
(2018) 11 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 05 Of 2017

Lok Bahadur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Code of Criminal Procedure, 1973 — Section 313, 498A

Citation : (2018) 11 SHI CK 0027

Hon'ble Judges : Dharam Chand Chaudhary, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Ritta Goswami , Narender Guleria, Svaneel Jaswal

Final Decision : Disposed Off

Judgement

The present appeal has been preferred by the appellant/accused/convict (hereinafter referred to as "the accused") laying challenge to judgment

dated 18.10.2016, rendered by learned Additional Sessions Judge (CBI), Shimla, Camp at Theog, in Trial No. 35-T/7 of 2013, whereby the accused

was convicted and sentenced for the offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2. Leaving fiddling little details, the facts of the case can tersely be summarized as under:-

On 17.5.2013, at about 05.30 p.m., Smt. Supna Devi (complainant), got her statement recorded in Police Station Theog. The relevant excerpts of her

statement are that on 17.5.2013, around 03.00 p.m., when she was present in her home, two Nepalis

came from Mohri, bazaar and they were quarrelling with each other. The complainant has further stated that one Nepali was lying on the ground and

blood was oozing from his ear. She separated both of them and afterwards they went towards Mohri nallah. Around 04.30 p.m., the complainant saw

them proceedings towards Sharmala, in a private bus. Subsequently, someone called that in between Mohri to Matiana two Nepalis were fighting. On

this she rushed to the road and found a nepali person lying on the road, who had sustained injuries and another nepali person hurriedly went towards

Mohri bazaar. Thereafter, she went to Mohri bazaar and when she returned, she saw nepali person, who killed other nepali sitting in the shop of

Chander Prakash. She identified the accused and narrated this to other persons, who caught hold of him (accused). The deceased was found dead on

the road and later on it was unearthed that his name was Harka Bahadur. It was also unearthed that accused and the deceased were engaged as

labourers by Shri Madan Lal, Pradhan Gram Panchayat Sharmala. On the anvil of the statement, so made by the complainant, FIR was registered and

investigation ensued. Police prepared the spot map and at the instance of the accused the spot was identified, wherefrom two disposable glasses were

recovered. The spot was got demarcated from Patwari Halqa and a copy of jamabandi was also procured. The accused was medically examined.

Police took into possession pieces of meat, potatoes and green chilly and the splinters of broken pieces of bottle were collected in a plastic jar, sealed

and taken into possession. Police also took into possession match box, scalp hair, mud, gold stake case and grass. The corpse of the deceased was

sent for postmortem examination and photographs of the spot were also clicked. Police also took into possession a pair of socks, a green T-shirt, a

multi-colour shirt and a blue jean pants. Police also seized white vests, grey long sleeves jacket and a brown underwear. Statements of the witnesses

were recorded in a CD/DVD. After conclusion of the investigation police presented the challan in the learned Trial Court.

3. In order to prove its case, the prosecution examined as many as twenty one witnesses. The statement of the accused, under Section 313 Cr.P.C.,

was recorded and he claimed innocence. No defence witness was produced by the accused.

4. The learned Trial Court, vide impugned judgment convicted the accused for the offence punishable under Section 302 IPC and sentenced him to

undergo rigorous imprisonment for life and to pay fine of ` 50,000/- (rupees fifty thousand) and in default of payment of fine he was further ordered to

undergo simple imprisonment for a period of one year, hence the present appeal preferred by the accused-convict.

5. We have heard Mr. Y.P.S. Dhaulta, Advocate, learned Legal Aid Counsel for the appellant/accused and Ms. Ritta Goswami, learned Additional Advocate General, for the respondent/State.

6. The learned Legal Aid Counsel for the accused has argued that the accused has been convicted by the learned Trial Court on the basis of surmises

and conjectures. He has further argued that the prosecution has failed to conclusively establish the guilt of the accused. He has argued that the

coherent connection

inter se the happening of the events, as portrayed by the prosecution, and the role of the accused, has not been cogently and conclusively established

by the prosecution, which, in turn, is fatal to the prosecution case. He has further argued that there is nothing on record which connects the accused

with a commission of the offence, so the appeal be allowed and the accused be acquitted by setting aside the judgment of the learned Trial Court.

The learned counsel for the accused, in order to get lateral support to his arguments has placed reliance on following decisions rendered by

Honâble Supreme Court:

1. Khekh Ram vs. State of Himachal Pradesh, (2018) 1 Supreme Court Cases 202; &

2. Krishan Chand vs. State of Himachal Pradesh, (2018) 1 Supreme Court Cases 222.

He has argued that grievous the offence, more stricter proof is required to establish it, but in the instant case there is no evidence which connects the

accused with the offence. Conversely, Ms. Ritta Goswami, learned Additional Advocate General, has argued that the prosecution has cogently and

convincingly proved the guilt of the accused beyond the shadow of reasonable doubt. She has further argued that minor discrepancies do not create

any doubt about the veracity of the prosecution story. She has further argued that the learned Trial Court has properly appreciated the facts and law

and the evidence led by the prosecution is not marred by lacunae, of which the accused can reap the benefit of doubt. She has argued that the

judgment rendered by learned Trial Court is not required to be interfered with and the same be upheld. She has relied upon the following judicial

pronouncements:

1. State of Andhra Pradesh vs. Pullagulli Casi Reddy Krishna Reddy alias Rama Krishna Reddy and others, (2018) 7 Supreme Court Cases 623;

2. State of Maharashtra vs. Suresh, (2000) 1 Supreme Court Cases 471.

7. In order to appreciate the rival contentions of the parties, we have gone through the record carefully.

8. The edifice of the prosecution story rests upon circumstantial evidence and the Honâ??ble Apex Courts, as also this Court in catena of judgments

settled the law qua the circumstantial evidence. In nitty-gritty, the law with respect to circumstantial evidence is that each and every circumstance is

required to be proved by the prosecution and the circumstances, as a whole, have to make out a chain in a manner that the only conclusion is that the

accused has committed the offence, as alleged by the prosecution. The law on the point of circumstantial evidence is considered and settled by the

Honâ??ble Courts in the following judgments:

1. State of H.P. vs. Sunil Kumar, Criminal Appeal No. 326 of 2011, decided on 15.06.2017;

2. Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622;

