
(2015) 09 P&H CK 0248

In the Punjab And Haryana At Chandigarh

Case No : CRA-D-127-DB-2003 and CRA-D-136-DB-2003

Babu Lal and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 174, 175, 207
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 09 P&H CK 0248

Hon'ble Judges : T.P.S. Mann and Gurmit Ram, JJ.

Bench : Division Bench

**Advocate : Ashwani Bhardwaj and Aditya Sanghi, Advocates, for the Appellant;
Dhruv Dayal, Deputy A.G., for the Respondent**

Judgement

Gurmit Ram, J.—The abovesaid appellants have assailed the judgment dated 24.1.2003 and order of sentence dated 25.01.2003 passed by the Court of learned Additional Sessions Judge, Faridabad in criminal case bearing FIR No. 165 dated 16.05.2001 under Sections 302 /34 IPC, Police Station GRP, Faridabad vide which they were held guilty for the offence punishable under Section 302 read with Section 34 , IPC and convicted thereunder.

Both these appeals have been taken up together for the purpose of disposal being the outcome of one and the same judgment and order of sentence abovementioned.

2. Briefly stated the case of prosecution before the learned trial Court was that on 30.01.2001 at about 9:30 A.M. a ruqa was received in Police Station G.R.P., Faridabad from Deputy Station Superintendent, Faridabad that one unknown person who was cut with some train is lying on fourth line in between junction cabin and Tuglakabad K.M., 1517/16-18. On this HC Ved Ram, 84, along with C. Jagdish, 830, and sweeper Hans Raj went to the spot for conducting proceedings under Section 174 , Cr.P.C. When they reached at the spot they found the dead body of Rohtash s/o. Ghisa Ram r/o. Kotda, Police Station Neemka, District Sikar

Rajasthan lying there. Inquest proceedings in respect of his dead body were conducted. Statements of witnesses under Section 175 Cr.P.C. in this regard were recorded. Post-mortem on the dead body of deceased was got conducted and thereafter the dead body was handed over to the guardians of the deceased.

Thereafter a complaint was received in the Police Station on 12th May, 2001 of Smt. Santosh Devi wife of the deceased through Superintendent of Police, Faridabad for investigation and necessary action. On this Piare Lal, A.S.I., No. 166; along with some other official reached at village Kotda District Sikar (Rajasthan), where during investigation abovesaid Smt. Santosh-complainant got recorded her statement, gist of which was as under:-

"Her husband Rohtash Singh (since deceased) was working as a Compounder in Sharma Nursing Home, Neemka Police Station, who used to go to attend his duties from village Kotda to the abovesaid Nursing Home daily and came back in the evening. She has four children i.e. one son and three daughters. On 28.01.2001 Dharampal son of Makhan Lal resident of her village along with another boy who was known to her by face came to her husband Rohtash Singh and took him from the house at village Kotda along with him at about 6:00 P.M. for going to Delhi. After three days i.e. Tuesday dated 30.01.2001 a telephonic message was received in the evening at the STD of the village from Sharma Nursing Home Neemka Police Station that her brother-in-law Rajender Prashad from Badarpur had informed that Rohtash had met with an accident. Upon this she along with other members of her family including her mother-in-law came to her brother-in-law, Rajender Prashad at Tejpur Pahari, Badarpur. From there they learnt that her husband, Rohtash had died. His dead body was lying in Civil Hospital at Faridabad for postmortem. Her brother-in-law along with some other family members brought the dead body after post-mortem on 31.01.2001.

She identified the dead body of her husband, which was cremated. One Makhan Lal, who was her grand father-in-law in relation had disclosed about some old money transaction of their family with regard to expenses incurred in respect of last rites of her grand mother-in-law. A sum of Rs. 150/- was pending being not paid till date by them (complainant-party). On this they paid a sum of Rs. 2,100/- to said Makhan Lal etc., but still they were demanding Rs. 1,100/- more. They refused to pay this amount on the plea that a sum of Rs. 2,100/- had already been paid instead of Rs. 150/-. On this Babu Lal son of Makhan Lal threatened them to see later on. This incident took place about a year back. Thereafter Dharampal son of Makhan Lal started visiting their house.

