all these facts were disclosed by him to the police while recording his diary statement Ex.D/3, however, if the same are not recorded he cannot tell the reason. He admits that he did not ask Ramesh and Rajkumar to take him to police station for recording his statement though Rajkumar was having a motorcycle with him. He has further admitted the fact that even bus facility is there for going to Kosir from Sarangarh but he did not ask even the police officer to record his statement. He states that he stayed back in his village for about 8 days but never went to police station for giving his statement and then again went to other village Bhadra. On 18.9.2011 police came to him along with PW-2 Ramu at Bhadra and on 19.9.2011 his statement was

recorded in the police station but no such statement was recorded on 20.9.2011 and if any such statement is there on record, it is incorrect and it might have been recorded by the police of their own. It is relevant to note that diary statement of this witness is said to have been recorded on 20.9.2011 and not on 19.9.2011 as stated by this witness. He states that his affidavit was made on 15.9.2011 and if in his earlier statement he has stated that the same was recorded on 18.9.2011, it is incorrect. He states that on 15.9.2011 he executed affidavit on being asked by the SDOP, Sarangarh.

10. PW-6 Bhagwat is the person in whose house the deceased was alleged to have gone for watching TV. He states that after watching TV, at about 10 pm the deceased left his house and thereafter he slept. At about 12 in the night two brothers of the deceased came to him and enquired about the deceased. In para-2 while improving he has stated that at about 10 pm after departure of the deceased he slept and about half an hour thereafter when he woke up and came out of his house he saw accused Ramsingh, Rajesh and Ramnivas returning from village pond and this fact was disclosed by him to Shyam Kumar (PW-1) when he came to his house for making enquiry about the deceased. He states that about 3-4 months prior to the incident the accused persons had threatened the deceased of killing him. He states that the deceased was a doctor by profession and was running a medical store and in the same village the accused persons were also having a medical store and that accused Rameshwar was also practising medicine. The deceased was having more fame and his medical store was doing well as compared to the medical store of the accused

persons as a result of which the accused persons killed the deceased. He states that after about 9-10 days of the incident, his statement was recorded by the police and that three accused persons namely Rajesh, Ramsingh and Ramnivas were arrested. Thereafter he states that five persons were arrested and two were set free and then he states that six persons were arrested and three were set free. There are number of omissions in his Court statement as compared to his diary statement.

11. PW-17 Dr. MK Manhar conducted postmortem on the body of the deceased on 1.9.2011 vide Ex.P/26 and noticed multiple incised wounds on the neck including cutting of trachea, incised wound in abdomen in hypochondrium region and amputation of the penis from root level. In his opinion, the cause of death was shock due to excessive blood loss from the body and the nature of death was homicidal.

12. PW-1 Shyam Kumar is the informant and has narrated the incident up to some extent but has not made any allegation against the accused persons. PW-3 Rajkumar, brother of the deceased, has not made any allegation against the accused persons but has stated that medical store of the deceased was doing well as against the medical store of the accused persons. PW-5 Gopal Prasad Chandra is a witness to inquest Ex.P/6, memorandum Ex.P/8, seizure Ex.P/9, P/10, P/11 and the arrest memos (Ex.P/13 to P/15). PW-7 Raju Nishad is a witness to inquest Ex.P/6, seizure from the spot Ex.P/16 and the spot map Ex.P/17. PW-8 Narsingh Tandan has turned hostile. PW-9 Amritlal

Chandra is a witness to inquest Ex.P/6 and seizure Ex.P/16. PW-10 Firu Ram Yadav, witness to memorandum Ex.P/18 and seizure Ex.P/9 & P/10, has turned hostile. PW-11 Smt. Kachrabai, mother of the deceased, has been examined to prove motive. She states that medical store of the deceased was doing well as compared to that of the accused persons. PW-12 Smt. Kamla, sister-in-law of the deceased has also been examined to prove motive. PW-13 Dayanidhi Sahu and PW-15 Laxminarayan Rathore, police personnel, assisted in the investigation. PW-14 Smt. Yashodabai, wife of the deceased, has also stated about motive of business rivalry between the deceased and the accused persons. PW-16 Mahettar Ram, Patwari, prepared the spot map Ex.P/21. PW-18 BP Jangde, ASI, is the person against whom allegations have been made by PW-2 & PW-4 that he beat them and compelled them not to disclose the names of all six accused persons but disclose the names of only three of them. PW-19 Pramod Xess, investigating officer, in para-23 has stated that PW-2 & PW-4 never came to him or police station before 20.9.2011 for recording their statements. He has admitted the fact that from 31.8.2011 till 2.9.2011 he was not aware about the culprits though on 31.8.2011 itself PW-1 had expressed his suspicion over the accused persons.