3. Padala Veera Reddy vs. State of Andhra Pradesh and others, AIR 1990 Supreme Court 79;

4. State of Uttar Pradesh vs. Ram Balak & another, (2008) 15 Supreme Court Cases 551, &

5. Rajdev alias Raju & another vs. State of H.P., Criminal Appeal No. 288 of 2015.

9. In State of H.P. vs. Sunil Kumar, Criminal Appeal No. 326 of 2011, decided on 15.06.2017, this Court has held as under:

â??13. It is more than settled that in case of circumstantial evidence, the circumstances from which inference as to the guilt of the accused is

drawn, have to be proved beyond reasonable doubt and there be a complete chain of evidence consistent only that the hypothesis of guilt of the

accused and totally inconsistent with his innocence and in such a case if the evidence relied upon is capable of two inferences then one which is in

favour of the accused must be accepted. It is clearly settled that when a case rests on circumstantial evidence such evidence must satisfy three tests:

i) The circumstance from which an inference of guilt is sought to be drawn must

cogently and firmly established.

ii) Those circumstances should be of a definite tendency un-erringly pointing out towards the guilt of the accused.

iii) The circumstances taken cumulatively, should form a complete chain so that to come to the conclusion that the crime was committed by the accused.

14. Equally well settled is the proposition that where the entire prosecution case hinges on circumstantial evidence the Court should adopt cautious

approach for basing the conviction on circumstantial evidence and unless the prosecution evidence point irresistible to the guilt of the accused, it would not be sound and safe to base the conviction of accused person.

15. In case of circumstantial evidence, each circumstances must be proved beyond reasonable doubt by independent evidence and the circumstances

so proved, must form a complete chain without giving room to any other hypothesis and should be consistent that only the guilt of the accused (See:

Lakhbir Singh vs. State of Punjab, 1994 Suppl. (1) SCC 173).

10. The Honâ??ble Supreme Court in Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622, has held as under:

â??48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral

statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last

time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would

naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that is done consciously but even

unconsciously the love and affection or the deceased would create a psychological hatred against the supposed murderer and, therefore, the court has

to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they

would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been

stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology

and no one can help it.

149. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This

is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves

complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link

it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where is any infirmity or lacuna

in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

150. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an

additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can

be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.

(2) the said circumstance point to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

151. If these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the

Court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was

examined in *Shankarlal's case* (AIR 1981 SC 765) (supra) where this Court observed thus:

Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best

be considered as an additional circumstance, if other circumstances point unflinchingly to the guilt of the accused.

152. This Court, therefore, has in no way departed from the five conditions laid down in *Hanuman's case* (supra). Unfortunately, however, the High

Court also seems to have misconstrued this decision and used the so-called false

defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General.â??

11. The Honâ??ble Supreme Court in Padala Veera Reddy vs. State of Andhra Pradesh and others, AIR 1990 Supreme Court 79, has held as under:

â??12. There are certain salient and material features in the present case which are not controverted; they being that A-1 to A-3 and the deceased lived under a common roof, that the deceased had instituted a civil suit against her father, PW-8 and brother PW-9 claiming exclusive possession of the disputed land, that the deceased was found dead on the morning of 7.9.85 and that there were certain visible injuries such as abrasions, nail marks and contusions on the part of the nose, upper lip, chin and neck etc. as noted by the Medical Officers (PWs 5 and 6) in the post-mortem report Ex. P.

9. The appellate Court on the strength of the opinion given by the Medical Officers (PWs 5 and 6) has agreed with the view of the Trial Court that the death of the deceased was of homicidal one and not suicidal and held ""therefore suicidal is ruled out."" We also very carefully went through the evidence of the Medical Officers and found that the prosecution has convincingly established that the death of the deceased was due to forcible administration of poison and smothering. Hence we are in full agreement with the concurrent findings of the Courts below that it is a clear case of murder.

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15. While considering the above circumstances, the appellate Court has expressed its view that the explanation given by the accused that they were at the marriage house of PW-1 throughout the night is nothing but a false explanation and that the culprits who ever they might have been should have administered the poison to the victim and thereby caused her death and that there is very strong suspicion against the accused persons but the

prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof. The relevant

portion of the final conclusion of the appellate Court reads thus:

“There is no evidence whatsoever either from the neighbours or from others to show that the accused at any time ill-treated the deceased or

treated her cruelly. In these circumstances, it is not possible to hold that the prosecution has established the guilt on the part of A. 1 to A. 3. Thus,

there is no conclusive evidence that the accused committed the offence of murder. It is an unfortunate case where cold-blooded murder has been

committed and it is difficult to believe that no inmate of the house had any hand in the offence of murder. But that will be only a suspicion which

cannot take the place of proof.”

16. We, in evaluating the circumstantial evidence available on record on different aspects of the case, shall at the foremost watchfully examine

whether the accused 1 to 3 had developed bad-blood against the deceased to the extent of silencing her for ever, that too in a very inhuman and

horrendous manner. The appellant wants us to infer that the deceased should have been subjected to all kinds of pressures and harassments and

compelled to institute the suit against her father and brother claiming exclusive right over the landed property in order to grab the said property, that

this conduct of the accused should have been resented by the deceased and that on that score the accused should have decided to put an end to her

life. In our view, this submission has no merit because there is no acceptable evidence showing that there was any quarrel in the family and that the

deceased was ill-treated either by her husband or in-laws. The appellate Court while dealing with this aspect of the case has observed that there is no

evidence that the accused ill-treated the deceased, which observation we have extracted above. Hence, we hold that there is no sufficient material to

warrant a conclusion that the accused had any motive to snatch away the life threat of the deceased. There is no denying the fact that the deceased

did not accompany her husband and in-laws to attend the marriage celebrated in the house of PW-1 and remained in the scene house and that she

has been done away with on the intervening night of 6th/7th September, 1985. From this circumstance, the Court will not be justified in drawing any

conclusion that the deceased was not leading a happy marital life. As observed by