They returned to their village from Badarpur after 15/20 days of last rites ceremony of her husband, Rohtash. Then Dharampal along with one boy came to her house and asked from her what they are proceeding ahead and returned after giving threat. So as such, she had a doubt that Dharampal and his accomplice, other boy, took her husband along with them and they were the killers of her husband-Rohtash. She had also sent a complaint to Superintendent of Police, Faridabad and Hon"ble Chief Justice of India, New Delhi for taking legal

action. After recording the abovesaid statement of complainant-Santosh, ASI Piare Lal read over the same to her, which was signed by her after admitting it to be correct."

On the abovesaid statement of the complainant, ASI Piare Lal made his endorsement on the basis of which, the instant case was registered. During investigation of the case, accused Dharampal and Prabhu Dayal were apprehended. During interrogation both of them made the disclosure statements that on account of some enmity they all consumed the liquor and started walking by the side of railway track, there came one goods-train, they both pushed Rohtash, who came in the spate of train and died. By taking advantage of the time, they fled away from the spot. On 31.05.2001 accused Prabhu Dayal was produced before the Court of learned Chief Judicial Magistrate, Faridabad with his muffled face for the purpose of his identification parade, who refused for his test identification parade. Statements of witnesses were recorded. Site-plan of the place of occurrence was prepared.

3. On completion of investigation, challan against the accused was produced in the Court of learned Chief Judicial Magistrate, Faridabad, who committed the same for trial to the Court of learned Sessions Judge, Faridabad after making compliance of provisions of Section 207 , Cr.P.C.

4. All the accused were charge-sheeted for the offence punishable under Section 302 read with Section 34 , IPC, by the learned trial Court, to which they pleaded not guilty and claimed trial.

5. During trial of the case, the prosecution examined 11 witnesses in all in order to prove its version.

6. Then the accused were examined as per the provisions of Section 313 Cr.P.C., in which they denied the entire incriminating evidence brought by the prosecution against them during the trial of the case. Further they took plea of their innocence and claimed their false implication in this case, but they did not lead any evidence in their defence to rebut the version of prosecution.

7. After hearing learned counsel for both the parties and going through the record as well, the learned trial Court held the accused (now appellants) guilty for the offence punishable under Sections 302 read with Section 34 , IPC and convicted them thereunder by awarding the sentence as detailed below:-

"Rigorous imprisonment for life along with fine of Rs. 10,000/- each, in default of payment of fine, further rigorous imprisonment for a period of two years each."

8. Feeling aggrieved from the impugned judgment and order of sentence, the appellants have come up before this Court vide the above noted two criminal appeals, notice of which was given to the respondent-State.

9. We have heard the learned counsel for both the parties and also analyzed the record with their able assistance.

10. The learned counsel for the appellants has contended that the impugned judgment is purely based on the presumptions and assumptions which is not permissible in law and also against the well settled principles of criminal jurisprudence. Further, he has contended that as per the case of prosecution, the alleged occurrence took place on the intervening night of 29/30.01.2001 and whereas the FIR Ex. PC/2 was lodged in this case on 16.05.2001. So, there is a delay of about 3 1/2 months in lodging of this FIR regarding which the prosecution failed to bring on record any plausible explanation and hence this delay is quite fatal to the case of prosecution. Then it is further contended that while examining the accused under Section 313 , Cr.P.C., the entire incriminating evidence was not put to them, which had caused a serious prejudice to them in their defence. Even at the time of preparing of inquest report Ex. PD, complainant-party was present at the spot and their statements were also recorded, but they did not state anything against any of accused at that time, rather they took it to be a case of accident. Further, the witnesses examined by prosecution were the interested witnesses and as such their statements did not inspire any confidence for want of any independent corroboration.

11. Then it is also submitted that entire case of prosecution rests on the fact that deceased-Rohtas was lastly seen in the company of Dharampal, which fact was neither pleaded nor proved against appellant-Babu Lal. The only circumstantial evidence which had come on the record against appellant-Babu Lal is that he went to the house of Rohtash Singh (since deceased) at village Kotda, Police Station, Neemka District Sikar, Rajasthan, when his wife and other members of his family came back to their house in the said village after the last rites of deceased. He asked them to get the matter settled. Except this there was no other incriminating evidence against appellant-Babu Lal connecting him with the crime in question. Even initially he was not challaned and he was summoned on the application of the prosecution filed under Section 319 Cr.P.C. during trial of the case. Lastly, he has prayed for the acceptance of these appeals and setting aside of the impugned judgment and order of sentence passed by learned trial Court with further prayer to acquit the appellants of the charges framed against them.