13. Close scrutiny of the evidence makes it clear that the entire prosecution case rests upon the statements of PW-2 Ramo and PW-4 Bharat Tandan. Diary statements of both these witnesses were recorded on 20.9.2011 i.e. after about 20 days of the incident and none of these witnesses have assigned any reason for this belated disclosure to the police. If the conduct of these witnesses is seen, PW-

2 even after seeing the incident instead of disclosing the same to anyone including the police, from the second day began to live his normal life and went back to hospital where his grand-son was admitted. Likewise, PW-4 Bharat Tandan after seeing the incident slept in his house and on the next day proceeded for another village Bhadra where he worked for about 3-4 days and then returned to his house. As per PW-2 after seeing the dead body of the deceased when the villagers had gathered near the said place, this witness also went there and thereafter returned to his house. Even at this moment also he did not disclose about the incident to anyone. Further, it has come in their evidence that police was also present at that time, yet these witnesses kept mum and did not inform the police about the incident allegedly seen by them.

14. Yet another thing which makes the testimony of these witnesses doubtful is that after about 3 days of the incident they were called to the police station by PW-18 where they were said to have been beaten by PW-18 and other police officers and were compelled to disclose the names of only three accused and not of all the six accused. According to these witnesses, the brutality was to such an extent that they were required to take medical treatment.

15. When in a case there are only two eyewitnesses of the incident and they were brutally beaten in the police station and compelled to disclose names of particular persons, their statements become doubtful. Furthermore, the manner in which the whole investigation has been carried out also raises a question as to the involvement of the

accused in the crime in question. Even in respect of affidavits of these two witnesses, their version is not consistent. Initially it has been stated by them that they have not given any such affidavit but later they state that they furnished the same.

16. In ***State of Orissa Vs. M. Brahmanand Nanda, AIR 1976 SC 2488***, the Hon'ble Supreme Court observed as under:

“Where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eyewitness and this witness did not disclose the name of the assailant for a day and half after the incident and the explanation offered for non-disclosure was unbelievable, such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witness and that the High Court was correct in rejecting it as untrustworthy and acquitting the accused.”

17. In the matter of ***Tejinder Singh Vs. State of Punjab, (2013) 12 SCC 503***, it has been observed as under:

“27. Insofar as the other appellants in connected appeals are concerned, the Sessions Court after placing reliance upon the evidence of PW-7, PW-8 and PW-9 has recorded the findings on charges against them, which is wholly untenable in law. Neither the learned Additional Sessions Judge nor the High Court has examined their testimony properly by re-appreciating the same to record the findings on the charges. The narration of the alleged offences against the appellants and other accused by the prosecution witnesses is most unnatural and unbelievable to convict and sentence them. The courts below should have appreciated the evidence on record properly and they should not have believed the statement of evidence of PW-

8 for the reason that neither has he disclosed the alleged offences said to have been committed by the appellant and other accused nor did he depose before the trial court or to anyone of the villagers. The explanation given by him regarding the non disclosure of the alleged offences said to have committed by the appellants and other accused that he was held out of fear and therefore, he did not disclose the incident to anyone of the villagers cannot be accepted as it is unnatural. Therefore, the evidence of PW-8 cannot be believed by this Court. The testimonies of PW-8 and PW- 9 would clearly go to show that there is a discrepancy regarding the narration of the offences said to have been committed by the accused. Therefore, the courts below should not have placed reliance on the evidence of PW-8 and PW-9 and recorded the finding that the charges levelled against the appellant/accused were proved. Both the courts below have committed serious error in placing reliance upon the untrustworthy testimonies of PW-8 and PW- 9 and passing an order of conviction and sentence against them.”