the appellate Court, the explanation offered by accused 1 to 3 that they remained in the house of PW 1 throughout the night is too big a pill to be swallowed. But at the same time, in our view, this unacceptable explanation would not lead to any irresistible inference that the accused alone should have committed this murder and have come forward with this false explanation. We have no hesitation in coming to the conclusion that it is a case of murder but not a suicide as we have pointed out supra. The placing of the tin container with the inscription 'Democran, by the side of the dead body is nothing but a planted one so as to give a misleading impression that the deceased had consumed poison and committed suicide. But there is no evidence as to who had placed the tin container by the side of the dead body. Even if we hold that the perpetrators of the crime whoever might have been had placed the tin, that in the absence of any satisfactory evidence against the accused would not lead to any inference that these accused or any of them should have done it. It is the admitted case that the first accused handed over three letters Ex. P. 6 to P. 8 alleged to have been written by the deceased to the Investigating Officer. The sum and substance of these letters are to the effect that the deceased had some grouse against her parents and that the accused were not responsible for her death. The explanation given by accused No. 1 in this written statement is that by about the time of the arrival of the police, one Sathi Prasad Reddy handed over these letters to him saying that he (Reddy) found them near the place where the dead body was laid and that he (A-1) in turn handed over them to the police. PWs 8 and 9 have deposed that these letters are not under the hand writing of the deceased. But the prosecution has not taken any effort to send the letters to any hand-writing expert for comparison with the admitted writings of the deceased with the writings found in Ex. P. 6 to P. 8. Under these circumstances, no adverse inference can be drawn against accused No. 1 on his conduct in handing over these letters.

17. No doubt, this murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances unerringly establish that all the accused or any of them are the real culprits. The circumstances indicated by the learned Counsel undoubtedly create a suspicion against the accused. But would these circumstances be sufficient to hold that the respondents 2 to 4 (accused 1 to 3) had committed this

heinous crime. In our view, they are not.

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22. We are of the firm view that the circumstances appearing in this case when examined in the light of the above principle enunciated by this Court

do not lead to any decisive conclusion that either all these accused or any of them committed the murder of the deceased, Vijaya punishable under

Section 302 read with Section 34 of I.P.C. or the offence of cruelty within the mischief of Section 498-A I.P.C. Hence, viewed from any angle, the

judgment of the appellate Court does not call for interference.â??

12. The Honâ??ble Supreme Court in State of Uttar Pradesh vs. Ram Balak & another, (2008) 15 Supreme Court Cases 551, has held as under:

â??12. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish, it was noted

as follows:

â??22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive

and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and

possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased

were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased

and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.â??

13. In Ramreddy Rajesh Khanna Reddy v. State of A.P., it was noted as follows:

â??27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were

last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. Even in such a case the courts should look for some corroboration.â??

(See also Bodhraj v. State of J&K, (2002) 8 SCC 45)

14. A similar view was also taken in Jaswant Gir v. State of Punjab, 2005 12 SCC

438. Factual position in the present case is almost similar, so far as time gap is concerned.

15. Out of the circumstances highlighted above really none is of any significance. Learned Counsel for the appellant-State highlighted that the extra judicial confession itself was sufficient to record the conviction. On a reading of the evidence of CW-1 it is noticed that accused Ram Balak did not a say a word about his own involvement. On the contrary he said that he did not do anything and made some statements about the alleged act of co-accused. Additionally, in his examination under Section 313 of Code, no question was put to him regarding his so called extra judicial confession. To add to the vulnerability, his statement is to the effect that after about 11 days of the incidence the extra judicial confession was made. Strangely he stated that he told the police after three days of the incidence about the extra judicial confession. It is inconceivable that a person would tell the police after three days of the incidence about the purported extra judicial confession which according to the witness himself was made after eleven days. Learned Counsel for the State submitted that there may be some confusion. But it is seen that not at one place, but at different places this has been repeated by the witness.

16. Learned Counsel for the appellant also refers to a judgment of this Court in Abdul Razak Murtaza Dafadar v. State of Maharashtra, more particularly para 11 that the Dog Squad had proved the guilt of the accused persons. In this context it is relevant to take note of what has been stated in para 11 which reads as follows: (SCC pp. 239-40)

“11. It was lastly urged on behalf of the appellant that the lower courts ought not to have relied upon the evidence of dog tracking and such evidence was not admissible in order to prove the guilt of the appellant. The evidence of tracker dogs has been much discussed. In Canada and in Scotland it has been admitted. But in the United States there are conflicting decisions:

“There have been considerable uncertainty in the minds of the Courts as to the reliability of dogs in identifying criminals and much conflict of opinion on the question of the admissibility of their actions in evidence. A survey of the cases however, reveals that most Courts in which the question of the admissibility of evidence of trailing by blood-hounds has been presented take the

position that upon a proper foundation being laid by proof that the dogs were qualified to trail human beings, and that the circumstances surrounding the trailer were such as to make it probable that the person trailed was the guilty party, such evidence is admissible and may be permitted to go to the jury for what it is worth as one of the circumstances which may tend to connect the defendant with the Crime.â?? (para 378, Am. Juris. 2nd edn. Vol. 29, p. 429.)

There are three objections which are usually advanced against the reception of such evidence. First, since it is manifest that the dog cannot go into the box and give his evidence on oath, and consequently submit himself to cross-examination, the dog s human companion must go into the box and report the dog s evidence, and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inferences. And, thirdly, it is suggested that even if such evidence is strictly admissible under the rules of evidence it should be excluded because it is likely to have a dramatic impact on the jury out of proportion to its value. In *R. v. Montgomery*, 1866 NI 160 a police constable observed men stealing wire by the side of a railway line. They ran away when he approached them. Shortly afterwards the police got them on a nearby road. About an hour and half later the police tracker dog was taken to the base of the telegraph pole and when he had made a few preliminary sniffs he set off and tracked continuously until he stopped in evident perplexity at the spot where the accused had been put into the police car. At the trial it appeared that other evidence against the accused that they had been stealing the wire was inconclusive and that the evidence of the behaviour of the tracker dog was crucial to sustain the conviction. In these circumstances the Court of Criminal Appeal ruled that the evidence of the constable who handled the dog on its tracking and reported the dog s reactions was properly admitted. The Court did not regard its evidence as a species of hearsay but instead the dog was described as ""a tracking instrument and the handler was regarded as reporting the movements of the instrument, in the same way that a constable in traffic case might have reported on the behaviour of his speedometer. It was argued in that case that the tracker dog s evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of

bacilli. The comparison does not, however, appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But Dogs are intelligent animals with many thought processes similar to the thought processes of human beings and wherever you have thought processes there is always the risk of error, deception and even self - deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight.

It is submitted by learned Counsel for the appellant that in the said case this Court had upheld the conviction. Though in the said case the conviction was upheld, but that was done after excluding the evidence of Dog Squad. This Court found that the rest of the prosecution evidence proved the charges for which the appellants therein had been convicted.â??