12. But on the other hand, learned State counsel has strongly controverted the above contention of learned counsel for the appellants. Then it is also his contention that learned trial Court has passed the impugned judgment by appreciating evidence on record from all the angles and as such, there is no substance on the record which could justify to make any sort of interference in the same.

13. Now we deem it appropriate to have a glance of the evidence as available on the record to make proper appreciation as well as evaluation of above rival contentions of both the parties.

14. PW-4, Smt. Santosh wife of Rohtash (since deceased) had narrated to the effect that on 28.01.2001 accused Dharampal and Prabhu Dayal came to her

husband with a request to accompany them to Delhi as accused Prabhu Dayal wanted to purchase some medical instruments for starting profession of Doctor. It was about 6:00 P.M. Her husband accompanied them from his residence by telling her that they are going to Delhi. The remaining part of her statement is on same lines as per her statement Ex. PC/3 made by her before the Police on 15.05.2001. So there is no need to discuss her said statement in detail in order to avoid repetition. Moreover, the same has already been discussed at length in Para No. 2 of this judgment.

15. PW-10 ASI Piare Lal stated that on 15.05.2001, he was posted in Police Station GRP, Faridabad and on that date after receiving complaint Ex. PB, he recorded the statement Ex. PC/3 of complainant-Santosh, upon which he made an endorsement Ex. PC/1, on the basis of which FIR Ex. PC/2 was recorded. Further he also sent the Special Reports to the Police Officer as well as the Illaqa Magistrate and prepared rough site plan Ex. PG.

16. PW-3 Rajender Parshad is the brother of deceased. His statement was to the effect that on 29.01.2001, his elder brother Rohtash accompanied by Dharampal and Prabhu Dayal came to his residence situated in area of Tajpur Pahari, Badarpur at about 7:00 P.M. After taking tea and staying for about 10 to 15 minutes, they proceeded towards Dayal Nagar, since accused Dharampal was having some urgent work. He accompanied them upto Seble Cinema at Badarpur and then returned to his house. His brother Rohtash handed over to him apparatus for checking blood pressure, first aid box and a book for keeping the same at home. At about 11:00 P.M., accused Dharampal and Prabhu Dayal came back to his residence. Both of them were in a frightened position. When he enquired from them about the whereabouts of his brother Rohtash, then they told him that he had left by boarding a bus, which they could not board. After taking meals at his residence they went to sleep. In the morning when he got up, he found both of them missing from his house. They left the same without informing him. Then it is also in his statement that after 3/4 days from 31.01.2001 accused Babu Lal accompanied by another person from Rajasthan came to him and enquired about the alleged occurrence. Said Babu Lal also told him that now nothing could be done about demise of his brother. Further, he showed his intention to assist the children of the deceased and also to give two bighas of land, besides, constructing a house for them, but subject to condition that no legal action is to be taken qua the death of his brother. Then further he threatened him that if any legal action is taken, then in that eventuality he would be done to death. The remaining part of his statement is identical with statement Ex. PC/3 of PW-4, Santosh, so the same is not discussed for the sake of brevity and also to avoid repetition.

17. PW-5 Dr. S.K. Mittal, conducted post-mortem on the dead body of Rohtash (since deceased) on 31.01.2001, who found six injuries on his dead body as detailed in carbon copy of his postmortem report Ex. PC. In his opinion, cause of death was due to shock and haemorrhage as a result of multiple injuries, which

were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

18. PW-6 Kamal Singh Meena, was posted as Deputy Station Manager, Old Railway Station, Faridabad on the relevant date, i.e. 30.01.2001. On receipt of information from Station Master Junction that a dead body of some unknown person having met with a rail accident is lying between junction cabin and Tughalakabad, he sent the intimation vide Ex. PE to Police Station GRP, Faridabad.