18. In the case of ***Surajit Sarkar Vs. State of West Bengal, AIR 2013 SC 807*** the Hon'ble Supreme also held the testimony of the eyewitness doubtful on the ground of his unnatural conduct as he was a neighbour of the victim, claimed to have seen the incident but did not inform the family of the victim or anyone else and after the incident straightway went to his home. In the matter of ***Shahid Khan Vs. State of Rajasthan, (2016) 4 SCC 96***, the Hon'ble Apex Court observed as under:

“20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they

are not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eye-witnesses to the occurrence. It may suggest that the investigating officer 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. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, does not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and re-appreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.”

19. Furthermore, there is absolutely no evidence as to when and where the deceased was killed and in what manner the accused persons committed his murder. The only evidence against them is that PW-2 & PW-4 saw them carrying a person. It is to be noted here that in their Court statements only they have stated that the person being so carried was the deceased whereas in their diary statements and the statements u/s 164 of CrPC they have not named the deceased. This apart, according to PW-4 face of the person being carried by the accused was covered whereas PW-2 has not stated so. There is also no evidence to show as to how and why all of a sudden on 20.9.2011 both these witnesses became wiser and came forward to the police

together claiming themselves to be eyewitness to the incident. Similarly, the prosecution is silent on the point as to how it came to know that PW-2 & PW-4 were the eyewitnesses to the incident. The prosecution has also not assigned any reason for obtaining affidavits of these witnesses and likewise for recording their statements u/s 164 of CrPC.

20. As regards the evidence of PW-6 Bhagwat Prasad, he merely saw three accused persons coming from the village pond but on this ground alone it cannot be presumed that the accused persons were returning after committing murder of the deceased or were going to the place of occurrence to commit his murder. So far as motive is concerned, it may be true that the accused persons were not happy with the deceased because the medical store of the deceased was flourishing as compared to that of the accused persons and further it has come in the evidence that 3-4 months prior to the incident they had threatened the deceased for life, but in the given facts and circumstances of the case, the quality of evidence of PW-2 & PW-4, the conduct of these witnesses, the manner in which the investigation has been carried out, the motive so attributed to the accused is not sufficient enough to bring home the charge u/s 302 of IPC against them.

21. Yet another thing which looks a bit unnatural is that PW-2 was first beaten by the police (PW-18), then offered liquor and on being refused, he was compelled to consume liquor in the police station. Here again it creates doubt as to whether the investigation has been

done properly and impartially or the witness is stating the truth.

22. Having gone through the entire evidence with utmost care, the conduct of the witnesses (PW-2 & PW-4) during the course of alleged offence and subsequent thereto, the omission and contradictions in their Court statements as compared to their diary statements and the statements u/s 164 of CrPC, the manner in which the investigation has been done, non-explanation by the prosecution for delayed recording of diary statements, we find that the judgments relied upon by the State have no application to the facts of the present case.

23. As regards seizure of certain articles, on the memorandum of accused/appellant Rajesh Khurana, one bloodstained *gupti* was seized and at the instance of appellants Ramnivas Khurana, Ramsingh Khurana & Rajesh Khurana, half burnt clothes were seized. However, there is no FSL or serological report on record to establish as to what nexus these seized articles had got with the crime in question and therefore, the evidence of seizure is also not conclusive in nature.

24. Thus, considering the nature and quality of evidence adduced by the prosecution in light of the principles of law laid down in the judgments cited by the appellants, we are of the opinion that the trial Court has fallen into error while holding the appellants guilty of offence under Sections 302/149, 201/149 & 120B of IPC on the basis of such evidence. Though the evidence so adduced lead to suspicion against the appellants, but the law is well settled in this regard that suspicion howsoever strong cannot take the place of proof. Being so, failure of the prosecution to prove its case beyond all reasonable doubt against

the appellants definitely makes them entitled for acquittal on this score.

25. Resultantly, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellants of the charges under Sections 302/149, 201/149 & 120B of IPC by extending them benefit of doubt. Appellants No. 1 to 3 are reported to be in jail since 3.9.2011 whereas appellants No. 4 to 6 are on bail. Therefore, appellants No.1 to 3 are directed to be set free forthwith and the bail bonds furnished by appellants No. 4 to 6 stand discharged and they need not surrender.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Gautam Chourdiya)
Judge