13. After touching the different facets relating to the law laid down by Honâ??ble Courts on the subject of circumstantial evidence, the testimonies of the prosecution witnesses need discussion and analysis. So, in order to appreciate the rival contentions of the parties we have gone through the record carefully.

14. In the instant case, statement of Smt. Sunpa Devi (complainant) is very material. The entire prosecution story revolves around the testimony of the complainant. She had deposed that on 17.05.2013 around 03.00 p.m., when she was in her home two nepalis, who came from Mohri side and going towards Sharmala, were quarreling. One nepali had laid another nepali, from whose ear blood was oozing. She tried to save him and afterwards they went towards the side of the gorge where they started taking liquor. This witness has further deposed that around 04.30 p.m., she came to Sharmala and some unknown persons called her and informed that two persons were quarreling on the road. She from distance saw that one person stained with blood, who was lying on the road side and other was going towards Mohri side. This witness recognized the accused as the person who was going towards Mohri side. She narrated the incident to Shri Mohan Singh, Chemist, Shri Chander Prakash, shopkeeper and Shri Prem Nepali. When she was returning, she saw the accused sitting in the shop of Shri Chander Prakash, so she told to the persons, who were present there, that the accused killed other Nepali. Therefore, the accused was caught and brought on

the spot. As per this witness, the name of deceased was Harka Bhadur. The accused disclosed his name as Lok Bahadur. She has further deposed that her statement, Ex. PW-1/A, was recorded by the police and she signed the same. She further deposed that police inspected the spot, prepared a spot map and also clicked photographs. This witness, in her cross-examination, has deposed that her house is only at a distance of 5 meters from the road and other houses are half kilometer away from her house. She has further deposed that the spot is visible from other houses as well. As per this witness, blood was oozing from the ears of the deceased and the accused put his foot on his head. She has categorically deposed that both Nepalīs were inebriated. She did not see any glass bottle in the hand of the deceased and also did not notice the person who called her. She has deposed that the accused came to market on his own, so she told to other persons that the accused killed the deceased. This witness specifically stated that she did not see the accused killing the deceased. She admitted that both the Nepalīs went towards gorge, which is a steep valley. She admitted it to be correct that if a person falls from the valley, he would sustain injuries and die. She feigned ignorance that who had informed the police. Police visited the spot on the same day around 05.00 p.m., and recorded her statement on the road. As per this witness, police did not record the statement of other witnesses on the same day. Police remained in her house till 11.00 p.m., as the spot of occurrence did not have lights.

15. Another key witness is PW-2, Shri Chaman Lal. He has deposed that he runs a shop at Mohri and last year in front of shop of Chander, approximately 60-70 feet away people were making noise. This witness had telephoned the police. After two days police came to the spot. Police associated him and the complainant in the investigation. The accused was brought by the police to his shop and then taken to the spot. At the instance of the accused police recovered two disposable glasses, which were sealed in a cloth parcel and taken into possession vide memo, Ex. PW-2/A. As per this witness, he and the complainant signed the memo and the accused also signed the same. Police prepared the spot map and memo of demarcation (Ex. PW-2/B). This witness, in his cross-examination, has deposed that there is steep slant on the spot.

16. PW-3, Shri Chander Mohan, is also important witness in the present case. He

has deposed that he is a shopkeeper having shop at Mohri. As per the deposition of this witness, tea- and chemist shops of Shri Mohan Singh are there at Mohri and he had engaged Shri Prem Chand as cook in his dhaba. On 17.5.2013 around 04.30 p.m., he alongwith Prem and Mohan Singh was standing outside his shop. The complainant came to his pharmacy shop for medicines and she told that a nepali had killed other nepali. He has further deposed that the complainant identified the accused, who had come near to his shop. Consequently, they caught the accused and on being inquired by the police he disclosed his name as Lok Bahadur. As per this witness, in his presence the accused did not tell anything and the police took the accused from the spot. This witness was declared hostile and subjected to exhaustive cross-examination. On being cross-examined by the learned Public Prosecutor, this witness admitted that the accused disclosed to the police that he and the deceased consumed liquor together and thereafter the deceased quarreled with him. So, the accused stabbed the deceased on his neck with a broken bottle of glass, so the deceased fell down and ultimately died. This witness, on being cross-examined by the learned Defence counsel, deposed that police was informed by Shri Chaman Lal and police reached the spot around 05.30 p.m. He has deposed that his statement was recorded after two days. He has specifically stated when he caught the accused he was inebriated. Police did not take him to the spot. He has further categorically stated that he heard from people that a Gorkha killed a Nepali.

17. PW-4, Shri Mohan Lal, is also one of the important witness. He has deposed that he runs a chemist shop at Mohri and Shri Chander Mohan, runs a tea-shop. He has deposed that Shri Chander Mohan had engaged a Nepali as cook in his shop. On 17.5.2013, at about 04.30 p.m., he alongwith Prem and Chander Mohan was standing outside his shop and the complainant came to his shop. The complainant divulged to them that a Nepali had killed another Nepali. Thereafter, a Nepali (accused) came there and the complainant told them that he killed another Nepali. So, they caught the accused and Shri Chaman Lal informed the police. Police came on the spot and accused disclosed his name as Lok Bahadur. The accused disclosed to the police that he and the deceased took liquor in the gorge and thereafter they had a quarrel and in the melee he stabbed the deceased with a

broken bottle on his neck and killed him. This witness, in his cross-examination, deposed that he did not see the accused stabbing the deceased on his

neck with a bottle. He has deposed that his statement was recorded on 19.05.2013. As per this witness, the statements of Shri Chander Mohan and

Shri Prem Bhadur were recorded in his presence.

18. PW-5, Shri Krishan Dutt, Halqua Patwari, deposed that he prepared tatima, Ex. PW-5/A, and also supplied copy of jamabandi, Ex. PW-5/B.

19. Indeed, in murder cases scientific and medical evidence provide unmatched and valuable aid to the Courts to reach on most probable conclusion.