Thereupon PW-7 HC Ved Ram went to the spot where dead body of Rohtash was found. Only a page of telephone diary was found from the dead body, which was taken into police possession vide memo Ex. PE/1. He sent the dead body for postmortem after preparing inquest report Ex. PD.

19. PW-8 Mr. Jagdeep Jain, was posted as A.C.J.M., Faridabad on 31.05.2001. Prosecution moved before him an application Ex. PF for the remand of accused Dharampal and Prabhu Dayal as well as for their test identification parade. On his asking accused Prabhu Dayal who was in muffled face refused to join the test identification parade and his statement Ex. PF/1 in this regard was also recorded. Thereafter, he disposed of this application vide order Ex. PF/2.

It was PW-9 Inspector Raghubir Singh who produced accused Dharampal and Prabhu Dayal in the Court vide application Ex. PF. He corroborated with the above statement of PW-8 Mr. Jagdeep Jain, A.C.J.M.

20. Statement of PW-11 Randhir Singh, City Inspector was simply to the effect that he recorded the statements of Rajinder and Ashok under Section 161 Cr.P.C. and prepared the report under Section 173 Cr.P.C. on completion of investigation.

21. PW-1 Sunder Lal was the photographer. He visited the spot of occurrence on 30.01.2001 on the request of GRP, Faridabad and took photograph Ex. P1, whereas Ex. P2 is its negative.

22. PW-2 C. Raj Kumar visited the spot of occurrence on 04.06.2001 on the police request and prepared the scaled site plan Ex. PA.

23. At the time of arguments, the main attack of the counsel for the appellants on the version of prosecution was regarding delay of about 3 1/2 months in lodging of the FIR in this case. Admittedly there is a delay of about 3 1/2 months in lodging of the FIR in this case. At this incipient stage, the complainant-party from the facts and circumstances of the case thought that the alleged death of deceased Rohtash was due to some rail accident and as such no further action was taken into this matter except conducting of the proceedings under Section 174 , Cr.P.C. Cremation of the deceased after the postmortem was performed at Tajpur Pahari, Badarpur, New Delhi where PW-3 Rajender Parshad, the brother of deceased was residing at that time. PW-4 Santosh wife of the deceased along with her other family members returned to her village Kotda after 15/20 days after last rites of her husband. It was during this period accused Babu Lal visited her house and threatened to kill her if any legal action is initiated with regard to

death of her husband. Even as above discussed it has come in the statement of Ex. PW 3 Rajender Prashad that after 3/4 days from 31.01.2001 accused Babu Lal along with another person came to him from Rajasthan in order to know about the alleged occurrence. Accused Babu Lal showed his readiness to render assistance for the children of deceased, but subject to condition not to take any legal action for the death of his brother Rohtash. Further he also threatened to kill him in case any action is taken qua the abovesaid matter. This act and conduct of accused Babu Lal and another created a suspicion in the mind of the complainant-party regarding their complicity in causing death of the deceased. Further, the complainant-party also started thinking on the lines that death of deceased was not caused in any rail accident, rather it was a case of murder, committed by all the appellants/accused together after a pre-planning with a common intention to do that illegal act. Thereafter they started visiting the concerned police authorities to take legal action into the matter and to punish culprits, though nothing in black and white in this regard had come on the record except the complaint Ex. PB dated 23.04.2001. Then it had also come on the record that complainant-Santosh, PW-4 was having four minor children, i.e. one son and three daughters of young ages at the time of alleged incident. Her mother-in-law Smt. Laxmi Devi was already a relict at the relevant time. So it was a herculean task for both the widows to pursue this matter with regard to death of the deceased. Then PW-3, Rajender Prashad, the brother of deceased was also doing labour work, whenever available. So the complainant party was not a man of means to wield any kind of influence upon concerned police authorities to get registered this case on the flimsy grounds for entrapping the appellants in this case falsely.