In the instant, case PW-6, Dr. Dalip Tekta, medically examined the accused on 18.05.2013. This witness found the following injuries on the persons of

the accused:-

1. Abrasions on the occipital region size 2.5X1/2 C.M. radish in colour underlying bone is normal.

2. Contusion on the right parietal region size 4X3X2 c.m bluish in colour underlying bone is normal.

3. Abrasion on the left side of the chest near clavicular joint size 3X1/2 c.m radish in colour.

As per this witness injuries were simple in nature and caused within the duration of 72 hours with blunt weapon. He handed over blood sample, sample

of scalp hair, wearing clothes and urine sample to the police. This witness issued medico legal certificate qua the accused which is Ex. PW-6/A and

also opined that injuries, as sustained by the accused, could be possible in a scuffle. This witness, in his cross-examination, admitted that injuries

mentioned in Ex. PW-6/A are possible in a fall.

20. PW-9, Dr. M.M. Verma, examined the deceased on 18.05.2013. As per this witness, he has noticed the following injury on the person of the

deceased :-

1. There was an acute lacerate wound over the right neck 1X1 1/2 inch in length.

2. There was an oblique lacerated wound over the left occipito parietal region of skull 1 inch in length.

3. There was another lacerated wound about 1 inch in length in the region of left eyebrow.

As per this witness, on the same day, through ASI Ram Ratan, the case was

referred to Department of Forensic Sciences, Indra Gandhi Medical

College, Shimla. The probable time between death and postmortem was approximately 20 hours. He issued postmortem report No. 15, Ex. PW-9/A.

He further deposed that the cause of death was to be ascertained by the Department of Forensic Sciences, Indra Gandhi Medical College, Shimla.

This witness, in his cross-examination, deposed that if a person falls on splinters of glasses, the injuries as mentioned in postmortem report, Ex-PW-

9/A, can be possible. He has further deposed that if a person falls from steep surface then also injuries mentioned in Ex-PW-9/A, can be possible.

21. Another key witness qua the scientific evidence is PW-21, Dr. Vivek Sahaj Pal, Assistant Director, DNA, SFSL, Junga. He has deposed that on

31.7.2013, five sealed parcels, which were intact, were received in DNA division from Biological and Serology Division, SFSL Junga. He conducted

DNA profiling and issued report, Ex. PW-17/N, and concluded as under:-

I. Identical DNA profile was obtained from Exhibit-16A (pants, Harka Bahadur) and Ext. 16/B (shirt, Harka Bahadur).

II. A mixed DNA profile was obtained Exhibit-11- A (pants, Lok Bahadur) and Ext.11B (T-shirt, Lok Bahadur), from which one DNA profile could

be identified, and this DNA profile matches completely with the DNA profile obtained from Ext-16/A (pants, Harka Bahadur) and Ext.-16/B (Shirt,

Harka Bahadur).

III. The partial DNA profile obtained from Ext-5 (broken glass of bottle) is consistent with the DNA profile obtained from Ext-5 (Broken glass of

bottle is consistent with the DNA profile obtained from Ext.16a (pants, Harka Bahadur) and ext.-16 (shirt, Harka Bahadur).

IV. A mixed and low intensity DNA profile was obtained from Ext-11C (upper, Lok Bahadur) from which nothing specific could be inferred.

This witness in his cross-examination, has deposed that sample of parcel 13 was highly putrefied and yielded highly degraded DNA and did not show

amplification, hence DNA profile could not be generated.

22. PW-11, Dr. Sangeet Dhillon, deposed that on 19.5.2013, at about 12.30 p.m. he conducted postmortem of the corpse of the deceased. He noticed

the following injuries on the person of the deceased:-

1. Lacerated wound on the left parietooccipital region 8Cm superior and lateral to upper end of left ear 2.5 C.m. X .5x bonedeeep. Another LW 1.5

C.m inferior to about wound 1.2 X .5 C.m.

2. Vertical LW on right eyebrow 1.2 x.5x bone deep.

3. V shape LW on the posterior aspect of left ear 1.2 CM.

4. One contusion corresponding to injury number 3.

5. Red contusions on left zygomatic region 4x3 C.M.

6. Red contusions on the bridge of nose, right chick 3x2 and 2x3 Cm.

7. Red contusions on the inner aspect of upper lip and lower lip 1.2x1.8, .8x1.2.

8. Red contusions on the superior aspect of left shoulder joint 1.2 x 1.3.

9. Oblique stab wound on the right anterolateral aspect of mid region of neck 4.5. C.M X 1.5. C.M. Upper end is 10 C.M from the right ear lobule

while the lower end is 14 C.M from the right ear lobule margins are irregular. The stab has pierced the muscle, carotid sheath cutting the internal

jugular vain and further gone towards a posterior area between hyoid and thyroid cartilage which has removed the bone of cervical vertebra No. 4.â??

This witness opined that the deceased died due to stab injury on the neck, he has preserved the viscera and sent the same alongwith samples for

examination. He found 267.63 mg % alcohol in the blood of the deceased.

23. PW-7, Shri Madan Lal Verma, Pradhan Gram Panchayat, Sharmala, deposed that the accused and the deceased used to work for him. As per this

witness both of them used to quarrel with each other and when he asked why they quarrel, the deceased told that accused is involved with some lady

and wants to take her away. He has further deposed that on 17.05.2013, Shri Om Prakash Sharma, Up-Pradhan, Gram Panchayat, Klint

telephonically informed that the deceased and the accused had a fight. Consequently, he went to Mohri, and saw the deceased lying dead and the

accused was heavily drunk. As per this witness police alongwith Shri Chater Singh and the complainant were present on the spot. In his presence

police took into possession the pieces of meat, potatoes and green chilly and to this effect memo, Ex. PW-7/A, was prepared, which was signed by

him. This witness has categorically stated that police took into possession broken pieces of glass bottle and blood-stained glass pieces of liquor bottle.

In this regard memos of Ex. PW-7/B and Ex. PW-7/C were prepared, which were signed by him. In his presence police also took into possession five

scalp hair from the right hand of the deceased, which were lying in his hand,

memo in this regard, Ex. PW-7/D, was prepared, which is signed by him.

He has further deposed that vide seizure memo, Ex. PW-7/E, police took into possession grass and mud from the spot. Besides this, blood stained mud

and grass were also taken into possession vide seizure memo, Ex. PW-7/F. This witness, in his cross-examination, deposed that he cannot name the

lady with whom the accused was involved. The accused did not give beatings to the deceased in his presence.

24. PW-8, Shri Vikram Chauhan, deposed that he used to run mobile sale and repair shop at Chaila. As per this witness on 17.5.2013, around 09.00

a.m., when he was present at his shop, the accused came for repair of his mobile handset, i.e. Lava C-31. He repaired the mobile of the accused

charged Rs.380/-. He has further deposed that accused used to work in the house of Shri Madan Pradhan. The accused left around 11.00 A.M. This

witness, during the course of investigation identified the accused.

25. In the instant case, the testimonies of the official prosecution witnesses are not of much significance as the prosecution has to overcome first

riddle of proving the incriminating circumstances against the accused by linking all the circumstances. The testimonies of the above mentioned

witnesses are to be looked into in order to link the circumstances and to form a complete chain of circumstances. However, relevant excerpts from

the testimonies of the prosecution witnesses are necessary in order to link the circumstances, as portrayed by the non-official prosecution witnesses.

Therefore, unnecessary fiddling little details of the official prosecution witnesses are deliberately left.

26. PW-10, Constable Naresh Kumar, in his cross-examination, admitted that the police team returned from the spot around 10.30 P.M. after the

Investigating Officer completed all the formalities. He has also admitted that after 08.00 to 09.00 p.m. it is pitch dark. He has further deposed that

Investigating Officer completed all the formalities on the spot. This witness did not see any blood stains on the broken glass pieces in the Court. Also,

he did not see any blood stains in the mud which was shown to him in the Court.

27. PW-13, Constable Anil Kumar, in his cross-examination, has deposed that hand writings in original roznamcha register and in abstract, Ex. PW-

13/A, are different. PW-15, HHC Kanshi Ram, deposed differently by saying that entire proceedings in the matter were completed by the

Investigating Officer in the house of the complainant.

28. In the present case, the investigation was carried out by PW-17, ASI Kamal Dev. No doubt he has supported the prosecution case and reiterated

the story as portrayed by the prosecution. This witness in his cross-examination, has deposed that he had prepared rukka on the spot while sitting in

the vehicle of the Deputy Superintendent of Police. He did not take finger prints from the liquor bottle.

29. PW-20, Shri Nasib Singh Patial, Scientific Officer, FSL, Junga, chemically analysed the samples sent by the police and issued report, Ex. PW-16-

E. This witness, in his cross-examination, has deposed that he did not check blood-stains on the pieces of glass and on the neck piece of the bottle.

30. After close scrutiny of the key prosecution witnesses and noticing the relevant excerpts of the official prosecution witnesses, it would be apt to

test the same on the touchstone of veracity and credibility. Indeed, prosecution case mainly hinges on the statements of non-official prosecution

witnesses and their depositions are relevant to connect the links in the chain of circumstances. In an umpteen number of cases the Honâ??ble

Supreme Court and also various High Courts have laid down that the rule of prudence with respect to dealing with circumstantial evidence is that each

and every circumstance must connect with other circumstances, so as to form a complete chain of events, ruling out any possibility of innocence of

the accused.

31. A threadbare scrutiny of the evidence, which has come on record, shows that the complainant PW-1, deposed that she saw two Nepalis, who

were quarreling with each other. She has further deposed that she could not identify those Nepalis. As per testimony of this witness, some unknown

person called her and divulged that two persons are quarreling on the road and when she saw from distance one person was lying on the road side,

who sustained injuries and the other person was going towards Mohri side. This witness has identified the accused as the same person, who went

towards the Mohari side. However, this witness, in his cross-examination deposed that, she did not see the accused killing the deceased. As per the

prosecution story, the complainant saw the deceased in the company of the accused before his gory body was found. Now, as per the prosecution,

complainant saw the deceased in the company of the accused. So, one of the

strong circumstance is that the complainant saw the accused and the deceased together immediately preceding the death of the deceased.

32. The Honâ??ble Supreme Court in State of Uttar Pradesh vs. Ram Balak & another, (2008) 15 Supreme Court Cases 551, has held as under:

â??12. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish, it was noted as follows:

â??22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive

and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime

becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long

gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the

deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the

deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.â??

13. In Ramreddy Rajesh Khanna Reddy v. State of A.P., it was noted as follows:

â??27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were

last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. Even in such a case the courts should look for some corroboration.â??

33. Certainly, last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive

and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crimes becomes

impossible. No doubt, Courts in such cases should look for corroborative evidence. In order to establish the last seen together, deposition of PW-1 is

very important. She in categorical terms deposed that, she did not see accused killing the deceased. She has further deposed that some unknown

person called her and said two persons are quarreling on the road and when she saw from distance a person was lying on the road, who had sustained

injuries and other person was going towards the Mohri side. This witness has identified the accused as the person who was proceeding towards the

Mohri side. PW-1, in her cross-examination stated that she did not see the accused killing the deceased. In fact, PW-1 nowhere named the accused to

be the person who had killed the deceased, but on the basis of testimony of this witness the prosecution has tried to attract the last seen theory. The

corpse of the deceased was found on a road which is a vehicular road and there is steep slant. The accused while answering question No. 61 in his

statement under Section 313 Cr.P.C., has stated as under:-

Q. 61 Do you want to say anything else?

Ans; I am innocent and falsely implicated in the present case. I and deceased Harka Bahadur had consumed the liquor in the morning on relevant day.

Deceased Harka Bahadur was heavily drunk. I left him and went to get repair my mobile. In the evening I was arrested by the police. I had not

committed the murder of deceased Harka Bahadur.

Certainly, last seen theory comes into force where the time gap between the point of time when the accused and the deceased were last seen alive

and the deceased is found dead is very small that the possibility of any person other than the accused being the author of the crime becomes

impossible. However, in the present case, as alleged by the prosecution, the accused was last seen with the deceased by the complainant and the

complainant did not see him killing the deceased. Subsequently, the complainant went to Mohri bazaar and saw the accused there, then she divulged to

some persons that the accused killed the deceased. In the wake of sequence of events, as portrayed by the prosecution, it becomes highly doubtful

that on a steep slant road which is frequented by vehicular traffic, the accused killed the deceased and then left to Mohri bazaar. The behaviour and

the conduct of the accused is also to be seen meticulously. Ordinarily, if a person kills someone, he would definitely try to escape and not to roam

freely without any fear of being caught. It is a serious circumstance which cannot at all be over-looked. However, in the case in hand the accused

was seen by the complainant at Mohri bazaar and then she got him apprehended by the persons who were there. The testimony of PW-1 belittles the

stand of the prosecution that complainant saw the deceased in the company of the accused and later on the deceased was found dead, as after the

complainant saw them together and later on the accused went to Mohri bazaar without any fear of being caught. The complainant has categorically

stated the she did not see the accused killing the deceased. The conspectus of the testimonies of key prosecution witnesses unequivocally shows that

where the deceased was found dead there is steep slant and a gorge.