24. From the abovesaid conduct of the appellants depicted by them subsequent to the death of the deceased, the complainant-party also considered their past conduct prior to the death of the deceased in order to form the opinion regarding their involvement in this incident, which aspect of this case would be dealt with later on while discussing the circumstantial evidence of this case. Statements of Smt. Laxmi Devi, mother of deceased Ex. DC and of Santosh widow of deceased Ex. DD under Section 175 Cr.P.C. cannot nullify the developments pertaining to merits of the case which took place subsequent to Ex. DC and Ex. DD. Moreover, at the time of recording their said statements, the complainant-party did not have any suspicion or malice against any person qua the death of the deceased. So they did not make any imputation against any person at that time. So the abovesaid delay itself cannot be considered to be a ground to dislodge version of prosecution because no trustworthy material had come on the record during trial of the case to hold that this delay was utilized by the complainant-party to make out a false story for the false prosecution of the appellants in this case.

25. Then it is also contended by learned counsel for the appellants that PW-3 Rajender Prashad and PW-4 Santosh, the star witnesses of prosecution, are interested witnesses being related to the deceased and as such, it is not safe to rely upon their statements to uphold the conviction of the appellants, since there

is no independent corroboration to their depositions qua the version of prosecution stated by them. In order to justify his contention, it is also his submission that said PW-3 is the brother, whereas PW-4 is the widow of deceased. Then it is also contended that it was the case of the prosecution that the message with regard to the unfortunate death of the deceased was received at the shop of Ganpat, who was running S.T.D. in the village and this news was further broken by him to Smt. Santosh and her other family members. But said Ganpat was neither cited as a witness nor he was examined as such during trial of the case. The learned trial Court has given too much weightage to the deposition of abovesaid PW-3 and PW-4 while holding the accused guilty in this case without considering the abovesaid fact of interestedness of these witnesses to support the conviction of the accused. But in this case there was no eyewitness to the alleged occurrence, so in such like situation only family members of deceased could tell something about the attitude and conduct of the appellants (accused) towards the deceased, both prior to his death as well as subsequent thereto. The other people may not be in a position to say anything in this regard. Moreover in our society there is a general tendency that everybody shirks himself to become a witness in any criminal case either in order to avoid enmity from the accused or to save the time which is usually consumed during trial of the case in recording the deposition of witnesses. Then in this case the role of said Ganpat was only to the extent that on receipt of telephonic message at his S.T.D. regarding the fact that Rohtash had met with an accident, he further conveyed the same to the family members of the deceased. So his statement was not of any much significance to cause any jolt to the case of prosecution due to his non-examination. Herein the support is taken from the case law as laid down by this Court in case titled as Gora Singh and Others Vs. State of Punjab, . In this case PW-7 Mandar Singh was the member Panchayat of the concerned village at the relevant time. The learned counsel for the appellants has tried to assail his testimony on the ground that he has remained Panch with Tota Singh Sarpanch, who happens to be the brother-in-law of deceased. It was held to be no ground to discard the testimony of this witness.

Interestedness of the witnesses is no ground to discard their deposition unless it is proved on the record that they had some motive or any other consideration for making statements in the Court in order to secure the conviction of the accused. In the present case, the appellants had failed to establish on record any motive or consideration against PW-3 and PW-4 for deposing against the appellants. So the above contention of learned counsel for the appellants is rejected being found not sustainable.

26. Then from the statements of PW-3 and PW-4, it was well established on the record that deceased was last seen in the company of appellants Dharampal and Prabhu Dayal. In this regard PW-4 Smt. Santosh had categorically deposed in the Court that on 28.01.2001 at about 6:00 P.M. accused Dharampal and Prabhu Dayal took her husband Rohtash from his residence for going to Delhi for purchasing some instruments for accused Prabhu Dayal in order to start the

profession of a Doctor. Then this fact is also supported by PW-3 Rajender Prashad when he had stated in very clear terms that his elder brother Rohtash accompanied by Dharampal and Prabhu Dayal accused, came to his residence at Tajpur Pahari, Badarpur on 29.01.2001 at about 7:00 P.M., who after taking tea proceeded towards Dayal Nagar on the plea that accused Dharampal was having some urgent work. The alleged occurrence took place during the night intervening 29/30.01.2001. So as such it is for both the said accused/appellants to unfold regarding death of the deceased or that they had left the company of deceased prior to his death well in time. Then it had also come in the statements of PW-3 Rajender Prashad that on 29.01.2001, both the accused Dharampal and Prabhu Dayal came to his residence at about 11:00 P.M. and when he enquired from them about the whereabouts of his brother Rohtash, then they narrated that he had left by boarding a bus, which was missed by both of them. They stayed at his residence during that night after taking meal and on the next morning, they were found missing and left his residence without apprising him. The said explanation given by the appellants is not held to be logical or believable and as such it cannot be acted upon. So the factum that deceased was last seen in the company of appellants Dharampal and Prabhu Dayal was fully established on the record and as above discussed, the appellants had miserably failed to rebut this version of the prosecution. So this theory of last seen can be considered to be a valid ground to uphold the conviction of these appellants. Herein the reference is made to an authority as laid down by Hon"ble Apex Court on this point in case titled as Raja Vs. State of Haryana . In this case accused and deceased had left the house of the deceased and were seen taking tea together at a tea stall. The counsel for the appellant had contended that theory of last seen as advanced by the prosecution is not acceptable inasmuch as the owner of the tea stall has not been examined. It was held that when the testimony of two witnesses (PW-10 and PW-11) deserve acceptance and receive corroboration from the other evidence on the record, no adverse inference is to be drawn due to non-examination of the tea stall owner.

27. In the case in hand also, both PW-3 and PW-4 strongly as well as consistently stated to the effect that deceased was last seen in the company of appellants Dharampal and Parbhu Dayal in the evening of 28.01.2001 and in the evening of 29.01.2001 also. So in the case in hand, there is nothing on the record to disbelieve the theory of last seen as put forth by the prosecution.

28. Then the learned counsel for the appellants has also pointed out about the conduct of appellants after the alleged occurrence and has contended that their said conduct is suffice to draw the conclusion that they were innocent in this case and were ensnared in this case falsely. The alleged occurrence as per the case of prosecution took place on the intervening night of 29/30.01.2001 and the appellants were very much available in Delhi from 28.01.2001 to 31.01.2001. Even they were handed over to the Police on 31.01.2001 at the instance of PW-3 Rajender Prashad, who were let off by the police after few days. But if a person remained present at the spot of the alleged occurrence or nearby to it after the

commission of the crime, then that does not mean that he is innocent. He might have remained present at the abovesaid place in order to mislead the investigation agency by showing his innocence with regard to commission of the crime in question. So the above contention of learned counsel for the appellants is also held to be not helpful to the appellants from any angle.

29. Regarding the motive part, it was case of prosecution that there was some money dispute between parties and as such the accused persons were having a grudge against the deceased and that they committed his murder due to that motive. PW-3 Rajender Prashad deposed that there was a dispute about the payment of Rs. 150/- between his deceased brother and Babu Lal accused. In respect of this amount his brother had already paid a sum of Rs. 1,100/- to Babu Lal, who was further raising a demand of Rs. 2,100/- more, which his brother had refused to pay. The learned defence counsel did not cross-examine this witness on this aspect of the case, so his testimony to this extent had remained unchallenged. Similarly, PW-4 Smt. Santosh had also stated about this money dispute between her husband since deceased and Babu Lal accused. Similar is the fate of this witness because she was also not cross-examined at all on this aspect of the case. So the motive as alleged by the prosecution in causing the death of the deceased by the appellants stood fully established on the record.

Then it was also one of the grounds taken in these appeals that entire incriminating evidence was not put to the appellants (accused) during their examination under Section 313 Cr.P.C. which had caused a prejudice to them and as a result thereof, they could not make out their defence properly. But at the time of hearing, learned counsel for the appellants has failed to point out as to which material incriminating evidence was not put to the appellants during their said examination thereby causing them any prejudice. So this plea of the appellants has also remained unsubstantiated on the record.

30. The basic principles in a case of circumstantial evidence are enunciated by the Hon'ble Apex Court in the case law titled as Sharad Birdhichand Sarda Vs. State of Maharashtra, , which are as under:-

- i. the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- ii. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- iii. the circumstances should be of a conclusive nature and tendency.
- iv. they should exclude every possible hypothesis except the one to be proved, and
- v. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

31. Now let us see the circumstantial evidence of the case in hand brought on record by prosecution during trial of the case:-

(i) In this case the last seen theory which is already discussed in para Nos. 26 and 27 of this judgment.

(ii) Motive, which aspect of this case is also discussed in para No. 29 of this judgment.