34. The other important witness PW-7, Shri Madan Lal Verma, though stated that in his presence police took into possession pieces of broken glass of

bottle of liquor, blood stained pieces of glass bottle of liquor, grass and mud from the spot. However, PW-10, Constable Naresh Kumar, stated that

there were no blood stains on broken glass pieces. In the wake of the contradictory statements of PW-7 and PW-10 the testimony of PW-20, Shri

Naseeb Singh Patyal, Scientific Officer, FSL, Junga, is important. PW-20, in his cross-examination, has specifically stated that he did not check the

blood stains on the pieces of glasses as well as on the neck piece of the bottle. Now, this is a major missing link in the chain of circumstances which

cannot at all be over-looked.

35. Likewise, as far as circumstance with respect to blood stains on the piece of glass bottle collected from the spot is concerned, it has come on

record is that the deceased was heavily inebriated at that time and the place where he was found dead has steep slant. It is also come on record that

the witnesses have only named that there were two Nepalis who were quarreling with each other and subsequently the accused was found in the

market and there he was apprehended.

36. It has been held by Honâ??ble Supreme Court in R. Shaji Vs. State of Kerala (2013) 14 SCC 266 that in a case of circumstantial evidence

motive may be considered as a circumstance which is relevant for the purpose of examining evidence. As per the prosecution story, the motive behind

the crime was a dispute with regard to some lady to whom the accused wanted to take away. PW-7, Shri Madan Lal Verma, in his cross-examination,

categorically deposed that he cannot disclose the name of the lady with whom the accused was involved. The said lady has also not disclosed to him

at any point of time that the accused was involved with her in any manner. After, threadbare examination of the material which has come on record,

not even remotely it has come on record that there was some dispute with regard to some lady. In the case in hand there is not even a subtle whisper

about what was the motive of the accused in killing the deceased and the motive as portrayed by the prosecution has no substance. Therefore, on this count also the case of the prosecution fails.

37. Now coming to the discrepancies with regard to the investigation, there is variance that the investigation was done while sitting in the vehicle under the torch light, but another witness says that investigation was carried out in the residence of PW-1 (complainant). No doubt, this is not a major contradiction and on this count only the case of the prosecution cannot be said to be marred with loopholes. However, coupled with other major contradictions and discrepancies even minor discrepancies cannot be ignored.

38. The learned counsel for the accused has placed reliance on a judgment of Honâ??ble Supreme Court rendered in Krishan Chand Vs. State of Himachal Pradesh (2018) 1 Supreme Court Case 222, wherein vide paras 20 and 25, it has been held as under :-

â??20. It is to be noted that the defence version is to the effect that at the instance of one B, the accused had been falsely implicated in the instant case. When, the defence version is of false implication, then it was required of the prosecution to have explained each and every material circumstance/contradiction which came on record.

â?| â?| â?| â?| â?| â?| ...

25. The High Court has not appreciated the fact that PW 4 contradicted himself when he stated that it was dark at 5.00 a.m. but no search lights or the headlights of the vehicles were switched on at the time of preparing the search memo and other documents at the spot.â??

In the present case also, the accused was apprehended by local people of Mohri at the instance of the complainant and if not false implication, there are chances of wrong implication of the accused. Even the material which has come on record show that prosecution could not connect the missing links in the chain of the circumstances, so as to make a complete chain of events compelling this Court to conclude that the accused committed the crime. There are major contradictions with regard to investigation being carried out in the vehicle or in the residence of the complainant. The absence of any particular motive behind the crime is also to be taken as a circumstance which goes against the prosecution case. Thus, the judgment (supra) is fully applicable to the facts of the present case.

39. The learned counsel for the accused has also place reliance on of another judgment of Honâ??ble Supreme Court rendered in Khekh Ram vs.

State of Himachal Pradesh, (2018) 1 Supreme Court Cases 202, wherein vide paras 33 to 35 it has been held as under:

â??33. It is a common place proposition that in a criminal trial suspicion however grave cannot take the place of proof and the prosecution to succeed

has to prove its case and establish the charge by adducing convincing evidence to ward off any reasonable doubt about the complicity of the accused.

For this, the prosecution case has to be in the category of ""must be true"" and not ""may be true"". This Court while dwelling on this postulation, in Rajiv

Singh vs. State of Bihar and another, 2015 16 SCC 369 dilated thereon as hereunder:

66. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to

warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise

stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established cannon of criminal justice is ""fouler the

crime higher the proof"". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the

charge(s) beyond all reasonable doubt.

67. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh v. State of Rajasthan as succinctly summarized in paragraph

21 as hereunder:

â??21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ""may be"" proved

and ""will be proved"". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason

that the mental distance between ""may be"" and ""must be"" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the

court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between ""may be"" true and ""must

be"" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a

convict, and the basic and golden rule must be applied. In such cases, while

keeping in mind the distance between ""may be"" true and ""must be"" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.â??

68. In supplementation, it was held in affirmation of the view taken in *Kali Ram v. State of H.P.* that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

69. In terms of this judgment, suspicion, howsoever grave cannot take the place of proof and the prosecution case to succeed has to be in the category of ""must be"" and not ""may be"" a distance to be covered by way of clear, cogent and unimpeachable evidence to rule out any possibility of wrongful conviction of the accused and resultant miscarriage of justice. For this, the Court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings as warranted by the same. The above proposition is so well-established that it does not call for multiple citations to further consolidate the same.

(emphasis in original)

34. In our estimate, having regard to the quality of evidence on record as a whole and in particular on the aspect of identification, the view taken by the Trial Court being convincingly reasonable is acceptable in comparison to one adopted by the High Court.

35. The High Court in the attendant facts and circumstances, in our determination, erred in upturning the findings recorded by the Trial Court. The impugned judgment and order is thus set aside and the acquittal of the appellant is restored. This Court shares the concern expressed by the Trial

Court on the shoddy investigation conducted in the case, having regard in particular to the seriousness of the offence involved and reiterate the

direction issued by it to the Superintendent of Police, Kullu to enquire into the matter to ascertain the reason for the omission/lapses in the investigation, identify the person(s) responsible therefor and the action taken in connection therewith so as to ensure against repetition of such shortcomings in future. The Superintendent of Police, Kullu would complete the inquiry and submit a report to this Court within a period of three months herefrom. The appeal is allowed. The appellant be released from custody if not required in connection with any other case.â??