(iii) Appellants Dharampal and Prabhu Dayal came back to the residence of PW-3 Rajender Prashad at about 11:00 P.M. on 29.1.2001 in a frightened condition and when he asked from them as to where his brother Rohtash is, then they replied that he had left by boarding bus, which they could not board and hence they had come back. But at the time of search of dead body of deceased after the alleged occurrence, no bus travelling ticket or any concessional pass for travelling was found from his possession. Then if he had boarded the bus as stated by abovesaid appellants, then he was to reach at his residence situated in village Kotda and not to go to the place where his dead body was found lying. Then it is also a fact that if two or more persons are to get any bus and one of them succeeds to board it and the remaining did not succeed to board the same, then the person who succeeds to board the bus can make a request either to driver or bus conductor to stop the bus so that his companions could also be able to board the same. Then both these appellants left the residence of PW-3 Rajender Prashad in the next morning without informing him, which fact also goes against them.

(iv) Then it is also established on the record that after the last rites/ceremonies of her deceased-husband, when PW-4 Santosh and her family members returned to village Kotda, then accused Dharampal and Babu Lal came to her residence and threatened her not to take any legal step regarding death of her husband.

(v) Then it had also come in the statement of PW-3 Rajender Prashad that after 3/4 days from 31.01.2001, Babu Lal accused accompanied by another person came to his residence and enquired from him about the occurrence. Said Babu Lal also told him that now nothing could be done about the death of his brother and he also offered to render help for the children of the deceased and also to provide two bighas of land for their house, but subject to the condition not to take any legal action qua the death of his brother. Even he also threatened him to death in case any legal action qua death of his brother was initiated.

Appellant-Babu Lal though himself was not involved in the murder of the deceased but he might have gone to PW-3 and PW-4 for the sake of interest of the remaining appellants/accused in order to save them from the clutches of law.

(vi) Then photograph Ex. P1 also gave sufficient indication that dead body of the deceased was lying in between two railway tracks and not in any single track.

(vii) So far as the opinion of PW-5 Dr. S.K. Mittal that it was a case of rail accident is concerned, the same is merely of advisory nature and it cannot be

held to be binding upon the Court in recording the final judgment.

(viii) Then in this case, appellant-Babu Lal was not seen in the company of the deceased on any date prior to the alleged occurrence, so his case is quite distinct and separable from the case of remaining two appellants namely Dharampal and Prabhu Dayal. Prosecution evidence that he had gone to PW-3 Rajender Prashad at his residence after 3/4 days of 31.01.2001 to enquire about the alleged occurrence and to offer assistance to the children of the deceased is held to be not upto the mark to hold him guilty in this case. Similarly, the statement of PW-4, that appellant-Babu Lal along with Dharam Pal had come to her when she had come back to her native village after the last rites of her husband and threatened her to death in case any action is taken qua the death of her husband, does not make out a case to hold that this person has any kind of complicity in the commission of murder of her husband. As abovesaid, he might have gone to them to save the interest of his remaining two appellants. So the above discussed evidence against him is not sufficient to bring home his guilt and to convict him of the charges levelled against him in this case.

The above discussed entire circumstantial evidence pinpoints to one strong hypothesis that the alleged murder of deceased was done by appellants Dharampal and Prabhudayal and none else.

32. i. In the light of the above discussion CRA-D-127-DB-2003 of appellant-Babu Lal is hereby accepted.

The impugned judgment of conviction and order of sentence under appeal so far as it relates to this appellant stands set aside. He is acquitted of the charges levelled against him under Sections 302 /34 , IPC, by giving him benefit of doubt. He and his surety are also discharged from the liability of their bail bonds and surety bonds, respectively.

ii. So far as appeal (CRA-D-136-DB-2003) relating to the appellants-Dharampal Singh and Parbhu Dayal is concerned, the same stands dismissed and impugned judgment relating to their conviction and order of sentence stand upheld. These appellants, as per the record, are on bail, their bail bonds and surety bonds stand cancelled. Let they be taken into custody and sent to the prison for undergoing the remaining period of sentence imposed upon them by the learned trial Court vide impugned judgment and order of sentence.

33. Copy of this judgment be sent to the learned trial Court as well as to the Court of learned Chief Judicial Magistrate, concerned for ensuring its strict compliance as per law.