In the instant case also, the accused was apprehended only on the basis of suspicion raised by the complainant that he had killed the deceased and surprisingly she, in her testimony, deposed that she did not see the accused killing the deceased. The complainant saw the accused and the deceased together and later on the deceased was found dead on a road. After exhaustively discussing the testimonies of the key prosecution witnesses, with certainty it cannot be said that it was the accused who killed the deceased. Indeed, many discrepancies have crept up in the prosecution case which go to the root of the prosecution case and makes it highly doubtful. Therefore, the judgment (supra) is fully applicable to the facts of the present case.

40. On the other hands, the learned Additional Advocate General has also relied upon judicial pronouncements of Honâ??ble Supreme Court in order to substantiate her arguments. She has placed reliance on a judgment of Honâ??ble Supreme Court rendered in State of Andhra Pradesh vs.

Pullagulli Casi Reddy Krishna Reddy alias Rama Krishna Reddy and others, (2018) 7 Supreme Court Cases 623, wherein vide para 11 it has been held as under:

â??11. The principle of â??falsus in uno falsus in omnibusâ?? has not been accepted in our country. Even if some accused are acquitted on the ground that the evidence of a witness is unreliable, the other accused can still be convicted by relying on the evidence of the same witness. Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness. The High Court was oblivious to this settled position of law. The High Court highlighted the minor inconsistencies and omissions in the evidence of Pws 1 to 3 and Pws 5 to 7 to disbelieve them. The High Court wrongly refused to believe the eyewitnesses on the ground that they attempted to implicate as many persons as

possible by making omnibus allegations. The High Court further erred in holding that Pws 1, 6 and 7, who were the eyewitnesses traveling in the jeep

with the deceased, were not speaking the truth as they were close relatives and supporters of Deceased 1. The rejection of the evidence of Pws 2, 3

and 5 by the High Court on the ground that they did not attribute specific overt acts to each accused is also erroneous.â??

In the case in hand, the evidence does not only contain minor discrepancies and contradictions, on the basis of which the whole of the prosecution

case is disproved, however, the prosecution evidence has major lacunae, which cannot at all be overlooked to convict the accused, so, the judgment

(supra) is not applicable to the fact of the present case.

41. The learned Additional Advocate General has placed reliance upon another judgment of Honâ??ble Supreme Court rendered in State of

Maharashtra Vs. Suresh, (2000) 1 Supreme Court cases 471, wherein vide para 27, it has been held as under:

â??27. It is regrettable that the Division Bench had practically nullified the most formidable incriminating circumstance against the accused spoken to

be PW 22 Dr Nand Kumar. We have pointed out earlier the injuries which the doctor had noted on the person of the accused when he was examined

on 25.12.1995. The significant impact of the said incriminating circumstance is that the accused could not give any explanation whatsoever for those

injuries and therefore he had chosen to say that he did not sustain any such injury at all. We have no reason to disbelieve the testimony of PW 22 Dr

Nand Kumar. A false answer offered by the accused when his attention was drawn to the aforesaid circumstance renders that circumstance capable

of inculcating him. In a situation like this such a false answer can also be counted as providing â??a missing linkâ?? for completing the chain.

True it is that the deceased died due to fatal injuries sustained by him in his neck. However, as per the prosecution case the accused inflicted an injury

on the neck of the deceased with neck of broken glass bottle of liquor. Necessarily, if it so, the broken neck of the bottle of liquor would have had

blood stains, but, PW-20 Shri Naseeb Singh Patyal, Scientific Officer, deposed that he did not check the blood-stains on the pieces of glasses and also

on the neck piece of the bottle. One of the official prosecution witness further makes it doubtful by deposing that the piece of broken glass bottle did

not have any blood stains. Now, this is a strong circumstance and certainly it creates a strong dent in the prosecution case. Thus, the judgment (*supra*) is not applicable to the facts of the present case.

42. In view of the above enumerated facts and circumstances of the case it is more than safe to hold that in the instant case the chain of circumstance is not complete and major links are missing. Thus, it cannot be said with impeccability that it was the accused who killed the deceased. It is well established principle of criminal jurisprudence that hundred guilty may escape but one innocent should not be convicted. The discrepancies, contradiction and suspicions which have crept up in the prosecution evidence go to the root of the prosecution case and raises major doubts about the veracity of prosecution story. In the case in hand only a Nepali person has been named as perpetrator of the crime, however, there may be other persons other than the accused alongwith the deceased at the time of the occurrence. Therefore, there are doubts and the evidence led by the prosecution, in no way proves its case, rather contrastingly, after meticulously examining the same we are of the considered view that prosecution has failed to prove the guilt of the accused beyond the shadow of reasonable doubt. It seems that only on the basis of suspicions raised by the complainant the accused was apprehended by the localities of the Mohri and he was handed over to the police and consequently police proceeded against him.

This Court in *Rajdev alias Raju & another vs. State of H.P.*, Criminal Appeal No. 288 of 2015, decided on 30.05.2016, has held as under:

“51. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the accused Manoj Sahani and the accused Manoj Sahani is entitled to get the benefit of doubt.”

43. After exhaustively discussing the entire gamut of the prosecution case with the aid of relevant evidence and law, the inescapable conclusion is that the prosecution has failed to prove the guilt of the accused conclusively and beyond the shadow of reasonable doubt and the finding of guilt, as recorded by the learned Trial Court, needs to be interfered with. Accordingly, the appeal is allowed the judgment is learned Trial Court is set aside.

The accused is acquitted for the offence punishable under Section 302 IPC and ordered to be released forthwith. Fine amount, if already deposited be

refunded to the accused. Since the accused is in jail, he be released forthwith, if not required in any other case, however, subject to his furnishing

personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of learned Additional Sessions Judge (CBI), Shimla,

undertaking specifically therein that in the event of an appeal is preferred against this judgment, he shall appear in the Honâ??ble Supreme Court.

44. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of Jail concerned in conformity

with this judgment forthwith.

45. In view of the above, the appeal, so also pending application(s), if any, stand(s) disposed of.